

1934

Present : Drieberg J.

THE GOVERNMENT AGENT, PROVINCE OF
SABARAGAMUWA v. PERIES

956—P. C. Ratnapura, 3,742

Motor car—Possession of motor car without licence—Proof of user not necessary—Ordinance No. 20 of 1927, ss. 2 (2) and 30 (1).

In a charge under section 30 (1) of possessing a motor car without a licence no proof is necessary of its user during the period when there was no licence in force.

A PPEAL from an acquittal by the Police Magistrate of Ratnapura.

Wickremanayake, C.C., for complainant, appellant.

Cur. adv. vult.

December 17, 1934. DRIEBERG J.—

The accused was charged with having possessed or used a motor car for which a motor car licence was not in force. This is an offence under section 30 (1) of the Motor Car Ordinance, No. 20 of 1927. On June 21 he pleaded not guilty and the trial was fixed for July 4. On the day of trial the accused admitted that the car was registered in his name. There was some discussion regarding the application of some authority. It was stated for the accused that the car was non-existent; the learned Police Magistrate said that without expressing an opinion on the matter discussed he would call on the accused to lead evidence, and fixed the further hearing for July 23. On that day the accused said he would plead guilty and that in the meantime he wanted to correspond with the Registrar of Motor Cars. It was ordered that the case should be called on August 29. On this day the Magistrate noted that in view of section 2 (2) of the Ordinance he asked the Kachcheri Clerk, who was conducting the prosecution for the complainant, the Government Agent of the Province, whether he could prove that the car was being used on a highway. The Kachcheri Clerk said that all he could do was to produce the certificate of registration and prove that the registration had not been cancelled nor had notice of non-user been given. He relied apparently on the ruling in the case of *The Government Agent, Central Province v. Beeman*¹, referred to at the argument on July 4. The learned Magistrate then made the order from which this appeal is taken. He held that though he agreed with the prosecution that "possess" in section 30 (1) had to be construed as equivalent to "own" and that, under section 25 the accused was to be deemed the owner, and that so long as the registration remained the accused could not be heard to say that the car was non-existent, he was of opinion that by reason of section 2 (2) of the Ordinance the words "motor car" only applied to a car when on a highway and as the prosecution could not prove that the car was on a highway at any time during the current year, for which its licence was not renewed, he had to acquit the accused.

¹ (1932) 88 N. L. R. 843.

Section 2 (2), which influenced him to this conclusion, is as follows:—
“Unless otherwise provided this Ordinance applies to a motor car only when on a highway”. This section is not well worded. The Ordinance contains provisions regulating the use of motor cars and also provisions regarding cars in matters independent of and unconnected with use. Illustrations of the former are to be found in Chapter 7, which deals with rules regulating driving, and Chapter 8, which deals among other matters with speed limits, and these may be made applicable by regulations to specified areas other than highways, section 58 (1).

Matters unconnected with the use of cars are to be found, apart from the section under consideration, in section 18 (1) which makes it an offence for a person to possess a car without being registered as the owner of it. Section 20 provides that once a car is registered the registered owner should give information to the Registrar of any alteration in its weight, dimensions, character or seating accommodation which would affect the accuracy of the description of it in the Register of Motor Cars. In the case of change of possession provided for in section 22, the transferor must within seven days surrender the car licence to the Registrar and inform him of the name and address of the new owner and the date of the change of possession. Failure to comply with these requirements is an offence.

Section 30 (1) makes it an offence for a person to possess a motor car for which a licence is not in force. It is also an offence for a person to use a car for which there is not a licence. In the case of use the person may not have possession of the car—one person may be entitled to possession and actually have possession of the car, but another may be using it. There may be possession without user, and user without possession.

In my opinion one must regard section 2 (2) in its reference to highways as dealing with so much of the Ordinance as regulates the use of cars: the words “only when on a highway” clearly suggest this.

The cases “otherwise provided” are those which though not expressly excluded from the application of section 2 (2) are by their very nature outside it—a clear illustration of such a case is section 22 which places certain obligations on a person who, for example, sells a car to another. There can be no relevancy to the offence or non-observance of this provision where the car happens to be, whether on the road or in a garage. It is only when a provision connected with the use is concerned that the place of user is a relevant matter, and section 2 (2) deals only with such cases. In section 30 (1) we have an instance of both subjects in the same section. It is an offence for a person to possess a car for which no licence is in force and this is not affected by the question of place of user or whether it is used at all. If a person were to use an unlicensed car, in the possession of another, his use would not be an offence unless it was on a highway. This is reasonable for otherwise a man who drives an unlicensed car of another from his garage to the porch of his house would be guilty of an offence; the driver in such case cannot be said to be in possession of the car, but he would come within the section if he took it on to a highway.

Similarly a person who drives a car recklessly or negligently on a private drive within his own premises cannot be brought within section 57

(2) and (3) of the Ordinance, for it is not user on a highway, though he may be liable under the Penal Code.

I have not lost sight of the requirement that this being a taxing Ordinance a strict construction is required, but it must be remembered that the registration and licensing of cars is one of the main objects, if not the primary one, of the Ordinance, and where the effectiveness of it can be secured by a reasonable construction of section 2 (2), I would not, unless compelled to do so, adopt a view of that provision which reduces to nullity a great part of the Ordinance.

I hold, therefore, that the charge against the accused of possession of the car—section 30 (1)—does not require proof of its user during the period when there was no licence in force.

I cannot regard the statement of the accused on July 23 as an unqualified plea of guilt. I therefore set aside the judgment of acquittal and direct that there should be a new trial.

Set aside.

