

HIGH COURT. Apia. 1955. 10, 16, June. MARSACK C.J.

Road Traffic Ordinance 1931 - omnibus carrying goods and luggage impeding entrance and exit - duties of driver - responsibility of owner.

A driver of a motor-omnibus who allows passengers' goods and luggage to be carried in the vehicle in a position impeding the entrance and exit of passengers commits a breach of a passenger licence by virtue of section 43 of the Road Traffic Ordinance 1931; and the owner of such omnibus is liable to conviction for such breach by virtue of section 11 of that Ordinance.

Cole v. Young /1938/ 4 All E.R. 39 referred to.

Defendant convicted.

Sub-Inspector Schmidt, for Police.  
Phillips, for defendant.

Cur. adv. vult.

MARSACK C.J.: This is an information laid under section 11(7) and (8) of the Road Traffic Ordinance 1931. As amended by section 6(b) of the Ordinances Amendment Ordinance 1953, section 11 provides (inter alia):-

"It shall be the duty of the owner of a motor-omnibus licensed to carry passengers to maintain such omnibus (during the continuance of such licence) according to the requirements set out in the First Schedule hereto and the conditions set out in section 43 hereof."

The relative subsections of section 43, which were added to the Road Traffic Ordinance 1931 by section 5 of the Ordinances Amendment Ordinance 1953, are as follows:

"43. In addition to the requirements set out in the First Schedule to this Ordinance it shall be a condition of every passenger licence of a motor-omnibus licensed to carry passengers issued under the provisions of this Ordinance -

- (a) .....
- (b) That the vehicle affords a ready means of entrance and exit of the passengers and driver thereof.
- (c) That the goods or luggage the property of the passengers shall be carried in such a position in the vehicle that they do not impede the entrance and exit of the passengers and driver thereof."

In this present case it is admitted that some goods or luggage the property of the passengers were carried in such a position in the vehicle that they might impede the entrance and exit of the passengers. The question is as to whether this constitutes a breach of section 11 of the Road Traffic Ordinance 1931.

Mr Phillips contends that the phrase "maintain such omnibus" used in section 11 cannot cover an act of a transitory nature such as the putting down of luggage in the wrong place; and he quotes the judgment of Lord Hewart L.C.J. in Cole v. Young /1938/ 4 All E.R. 39 in support of his contention. I agree that if section 11 were limited to the maintenance of the omnibus according to certain structural requirements then Counsel's contention would be well founded and the prosecution could not succeed.

As amended by section 6(b) of the 1953 Amendment, however, section 11

provides that the owner of a licensed motor-omnibus must also maintain such omnibus according to the conditions set out in section 43. The use of the word "maintain" is perhaps unfortunate, and it would unquestionably have been more satisfactory if the provision regarding the goods and luggage of the passenger, which is made a condition of every passenger licence, should have been referred to sections 3 and 4 of the Road Traffic Amendment Ordinance 1934. At the same time I am of the opinion that the relevant portion of section 43 must be read as imposing an obligation on the driver to observe and comply with all the conditions set out in section 43. This would mean that he must, inter alia, ensure that the passageways are kept clear of passengers' goods and luggage. If he fails to do so, then one condition of the passenger licence is not being complied with. As by section 6(b) of the 1953 Amendment this is made a breach of section 11(7) of the Road Traffic Ordinance 1931, then by section 11(8) of that Ordinance the owner commits an offence and must be convicted.