

## CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

EMPEROR v. J. D. SHERSTON BAKER\*.

1921.

November 2.

*Indian Motor Vehicles Act (VIII of 1914), sections 10 and 11—Bombay Motor Vehicle Rules, 1915, Rule 6 and schedule D—Registration Certificate of Motor Vehicles—Time limit introduced into the certificate—Rule ultra vires.*

The provision in Rule 6 of the Bombay Motor Vehicle Rules, 1915, as amended by the rules published in 1918, framed under section 11 of the Indian Motor Vehicles Act, 1914, and in schedule D, as to the limit of time during which the certificate is valid, is *ultra vires*.

THIS was an application under the criminal revisional jurisdiction against conviction and sentence passed by G. R. Khairaz, Acting Third Presidency Magistrate of Bombay.

The applicant owned a motor car. He had taken out a registration certificate for his car in 1920. The certificate expired on the 31st December 1920 and was not renewed during 1921.

In May 1921, the applicant was still driving his motor car with the unrenewed registration certificate. He was charged with contravening Rule 6 (1) (b) of the Bombay Motor Vehicles Rules, 1915, as amended by the rules published on the 18th December 1918, and convicted and sentenced to pay a fine of one rupee.

The applicant applied to the High Court.

*O'Gorman*, with *Little & Co.*, for the applicant.

*Bahadurji*, Acting Advocate-General, with *J. C. Bowen*, Public Prosecutor, for the Crown.

MACLEOD, C. J.:—The applicant in this case was charged with having caused his motor car to be driven

\* Criminal Application for Revision No. 262 of 1921.

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along the Queen's Road on the 27th May 1921, without having re-registered the same for the year 1921, in contravention of Rule 6 (1) (b) of the Bombay Motor Vehicle Rules, 1915, as amended by the Rules published on the 18th December 1918. The applicant contended that the said Rule as amended was and is *ultra vires* of the powers conferred on the Local Government by sections 10 and 11 of the Indian Motor Vehicles Act, 1914, and that the same was invalid and of no effect. The Third Presidency Magistrate, however, convicted the applicant under the said amended rule and sentenced him to pay a fine of one rupee. The applicant has applied to us under our revisional powers to set aside the conviction and sentence. The learned Magistrate has given no reasons for his decision.

Section 10 of the Act provides (1) that the owner of every motor vehicle shall cause it to be registered in the prescribed manner, and (2) that such registration shall be valid in such area as may be specified in the certificate of registration; and by section 11, the Local Government, subject to the condition of previous publication, shall make rules for the purpose of carrying into effect the provisions of the Act and of regulating, in the whole or any part of the territories under its administration, the use of motor vehicles or any class of motor vehicles in public places. By subsection (2) in particular, and without prejudice to the generality of the foregoing powers, the Local Government may make rules for all or any of the following purposes, which are detailed in the headings (a) to (i). Under (a) rules may be made providing for the registration of motor vehicles, and the conditions subject to which such vehicles may be registered, the fees payable in respect of and incidental to registration, the issue of certificates of registration, the notification of any

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changes of ownership, and (subject to the provisions of section 10) the area in which certificates of registration shall be valid.

Rule 6 of the Bombay Motor Vehicles Rules, 1915, framed by the Local Government under its powers given by section 11 of the Act provided that subject to the provisions contained in Sub-Rule (2) of Rule 13, no motor vehicle should be used unless it had been first registered by the registering authority, and any motor vehicle which had already been registered under the Act did not need to be re-registered.

Rule 73 provided that every registration certificate granted under section 10 of the Act should be in the form of schedule D and should be available for the whole of British India.

It will be noted that the Rule did not provide for any limit of time during which the certificate should be valid.

On the 18th December 1918 the Local Government published amendments to the Bombay Motor Vehicles Rules, 1915.

The following Rule was substituted for the existing Rule 6 :—

6. (1) No motor vehicles shall be used (save in accordance with Rule 14 or for the purpose of procuring registration)—

(a) unless it has been registered by the registering authority, and

(b) unless the registration certificate granted in respect of it is in force.

(2) Registration certificates granted in accordance with Rule 73 and schedule D shall expire on the 31st December in the year in which they are granted but shall be renewable.

