

72

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IN THE MATTER of an Appeal from the Justice in  
Petty Sessions at Port Moresby

NOEL VINCENT COOPER Appellant

and

VIVA MAE McGEOGH Respondent.

J U D G M E N T.

Bignold, J.

1. This appeal is by way of a special case stated under the provisions of Section 189 of the Justices Ordinance 1912-1953 and lies within a small compass.
2. The Respondent, upon the facts found by the Court of Petty Sessions, was driving a motor car on a public street on 16th July, 1955 without a current driver's licence - her driver's licence having expired on 7th July, 1955.
3. The licensing authority, however, on 18th July, 1955, renewed her licence with effect from the date of expiry of her previous licence, namely the 7th July, 1955.
4. The learned Resident Magistrate found that the licence so renewed made lawful her act of driving without a licence on the 16th July, 1955, as the licence purported to cover that period - being expressed to be effective from the date of expiry of her old licence, namely the 7th July, 1955.
5. In my view, the question put to this Court inevitably requires consideration of whether the purported renewal was a valid exercise of the statutory powers of the licensing authority - for if the renewal was not in pursuance of his statutory powers, the renewal would be a nullity from which no legal consequences could flow.
6. It is trite law that a renewal of a licence can only be made upon application by the licence-holder applying to renew that which is in existence and is on the point of expiring. Per Lindly L.J. Queen v. Licensing Justices of Crewkerne 1888 21 Q.B.D. 87.
7. In the present case, the licence had expired and had therefore ceased to exist, so that after the 7th July, 1955, no question of its renewal could arise.

8. If I am correct, the only power residing in the licensing authority in respect of the driver in question was to issue a new licence, and such a licence could not be issued with any retrospective effect.

9. The learned Resident Magistrate was not unaware of the difficulties relating to renewal in point of time, but apparently omitted to consider the possibility of the renewal in question being beyond the powers of the licensing authority.

10. I agree with Mr. Lalor's submission also that the offence alleged must be considered as at the date it is alleged it was committed and that the licensing authority has no powers of validation.

11. In view of the findings of fact contained in the case stated, this Court, for the abovementioned reason, namely, that the renewal was ultra vires, reverses the decision of the Court of Petty Sessions and remits the case thereto to deal with the matter of penalty.

19th July, 1955.