Present : Dalton J.

1926.

EMBULDENIYA *v.* PALIPANE.

14—P. C. Kurunegala, 27,810.

Vehicles Ordinance—Overloading a motor omnibus—Liability of owner—Validity of by-law—Ordinance No, 4 of 1916, s. 18.

A motor omnibus is a motor car within the meaning of by-law 2 (*a*) made under the provisions of section 18 of the Vehicles Ordinance.

The by-law 2 (*b*), which makes the owner liable equally with the driver for the act of the latter in exceeding the maximum number of passengers which a motor omnibus is licensed to carry, is valid.

APPEAL from a conviction by the Police Magistrate of Kurunegala. The accused was charged, as the owner of a motor omnibus, with having overloaded the omnibus in breach of by-law 2 (*b*) made under the provisions of section 18 of the Vehicles Ordinance, 1916. It was admitted that the omnibus was licensed to carry passengers and was the property of the accused, and that the driver had carried more than the licensed number of passengers without the knowledge of the accused. The accused was convicted, and he appealed from the conviction on two grounds :—

(1) That a motor omnibus is not a motor car ;
(2) That the by-law is *ultra vires* in so far as it makes the owner liable for an offence committed without his knowledge and in his absence.

Croos Da Brera, for second accused, appellant.

Brito Muttunayagam, C.C., for Attorney-General.

March 12, 1926. DALTON J.—

The appellant has been charged, as the owner of a motor omnibus, with having overloaded the omnibus in breach of by-law 2 (*b*) dated May 19, 1921, made under the provisions of section 18 of the Vehicles Ordinance, 1916. He has been convicted, and appeals from that conviction.

Two grounds of appeal have been put forward :—

(1) A motor omnibus is not a motor car ;
(2) The by-law is *ultra vires* inasmuch as it makes an owner liable to be convicted of an offence committed without his knowledge and in his absence.

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It is admitted that the omnibus was licensed to carry passengers and was the property of the appellant, and that on a journey the driver picked up and carried more than the licensed number of passengers, but the appellant was not present, and there is no evidence that he had any knowledge of the act of his driver.

By-law 2 is as follows :—

"(*a*) The maximum number of passengers that may be carried in a motor car licensed to carry passengers and the maximum number of such passengers who may occupy the front seat with the driver shall be determined by the proper authority, whose decision shall be final. Such numbers shall be endorsed on the licence, and the maximum number of passengers the car is licensed to carry shall be clearly and legibly painted on a conspicuous part of the body of the motor car or on a plate or board affixed to a conspicuous part of the motor car.

"(*b*) If more than the authorized number is carried on the front seat, or more than the maximum number is carried in the car itself, the owner and the driver shall be guilty of an offence."

Section 18 of the Vehicles Ordinance (No. 4 of 1916) in its material parts is as follows :—

"18. (1) The Governor . . . . may . . . . from time to time make, and when made, revoke, amend, alter, or vary, such by-laws as may seem necessary or expedient for the purpose of carrying out the provisions of this Ordinance.

"(2) The by-laws made under the last preceding sub-section may provide, among other things—

"(*a*) For regulating the number of persons to be carried in vehicles . . . ."

Section 21 of the Ordinance provides a penalty for a breach of any by-law.

The first point to be decided is whether a "motor omnibus" comes within the term "motor car," the by-laws referring to motor cars only. It is admitted that previously to this it has not been questioned that they have been applied to a motor omnibus, although cases dealing with offences under these by-laws in respect of 'buses have been dealt with by this Court.

I am unable to find any definition of "motor car" in any local Ordinance. The expression as used in the English Motor Car Act of 1903 means the same as the expression "light locomotive"

as used in the Locomotives on Highways Act, 1896. That is, however, of no assistance here.

