

ERNEST GUNTER EGGERS

v.

REGINAM

[SUPREME COURT, 1973 (Grant J.), 27th September]

Appellate Jurisdiction

*Road Traffic—driving a heavy goods vehicle without holding a licence to drive that class of vehicle—Traffic Ordinance (Cap. 152) s. 23(1)—whether vehicle licence sticker prima facie evidence of its contents—Traffic Ordinance (Cap. 152) s. 11 (1), 14(1) and 19(1).*

*Evidence—vehicle licence and vehicle licence sticker—whether vehicle licence sticker prima facie evidence of its contents.*

The only evidence adduced by the prosecution to establish that the vehicle in question was a heavy goods vehicle, was that of a police officer who testified that he had ascertained that the vehicle's weight was sixty-three hundredweight by checking this from the vehicle licence sticker affixed to the windscreen and also from records at the head licensing office. It was admitted by the respondent that the latter records were hearsay but it was contended that the vehicle licence sticker was prima facie evidence of its contents.

*Held:* The vehicle licence and licence sticker are separate and distinct entities and that it is the licence sticker which is exhibited on a vehicle. Consequently as no regulations have been enacted prescribing either the form of vehicle licences or of licence stickers, they are not prima facie evidence of their contents.

*Per curiam:* As far as a vehicle licence is concerned, the rule of evidence relevant to a driving licence, namely that the burden of proof that the defendant has a licence lies on him, cannot be prayed in aid in Fiji.

Cases referred to:

*John v. Humphreys* [1955] 1 All E.R. 793; [1955] 1 W.L.R. 325.

*Rajgopal Pillai v. Reginam*, 8 F.L.R. 163.

Appeal from the Magistrate's Court against the conviction of the appellant for driving a heavy goods vehicle without a valid licence to drive that class of vehicle

GRANT J. [27th September 1973]—

On the 9th day of May 1973 at Suva Magistrate's Court the appellant was convicted after trial of driving a motor vehicle when not being the holder of a driving licence in respect of that class of motor vehicle contrary to section 23(1) and Section 85 of the Traffic Ordinance Cap. 152, in that on the 2nd September 1972 at Suva he drove a heavy goods vehicle on Queens Road 2 miles without being the holder of a driving licence in respect of that class of motor vehicle, against which conviction he has appealed.

**A** The evidence adduced by the prosecution to establish that the vehicle in question was a heavy goods vehicle was solely that of a police constable who testified that he ascertained that the weight of the vehicle was sixty three hundredweight by checking this from the licence sticker and also from the records at the head licensing office.

**B** It is conceded by the Crown that the police constable's evidence as to what he saw in the records at the head licensing office is hearsay, as indeed it is, and counsel for the appellant has accordingly confined himself to the submission that the contents of a licence sticker are also hearsay and cannot be relied upon to prove, *inter alia*, that the vehicle in question was a heavy goods vehicle exceeding sixty hundredweight. The Crown contends that, as there is a legal obligation to affix a licence sticker on the windscreen of a licensed vehicle by virtue of Section 14(1) of the Traffic Ordinance, the licence sticker is *prima facie* evidence of its contents.

**C** There is no doubt that in some countries a vehicle licence attached to the windscreen of a vehicle may be and is treated as *prima facie* evidence of its contents; but this results from the manner in which the legislation is framed. A useful example of this is furnished by the English Road Vehicles (Registration and Licensing) Regulations 1955 to which I shall now refer simply for the purpose of drawing a comparison with the Fiji legislation. Regulation 13 provides that after the correct amount of duty has been paid the council to whom application for the licence is made shall issue to the applicant a licence in the appropriate form, but, before issue, there must be entered upon the licence the registration mark of the vehicle, the class and make of the vehicle, the rate of duty, and a stamp or other sufficient mark indicating the name of the authority by whom the licence is issued and the date of issue. Regulation 4 provides that the vehicle licence so issued must be attached to and carried on the vehicle at all times when the vehicle is in use on a public road and lays down the position in which and the manner in which it shall be fitted and carried; and Regulation 5 provides that no person shall alter deface mutilate or add anything to any such licence. In view of these legislative provisions it is the vehicle licence itself, containing mandatory particulars, that is attached to the vehicle and consequently a court of law may apply the maxim *omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*. All that is necessary to make out a *prima facie* case in these circumstances in respect of a charge of the type with which this appeal is concerned is for a police officer to identify the defendant as the driver, and to give oral testimony of what he saw on the vehicle licence affixed to the vehicles; there being no need for the prosecution even to give notice to the defendant to produce the vehicle licence as the charge itself gives him sufficient notice of the subject of enquiry so that he may prepare himself to produce the vehicle licence if necessary for his defence (Archbold, 37th Edition, para. 1065).

