

stopped short of finding, as it had no occasion to find, that, if proof were offered that the foreign corporation was guilty of the infringement alleged, the Court could or should convict it. However, the High Court in *Home Benefits Pty. Ltd. v. Crafter* (f) some time later found that a conviction to which a foreign corporation had in similar circumstances been subjected was valid. It is true that in that case no argument was advanced that a foreign corporation was not subject to proceedings under criminal law, but I think the point would not have escaped the Court, and that, wrapped up in the decision, is, inferentially, a ruling that a foreign corporation is so subject. As Mr. Eggleston has pointed out by reference to *Russian & English Bank v. Baring Brothers & Co.* (g), and to the earlier case of *Bateman v. Service* (h), English law does regard foreign corporations as entities. Accordingly, I think the police magistrate should have proceeded to hear the information.

The order *nisi* will be made absolute and the matter remitted to the police magistrate for hearing.

*Order absolute.*

Solicitor for the informant: *F. G. Menzies*, Crown Solicitor.

Solicitors for the defendant: *Alexander Grant, Dickson & Menhennitt*.

F. R. N.

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### HUDD v. GANGE.

MARTIN J.

JUNE 11, 12, 20, 1941.

*Transport regulation—Commercial passenger vehicle—Operating without licence—  
Vehicle leased by owner to driver—Driver not servant or agent of owner—  
Whether owner liable—Transport Regulation Act 1933 (No. 4198), sec. 45.*

An information charged the defendant that he was the owner of a commercial passenger vehicle which operated upon a public highway without a licence contrary to sec. 45 of the *Transport Regulation Act 1933*. The defendant proved that he had leased and given up control of the vehicle to the person driving it. The information was accordingly dismissed.

*Held*, that, on the true construction of the section, the defendant should have been convicted.

*Dictum* of Mann J. in *Machin v. Fairweather*, [1935] V.L.R. 294, at p. 296, not applied.

### ORDER TO REVIEW.

Alfred Gange was charged on the information of William Wyatt Hudd, constable of police, that on the 28th December 1940 at Mentone he was

(f) [1939] 61 C.L.R. 701.

(h) [1881] 6 App. Cas. 386.

(g) [1936] A.C. 405.

the owner of a commercial passenger vehicle which operated on a public highway without being licensed as a commercial passenger vehicle under Part II. of the *Transport Regulation Act* 1933, contrary to sec. 45 of that Act. The information came on for hearing before a Court of Petty Sessions at Cheltenham. The evidence for the informant showed that a taxicab owned by the defendant, and driven by one Wellard, had conveyed passengers to the Mentone racecourse; that each passenger had paid a fare to the driver and that the taxicab was not registered under the Transport Regulation Act as a commercial passenger vehicle. The defendant gave evidence that at the time of the alleged offence the taxicab had been leased by him to Wellard. The lease, which was produced and put in evidence, provided that Wellard should hire the taxicab from the defendant for certain periods of the day and should pay to the defendant by way of rent a sum equivalent to 62½ per centum of the gross amount received by him as fares during such periods, and that while the taxicab was in the possession of Wellard he should have sole control of it and of the running and management thereof, and should be at liberty to use it for the transportation of passengers, in accordance with any Acts, regulations or by-laws relating to taxicabs, at such times and in such places as he in his absolute discretion should deem fit. The defendant gave evidence that he did not know on the date of the alleged offence that Wellard was operating the taxicab in contravention of the law. Wellard said in evidence that he carried the passengers on the day in question with full knowledge that each passenger was contributing separately to the fare. Relying on a *dictum* of Mann J. in *Machin v. Fairweather* (a) the magistrates dismissed the information.

The informant obtained an order *nisi* to review the decision of the magistrates on the grounds, (1) that they were wrong in holding that the defendant could not be convicted unless the driver was his agent, servant or employee, and (2) that on the evidence the defendant should have been convicted, inasmuch as the only defence relied upon, namely, that the defendant was not responsible for the conduct of a hirer of the vehicle, was not a valid defence.

*Eggleston*, for the informant, to move the order absolute—The defendant should have been convicted. Sec. 45 of the *Transport Regulation Act* 1933 should be read literally. It is undisputed that the defendant was the owner of the taxicab and that the taxicab was operating in contravention of section 45. Absence of *mens rea* is no defence to a charge under this section. [He referred to *Machin v. Fairweather* (b); *Blyth v. Hudson* (c); *Barker v. Callaghan* (d); *Transport Regulation Act* 1933, secs. 5, 40, 43, 46 and 47.]

(a) [1935] V.L.R. 294.

(b) [1935] V.L.R. 294.

(c) [1929] 41 C.L.R. 465.

(d) [1941] V.L.R. 15.

*O'Driscoll*, for the defendant, to show cause—The information was rightly dismissed. “Owner” in section 45 means “owner whose driver offends.” There must be the relationship of master and servant between the owner and the driver for the owner to be liable for the driver’s acts. [He referred to *Machin v. Fairweather* (e); *Fraser v. Dryden’s Carrying & Agency Co. Pty. Ltd.* (f); *Maher v. Musson* (g).]

*Eggleston*, in reply.

*Cur. adv. vult.*

MARTIN J. read the following judgment: The defendant was charged with being the owner of a commercial passenger vehicle which operated on a public highway on the 28th December 1940 without a licence under the *Transport Regulation Act* 1933. It was proved or admitted on the hearing of the information that the defendant was the proprietor of the vehicle in question, that it had “operated” on a public highway on the date alleged and that it was not licensed under the said Act. But the defendant satisfied the Court that he had leased the vehicle to one Wellard, the driver of the vehicle on that date, who had full control of it, and the information was dismissed.