By-law 2 of May 19, 1921, is a substitution for by-law 2 in the by-laws of November 16, 1917. Those by-laws are headed "By-laws for mechanically propelled vehicles in Ceylon plying for hire." They deal with motor cars used for the purpose of conveying and transporting goods or passengers for hire, but they contain no definition of the term "motor car" as used. It has been suggested that at the time these by-laws were made, motor omnibuses, as we know them to-day, were unknown in Ceylon. If we look at later by-laws, however, namely, those dated January 20, 1922, we also find that the words "motor omnibus" do not appear, save in section 18 sub-sections (12) and (13), and section 32, although it is provided that the expression "motor car" includes motor lorries and motor cycles. These by-laws are the general by-laws in force for the regulation and control of mechanically propelled vehicles framed under section 22 of the Vehicles Ordinance and subsequent amendments, and it is impossible to conceive that at that date, at any rate, the authorities overlooked the necessity of regulating and controlling the use of omnibuses. The presence of the words "motor omnibus" in section 18 (12) and (13) does not, in my opinion, necessarily simplify the question raised as Mr. Brito Muttunayagam suggests, but I think it may be argued that in the view of the rules a motor omnibus does come within the category of motor cars. The ordinary English meaning of the word "car" is a vehicle moved on wheels; it is applied to numerous different forms of vehicles. The addition of the word "motor" merely means that it is impelled or driven by a motor. I see no reason to restrict the meaning of the term as used in by-law 2 to one form of motor propelled vehicles, and to say that it does not include the vehicle known to-day as a "motor omnibus." On the first ground of appeal, therefore, I find against the appellant.

The second ground of appeal, as argued, has presented some difficulty. The by-law purports to make the owner equally guilty with the driver if more than the authorized number of persons is carried in the vehicle. If this means that the owner can be convicted of an offence committed in his absence and without his knowledge, it is argued that the by-law is *ultra vires*.

It is a maxim of law that criminal responsibility shall not attach to a man unless it is shown that the act charged against him is done with a criminal intent. In *Provincial Motor Car Cab Co., Ltd. v. Dunning*[1] Lord Alverstone L.C.J. pointed out, however, that the regulations under the Motor Car Act, 1903, were made for the protection of the public. In that case certain motor cab proprietors were charged with aiding and abetting a driver in their service

[1] *(1909) 2 K. B. 599.*

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in using a motor cab in contravention of a by-law requiring certain fittings for the lighting apparatus. In respect of the breach of such a regulation Lord Alverstone says—

> "A breach of that regulation is not to be regarded as a criminal offence in the full sense of the word, that is to say, there may be a breach of the regulation without a criminal intent or *mens rea* . . . . The doctrine that there must be a criminal intent does not apply to criminal cases of that particular class which arise only from the breach of a statutory duty."

There being evidence in that case whence it could be concluded that the cab was sent out in a condition not conforming to the regulations by persons for whom the owners were responsible it was held that there was evidence that the owners aided and abetted the offence.

It is also pointed out in *Maxwell, Interpretation of Statutes, p. 185*, that at the present time there is a large body of Municipal law which has been framed in such terms as to make an act criminal without any *mens rea*. There is of course a distinction between things criminal in themselves, morally wrong and wicked, and things merely made criminal because the Legislature forbids them. The principle, however, remains that unless the Legislature has indicated the contrary intention, the infliction of penalties is to be presumed to be confined to cases where the offender has the *mens rea* (*Maxwell, p. 188*), and is illustrated by those cases in which it is sought to make a master responsible penally for the acts of his servant. The decisions in those and other like cases, the learned author points out, are based upon the view of the Court, that having regard to the language, scope, and object of the statutes, the Legislature intended to fix criminal responsibility upon the master for acts done by his servants in the course of their employment, although such acts were not authorized and might have been expressly forbidden.

The by-law is made, as I have pointed out, under the provisions of section 18. The provisions of section 20 were not referred to in the course of the argument, but they seem to have an important bearing on the point raised, Mr. Brito Muttunayagam having argued the appeal on the footing that the overloading had been "permitted" or "suffered" by the owner. Section 20 provides that the by-laws, "when so made, altered, or amended," *i.e.*, in accordance with the provisions of section 18,—

> "shall be published in the *Government Gazette* and shall thereupon become as legal, valid, binding, and effectual as if the same had been inserted in this Ordinance, and all courts, Judges, and Magistrates shall take judicial notice thereof."

