

CRIMINAL REVISION.

*Before Mr. Justice Baguley.*THE KING *v.* BA BA SEIN.*

1937

Dec. 10.

Child under seven as registered owner of motor vehicle—Plying bus for hire without licence—Exemption from criminal liability—Immunity not confined to offences under the Penal Code—Offence under special or local law—Burma Hired Motor Vehicles Rules—Penal Code, ss. 40, 82.

There is no provision of law in Burma against children, however young, being registered owners of motor vehicles, even of hired motor vehicles. But a child under 7 who is the registered owner of a hired motor vehicle cannot be convicted of the offence of plying a bus for hire without a licence. The immunity of children under seven years of age from criminal liability is not confined to offences under the Penal Code only, but extends to offences under any special or local law, unless a particular Act has special provisions to the contrary. S. 40 of the Penal Code governs s. 82 of that Code. S. 82 is in Chapter IV of the Penal Code and s. 40 says that in Chapter IV of the Code, the word "offence" denotes a thing punishable under this Code, or under any special or local law.

BAGULEY, J.—The accused in this case is, it would appear, 4 or 5 years old. The medical officer after examination says that his age is between 4 and 5, and his father who brought him to Court says that he is 5 years old, according to the ordinary Burmese way of reckoning age. This would mean that he is between 4 and 5 years old according to English reckoning. He has been found guilty of an offence described as being under section 7 of the Burma Hired Motor Vehicles Rules and bound over. Rule 7 merely states that the registering authority may at any time require a motor vehicle plying for hire to be produced for inspection and may prohibit the use of any hired motor vehicle which is unfit. According to the Motor Vehicle Sub-inspector of Police bus No. R.B. 3670 was found not fit to ply and so a "fit pass" was not issued to the owner. I presume that means that registration was refused. Nevertheless, the

* Criminal Revision No. 783A of 1937 from the order of the 1st Additional Special Power Magistrate of Henzada in Criminal Summary Trial No. 140 of 1937.

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bus was found plying for hire without being registered ; so the owner has been found guilty of plying it for hire without a licence. It is of interest to note that although no person under the age of 18 years is allowed to drive, there seems to be no provision against children, however young, being registered owners of motor vehicles, even of hired motor vehicles, which seems a defect in the Act and rules which might be brought to the notice of the authorities.

Be that as it may, it is obvious that the conviction is bad. The learned Magistrate before whom the case was brought had doubts as to whether section 82 of the Penal Code was not a complete bar to the charge. The Court Prosecuting Officer however drew his attention to the last paragraph of the note on section 82, Penal Code, in Ratanlal's Law of Crimes, which says :

“The exception in favour of infants under seven years is only confined to the Penal Code, and does not extend to local or special Acts”;

and gives as an illustration section 130 of the Railways Act. This comment must, I fear, be regarded as a blot on a publication which can as a rule be relied upon. Section 130 of the Railways Act contains special words suspending with regard to certain sections of the Act the provisions of sections 82 and 83 of the Penal Code. In general, however, section 40 of the Penal Code governs section 82. Section 82 is in Chapter IV of the Act, and section 40 says that in Chapter IV of the Penal Code the word “offence” denotes a thing punishable under this Code, or under any special or local law. This being the case the conviction is clearly bad.

I set aside the conviction and sentence, and acquit the accused. The custody order and bond which has been executed will be cancelled.