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Present: Lyall Grant J.

KING *v.* RATNASINGHAM.

93—P. C. Jaffna, 12,804.

Motor car—Permitting or suffering a private car to be used for hiring purposes—Vehicles Ordinance, No. 4 of 1916, s. 44 (2)—Liability of owner.

The owner of a motor car cannot be said to have "permitted or suffered" his car to be used for any purpose not set out in his licence, without evidence of knowledge or connivance or carelessness on his part.

APPEAL from a conviction by the Police Magistrate of Jaffna. The charge was that the accused did on November 23 and 30, 1926, being the owner of a private car, allow the same to convey passengers on hire without obtaining a hiring licence, in breach of section 44 (2) of Ordinance No. 4 of 1916. It was proved in evidence that the car was registered in the name of the accused as a private car. It was also proved that the car was used for purposes of hiring on the dates in question. The defence was that the accused had sold the car in August to one Kathiresu, but that as the money was not paid he did not notify the change of ownership to the Registrar. The learned Police Magistrate convicted the accused.

H. V. Perera (with *Spencer Rajaratnam*), for accused, appellant.

May 24, 1927. LYALL GRANT J.—

This is an appeal from a conviction in the Police Court of Jaffna. The charge was that the accused did on November 23 and 30, 1926, at Jaffna, Kopay, being the owner of a private car, No. H 334, allow the same to convey passengers on hire without obtaining a hiring licence, in breach of section 44, sub-section (2), of Ordinance No. 4 of 1916, and that he thereby committed an offence punishable under that section.

It was proved in evidence that the car was registered in the name of the accused as a private car. It was also proved that on the dates in question the car was used for purposes of hiring, being driven by a certain individual named Sinnappu. The case for the defence was that the accused was not the real owner of the car; that he bought it in August, and soon afterwards transferred it to one Kathiresu, but that as the money was not paid he did not notify the change of ownership to the Registrar. There was no written evidence of this transaction, but the evidence of the accused was supported by another proctor in Jaffna. He said that the car

was delivered to Kathiresu on or about September 15, and that Kathiresu removed it from Irrupalai, where the accused's residence is, to Kopay. The driver, Sinnappu, was admittedly employed by the accused for the few days that the car was with the accused before he handed over possession to Kathiresu. Thereafter there is evidence that Sinnappu was Kathiresu's driver, and that he remained in Kathiresu's employment till the offence took place and when he was fined for the offence of using the car for a purpose not set out in the licence.

The learned Magistrate has expressed doubt as to the story of the change of ownership told by the defence. He holds that the accused has failed to discharge satisfactorily the burden he undertook of proving that he was not the owner, and he proceeds to say "I find him guilty therefore." Obviously, the assumption in the Magistrate's mind was that if the accused was at the date of the offence the owner of the car, he was *ipso facto* guilty of the offence of permitting or suffering his vehicle to be used for purposes not set out in his licence. I may mention that throughout the case it is assumed that the licence granted for this car did not allow it to be used for purposes of hiring. No evidence has been given in regard to this. It would have been better and more formal had that been proved. Any way, the point has not been raised, and as it may be that a licence for a private car does not allow it to be used for purposes of hiring, I merely draw the attention of the police to this omission for the purpose of pointing out that formal proof ought to be led of matters of this sort, where proof of a particular fact is necessary in order to make it clear that an offence has been committed. Unless this fact is proved, namely, that the licence does not allow the car to be used for hiring purposes, there is, strictly speaking, no proof that any offence has been committed. There is nothing whatsoever in the law, or in the charge, or in the facts as proved, to show that the accused has committed any offence. However, probably it has been assumed in this case that everybody connected with the case is well aware that these licences do not permit of hiring, and the point has not been taken by Counsel.

The important point in the case it seems to me is the question of whether the evidence proves beyond reasonable doubt that the accused was guilty of an offence under section 44 sub-section (2). He was charged with having allowed his car to be used for a certain purpose. The words of the Ordinance are "permitting or suffering to be used any vehicle required to be licensed under this Ordinance for any purpose or purposes not set out in that licence." The words which have to be considered, therefore, are not the word "allowed," as used in the case, but the words "permitted or suffered." The question is whether the accused permitted or suffered this car to be used for hiring purposes. There is no direct evidence that he had

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any knowledge that the car was so used, and the question is whether on the facts shown it must necessarily be inferred that he either knew or ought to have known it was being so used.

I should find it very difficult to hold that the owner of a car must, merely because he is the owner, be considered to have permitted or suffered his car to be used for hire at any time without any evidence that he knew what was being done. I think what the Ordinance intends is that the owner should not knowingly allow his car to be used for a purpose forbidden by law. That this is the sense in which the words " permit or suffer " have been interpreted appears from the English case of *Somerset v. Wade*.[1] In that case a licensed person was charged with permitting drunkenness to take place on his premises, the evidence showing that the person on the premises was in fact drunk, but that the licensed person did not know that such person was drunk. In the section under which the accused was charged in that case the word used was " permitted." " If any licensed person permits drunkenness, &c., to take place in his premises, &c., he shall be liable to a penalty, &c." In a previous case *Somerset v. Hart*,[2] which was a case under the Gaming Acts, the word used was " suffer," and in that case Lord Coleridge, L.C.J. said: " How can a man suffer a thing to be done when he does not know of it." The Court held in *Somerset v. Wade* (*supra*) that a licensed person could not be convicted of permitting or suffering in the absence of knowledge or connivance or carelessness on his part.

In the present case I do not think there is anything in the evidence from which any knowledge or connivance or carelessness can be inferred. It certainly is not proved beyond reasonable doubt that the accused knew that the car was being used for the purpose of hiring. I do not think that it can be said that he ought to have known. That question possibly is one of some little difficulty. If the car was habitually used for hiring purposes I am inclined to think that the man in whose name it was registered, and who has not definitely parted with the ownership by notifying the Registrar, must be held to have a certain responsibility in regard to the car, and that he may reasonably be held liable if the car is constantly and persistently used for the purposes for which it is not licensed. However that may be, and I do not wish to express any fixed opinion in regard to it, all that is proved in the present case refers to two isolated acts of hiring, of which the accused might easily have been ignorant and justifiably ignorant.

The appeal is allowed. The conviction is set aside.

Set aside.

[1] *(1894) 1 Q. B. D. 574.*

[2] *12 Q. B. D. 360.*