

## WALKER v. PALANY.

P. C., Vavuniya, 3,669.

1898.  
March 10.

*Refusal to produce duplicate license of coach—Party to make requisition to produce—Liability of owner for neglect to produce—Ordinance No. 14 of 1865, ss. 11 and 16—Penal Code, s. 289.*

Under section 11 of Ordinance No. 14 of 1865, the driver of a coach must be ready to produce the duplicate of the license for such coach "whenever required."

*Per* LAWRIE, J.—The words "whenever required" refer to a requisition by any person having an interest, *e.g.*, a passenger by such coach.

An infringement of the provisions of the above section is punishable under section 289 of the Ceylon Penal Code.

The refusal or neglect to produce the license for a cart, boat, or coach, penalized by section 16 of the Ordinance, is a refusal or neglect by the owner and not by the driver or person in charge.

THE facts of the case sufficiently appear in the judgment.

*H. Jayawardena*, for accused, appellant.

10th March, 1898. LAWRIE, J.—

The accused was the driver of a licensed coach on the 17th December, 1896, at Omantai.

He has been convicted of an offence, inasmuch as he did not produce a duplicate license when required by the Inspector of Coaches, and he has been fined Rs. 25.

His defence was that he was not asked by Mr. Walker, the Inspector, to produce the license, that he (the accused) had the license with him in the box under the seat in the coach. Mr. Walker said, "I asked the accused (Palany), the driver, whether he had any license to show, and he said he had none."

Mr. Walker had been looking for the plate which ought to have been affixed to the coach, and for the want of which the owner has been fined, and it is possible that he did not make it clear to the driver that he wished (in addition to the plate) to see the duplicate license. The driver certainly had no interest in concealing the duplicate if he had it with him, and it is very likely that it was in the box under his seat. However, the Police Magistrate found it proved that the accused, the driver, told Mr. Walker he had no license to show.

The 11th section of the Ordinance No. 14 of 1865 imposes on the driver the duty of having the duplicate in his possession, ready to produce it whenever required. It seems to me that this "whenever required" refers to a requisition by any one having

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 LAWRIE, J.

an interest ; for example, I think a passenger has right to require the production of the license to satisfy himself how many passengers the coach may carry. It may be the only check on over-crowding.

The 16th section makes it an offence for any one using or suffering the coach to be used to refuse or neglect to produce the license for the same to a Justice of the Peace, Superintendent of Police, Police Officer, or any person claiming interest in the goods conveyed or to be conveyed, and this offence is punishable by a fine of £5 for the first offence and £10 for the second offence, and in the case of a further conviction the coach and the horses are to be confiscated. In my opinion section 16 does not apply to drivers. It refers to the owners of coaches, to those who are responsible for taking out a license.

Drivers are liable for their own acts ; for instance, for cruelty to animals, if they drive galled or lame horses or bullocks, and for all acts of omission and commission in the discharge of their duties as drivers, but I do not think that they are liable to fulfil all the requirements of the 16th section, or that it would be reasonable to forfeit a coach and horses for the act of a driver. If that be so, the duty cast on drivers by the 11th section to produce the duplicate, whenever required, is not limited to a request by a Justice of the Peace or an Officer of the Police, but includes a request by any respectable person having an interest. Mr. Walker certainly was so, and indeed the defence in the Court below was not that Mr. Walker had no right to ask for the duplicate, but that in fact he did not ask for it.

The accused omitted to perform the statutory duty of producing the duplicate, and as for that omission no punishment is provided in the Ordinance No. 14 of 1865, the Magistrate was right to punish under the 289th section of the Penal Code ; but I think the punishment was too severe. I reduce the fine to Rs. 2;50, which I daresay is a considerable sum for a driver of a coach on the North road.

