

1953

*Present : Swan J.*

W. H. DHARMASENA, Appellant, and S. M. B. SIRIWARDENA  
(Inspector of Police), Respondent

*S. C. 912—M. C. Walasmulla, 7,557*

*Motor Traffic Act, No. 14 of 1951—Section 32—Licence—Provision for carriage of persons and their “personal effects”—Meaning of “personal effects”.*

Where a licence issued to an owner of a motor vehicle under section 32 of the Motor Traffic Act authorised the use of the vehicle for “the carriage, otherwise than for fee or reward, of persons and their personal effects” —

*Held*, that vegetables (not being merchandise for sale) carried by passengers on the hood of the vehicle were their “personal effects” within the meaning of the terms of the licence.

**A**PPEAL from a judgment of the Magistrate’s Court, Walasmulla.

*A. H. C. de Silva*, with *A. K. Premadasa*, for the accused appellant.

*N. Pittawella*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

January 13, 1953. SWAN J.—

The accused who was the driver of Station Wagon CL 1449 was charged with having on 11th February, 1952, carried certain goods in the vehicle in contravention of the conditions of the licence issued to the owner under Section 32 of the Motor Traffic Act, No. 14 of 1951. The licence authorizes the use of the vehicle for “the carriage, otherwise than for fee or reward, of persons and *their personal effects*”.

When the Police stopped and examined the vehicle on the day in question it was found to contain no less than twenty-six passengers, and on the hood, which was constructed to carry goods, there were two bags of radishes, one bag of brinjals and two bunches of plantains. These were claimed by some of the passengers, and the learned Magistrate has found that they did in fact belong to the persons who claimed them. He however convicted the accused because he was of the opinion that these goods could not be said to be the “*personal effects*” of the passengers whose property they were.

The accused did not give evidence but the owner of the bus, who was called by the prosecution to produce the licence, stated that he used the vehicle to convey some workmen to a building site where they were

putting up a boutique for him. His explanation was that these workmen had bought some vegetables and were taking them back home. As the learned Magistrate himself remarks, this hardly explains how such a large quantity of vegetables was carried in the vehicle; and as the owner had only six workmen, no explanation was given why the vehicle was conveying as many as twenty-six persons. Very probably the other passengers were being conveyed by the accused for fee or reward, but the accused was not charged with that offence. The simple question therefore to decide is whether the vegetables on the hood of the vehicle were the *personal effects* of the persons who laid claim to them.

The expression "*personal effects*" is not defined in the Motor Traffic Act. Section 32 enacts that—

"every revenue licence (other than a dealer's licence or visitor's temporary licence) for a motor vehicle shall be issued by the licensing authority in such one of the prescribed forms, as may be appropriate to the case, shall be in force from the date on which it is expressed to come into force and shall, save as otherwise expressly provided in this Part, continue in force until the thirty-first day of December next following that date."

The appropriate prescribed form is found in the *Government Gazette* No. 10,286 of the 25th August, 1951, Part I, page 1127. There is no indication there what the term "*personal effects*" connotes. We have therefore to ascertain its meaning by the usual canons of interpretation.

In legal language the word *personal* is often used in contradistinction to *real*. In the Oxford Dictionary it is defined as "one's own, individual, private", and almost every other dictionary gives the same connotation to the word. The word "effects" is defined in Stroud's Dictionary as follows:—

"*Effects used simpliciter* will carry the whole personal estate e.g. all my effects. But it is frequently used in a restricted sense, meaning goods and movables e.g. furniture and effects . . . ."

The definition of *effects* in the Imperial Dictionary is "goods, movables, personal estate" and we are given, by way of example, "*the people escaped from the town with their effects*".

Learned Crown Counsel contended that the expression "*personal effects*" used in the licence must be taken to mean "*luggage*" and nothing more. "*Luggage*" undoubtedly is confined to what is "lugged about on a journey for personal convenience" (see Stroud's Dictionary, page 1130). In the case of *Hudston v. the Midland Railway Company*<sup>1</sup> it was held that a child's "spring horse" was not ordinary or personal luggage. Undoubtedly the bags of vegetables in question would not be the ordinary or personal luggage of the passengers who claimed them; but could it be said that they were not part of their *personal effects*?

<sup>1</sup> (1869) 4 Q. B. 366.

Learned Crown Counsel also referred me to the note on “ *personal effects* ” in *Words and Phrases* (1914 Ed. Vol. 3 at page 1001) which reads as follows :—

“ The words ‘ personal effects ’ in a will, when not restricted by the context, mean everything embraced within the description ‘ personal property ’ .” *Gallagher v. McKeague*, 103, N. W. 233, 234, 125 Wis. 116, 110 Am. St. Rep. 821.

Merchandise for sale is not within the usual definition of ‘ personal effects ’, nor within Customs Administrative Act June 10, 1890, c. 407, Sec. 4, 26 Stat. 131, providing that, except in case of ‘ personal effects ’, no importation of any merchandise shall be entered without invoice. *United States v. One Trunk*, 175 Fed. 1012, 1015. ”

But there is no evidence to justify the conclusion that the vegetables carried on the hood were “ merchandise for sale ” although one suspects that they could not have been taken for any other purpose. In the result I would hold that they were the “ *personal effects* ” of the persons to whom the learned Magistrate has held they belonged.

If the licensing authorities desired to restrict the use of the vehicle to the conveyance of passengers and their luggage they should not have used the expression “ personal effects ”.

I set aside the conviction and acquit the accused.

*Appeal allowed.*

