1956 *Present :* Sansoni, J.

ALFRED APPUHAMY, Appellant, *and* D. G. A. DE SILVA (S. I. Police), Respondent

S. C. 1,337—M. C. Colombo, 19,507

Lorry—Carriage of goods in excess of maximum load—Weigh-bridge—Is evidence of its accuracy necessary ?—Motor Traffic Act, No. 14 of 1951, ss. 190, 216 (1) (a).

The accused was charged with having carried on a lorry goods in excess of the permitted maximum load, in breach of Section 190 read with Section 216

(1) (*a*) of the Motor Traffic Act. The prosecution witnesses stated that an excess weight of 2 tons and 7 lbs. was ascertained by means of a weigh-bridge. No evidence was called for the defence.

Held, that it was open to the Court to hold that the load in the lorry was 2 tons and 7 lbs. in excess, even though the weigh-bridge had not been tested for over four weeks prior to the day when the lorry with its load was weighed on it.

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

Stanley de Zoysa, with *P. Rahasinghe*, for the accused appellant.

Daya Perera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 20, 1956. SANSONI, J.—

The accused, who was the driver of lorry No. IC 2540, was convicted on a charge of having carried 2 tons 0 cwts 0 qrs 7 lbs. of goods in excess of the weight which the lorry was licensed to carry, in breach of S. 190 read with S. 216 (1) (*a*) of the Motor Traffic Act No. 14 of 1951. The prosecution witnesses stated that the lorry in question was weighed with its load of vegetables at the Grandpass weigh-bridge, and the excess weight thus ascertained. An Engineer of Messrs. Avery & Co. gave evidence that the weigh-bridge in question was maintained by his firm and that it was last tested on 28th June 1955; the offence was detected on 2nd August 1955.

No evidence was called for the defence. The accused's Proctor submitted that the charge had not been established as the accuracy of the weigh-bridge at the time in question had not been proved. The learned Magistrate accepted the evidence of the Engineer who had spoken to having tested the machine. He also commented on the absence of any evidence for the defence and rejected a suggestion that the lorry carried only a small quantity of chillies.

In appeal it was urged that the accused should have been acquitted in view of the judgment of Soertsz, A.J., in *Soysa v. James Singho*[1], where the learned Judge said that it was desirable that a loadometer (which was the machine used in that case) should be tested soon after it had been used, to see that it was accurate at the crucial time. In *Siman v. Miskin*[2], Koch, J., expressed a similar opinion in regard to a stop-watch which had been used to detect a case of exceeding the speed limit. If these decisions are binding on me I should have no alternative but to allow this appeal. Those decisions also have the support of the Divisional Court judgment in *Melhuish v. Morris*[3], which laid down that before a speedometer reading can be acted upon there must be evidence of the accuracy of the speedometer. Charles, J., in that case said:

[1] (1935) 38 N. L. R. 12. [2] (1936) 38 N. L. R. 239.
[3] (1938) 4 A. E. R. 98.

"the case rested upon the accuracy of the speedometer, which had not been tested . . . . it does not matter if five officers glued their eyes to the speedometer if evidence is not given as to its accuracy".

Learned Crown Counsel drew my attention to the later judgment of the Divisional Court in the case of *Nicholas v. Penny* [1]. In that case the accused was charged with exceeding the speed limit of thirty miles per hour. The evidence against him was that of a Police Constable who followed the accused's car for a distance of 4/10ths of a mile at an even distance, and found that the speedometer in the Police car showed an even speed of forty miles per hour. Lord Goddard, C.J., considered the question whether it was necessary as a matter of law that the Court must have evidence that the speedometer was tested before the speedometer reading can be accepted. He refused to follow the decision in *Melhuish v. Morris* [3] and held that the evidence as to the speedometer reading was admissible and was prima facie evidence on which Justices can act. He said that in a particular case they might refuse to act on such evidence, owing to the cross-examination of the prosecution witnesses, or the evidence given on the other side, which might cause them to reject the prosecution case; or again, the speedometer reading may show that the accused was driving at a speed which was just over the speed limit. Ultimately, however, it is a matter for Justices to say whether they are satisfied that the accused was travelling at a speed in excess of thirty miles per hour and they can be satisfied about it on the evidence which was given, apart from any evidence as to the accuracy of the speedometer.

Following this decision, I would hold that it was open to the learned Magistrate in this case to hold that the load in the lorry was 2 tons 0 cwts 0 qrs 7 lbs. in excess, even though the weigh-bridge had not been tested for over four weeks prior to the day in question. I therefore dismiss this appeal.

Appeal dismissed.