Under the Act “‘owner’ includes every person who is the owner . . . of a commercial passenger vehicle . . . and any person who has the use of any such vehicle under a hiring or hire purchase agreement, but does not include an unpaid vendor of such a vehicle under a hire purchase agreement.” This exception, in the context in which it appears, indicates that the Legislature intended that both the person letting and the hirer of a commercial passenger vehicle, in cases other than hiring under a hire purchase agreement, are to be regarded as the “owner” of such vehicle. On a literal construction of the Act there can be little doubt that the defendant was liable, but, it is urged on his behalf that the consequences of a literal reading of the words of the statute would be so unjust that the Legislature could not have intended such a construction. It was pointed out that if full effect were given to the words, an owner whose car was taken from his garage unlawfully by another, for whose acts he was in no way responsible, could be convicted, and reliance was placed upon the judgments of the High Court in *Blyth v. Hudson* (h), and that of Mann J., in *Machin v. Fairweather* (i).

In the former of these cases language was used, both by the learned Justices who combined in delivering one judgment and by Isaacs J., who gave his reasons separately, to the effect that the section of the Act there in question—sec. 40 of the *Motor Omnibus Act* 1927—would not impose

(e) [1935] V.L.R. 294.

(h) [1929] 41 C.L.R. 465.

(f) [1941] V.L.R. 103.

(i) [1935] V.L.R. 294.

(g) [1934] 52 C.L.R. 100, at p. 104.

penal consequences upon one who had not himself and whose servants and agents had no reason to believe that facts existed which would make its provisions applicable. That must mean, I think, that, in the opinion of the High Court, *mens rea*, either personal or imputed, was an element of the offence charged.

The *Transport Regulation Act* 1933 was enacted nearly five years after the decision in *Blyth v. Hudson* (j) and in that Act, which has many sections very similar to those appearing in the *Motor Omnibus Act* 1927 there are several provisoes to sections, exempting from liability one who has no knowledge of the facts carrying penal consequences, which had no counterpart in the *Motor Omnibus Act* 1927. Largely because of these provisoes I have already expressed the opinion in *Barker v. Callaghan* (k) that *mens rea* is not an essential part of the proof required to convict under section 45 of the Act, and I adhere to that opinion. In *Machin v. Fairweather* (l) the learned Judge in the course of dealing with a case brought under this section, and in relation to some supposititious cases put to him in argument, said, "In my view, no person would be liable of whom it could be said that neither he nor his servants or agents used or intended to use the vehicle in the way forbidden." Mr. Eggleston, who appeared for the informant in that case, informs me that, as his leader was stopped in opening the case, as was he himself in reply, the provisoes to the various sections exempting one who was innocent of the wrongful acts from liability, were not brought to the notice of the Court. That was a case in which an employee of the owner was driving a commercial passenger vehicle, and it was clear that the defendant had employed the driver to use such vehicle for reward. What was decided there is that an owner is vicariously liable for the acts of the driver whom he employs or authorises to use the car for reward. The passage cited from the judgment was not part of the *ratio decidendi* and, as already stated, the learned Judge was not referred to the provisions of the Act, exempting innocent persons from liability, which appear in sections 40, 43 and 46 thereof.

In the present case the defendant leased a taxicab to Wellard, intending that the latter should use it to carry passengers and collect fares, for the only rental reserved was a percentage of the fares received from passengers, so, it might be argued, that he comes directly within the decision in *Machin v. Fairweather* (m), and that he is vicariously liable for the acts of Wellard whom he authorised to use the car for reward. The fact that section 46, which deals with a licensed vehicle being operated otherwise than in accordance with its licence, contains an express provision exempting from liability the driver or owner of such vehicle

(j) [1929] 41 C.L.R. 465.

(k) [1941] V.L.R. 15.

(l) [1935] V.L.R. 294, at p. 296.

(m) [1935] V.L.R. 294.

who can satisfy the Court that it so operated without his knowledge, indicates strongly that the Legislature, when dealing with this group of sections, considered the question of the innocent wrongdoer and for some reason refrained from giving to the owner of the vehicle subject to section 45 similar privileges to those given to the driver of such vehicle or to the driver and owner of a licensed vehicle. It is true that in construing statutes: "If the words are not conclusive in themselves, the reasonableness or otherwise of the construction contended for has always been recognised as a matter fairly to be taken into account"—*R. v. Tolson* (n). But here I think the words are conclusive in themselves, and the fact of the exclusion of the unpaid vendor of a vehicle under hire purchase terms from the definition of owner shows that the mind of the Legislature was directed to the reasonableness or otherwise of making proprietors liable who had parted with the control of their vehicles. It may be some would think that one who had leased his car, as the defendant has done here, should be placed on the same footing as one who has agreed to sell by hire purchase, but the Legislature has not thought so, and it is not for the Court to find unreasonableness when the case of a hiring agreement, expressly referred to in the definition of "owner", was obviously in the contemplation of Parliament. Not only in that definition but in other sections of the Act the Legislature has shown it was alert to the possibility of innocent persons being charged with offences, and so has made provision in some cases that innocence of wrongdoing, if established, shall be a defence. I cannot depart from the literal meaning of the words used in the statute on the assumption that it could not have been intended that in every case one with no knowledge of the wrongful act should suffer.

In my opinion the decision of the Court of Petty Sessions was wrong and the defendant should have been convicted. The order *nisi* will be made absolute.

*Order absolute.*

Solicitor for the informant: *F. G. Menzies*, Crown Solicitor.

Solicitor for the defendant: *Thomas Cleary*.

F. R. N.

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(n) [1889] 23 Q.B.D. 168, at p. 175.