

[BELCHER, C.J., SERTSIOS AND FUAD, JJ.]

POLICE

v.

ELEFTHERIOS S. ALONEFTIS.

1929.
Nov. 14.POLICE
v.
ALONEFTIS.

Motor car—Passengers in lorry—Power in registrar to fix varying maxima—Law 9 of 1921, Sections 3, 5—Motor Car Regulations of 21st December, 1923, Nos. 18, 19.

The Registrar of Motor Cars purporting to act under Regulation 18 of 21st December, 1923 (which directs him to fix the maximum number of passengers which may be carried by any car plying for hire), fixed in respect of a certain motor truck of lorry maxima which were to vary according as goods were carried or not.

Held, that Regulation 18 empowered him to do so.

Question of law reserved for the Supreme Court by the Magisterial Court of Nicosia (No. 7879/29) under C.C.J.O., 1927, Clause 94 (2).

Tsiros for defendant.

Paschalis, Acting Attorney-General, for the Crown.

The facts appear sufficiently from the judgment of the Court, which was delivered by the Chief Justice.

JUDGMENT :—

BELCHER, C.J.: The Motor Car Law, 1921, (No. 9 of 1921) is a very short enactment which in essentials consists of a definition clause, a power to the Governor to make Regulations, and provisions relating to offences which may be committed against the Regulations when made. Regulations were in fact made on 18th December, 1923 (*Gazette*, p. 585) which are still in force. Under them the Chief Commandant of Police is made a Registrar of motor cars, and all cars are to be registered and the owners must take out licences for them. The definition of motor car in the Law includes a motor lorry; that is plain enough from its wording. The Regulations are numerous, but the only ones which concern us are Nos. 18 and 19. These on the face of them refer to differing subject-matters, namely 18, to passenger cars plying for hire and 19 to motor lorries. No. 18 says that the Registrar shall fix the maximum number of passengers which may be carried by "any car" plying or hire, and the part of Regulation 19 which may be material is paragraph 4 which lays it down that the weight of a lorry and its load together shall not exceed two tons. The two classes of vehicles are thus treated, it would seem, as mutually exclusive, and it is noteworthy that although the expression "motor car" must occur well on towards

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100 times in these Regulations, the word "car" by itself occurs only twice or thrice. In the other one or two cases it is clearly used in the wide sense of "motor-car," but the omission in Regulation 19 of the word "motor" in such close juxtaposition to the "lorry" provisions certainly does suggest that it is here used in a more limited sense, *i.e.*, in the sense of a "car" as used in ordinary speech, where it never includes "lorry" in its denotation any more than it includes a motor-cycle; although "motor car" under No. 9 of 1921 does include "motor-cycle." Now the fact is that there are in the Colony and in use quite a number of vehicles which, primarily motor lorries, are capable of being converted temporarily into passenger cars and back again, while of course it is possible to use a lorry either wholly or in part for passengers without any conversion at all. And it is evident that these circumstances were overlooked by the framers of the Regulations or they would have been provided for in so many words. To revert for a moment to Regulation 18, the Registrar, as it appears, in practice fixes the number of passengers for "cars" by means of words written on the licence which as above stated the owner has to take out in respect of the particular car. This seems an eminently practical way of doing it, and if it is, as is not in this case disputed, within his powers to fix any maximum at all, that is to say assuming that Regulation 18 is a proper delegation of power by the Governor, there can be no mode open to less objection. Then the Registrar was faced with the problem of these "convertible" lorries, or as one might say in another jargon, "dual-purpose" cars. He got over it in a manner illustrated by the licence in evidence in this case, which has, added to its printed words, a written proviso as follows: "Such motor truck if plying for hire shall not carry more than two front-seat passengers, and 27 cwt. of goods, or 14 passengers with their personal light luggage excluding the driver at any time." Coming to the facts on which our opinion is sought, they are that the defendant, who is charged with carrying passengers in excess of the number fixed by the Registrar, carried in his truck (whether converted or not does not appear and I think does not matter) two front-seat passengers besides himself, and three other passengers sitting in the rear part, where also were loads of freight which were not the personal light luggage of the passengers. What we are accordingly asked is whether the Registrar is given power by Regulation 18 to impose alternative maxima according as the lorry is used wholly as a passenger vehicle, or partly as a freight vehicle. That a lorry may, if used for passengers, be deemed a car so as to enable the Registrar to apply a maximum to it was decided by this Court in the case of *Police v. Christos*

Angelides, Criminal Appeal No. 1236, on 22nd June, 1929 (1), and although the Court did not give its reasons we ought *prima facie* to follow that decision as an authority: we should probably have arrived at the same conclusion ourselves. For looking at Regulation 18, one cannot doubt that the underlying idea is to safeguard the passengers, who run at least equivalent risks in a lorry to those they run in a car, and so we may well follow, and if need be extend, the application, of the assumption that the legislature or rather the Governor in making these Regulations had in mind, in separating motor lorries from passenger cars, rather the use to which the particular vehicle is put, than any peculiarities in its structure. That being granted, then the Registrar must surely be entitled to provide not only a purely "passenger maximum," but a maximum, which would naturally be a lower one, for the case where part of the space is taken up by freight loads. Clearly it is impossible to envisage every sort of proportion, and so what he does is to say when issuing a licence for a vehicle which may be put to either purpose or both, "You may carry no passengers at all if your freight exceeds 27 cwt., and if the freight is less, then your maximum number of passengers shall be two, and they shall sit in front." I think this is what the condition of the licence in this case amounts to. It cannot be said to diminish the lorry owner's limit of freight under Regulation 19 for, as seen, that applies (if the mode of user is the guide, as we have said) only when the lorry is used for freight alone. From the standpoint of passengers' safety, which as said above must be the underlying principle in Regulation 18, it is entirely reasonable and necessary.

Question answered in the affirmative.

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(1) C.J.'s notebook, p. 142A.