

1932

Present: Drieberg J.

## GOVERNMENT AGENT, CENTRAL PROVINCE v. BEEMAN.

978—P. C. Panwila, 17,309.

*Motor car—Possession by registered owner—Defence that car is unserviceable—Exemption from liability to obtain licence—Duty of owner to cancel registration—Ordinance No. 20 of 1927, s. 24.*

The registered owner of a motor car, who claims to be exempt from liability to obtain a licence for it on the ground that it is unserviceable, must procure a cancellation of the registration under section 24 of the Motor Car Ordinance.

**T**HE accused-appellant was charged under section 20 (1) of the Motor Car Ordinance, No. 20 of 1927, with possessing or using a motor car without a licence for the year 1931. The Police Magistrate convicted the accused and condemned him under section 30 (3) of the Ordinance to pay the amount of the licence.

*Wendt, C.C.*, for the respondent.—The judgment of the Police Magistrate is right.

Section 18 (1) of Ordinance No. 20 of 1927 indicates that the person who is required to be registered as the owner of a car is the person who at the time is entitled to possession of the car. When a person applies to be registered as the owner of a car he submits to the licensing authority an application in Form No. 2 in the third schedule to the Ordinance and

declares that he is entitled to the possession of the particular car. Though the application in Form No. 2 has not been produced in this case it can be inferred from the accused's letters P, P 1, P 2, which he does not deny writing, that he was duly registered as owner.

Section 22 of the Ordinance requires a change of possession to be notified to the licensing authority by the registered owner.

Section 24 provides for the cancellation of the registration of a car on the car being destroyed, &c.

Section 30 (2) provides that the registered owner may give written notice of his intention *not* to use the car for a stated period, and that possession of the car *during such stated period* shall not be an offence. The accused has given no such notice for 1931 or any part of 1931.

In the absence of any steps taken by the accused under section 22, section 24 or section 30 (2) the presumption arises that he is still in possession of the car.

The case of *Government Agent, Western Province v. Bilinda*<sup>1</sup> can be distinguished. In that case a point is made in the judgment of Garvin J. that the charge was that accused "did fail to obtain the necessary licence . . . for the car," whereas section 30 (1), under which the accused was charged, does not make the failure to licence an offence. Further, the facts in that case were that the accused never actually took possession of the car at any time. The respondent was not represented and no argument on his behalf was placed before the Court.

April 21, 1932. DRIEBERG J.—

The appellant was charged on October 1, 1931, under section 20 (1) of the Motor Car Ordinance, No. 20 of 1927, with possessing or using a motor car, bearing registered number D 1579, on January 1, 1931, without a licence for the year 1931. The complainant-respondent, the licensing authority, prayed that the appellant be condemned to pay the sum of Rs. 170, the amount of tax on the car. The Police Magistrate convicted the appellant, fined him Rs. 5 or in default one week's simple imprisonment, and condemned him under section 30 (3) of the Ordinance to pay the amount of the licence, Rs. 170.

The appellant is the registered owner of this motor car. There is no specific evidence of this by the production of the certificate of registration but the clerk of the Registrar of Motor Cars has stated that the appellant was the owner since June 10, 1928, when I take it he was registered as such. On December 16, 1929, the appellant wrote to the Registrar of Motor Cars that the vehicle, which he describes as "Bus No. 1579", was under repair. He wrote "I do not anticipate to put it on the road for 1930, and no tax shall be paid for 1930". The appellant here adopted the course provided by section 30 (2) of the Ordinance, and the effect of that was that his possession alone did not render him liable to take out a licence for 1930.

The appellant followed this up by a letter on December 28, 1929, to the Government Agent that the bus was to be converted into a lorry and again stated that it would not be used in 1930 and that he would not take out a licence for that year.

<sup>1</sup> 3 Cr. Ap. Rep. 38.

The appellant gave no notice that the bus would not be used in 1931 and, some time before October 22, 1931, the Government Agent wrote to him apparently calling attention to his failure to take out a licence for 1931. The letter has not been produced, but it was acknowledged by the appellant by his letter of October 22, 1931, in which he said that the bus "is unserviceable and the remaining parts are lying in Tawalantenne Veerasamy's garage at Madulkele"; this letter was written after the prosecution was started on October 1.

At the trial, the appellant said that the bus became unserviceable in 1929, that he had not used it since, and that it was in pieces at a garage. It was contended that it was for the prosecution to prove both possession and use of the bus by the appellant and that proof of this had failed. The word "possess" in section 30 (1) must be considered with reference to the scheme of the Ordinance. Section 18 (1) provides that no person shall use or possess a motor car unless the person for the time being entitled to the possession of it is duly registered as owner. In Form 2 of the third schedule to the Ordinance, the following declaration has to be made by the applicant for registration "I hereby declare that I am entitled to the possession of the motor car described below and apply to be registered as the owner thereof". Section 18 (3) makes provision for a case where the person entitled to the possession of a motor car is not the absolute owner of it.

A change of possession otherwise than by death can only be effected by the registration as owner of the new owner, and a similar provision is made for devolution of ownership on the death of the registered owner (section 22); in both cases the new owner has to apply for registration.

Section 24 provides for the cancellation of a registration if the registrar is satisfied that the car has been destroyed or rendered permanently unserviceable or permanently removed from Ceylon. It follows from this that, once a person has been registered as owner of a car on his declaration that he is entitled to the possession of it, he must be regarded as the person in possession of it unless there has been a transfer of possession in the manner provided by the Ordinance or unless by the cancellation of the registration it ceases to be a car which can be the subject of possession for the purposes of the Ordinance.

But the appellant does not say in reality that he is not in possession of the bus. If, as would appear, the bus was left for repairs or storage at Veerasamy's garage it was still for the purposes of this section in the possession of the appellant and not that of the owner of the garage. What the appellant in effect says is that he is not in possession of a car which is capable of being used, but if this is so he should have satisfied the registrar that the car is permanently unserviceable and had the registration of it cancelled.

This case is distinguishable from that of the *Government Agent, Western Province v. Bilinda*<sup>1</sup> where the appellant bought a car at a garage and, though he was registered as the owner of it, never took possession of it.

If, as has been proved, the appellant was in possession of the bus he was liable to take out a licence for it and it does not matter whether he used it or not unless he did so within the period for which he stated he would

<sup>1</sup> 3 Cr. Ap. Rep. 38.

not use it, section 30 (2). In his evidence the appellant stated that the bus became unserviceable in 1929; if he means to suggest by this that it was then ascertained to be permanently unserviceable he cannot be right, for on December 28, 1929, he informed the registrar that he was converting the bus into a lorry and that it would not be used during 1930. As I have pointed out, the appellant here acted rightly and he would not have been liable to take out a licence for 1930 unless he did in fact use the car in that year. When he found, if such was the case, that the car was beyond repair and was permanently unserviceable, he should have satisfied the registrar of this and had the registration cancelled.

He did not do so, nor did he declare his intention of not using the car in 1930 and he became by reason of his possession alone liable to take out a licence for that year whether he used it or not.

*Appeal dismissed.*

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