

1939

*Present : de Kretzer J.*PERERA *v.* RAJAKARIAR.590—*M. C. Negombo, 25,567.*

Motor car—Definition of overhang—Rear flap door of car not to be taken into account—Motor Car Ordinance, No. 45 of 1938, Schedule I., Reg. 2.

The length of the rear flap door of a motor lorry, when it is opened, should not be taken into consideration in measuring its "overhang".

A PPEAL from a conviction by the Magistrate of Negombo.

S. W. Jayasuriya, for accused, appellant.

D. Jansze, C.C., for complainant, respondent.

December 8, 1939. DE KRETZER J.—

Section 2 of the first schedule of the Motor Car Ordinance, No. 45 of 1938, makes provision regulating the dimensions of motor cars used on a highway outside Colombo. It provides for the width of a car including the load. It provides for the height including the load. It provides for a wheel-base and wheel-base is defined in section 30 of the Schedule. Then it also provides that the overhang of any motor car must not exceed a certain space, and in a proviso the Commissioner is authorized to permit the use of motor cars with overhang in excess of the above limits.

If the Ordinance had ended there, there might have been some doubt as to the interpretation of the word "overhang", but the word was defined in the repealed Ordinance in exactly the same way as it is defined in section 30 of the Schedule; and that definition makes it "the horizontal distance between a vertical line drawn through the centre of the rear axle and a vertical line drawn at the extreme end of the rear of the body". Even if the expression had been "rear of the car" I do not think there could have been any doubt as to the meaning of the words; but the expression here used is "rear of the body" and quite obviously the word "body" is used in its ordinary significance. The Ordinance is one which is meant to regulate everyday affairs, and which quite simple people will have to comply with, and the ordinary rule of interpretation that the popular meaning must be given to a word must be adhered to. I do not think any ordinary person would imagine that the flap door of a car formed an extension of its body when that flap door was opened.

¹ (1913) 108 *Law Times* 806.

What the accused in this case seems to have done was to let down the flap door of the lorry and to have loaded goods on the flap door so lowered. That may or may not be an offence regarding the loading of lorries, but I do not think it can be taken as constituting an offence against section 2 which only regulates the dimensions of a motor car.

The section made provision for loads which might be included in the width or height. It made no provision for including a load in an overhang. In section 11 (6) there is provision made for the load of a motor car projecting behind the car, so that apparently the Legislature did not object to the load of a car projecting behind the back of the car when it was defining in section 2 the dimensions of a car.

In my opinion the body of a car must be measured with its doors closed, because otherwise whenever a car or lorry door is left open an offence may be committed.

I set aside the conviction and acquit the accused.

Set aside.

