

Present : Jayewardene A.J.

1925.

SHEFFIELD v. KANDIAH.

15.—M. C. Colombo, 5,624.

Vehicles Ordinance—Right of appeal—Complainant—Ordinance No. 4 of 1916, s. 49.

A right of appeal lies against an order made by a Police Magistrate under section 49 of the Vehicles Ordinance. The right is given to all persons who are aggrieved by an order made in the course of proceedings under that section.

*Henry v. Aluwihare*¹ followed.

A PPEAL by the complainant from an order dismissing a claim made by him to recover summarily a sum of money due for the hire of taxi-cabs under section 49 of the Vehicles Ordinance.

H. V. Perera, for appellant.

Garvin, for respondent.

June 20, 1925. JAYEWARDENE A.J.—

In this case I see no reason to interfere with the order made by the learned Police Magistrate. The complainant proceeded summarily under section 49 of the Vehicles Ordinance, No. 4 of

¹ (1907) 10 N. L. R. 353.

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1916, to recover a sum of Rs. 609·12 due for the hire of certain taxi-cabs. The accused disclaimed all liability to pay the amount. The Magistrate upheld his disclaimer and has dismissed the complainant's application. The complainant appeals against the order. For the accused it is contended that the order is not an appealable one. I am unable to uphold this contention. I think section 39 of the Courts Ordinance entitles an aggrieved party to appeal to this Court against all orders made by any Police Court, and this Court has the power to correct all errors in fact or in law committed by any Police Magistrate. This section was so construed by Hutchinson C.J. in the case of *Henry v. Aluwihare (supra)* where he held in a cattle trespass case under the provisions of Ordinance No. 9 of 1876, that an appeal lay from an order for the payment of damages under that Ordinance. The accused's contention against the right of appeal is that the inquiry into an offence under section 49 has to be summary. The Cattle Trespass Ordinance, No. 9 of 1876, empowers a Police Court to summarily inquire into the case and award damages. So an inquiry into a claim under the Cattle Trespass Ordinance is also a summary one, but the right to appeal was upheld. I would accordingly hold that a right of appeal lies against an order under section 49 of the Vehicles Ordinance, and that that right is not restricted to accused persons, but to all persons who are aggrieved by an order made in the course of the proceedings under that section. Consequently, I heard the appeal of the complainant and I think the learned Magistrate has come to a right conclusion on the facts. He has held that the accused Kandiah did not go with Ponnudurai when the order for the hire of the cars was given. It is also proved that accused Kandiah signed the receipts A1-A5 at the request of Ponnudurai's father, and that he signed them for the purpose of acknowledging the correctness of the amounts claimed and not with the object of incurring any liability for them. This is clear from the letter D 6 produced by the complainant. Having considered the evidence, I have no doubt whatever that the person who ordered the cars for use on September 27 last was Ponnudurai, and not this accused. I would accordingly dismiss the appeal. The respondent's Counsel asks that an order for costs be made in his favour. The Magistrate has not made any order for costs. The respondent has not appealed against the failure of the Magistrate to award costs, and in all the circumstances of the case I do not feel called upon to make any order for the costs of this appeal.

Appeal dismissed.