APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Napier.

J. KRISHNA ROW, APPELLANT,

1916. March 29.

v.

THE PRESIDENT, MUNICIPAL CORPORATION, MADRAS, RESPONDENT.*

Madras City Municipal Act (III of 1904), sec. 150—"Kept," meaning of—Vehicle under repair is one kept and taxable.

Even a vehicle that is under repair and therefore unfit for immediate use is a vehicle "kept" within the meaning of section 150 (1) of the Madras City Municipal Act (III of 1904) and so becomes liable to be taxed under that section. The word "kept" is not qualified by the words "for hire." It is not necessary that the owner should have possession of the vehicle in order to make it taxable.

CASE stated under section 176 of the Madras City Municipal Act (III of 1904) by C. B. N. PELLY, Chief Presidency Magistrate, Egmore, in Calendar Case No. 9747 of 1915.

The facts of this appear from the following letter of Reference of the Chief Presidency Magistrate, Egmore, to the High Court:—

"At the request of the President, Corporation of Madras, I have the honour to submit, under section 176 of the Madras City Municipal Act (III of 1904), the following case for the decision of the High Court:—

A gentleman Mr. Krishna Row bought a motor-car in August 1914. Immediately after purchase, it was handed over to a firm of Motor-car Repairers, as it was not then in running order. It was returned to him after repair only on the 9th September 1914; on these facts, the Corporation assessed Mr. Krishna Row on his motor-car for the half-year ending 30th September 1914, viz., Rs. 25. This assessment was based on section 152(2) of the said Act which lays down that the tax shall be payable 'so soon as a vehicle has been for thirty days kept or let out for hire or used within the city.' The Corporation contends that the car having been purchased in August 1914 was kept for more than thirty days.

* Referred Case No. 5 of 1915.

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On appeal, this Court held that to keep a car was something more than to own a car and that though Mr. Krishna Row owned the car from August 1914, he kept a car only from the 9th September 1914 when the car was handed over to him by the repairers.

If the interpretation placed by this Court on the expression 'to keep a vehicle or animal' is not upheld a further question raised by the appellant will have to be considered, i.e., whether it was the keeping of a car or the keeping for hire that is referred to in section 150 as a condition necessary for rendering a person liable to the tax.

A copy of the order passed by this Court on appeal is enclosed.

The necessary cost of reference will be deposited by the Corporation on intimation."

R. N. Ayyangar for the appellant.

P. Duraiswami Ayyar for the respondent.

AYLING, J.

AYLING, J.—In my opinion the three phrases "kept," "let out for hire" and "used" in section 150 of the Madras City Municipal Act are employed distinctively, and the word "kept" is not qualified by the words "for hire." If the mere possession of a car which is never used does not bring the possessor within the scope of section 150, it is difficult to imagine what is the object of the exemption clause, section 151 (*f*).

I can see no ground for holding that a car ceases to be "kept" within the meaning of section 150, because it is under repair and for that reason unfit for immediate use.

I would set aside the order of the Magistrates cancelling the tax and ordering refund.

NAPIER, J.

NAPIER, J.—I agree. Three points are argued. First, that a car under repair is not a vehicle. I cannot take this argument seriously. Second, that the word "kept" must be read with the words "for hire," and private persons who do not use for thirty days are not taxable. Section 151 (*f*) clearly negatives this argument. Thirdly, that as the owner had not the car in his possession, he was not "keeping." The section does not require the car to be in the possession of the owner. Any vehicle that is under some one's control is undoubtedly kept.

It has not been argued that if it was kept the owner need not pay and the argument would be impossible as long as the

owner had control—vide section 150 (2) of the Madras City Municipal Act. The assessment by the Corporation is correct.

N.R.

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NAPIER, J.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Phillips.

C. B. SWAMI CHETTY (DEFENDANT), APPELLANT,

v.

S. T. ETHIRAJULU NAYUDU AND ANOTHER MINOR BY THEIR NEXT FRIEND AND BROTHER (PLAINTIFFS), RESPONDENTS*

1916. April 4.

Registration Act (XVII of 1908), sec. 49—Mortgage by deposit of title-deeds—Agreement to mortgage—Document, containing agreement to mortgage—Registration of, if necessary—Admissibility of document for any purpose.

Where the plaintiff, who had executed a mortgage by deposit of title-deeds, executed a promissory note to the defendant and agreed that the latter should pay off the mortgage and recover the title-deeds from the mortgagee and retain them himself as additional security, and the terms of the agreement were embodied in two documents which were not registered.

Held, that the documents required to be registered and were inadmissible in evidence in respect of any of the terms contained therein under section 49 of the Registration Act (XVII of 1908).

Moore v. *Culverhouse* (1860) 27 *Beav.*, 639; *Neve* v. *Pennel* (1863) 2 H. & M., 170, followed.

Kedarnath v. *Shamloll Khettry* (1873) 11 B.L.R., 405, distinguished.

APPEAL from the judgment of KUMARASWAMI SASTRIYAR, J., in Civil Suit No. 144 of 1914.

The plaintiffs had effected a mortgage by deposit of title-deeds with one Vijiarangam Pillai. Subsequently the plaintiffs executed two promissory notes in favour of the defendant and arranged with him that he should pay the amount of the note to the mortgagee and recover the title-deeds from the mortgagee and retain them himself as additional security for the amount due under the promissory notes. The abovesaid arrangement was embodied in two documents which were not however registered. The documents contained a provision for payment of compound interest in case the interest payable under the

* Original Side Appeal No. 56 of 1915.