is that the accused persons could not be said to have exceeded any number which had been prescribed as the maximum limit for the conveyance of passengers.

The provision under the law is that where omnibuses are to be licensed from the month of January applications for such licences should be forwarded in September the previous year. There is no reason to suppose that no such applications had been made in respect of these omnibuses. If so, the delay in issuing the licences must be attributed entirely to the fact that the Motor Commissioner's Department was for reasons best known to the Department, not in a position to issue the licences not merely before January 1 of the following year but even as late as the date of the detection of these offences. The solution would seem to be that the Department should have an increased personnel who would be able to license these vehicles effectively before the commencement of the subsequent year, or, if that be not possible, an amendment of the law should be made so as to penalise offences of this nature by a reference to the number of passengers carried on the omnibus in the previous year.

So far as these accused are concerned, there can be little doubt that the convictions against them cannot be sustained. I therefore set aside the convictions and acquit the accused.

Appeals allowed.

1949 *Present* : **Pulle J.**

MAJEED *et al.*, Appellants, *and* MANNAMPERUMA (P.S.), Respondent

S. C. 913-914—M. C. Hatton, 13,733

Protection of Produce Ordinance (Cap. 28), Section 4—Charge of unlawful possession of tea leaf—Particulars which such charge should contain.

A proper charge under section 4 of the Protection of Produce Ordinance should set out particulars of the circumstances from which one can reasonably suspect that the produce was not honestly in the possession of the person accused.

APPEALS from a judgment of the Magistrate's Court, Hatton.

Colvin R. de Silva, with *M. M. Kumarakulasingham*, for accused appellants.

E. R. de Fonseka, Crown Counsel, for Attorney-General.

Cur. adv. vult.

November 21, 1949. PULLE J.—

The two accused-appellants, who have each been sentenced to a term of six months' rigorous imprisonment, appeal from a conviction under section 4 of the Protection of Produce Ordinance (Cap. 28). The material portion of section 4 reads as follows :—

"Whenever anyone is found in possession of any of the following descriptions of produce, that is to say :—

(*a*) any . . . . tea leaf (whether in a natural or manufactured state) ;

(*b*), (*c*), (*d*), ...

under such circumstance that there is reason to suspect that the same is not honestly in his possession, and he is unable to give to the court before whom he is tried a satisfactory account of his possession thereof, such person shall be guilty of an offence, and shall be liable on summary conviction before a Magistrate, to imprisonment of either description for a period not exceeding six months, or to a fine not exceeding two hundred rupees or both . . . . ".

On the 6th June, 1949, Police Sergeant Mannamperuma of Maskeliya made a report to Court under section 148 (1) (*b*) of the Criminal Procedure Code on which the charge set out below was based. That charge reads :—

"you are hereby charged that you did within the jurisdiction of this Court at Upcot Road, Maskeliya, on the 3rd June, 1949, were found in possession of a gunny bag containing fifty-six (56 lbs.) of manufactured tea and were unable to give a satisfactory explanation of their possession thereof and thereby committed an offence under section 4 of the Protection of Produce Ordinance (Cap. 28)".

It would seem from the terms of the section that it is the duty of the prosecution to allege circumstances which give rise to a reasonable suspicion that the produce in question was not honestly in the possession of the accused. There is no burden on the accused to give to the prosecution a satisfactory account of the possession. The burden to satisfy the court, and not the prosecution, arises only after the prosecution has established the existence of the circumstances which give rise to the suspicion referred to in section 4. In my opinion the charge framed against the appellants is misconceived. A proper charge under the section ought to have set out the particulars of the circumstances from which one can reasonably suspect that the produce was not honestly in the possession of the person accused. It was for the court thereafter to find whether the accused had satisfactorily accounted for his possession.

The need for giving particulars of the circumstances in the charge becomes apparent when one considers that it ought to be open to an accused person upon being charged to submit that on the facts set out in the charge sheet no offence is disclosed. Secondly, he is entitled to have proper notice of the circumstances giving rise to suspicion of dishonest possession in order that he may be in a position to adduce evidence to prove the non-existence of the circumstances.

Learned Counsel for the appellants argued that the charge was bad inasmuch as it stated that the tea was found in the possession of the appellants at Upcot Road, Maskeliya, whereas it was in fact found at Glentilt Gap, three miles away from Maskeliya. If this had been the only infirmity in the charge I should have ignored it as a mere irregularity. The other considerations which I have already adverted to leave me with no option but to interfere in this case. I would, therefore, set aside the conviction and sentence and remit the case for trial *de novo* before another Magistrate.

I trust that the prosecution will avail itself of the services of a pleader to draft a fresh report under section 148 (1) (*b*) of the Criminal Procedure Code on which a proper charge could be based and also to lead evidence. The absence of a pleader for the prosecution at the trial already held had apparently compelled the learned Magistrate to examine the appellants at some length after they had been cross-examined by the Police Sergeant, himself a witness, who conducted the prosecution.

Fresh trial ordered.

1949 *Present :* **Nagalingam J.**

PERERA, Appellant, *and* JANSZ, Respondent

S. C. 65—C. R. Colombo, 14,637

Landlord and tenant—Notice to quit—Incorrect assessment number assigned to premises—Premises otherwise accurately described—Validity of notice.

A notice to quit given by a landlord to his tenant referred to the premises in question by an incorrect assessment number. The tenant, however, could have had no misgiving as regards the particular premises which he was asked to quit.

Held, that, in the circumstances, the maxim *falsa demonstratio non nocet* applied and that the notice to quit was valid.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

H. W. Jayewardene, for defendant appellant.

E. B. Wikramanayake, K.C., with *M. M. Kumarakulasingham*, for plaintiff respondent.

Cur. adv. vult.

December 5, 1949. NAGALINGAM J.—

This is a tenant's appeal against a judgment directing his eviction from the premises occupied by him. Two points have been urged on this appeal, firstly, that the notice served on the tenant is insufficient