

1956

Present: T. S. Fernando, J.

**M. P. P. GUNAWARDENA, Appellant, and REGISTRAR
OF MOTOR VEHICLES, Respondent***S. C. 1,688—M. C. Colombo, 21,622*

Lorry—Transfer of ownership—New owner's liability for possession without revenue licence—Motor Traffic Act, No. 14 of 1951, ss. 12 (3), 14 (3), 25 (1) (2) (9), 28 (3), 32, 216 (1), 226.

When a lorry is transferred by its registered owner to another person, the benefit of the licence already issued to the transferor cannot be claimed for the transferee. Under section 25 (9) of the Motor Traffic Act the new owner can avoid a prosecution for possessing the lorry without a revenue licence, in contravention of section 25 (1) of the Motor Traffic Act, only (a) if he has applied for a new licence, but has not yet had a decision made on such application, or (b) if he has given notice of non-user. Whatever benefit he can derive from section 32 of the Act is taken away by the provisions of section 25 (9).

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

C. D. S. Siriwardena, for the accused appellant.

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

Cur. adv. vult.

May 29, 1956. T. S. FERNANDO, J.—

Complaint was made to the Magistrate's Court of Colombo on 26th October 1955 by the Registrar of Motor Vehicles that the appellant did on 1st December 1953 possess a lorry bearing registered number CN 1037 for which a licence was not in force on the said 1st December 1953, thereby contravening section 25 (1) of the Motor Traffic Act, No. 14 of 1951, an offence punishable under section 226 read with section 216 (1) of the same Act.

It is admitted that on the date alleged in the charge, viz., 1st December 1953, the appellant was the registered owner of lorry bearing number CN 1037. By reason of the presumption created by section 25 (2) of the Act the appellant can therefore be said to have possessed the lorry on the day in question. Prior to the registration of the appellant one Nilaweera had been the registered owner of this lorry up to 1st December 1953, on which date he transferred its ownership to the appellant. Nilaweera had paid the licence fee in respect of this lorry up to and including the year 1953. It is admitted by the prosecution that the appellant has paid the licence fee for the years 1954 and 1955, and it is not denied by the appellant that he has failed to pay any fee in respect of the year 1953 although the lorry was admittedly in his possession during the period 1st to 31st December 1953.

Counsel appearing for the appellant contends that, as the transferor has already paid the licence fee for the year 1953, the transferee is not in law obliged to pay any further duty in respect of the lorry in view of the provisions of section 32 of the Act which enacts that a revenue

licence issued continues in force till the 31st of December following the date of issue. The benefit of the licence issued to Nilaweera for 1953 is thus claimed for the appellant until 31st December 1953, and it is further contended by counsel that such benefit cannot be said to be lost unless otherwise expressly provided in Part III of the Act.

It is important to bear in mind that under the scheme for licensing of lorries contemplated in the Motor Traffic Act no lorry licence can be issued except for a lorry the registered owner of which is the holder of a permit granted under Part V of the Act which regulates the issue of goods carriage permits. This requirement is not only made clear by the provisions of section 28 (3) of the Act, but sections 12 (3) and 14 (3) which prohibit a new owner of a registered lorry from using such lorry unless a new revenue licence is issued in respect of such lorry only serve to strengthen such requirement. If therefore the new owner wishes to use the lorry he must make application for a new licence for such lorry. Inasmuch, however, as possession of the lorry without a revenue licence is, irrespective of the user of the lorry, itself a contravention of the provisions of the Act, the registered owner of a lorry can avoid a prosecution for such contravention only (a) if he has applied for a new licence, but has not yet had a decision made on such application, or (b) if he has given notice of non-user. This is the position to which the new owner appears inexorably to be driven by the provisions of section 25 (9) of the Act which enacts that

“ On any change of possession of a lorry, the possession of the lorry by the new owner shall be deemed not to be a contravention of sub-section (1), if, but only if, he has applied for a new revenue licence in accordance with the provisions of section 41 and the application has not been finally determined, or he has given notice of a period of non-user under section 37. ”

If the new owner has not done either of the two things specified in the sub-section quoted above, it seems to be a clear inference that he cannot be heard to say that he has not contravened sub-section (1).

In the case before me it is admitted that the appellant (the new owner) had not on the date alleged in the charge either applied for a new licence or given notice of non-user. In these circumstances I am of opinion that whatever benefit the appellant could have derived from section 32 of the Act has been taken away by the unambiguous language of section 25 (9), and the learned Magistrate had no alternative to entering a verdict of guilty in the case.

That a new owner of a lorry should be compelled in law to pay the licence fee for a full year, irrespective of the length of the period of his possession of the lorry during the tax year, can work undue hardship on some new owners as it certainly has done in the case of this appellant. The removal of such hardship is however a matter for the legislature and not for a court of law which can but interpret the law as enacted by the legislature.

For the reasons set out above this appeal is dismissed.

Appeal dismissed.