

## POLICE v OSOOSO

High Court Apia  
23, 30 September 1947  
Herd CJ

STATUTORY OFFENCES (Licensing laws) - Failure to have passenger service license required under The Road Traffic Amendment Ordinance, 1934 - Driver of motor vehicle employed by licensed owner not "carrying on passenger service" within meaning of Ordinance: Sangster v. Kay (1850) 5 Exch. 386 at p. 387 quoted and applied - Ordinance not imposing liability on driver in absence of proof of aiding and abetting owner to commit offence: vide s 200.(b) the Samoa Act, 1921.

PROSECUTION under ss 3 & 4 of The Road Traffic Amendment Ordinance, 1934.

Blakelock for Police.  
Defendant in person.

Cur adv vult

HERD CJ. In this case the driver of a motor vehicle owned by another person who held a passenger service license under The Road Traffic Amendment Ordinance, 1934 was prosecuted under sections 3 and 4 of the Ordinance that he did:-

carry on a passenger service otherwise than pursuant to the authority and in conformity with the terms and conditions of a passenger service license . . . granted under the . . . Ordinance.

Decision was reserved on the point whether the driver, who admitted being employed by, and driving the motor vehicle for the owner, was a person who did "carry on a passenger service."

Looking at the Amendment Ordinance as a whole it is clear that although to be read with and deemed part of The Road Traffic Ordinance, 1931 it does make new and separate provisions to grant licenses for the purpose of passenger services. It is also abundantly clear that the licensees are to be obliged to conform to the terms and conditions of the license (vide section 14). I think on the reading of this Ordinance it may be safely said what is envisaged by the Ordinance generally is that the owner should separately take out a passenger service license.

The driver in this case is the employee of the licensee owner and it is clear that he is subject to discharge at any time. In this connection the case of Sangster v. Kay (1850) 5 Exch. 386 at p. 387, as quoted in Words and Phrases Judicially Defined, Volume 1, page 391, is in point. The quotation is:-

The term "business" may mean the employment or the occasional occupation of a person; but the term "carrying on business" within the meaning of this Act of Parliament [the County Courts Act, 1846 . . . ] implies something more than mere service, from which the person may be discharged at a moment's notice.

From this I conclude that without any further qualifications the Ordinance alone does not specifically impose liability on the driver

unless he is also the owner or person who is responsible for the service.

There is, however, a further matter for consideration and that is whether the driver aids and abets within the meaning of section 200 of the Samoa Act, 1921 which reads as follows:-

200. Every one is a party to and guilty of an offence who -
- (a.) Actually commits the offence; or
  - (b.) Does or omits any act for the purpose of aiding any person to commit the offence; or
  - (c.) Counsels or procures any person to commit the offence.

To bring this act of the driver within the meaning of section 200 it would, I believe, be necessary to show that he had the purpose of aiding the person responsible for the passenger service to commit the offence, and on the facts of the case under review it is fairly clear that the driver acted on his own initiative and did not have the purpose of aiding his employer to commit the offence.

This information is therefore dismissed.