(3) Registration certificates granted before the 18th December 1918, shall expire on the 28th February 1919.

(4) Notwithstanding anything in this rule any registration certificate granted under any enactment for the time being in force in any part of British India other than the Presidency of Bombay or in any State in India included in schedule H shall be valid in the Presidency of Bombay until the date of its expiry.

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Then in Rule 7 for the word "provided" the following was substituted :—

" Provided that no fee shall be charged for the renewal of a registration certificate in any case where the application for renewal is made before the expiry of the certificate."

Various changes were made in schedule D, the important one for the purpose of this case being that immediately below "Registration Certificate" the words "Valid for the year ending the 31st December 191" were to be inserted.

The result of the amendment of the rules was that owners of motor vehicles who had registration certificates granted before the 18th December 1918 had to renew their certificates before the 28th February 1919, and that every certificate granted after the 18th December 1918 was only valid up to the 31st December 1919. If then an owner neglected to renew his certificate before the expiry of the period for which it was valid, he was treated by the authorities as a person who had not caused his motor vehicle to be registered in the prescribed manner, and in order to come within the provisions of section 10 of the Act he was liable to be charged with a fresh fee before he could get his certificate renewed.

Now it is contended by the applicant that the amendment of the rules by the Local Government limiting the duration of time for which a certificate was to be valid was *ultra vires* as no power was given by section 11 to make rules for that purpose. Special reference was made to heading (d) of section 11, subsection (2) which enabled the Local Government to

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make rules prescribing the authority by which, and the conditions subject to which, drivers of motor vehicles or any class of such drivers might be licensed, the fees payable in respect of such licences, and (subject to the provisions of section 9), the area within which, and the duration for which, licences should be valid. Where it was intended to give the power to make rules prescribing a time limit it was expressly given to that effect, and in our opinion heading (a) of section 11, sub-section (2), does not by implication give a power to the Local Government to prescribe by rule the duration of time during which a certificate of registration shall be valid.

It has been contended that the Local Government could make rules providing for the conditions subject to which the motor vehicles might be registered, and the duration of time was one of the conditions of registration. But we do not think there is any force in that argument, as although the same words appear in heading (d), it was expressly provided that the duration of time during which licences should be valid should be prescribed by rule.

Lastly, it was argued that the rule was made under the general powers given by sub-section (1), but such a provision must be strictly construed and when the rules which can be made relating to the registration of motor vehicles are defined by section (2) (a) it is clear that the Legislature intended that any rules relating to registration must come within that definition.

We think, therefore, that the contention of the applicant must prevail, and that the amendment of the rules which were made on the 18th December 1918 so far as they provided that registration certificates should expire on the 31st December in the year in which they were granted was *ultra vires* of the Local Government.

It would also follow that the corresponding amendment of the form in schedule D was *ultra vires*, and that the certificates of registration granted according to the amended form should be considered as if the words "valid for the year ending the 31st December 191" were not added. Therefore, as the applicant had a certificate, he had complied with the provisions of section 10 of the Act and the conviction under section 16 of the Act must be set aside and the fine, if paid, refunded.

SHAH, J.:—I agree.

*Rule made absolute.*

R. R.

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## APPELLATE CIVIL.

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*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

RABIA BIBI WIDOW OF SHARIFF WALAD SULEMAN MEMAN AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* GANGADHAR VISHNU PURANIK AND ANOTHER, MINORS, BY THEIR GUARDIAN THEIR UNCLE RAMCHANDRA KRISHNA PURANIK (ORIGINAL DEFENDANTS), RESPONDENTS<sup>o</sup>.

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*November 9.*

*Salt Act (Bom. Act II of 1890), sections 11 and 47—Salt pans—License to manufacture salt—Clause against sub-letting without permission—Agreement to grant sub-lease void.*

The defendant obtained a license from Government for the manufacture of salt. One of the terms of the license was that the licensee should not sub-let the pans without the permission of the Collector. The defendant without obtaining permission from the Collector entered into an agreement to lease the pans to the plaintiff for one year. The plaintiff sued for specific performance of the agreement.

<sup>o</sup> First Appeal No. 277 of 1920.