

1956

Present: L. W. de Silva, A.J.

K. SUBRAMANIAM, Appellant, *and* ARIYA PERERA
(S. I. Police), Respondent

S. C. 681—M. C. Jaffna, 8,438

Immigrants and Emigrants Act, No. 20 of 1918—Section 45 (1) (c), as amended by s. 20 (1) of Act No. 16 of 1955—Difference between “ transports ” and “ causes to be transported. ”

A person would be guilty of “ transporting ” an illegal immigrant within the meaning of section 45 (1) (c) of the Immigrants and Emigrants Act if, with guilty knowledge, he personally takes an illegal immigrant in a car, although the car is a borrowed one and the driver's services have been hired.

APP_EAL from a judgment of the Magistrate's Court, Jaffna.

Colvin R. de Silva, with *M. M. Kamarakulasingham* and *M. L. de Silva*, for the accused-appellant.

T. A. de S. Wijesundara, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 21, 1956. L. W. DE SILVA, A.J.—

The appellant was charged with having committed an offence punishable under section 45 (1) (c) of the Immigrants and Emigrants Act No. 20 of 1948 as amended by section 20 (i) of the Act No. 16 of 1955 in that he had transported by car, on 23rd March 1956, at Navaly North, a certain Indian immigrant named Pichehai Kannu Devar, knowing or having reasonable grounds for knowing that the said Devar had entered Ceylon in contravention of these Acts. The amended section is as follows :—

“ Any person who conceals or harbours any other person in any place whatsoever, or transports any other person or causes any other person to be transported by any means whatsoever, or employs any other person, knowing or having reasonable grounds for knowing that such other person has entered Ceylon or is remaining in Ceylon in contravention of any provision of this Act or of any Order or regulation made thereunder, shall be guilty of an offence under this Act, ” etc.

After trial, the Magistrate convicted the appellant and sentenced him to a period of three months rigorous imprisonment. At the hearing of this appeal, learned Counsel for the appellant accepted the findings of the Magistrate but sought to find a loophole of escape on a point which had not been raised in the court below. Shortly stated, learned Counsel drew a distinction between transporting a person and causing a person to be transported, and contended that the appellant was entitled to be acquitted since, according to the evidence, the appellant had not transported the Indian immigrant but had caused him to be transported by car, and the charge should have been framed accordingly.

There is no doubt that the section draws a distinction between a person transporting another and a person who is responsible for the transport. Two different relationships are contemplated and two different ways of committing the offence are indicated in the enactment. But one who provides another with means of transport cannot be said to “ cause ” that other to be transported. He merely enables him to transport. But, to cause a thing to be done is the same thing as to be its *causa causans*. In my opinion, it is in this sense that the expression “ causes any other person to be transported ” has been used in the Act. The facts established by the prosecution in this case show that the appellant had not only borrowed the car on a false pretext, but travelled in it himself and had it driven to the place where certain illegal immigrants were, including Devar. It was the appellant who pointed out the place to the car driver, and got

the immigrants into the car at two different stages of the journey, and also pointed out the place to which they were taken. The various items of evidence, taken cumulatively, prove that the appellant, while being present at every stage, was the person who did in fact use the car with guilty knowledge to transport the illegal immigrant named in the charge. It was an occasion on which the car driver's services were hired by the appellant who did the transporting in person. The man who physically propelled the vehicle thus enabled the appellant to transport the illegal immigrant. This is not a case where the appellant caused him to be transported. I am of the opinion that the charge was correctly framed. The conviction and sentence are therefore affirmed, and the appeal is dismissed.

Appeal dismissed.

