

to support her. By evidence *aliunde* is meant evidence circumstantial or otherwise apart from the plaintiff's evidence which is relevant and leads one to believe the plaintiff and reject the defendant's evidence¹. Even a false statement by the defendant may in certain circumstances afford the necessary corroboration.²

Appeal allowed.

1950

Present: Windham J.

ABDUL FAREED, Petitioner, and TRIBUNAL OF APPEAL,
MOTOR TRANSPORT *et al.*, Respondents

S. C. 513—Application for a writ of Certiorari on the Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938.

Omnibus Service Licensing Ordinance, No. 47 of 1942—Appeal against refusal of licence—Tribunal of Appeal—Cannot remit case to Commissioner for re-hearing—No such inherent power in a statutory semi-judicial body—Sections 13 (3), 14 (2) and (3).

When an applicant for a licence appeals under section 13 (3) of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the Tribunal of Appeal has no power to remit the matter for decision by the Commissioner, or even for the re-consideration of any particular points by the Commissioner. Under subsections (2) and (3) of section 14, the Tribunal of Appeal can do one of two things only, namely, either to confirm the Commissioner's refusal of a licence or to order that the licence be issued.

APPPLICATION for a writ of *certiorari* on the Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938.

H. W. Tambiah, with *S. Sharvananda*, for petitioner.

M. Tiruchelvam, Crown Counsel, as *Amicus Curiae*.

Cur. adv. vult.

February 7, 1950. WINDHAM J.—

The petitioner is an applicant for the grant of a road service licence for a regular car service between Kandy and Udurawana. The application was made to the Commissioner of Motor Transport under section 3 of the Omnibus Service Licensing Ordinance, No. 47 of 1942. The Commissioner refused the application on the sole ground that the route from Kandy to Udurawana was unsuitable for a cab service. Against this decision the petitioner appealed under section 13 (3) of the Ordinance to the Tribunal of Appeal, namely the first respondent, the other three respondents being the members of the Tribunal. The Tribunal, after hearing the petitioner, postponed further hearing in order to enable it to ascertain

¹ *Potas v. Potas*, 1911 C. P. D. 728.

² *Poggenpool v. Morris*, 1938 C. P. D. 90.

from the Director of Public Works whether the route applied for was in fact unfit for a cab service with a gross load of 2 tons. The Director of Public Works duly reported by letter to the Tribunal that the road was fit for such a load. The Tribunal thereupon, after reciting that the Commissioner had refused the application upon an error of fact as to the capacity of the road to carry the load applied for, and that he had held no inquiry into the merits, proceeded to make order in the following terms:—" We set aside the Commissioner's order dismissing the application but make no order re final allowal or dismissal. It seems to be now the duty of the Commissioner to refile the application for hearing and hear on its merits ".

The petitioner now moves for a writ of *certiorari* to quash the Tribunal's order on the ground that it was made in excess of jurisdiction in that the Tribunal had no power to remit the matter to the Commissioner, but had power only to confirm the latter's decision or to order that a licence be issued to the petitioner.

Now the powers of the Tribunal upon an appeal to it under section 13 (3) of the Ordinance, namely an appeal against a refusal by the Commissioner to issue a licence, are set out in subsections (2) and (3) of section 14 as follows:—

" 14. (2) A Tribunal of Appeal may, in the case of an appeal under section 13 (2) or section 13 (3) or section 13 (6) by the holder of or an applicant for a road service licence—

- (a) make order confirming the decision of the Commissioner ; or
- (b) make order that a licence should be issued to the applicant.

(3) In any case where a Tribunal of Appeal makes order under the preceding provisions of this section that a licence shall be issued to any applicant, the Tribunal shall determine the route or routes on which a service is to be provided under the licence and the conditions to be attached thereto and shall for the purposes of such determination have regard to the provisions of sections 4 to 7 of this Ordinance ".

It is thus clear that under the Ordinance the Tribunal is empowered to do one of two things only, on an appeal to it under section 13 (3), namely, either to confirm the Commissioner's refusal of a licence or to order that the licence be issued. There is no power to remit the matter for decision by the Commissioner, or even for the re-consideration of any particular points by the Commissioner. And the powers of a semi-judicial body, such as the Tribunal under the Omnibus Service Licensing Ordinance, will be confined strictly to the powers conferred upon it by the Statute creating it or by subsequent statutory legislation. In the case of such a body there can be no question of any inherent power to remit, for it derives its powers solely from the statute. It is to be noted that the powers of remission even of the fully judicial criminal and civil courts of appeal of the land are not inherent but are conferred upon them only by statute, namely section 37 of the Courts Ordinance (Cap. 6), section 347 of the Criminal Procedure Code (Cap. 16) and section 773 of the Civil Procedure Code (Cap. 86).

Nor is the omission of any provision in the Omnibus Service Licensing Ordinance empowering a Tribunal to remit an application for the decision of the Commissioner to be considered an oversight on the part of the legislature. For clearly the object and effect of the provisions of sections 13 and 14 is that, upon an appeal from the Commissioner the Commissioner is *functus officio* so far as the particular application is concerned, and the Tribunal is vested with all the powers which the Commissioner had, to determine the matter itself. That is borne out by the provision of section 14 (2) that the Tribunal, if it decides that a licence shall be issued, shall in determining the route and conditions have regard to the provisions of sections 4 to 7 of the Ordinance, sections which set out at length the matters to be considered by the Commissioner when application is made to him. Furthermore, the object of expediency, a necessary object in road transport licensing, is better achieved by the Tribunal's having itself to make the final order upon an appeal, without reference back to the Commissioner.

For these reasons I hold that the order of the Tribunal dated July 3, 1948, was made in excess of jurisdiction. This application is allowed with costs, and a writ of *certiorari* will issue to quash the said order.

Application allowed.

1950

Present : Gratiaen J.

ANDREE, Appellant, and DE FONSEKA, Respondent

S. C. 43—C. R. Colombo, 9,879

Rent Restriction Ordinance—Premises required for use of landlord—Starting new business—Quantum of proof necessary—Ordinance No. 60 of 1942, Section 8 (c).

Where a landlord pleads under section 8 (c) of the Rent Restriction Ordinance that the premises are reasonably required for the purposes of a new business which he proposes to start, the burden is on him to furnish the Court with sufficient material upon which it can be inferred that his proposal is genuine and that his demand to eject the tenant in occupation is reasonable having due regard to the tenant's position.

It is in certain circumstances open to a landlord, in terms of section 8 (c) of the Rent Restriction Ordinance, to claim back his premises for the purpose of establishing a business which has not yet come into existence.

Hameeku Lebbe v. Adam Saibo (1948) 50 N. L. R. 181, followed.

Mamuhewa v. Ruwanpatirana (1948) 50 N. L. R. 184, not followed.

APPPEAL from a judgment of the Commissioner of Requests, Colombo.

H. V. Perera, K.C., with *S. J. Kadirgamar*, for defendant appellant.

G. E. Chitty, with *Vernon Wijetunge*, for plaintiff respondent.

Cur. adv. vult.