POLICE *v.* UDAY KUMAR SINGH

[Revisional Jurisdiction (Hyne, C.J.) May 30th, 1955]

S. 26 Traffic Ordinance, 1946—permitting vehicle to be used—facts necessary to establish offence.

The accused was a taxi proprietor at Ba who in addition to owning a number of taxis owned a private car. He had forbidden his employees to use this vehicle as a taxi but during his absence an employee took out the private car and let it out as a taxi.

The accused was charged with the offence of permitting this employee to drive a vehicle in contravention of the terms of the licence thereof contrary to section 26* of the Traffic Ordinance, 1946.

He was convicted by the Magistrate's Court at Ba and fined.

On revision:—

HELD.—A person cannot permit an offence unless he knows of the offence or shuts his eyes to what is taking place.

Cases referred to:—
Evans v. Dell [1937] A.E.R. 349.
Ferguson v. Weaving [1951] 1 K.B. 814.
Goldsmith v. Deakin 150 L.T. 157.
Somerset v. Wade [1894] 1 Q.B. 574.

No Counsel appeared.

HYNE, C.J.—Section 26* of the Traffic Ordinance, 1946, under which the charge was preferred reads—

> " Any person who contravenes any of the provisions of this part or who uses a motor vehicle or permits such vehicle to be used in contravention of any of the terms or conditions of a licence or permit issued in pursuance of any of the provisions of this Ordinance is guilty of an offence."

The only question for consideration is whether, in the present case, the defendant permitted the use of the vehicle so as to make him liable under the Ordinance.

In the case of *Goldsmith v. Deakin*, 150, L.T. 157 at p. 158 *Lawrence, J.* said—

> " In my opinion the word ' permit ' means ' intentionally allow ' in the sense that one has to consider the state of the defendant's mind."

This was a case in which the owner of a vehicle not licensed to be used as a stage carriage hired it out in circumstances in which he ought to have known that it would probably or might be used as a stage carriage. He put his servant in charge of it for user in any way in which the hirer might direct the servant. It was held accordingly that he was permitting the use of the vehicle as a stage carriage without the licences required by the Road Traffic Act, 1930.

---

* *S. 29 of the Traffic Ordinance, 1954.*

At page 8 of the same judgment, *Lawrence, J.* said further—

> " The Justices have determined that in their opinion the respondent was unaware that the vehicle was being used as a stage carriage. Having regard to the facts before them I think the only interpretation of their opinion is that they have used the words " the respondent was unaware " as meaning he did not affirmatively know. That, in my opinion, is not a proper interpretation of the Statute, because, although the respondent may not have known affirmatively the way in which the vehicle was being used, if in fact he allowed it to be used and did not care whether it was in contravention of the Statute or not, he did, in my view, permit the use."

In the present case now being reviewed, the owner of the vehicle had given definite instructions that the private car should not be used as a taxi. It is true that the driver was permitted to use the car for private purposes, but I cannot think that the owner could be said to have known that it was to be used as a taxi merely because the driver was allowed to use the car for private purposes on Sundays. In *Evans v. Dell* [1937] A.E.R. 349, it was held that as the respondent was unaware of the use to which the motor coach in question was being put, he was not guilty of the offence charged.

The editorial note to this case reads—

> " It is clear from the decision in this case that the offence of using a vehicle as a stage carriage is one in which *mens rea* must be proved. This will not absolve a person who wilfully shuts his eyes to the plain facts of the case, nor one who is put upon inquiry and fails to make proper inquiries. On the other hand the owner who has no knowledge of being guilty of improper uses of the coach does not commit any offence."

Similarly, it was laid down in an earlier case, *Somerset v. Wade* [1894] 1 Q.B. 574, and in *Ferguson v. Weaving* [1951] 1 K.B. 814, that a man could not permit an offence unless he knew of the offence, or at any rate shut his eyes to what was taking place.

There are numerous other cases but I think it unecessary to go further.

The facts as found by the Magistrate make it quite clear that the owner gave no permission, either express or general, to use the car as a taxi, nor is there any evidence from which authority for such user can be inferred. Furthermore, there is not any evidence that the owner had any knowledge that the car was to be used as a taxi. In the circumstances, therefore, the owner of the car cannot be said to have permitted the use of the car as a taxi, and as no offence was therefore committed, the conviction and sentence are quashed.