In view of that provision in the Ordinance, it is not competent to question the validity of the by-laws framed under section 18, as has been done in this appeal; this conclusion has judicial authority already in Ceylon (*La Brooy v. Marikar*[1] and *Sourjah v. Hadjiahi*)[2] decisions based upon a judgment in the House of Lords (*Institute of Patent Agents v. Lockwood*[3]). The local case of *Andree v. Pate*[4] cited deals with by-laws under the Carriage Ordinance, 1873. The by-laws made the proprietor of a coach liable in the case of a breach of the by-laws by his servant carrying more passengers than the licensed number. It was held that the by-laws were *ultra vires* of the Ordinance in so far as they made the proprietor liable to be found guilty of an offence committed by one of his servants without his privity. There is no section in that Ordinance equivalent to section 45 of the Vehicles Ordinance, No. 4 of 1916, and further the force of section 11 of the Carriage Ordinance, 1873, does not appear to have been considered when the question of *ultra vires* was raised, inasmuch as that section enacts that the by-laws shall be as legal, valid, and effectual as if they were inserted in the Ordinance.

Wickremesinghe v. Don Abraham[5] and *Amath v. James Appuhamy*[6] have also been cited. The former case was brought under section 32 of the by-laws of January 20, 1922, which are framed under the powers given by section 22 of the Vehicles Ordinance. If section 22 be examined it will be noted that, in respect of by-laws framed under that section, there is no such provision applicable to them as is contained in section 20 of the Ordinance. Sub-section (3) merely provides that the by-laws shall be laid before the Legislative Council within one month of publication, thus enacting the latter part of section 20, but not the first part. It may, therefore, be open to the Court to consider the question of the validity of by-laws framed under section 22. It further appears from the judgment in the former case that the learned Judge had considerable difficulty in understanding section 32, which is an exceedingly long and cumbersome section, and is badly put together. The query raised by Ennis J. as to the validity of section 32 in including the owner in the earlier part of that section is definitely dealt with by Schneider J. in *Stewart v. Packir Saibo.*[7] He held that the by-law was *ultra vires* in so far as it seeks to make the owner liable equally with the driver for an offence of negligent driving by the driver in the absence of the owner. These cases can be distinguished from the case with which I am dealing on the ground to which I have already referred. That, however, I would add is not the only ground on which thay can be distinguished.

[1] *2 A. C. R. 6*.
[2] *18 N. L. R. 31.*
[3] *(1894) A. C. 347.*
[4] *(1883) 5 S. C. C. 139.*
[5] *2 T. C. L. R. 158.*
[6] *6 C. L. R. 35.*
[7] *27 N. L. R. 25.*

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The case of *Amath v. James Appuhamy* (*supra*) deals with the very by-law under which the present charge was laid, and is an authority against the contention of the appellant. What exactly were the grounds of appeal in that case do not appear from the judgment, but one can gather that the argument was that an owner should not be convicted of an offence under the by-law, carrying more than the ordinary number of passengers, unless he " permitted or suffered " the commission of the offence. The learned Judge points out the difference between the by-law and section 45 of the Ordinance, in respect of the words used, and he held that under the by-law the owner is equally liable with the driver if more than the maximum number is carried in the car. He adds that the owner must see to it that his employees do not commit breaches of the law or act contrary to his instructions.

I agree with the decision of Schneider J. as to the interpretation to be put upon the by-law, but for somewhat different reasons. Its validity cannot be questioned in view of the provisions of section 20 (1). If that sub-section did not stand, the question would, in my opinion, be not without difficulty, but in that case I am inclined to think, as section 45 provides a penalty for the same offence, one would have had to interpret the by-law by reference to the words of section 45, and reading them together. In such a case, I do not think the by-law could have gone beyond the express provisions of the Ordinance. I would point out, however, that, even if that were so, the result might still be the same, as there is ample authority, having regard to the scope and purpose of particular statutes or Ordinances, to say that a person has " permitted or suffered " a thing to be done, even if he has expressly forbidden it to be done. One of the tests usefully applied in some of the cases is as to whether or not the servant was doing some illegal act out of which the master was making a profit. (See *Roberts v. Woodward*.[1]) It is not necessary, however, to go into that matter here.

For the reasons I have stated the grounds of appeal cannot be sustained and the conviction must be affirmed, the appeal being dismissed.

[1] *25 Q. B. D. 412.*