1951 *Present:* **Nagalingam J.**

WILLIAM SINGHO, Appellant, *and* AVERY (S. I. Police) Respondent

S. C. 63—M. C. Colombo South, 30,161

Lorry—Carrying excess load—Proof of authorised maximum load—Production of licence necessary—Motor Car Ordinance, No. 45 of 1938, s. 62—Evidence Ordinance, s. 100.

The accused, a lorry driver, was convicted of having carried an excess load.

Held, that oral evidence of the contents of the licence relating to the maximum load which could be carried in the lorry was inadmissible. No evidence could be given in proof of the authorised maximum load except the licence itself or, where permissible, secondary evidence of its contents.

Held further, that an admission made by the accused himself in regard to the authorised load was inadmissible.

APPEAL from a judgment of the Magistrate's Court, Colombo South.

J. A. L. Cooray, with *I. J. Fernando*, for the accused appellant.

L. B. T. Premaratne, Crown Counsel, for the Attorney-General.

Cur. adv vult.

March 5, 1951. NAGALINGAM J.—

The appellant, a lorry driver, has been convicted of having carried an excess load and been sentenced to pay a fine of Rs. 200. Two points of law were taken on his behalf by Counsel and as one of the points is decisive I shall deal only with it.

The point taken is whether there is legally admissible evidence on record as to what is the permitted load or the authorised load of the lorry, for if there is no such legally admissible evidence, then it is obvious that it is impossible to establish whether the authorised load has in any way been exceeded. Under section 62 of the Motor Car Ordinance,

[1] *(1948) 50 N. L. R. 15.*

No. 45 of 1938, the licensing authority is required to specify in every licence issued for a lorry the maximum load which may be carried in the lorry. Counsel have not been able to point out nor have I been able to trace any provision in the Ordinance which indicates that the maximum load in respect of a lorry is to be recorded anywhere else. The licence, therefore, seems to be the only repository of the statement of the maximum load authorised by the licensing authority. The licence itself being a document, the requirement that the maximum load shall be specified in the licence amounts to a direction that the maximum load should itself be in writing as it is required to be specified in the licence; so that the maximum load authorised by the licensing authority is required by law to be reduced to the form of a document and no evidence can be given in proof of such matter except the document itself or secondary evidence of its contents.

In this case the licence itself was not produced by the prosecution to prove what the maximum load of the lorry was. Nor was evidence of any facts placed before the Court enabling the prosecutor to lead secondary evidence of the contents of the document. There was no suggestion that the licence had been destroyed or that the registered owner of the vehicle had been summoned to produce the licence and that he had failed to do so. In either event oral testimony of the contents of the licence may have been given by way of secondary evidence. The prosecuting Inspector, however, gave oral evidence of the contents of the licence which he said he had perused at the time of the detection of the alleged offence. Clearly, therefore, this evidence was not admissible, and if this evidence is rejected, there is no proof as to the authorised maximum load which would enable one to say whether there has been an overloading of the lorry or not.

No further argument could have arisen had the evidence of the Inspector stood by itself. There was, however, an admission by the accused, who gave evidence, that the authorised pay load of the vehicle was what the Inspector had deposed it to be. The question therefore has to be considered as to what is the effect of an oral admission by a party of a matter which the law requires to be reduced to the form of a document, where the document itself is not produced. Under the English Law such an admission would be admissible, but it is otherwise under our Law, because the wording of our section is explicit and does not create an exception in favour of such an oral admission. Nor can the provisions of section 100 of the Evidence Ordinance be resorted to, because this is not a case where there is no provision made in the Ordinance itself. I am of opinion that the admission made by the accused himself in regard to the authorised pay load of the vehicle was inadmissible.

In the result, one is constrained to uphold the contention that there is no legally admissible evidence establishing what the permitted load of the lorry was. The case, therefore, cannot be said to have been established against the accused.

I therefore set aside the conviction and acquit the accused.

Appeal allowed.