**D** Turning to the Fiji legislation, a very different situation exists. Section 11(1) of the Traffic Ordinance Cap. 152 provides that application for a motor vehicle licence in every case shall be made to a licensing authority who shall, on payment of the prescribed fee, issue to the applicant a licence in the prescribed form. Section 14(1) of the Ordinance provides that with every motor vehicle licence issued, and upon every renewal of a motor vehicle licence, there shall be issued a licence sticker which shall be affixed to and exhibited upon the licensed vehicle in a specified manner. Section 19(6) provides that upon certain changes of possession of the vehicle the licensing authority on the application of the new owner and the payment by him of the prescribed fee shall make the necessary alterations to the motor vehicle licence and shall deliver the amended licence to the new registered owner. Section 83 makes it an offence to forge or alter any licence; and Section 86

gives the Central Traffic Authority power to make regulations for prescribing anything which may be prescribed under the Ordinance, including licences and the form of stickers (Section 86(1) (b)). **A**

It is perfectly clear from these provisions that a vehicle licence and a licence sticker are separate and distinct entities; and that it is not the vehicle licence that is exhibited upon the motor vehicle but a licence sticker. Whether or not the contents of each be the same or differ will depend entirely upon the form that a vehicle licence shall take and the form that a licence sticker shall take, and this in its turn will depend upon what the Central Traffic Authority prescribes. Section 2 of the Traffic Ordinance defines "prescribed" as meaning "prescribed by this Ordinance or by any regulations made thereunder"; and so far as can be ascertained no regulations have been enacted prescribing either the form of vehicle licences or the form of licence stickers. Regulation 6 of the Traffic Regulations 1967 does say "Every vehicle licence and licence sticker shall be of such size colour and shape and shall contain such particulars as the Principal Licensing Authority shall direct", but this takes the matter no further as it is not a prescription by regulation of the form of or contents of a vehicle licence nor a licence sticker. Consequently the maxim *omnia praesumuntur rite esse acta* has no application. **B**

I might add that the rule of evidence relevant to a driving licence, namely that the burden of proof that a defendant has a licence lies on him because the fact is peculiarly in his own knowledge (*John v. Humphreys* [1955] 1 All E.R. 793), cannot as the position stands in Fiji be prayed in aid so far as a vehicle licence is concerned, as it would seem that the licensing authorities, in breach of the requirements of the Traffic Ordinance, are not issuing or renewing vehicle licences. They are merely issuing licence stickers, which as I have pointed out are separate and distinct from vehicle licences and which under present circumstances prove nothing, not even that a vehicle licence has been issued. **D**

I have not overlooked the case of *Rajgopal Pillai v. Reginam* (1962) 8 F.L.R. 163 in which the trial Magistrate purported, erroneously, to take judicial notice that the licence sticker is the licence for the car and which was not upset on appeal; but the appeal was on a different ground, the point was not taken that by virtue of the Fiji legislation a licence sticker is not a vehicle licence, the attention of the learned Judge was not drawn to this fact and consequently he did not direct his mind to it. **E**

It is not for me to speculate on why such cumbersome legislation has been adopted in Fiji in place of simple provisions of the type quoted as an example earlier in this judgment; nor is it the concern of this Court that the licensing authorities are failing to issue vehicle licences or that the Central Traffic Authority has omitted to make regulations prescribing the particulars which shall be contained in a vehicle licence and the particulars which shall be contained in a licence sticker. However the outcome is that the evidence of what the police constable saw on the licence sticker attached to the motor vehicle which is the subject matter of this appeal is valueless. **F**

As there was no admissible evidence before the trial Magistrate as to the class of vehicle which the appellant was driving the conviction is quashed and the sentence set aside. **G**

*Appeal allowed.*