

SHIUPAL SINGH *ats.* POLICE.

[Appellate Jurisdiction (Seton, C.J.) August 22, 1946.]

Traffic Ordinance, 1946—s. 8—use of unlicensed vehicle—vehicle owned by corporation—prosecution of manager—whether an aider and abettor.

A motor lorry owned by the Lautoka Transport Company Limited was noticed on the road by a police officer who interviewed Shiupal Singh and was told by him in answer to a question "the lorry belongs to the Lautoka Transport Company and I am the manager" Shiupal Singh was warned that it should not be on the road as it was not registered. On two succeeding days the lorry was seen by the police in various parts of Lautoka Town and Shiupal Singh was again warned. Three charges were brought in respect of three separate days when the lorry was seen and Shiupal Singh convicted on all counts. In the case of the second count there was evidence that Shiupal Singh was himself driving the lorry; this conviction was not the subject of the appeal. Charges on the first and third counts were as follows:—

"*First Count.*—Being the owner permitted another person to drive an unlicensed motor vehicle upon a public road; contrary to s. 8 of the Motor¹ Traffic Ordinance No. 2 of 1946.

"*Particulars of Offence.*—Shiupal Singh Father's Name Pran Singh on the 19th day of April 1946 in the Western District being the owner of an unregistered vehicle to wit; a "Diamond T" 4 ton 6 x 6 truck (Serial No. 968A0849) did unlawfully permit such vehicle to be driven upon a public road to wit; Namoli Avenue, Lautoka.

"*Third Count.*—Being the owner permitted another person to drive an unlicensed vehicle upon a public road.

"*Particulars of Offence.*—Shiupal Singh Father's Name Pran Singh on the 21st day of April 1946 in the Western District being the owner of an unregistered vehicle to wit a "Diamond T" 4 ton 6 x 6 truck (Serial No. 968A0849) did unlawfully permit such vehicle to be driven upon a public road to wit at Naviti Street, Lautoka".

No proceedings were taken against the corporation.

HELD.—(1) A person who aids and abets the owner of a vehicle in committing an offence contrary to s. 8 of the Traffic Ordinance, 1946, is liable to conviction as a principal offender.

Cases referred to:—

(1) *Booth v. Helliwell* [1914] 3 K.B. 252; 83 L.J.K.B. 1548; III L.T. 542; 78 J.P. 223; 30 T.L.R. 529; 24 Cox C.C. 361; 9 Dig. 506.

(2) *Du Cros v. Lambourne* [1907] 1 K.B. 40; 76 L.J.K.B. 50; 95 L.T. 782; 70 J.P. 525; 23 T.L.R. 3; 21 Cox. C.C. 311; 14 Dig. 91.

¹ Sic.

(3) *Griffiths v. Studebakers Ltd.* [1924] 1 K.B. 102 ; 93 L.J.K.B. 50 ; 130 L.T. 215 ; 87 J.P. 199 ; 40 T.L.R. 26 ; 27 Cox. C.C. 565 ; 34 Dig. 153.

(4) *Moussell Bros. v. London and North Western Railway* [1917] 2 K.B. 836 ; 87 L.J.K.B. 82 ; 118 L.T. 25 ; 81 J.P. 305 ; 14 Dig. 44.

(5) *Morris v. Tolman* [1923] 1 K.B. 166 ; 39 T.L.R. 39 ; 92 L.J.K.B. 215 ; 128 L.T. 118 ; 86 J.P. 221 ; 27 Cox. C.C. 345 ; 14 Dig. 92.

(6) *Thornton v. Mitchell* [1940] 1 A.E.R. 339.

(7) *Massey v. Morris* [1894] 2 Q.B. 412 ; 63 L.J.M.C. 185 ; 70 L.T. 873 ; 58 J.P. 673 ; 14 Dig. 42.

APPEAL AGAINST CONVICTION.

P. Rice, for the appellant, submitted that s. 8 of the Traffic Ordinance 1946 dealt with two separate offences but that in either case the prosecution has to prove that the defendant was the owner of the vehicle in question. Appellant was merely the manager of an incorporated Company. He referred to:—

Booth v. Helliwell,

Griffiths v. Studebakers Limited,

Moussell Bros. v. London and North Western Railway.

and submitted that there was in any case no evidence that appellant permitted the vehicle to be driven.

