

land with them was bound to know, for it stood open and patent on the register. The third defendant did not want a search made as he had a suspicion that there was something wrong and refrained from asking questions of his brother; he did not wish to make further inquiry as regards the previous obligations imposed on his brother and sister-in-law. It would hardly be possible in the circumstances of this case for him to assert that he acted honestly in obtaining a transfer of the property. There is no evidence to show that he was a transferee in good faith and for consideration. There is his evidence that he paid at the execution of the deed a sum of Rs. 1,000 for this lot, although it and five other lands were then subject to a mortgage of Rs. 6,000. The burden was on him to prove that he was a transferee in good faith. He did not even plead that he was such a transferee nor was there an issue framed on this point—The issue was did he purchase the land from the first and second defendants with notice of the trust. If he was a purchaser from an express trustee he must show that he acquired the property without notice; he would have found greater difficulty in proving that he was such a purchaser. The defendant, a purchaser from constructive trustees is in the same position as his transferors, he holds the lot subject to the condition for retransfer.

The learned Judge has unfortunately not been referred to the principles applicable to a case of this kind, and has completely gone astray. The judgment of the lower court is set aside and judgment should be entered in favour of the plaintiff in terms of prayer one of the plaint. The defendants will pay half the costs of the trial and the costs of appeal to the appellant.

BASNAYAKE J.—I agree.

*Appeal allowed.*

1950

*Present: Nagalingam J.*

HINNIAPPUHAMY, Appellant, and COMMISSIONER OF MOTOR TRANSPORT, Respondent.

*S. C. 45—Case stated for the opinion of the Supreme Court under section 4 (4) of Ordinance No. 45 of 1938*

*Motor Car Ordinance, No. 45 of 1938—Case stated for opinion of Supreme Court—Requirement of proof of compliance with provisions of section 4 (6) (c).*

By section 4 (6) (c) of the Motor Car Ordinance, No. 45 of 1938, the duty is cast upon the party requiring a case to be stated for the opinion of the Supreme Court (1) to send to the other party notice in writing of the fact that the case has been stated on his application, and (2) to supply that other party with a copy of the stated case.

*Held*, that before the Court could enter upon a consideration of the case stated there must be proof before it that the appellant attended to the requirements of section 4 (6) (c).

CASE stated for the opinion of the Supreme Court under section 4 (6) of Ordinance No. 45 of 1938.

No appearance for appellant.

No appearance for respondent.

*Cur. adv. vult.*

March 24, 1950. NAGALINGAM J.—

This is a case stated for the opinion of this court under section 4 (6) of the Motor Car Ordinance, No. 45 of 1938. The party at whose instance this case has been stated is the appellant before the Tribunal of Appeal who will hereafter in this order be referred to as the appellant. The Commissioner of Motor Transport refused to renew the licences in respect of five lorries of the appellant, and the tribunal on appeal affirmed the order of the Commissioner; and by means of these proceedings the appellant seeks to test the soundness of the principles of law applied by the tribunal in deciding his appeal.

Under section 4 (6) (c) of the Ordinance the duty is cast upon the party requiring the case to be stated (1) to send to the other party notice in writing of the fact that the case has been stated on his application and (2) to supply that other party with a copy of the stated case. This sub-section further prescribes the period within which these steps should be taken. It enacts that these acts should be done "at or before the time" when the stated case is transmitted to this court.

In this case, as stated earlier, it is the appellant who has had the case stated for the opinion of this court, but there is nothing in the papers filed to indicate that the appellant has in point of fact complied with the provisions of the sub-section. The Commissioner, who would be the other party to these proceedings, has not appeared. This may very well be due to the fact that he has received no intimation of the transmission of the papers to this court. The appellant, too, has not appeared either in person or by Counsel to assist this Court, and there is therefore a total lack of information as to whether the provisions of the sub-section have been complied with by the appellant. There must be proof before the Court that the appellant has attended to the requirements of section 4 (6) (c) before it can enter upon a consideration of the case stated for its opinion and the proof should be furnished either when the case stated is forwarded to this Court or at any rate when the matter comes on for consideration. In this case proof was furnished neither at the time the papers were filed nor at the time the matter came up for hearing.

The only other question is whether the court should direct the issue of a notice even at this stage. In view of the express terms of the sub-section, I do not think it justifiable to order a notice on the other party subsequent to the case stated having been transmitted to this Court.

In this state of the facts I reject the case stated as the appellant has failed to satisfy this Court that the other party has been duly noticed of these proceedings.

*Case stated rejected.*