The Attorney-General, *J. H. Vaughan*, for the respondent : *Booth v. Helliwell* is not in point and the other two cases support the respondent's contention. If a corporation commits an offence any official of the corporation personally concerned in the commission of the offence may be individually indicted (*Kenny "Outlines of Criminal Law"* 15th Edition, p. 75). This does not result in any miscarriage of justice. The evidence shows that appellant was aiding and abetting and was thus a principal in the commission of the offence in the terms of s. 21 of the Penal Code (Cap. 5). There is no doubt (and it is not in question), that there was an offence by the Company.

P. Rice, for the appellant, in reply: S. 21 of the Penal Code does not alter the law—certainly as regards summary offences. There can be no aider and abettor in this class of offence which is an offence depending on special ownership (Criminal Procedure Code (Cap. 4) s. 125—(c) (i) ; *Archbold's Criminal Pleading Evidence and Practice*, 31st Edition p. 4041 Rule 6 (1) and (2). S. 8 of the Traffic Ordinance is an instance of special ownership ; you cannot aid and abet an owner (*Morris v. Tolman* ; *Thornton v. Mitchell* ; *Massey v. Morris*).

SETON, C.J.—The appellant was convicted of three offences under the Traffic Ordinance, No. 2 of 1946, and has lodged an appeal in respect of two of the three convictions. The charge in each of these latter two was that he, being the owner of an unlicensed vehicle, unlawfully permitted another person to drive it upon a public road contrary to the provisions of s. 8 of the Ordinance. It appeared from the evidence given at the trial that the motor vehicle in question did not belong to the appellant but to an incorporated Company of which he was the manager ; nevertheless he was convicted apparently on the ground that as he came to the Police Station to transact business for the Company he could rightly be charged as the owner.

Mr. Rice on behalf of the appellant contended that since the appellant was not the owner he could not properly be convicted under s. 8 and the fact that he was the manager of the Company which owned the vehicle and that he was accustomed to transact the business of the Company at the Police Station was immaterial.

The learned Attorney-General, who appeared for the respondent, supported the conviction on the ground that although the appellant may not have been the owner of the vehicle, he had aided and abetted the owner in the commission of the offences, and he referred to paragraphs (b) and (c) of s. 21 of the Penal Code.

Mr. Rice in reply drew attention to s. 125 (c) (i) of the Criminal Procedure Code and argued that this was a case depending upon special ownership and in such cases there can be no aiders and abettors, meaning, I suppose, that you cannot aid or abet a person in his ownership, but the substance of the offence here is not the ownership of the vehicle but permitting it to be driven on a public road when it was not licensed.

In the course of the argument Mr. Rice cited a number of authorities but I do not find any of them exactly in point. In *Booth v. Helliwell* [1914] 3 K.B., 152, which is perhaps the nearest, the question of whether or not the appellant could have been convicted of aiding and abetting was not raised in the case stated and was not discussed.

In my view, the contention of the learned Attorney-General is well founded. The law in regard to aiders and abettors in cases of misdemeanour, which expression in this connexion includes offences punishable on summary conviction, was dealt with in the case of *Du Cros v. Lambourne* [1907] 1 K.B., 40 where it was held that those who aid, abet, counsel or procure the commission of a misdemeanour (who, in case of felony, would be accessories before the fact) are at Common Law and by Statute (s. 8 of the Accessories and Abettors Act, 1861,¹ and s. 5 of the Summary Jurisdiction Act, 1848²) liable to be tried and punished as principal offenders.

Mr. Rice's last point was that it had not been proved that the appellant permitted the vehicle in question to be driven on the public road, but to say this is to disregard the evidence given before the Magistrate from which I think the only inference which can be drawn, since it was not challenged, is that it was the appellant himself who was responsible for the vehicle being driven on the road on both occasions.

It having been established that the appellant aided and abetted the owners in the commission of the offences, in my judgment he was rightly convicted as a principal offender just as the appellant was in the case of *Du Cros v. Lambourne* (supra). In that case the appellant had been convicted of driving his motor car at a speed dangerous to the public although in fact he had not been driving the car at all at the time in question but was merely sitting next to a friend of his who was driving; on appeal, a Divisional Court held that, although not actually driving, the appellant was aiding and abetting the commission of the offence and was therefore rightly convicted as a principal offender.

The appeal is dismissed.

¹ 24 & 25 Vict. c. 94.

² 11 & 12 Vict. c. 43.