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IN THE COURT OF APPEAL

R.M. COURTS CRIMINAL APPEAL No. 206/66

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Henriques
The Hon. Mr. Justice Waddington

R. vs. R. A. S I L V E R A L T D.

Mr. W. K. ChinSee for the Crown

Mr. N. Hill for the appellant

23rd November, 1966.

HENRIQUES, J.A.,

The appellant company R. A. Silvera Limited, was charged on an information in the following terms, that on Sunday the 23rd day of January, 1966, one Arnold Silvera Limited at Half-Way-Tree in the parish of St. Andrew with force at St. Andrew and within the jurisdiction of this Court being the owner of a motor vehicle to wit: motor truck registered R5848 did permit the said vehicle to be driven along the Constant Spring Road in the parish of St. Andrew with the right inner rear tyre so worn that a portion of the textile material known as the breaker strip has become visible in contravention of Regulation 157 of the Regulation made under Section 51 of the Road Traffic Law, Chapter 346.

The information came for hearing before the learned judge of the Traffic Court on the 28th of April, and the appellant company was convicted of the offence and sentenced to pay a fine of £5 or 14 days hard labour.

The evidence in the case was that a police

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officer while on patrol duty on the 23rd of January, 1966, saw the appellant's truck being driven along the road and he observed the condition of the truck, and in particular, inspected the right inner rear tyre. He then discovered it was worn to the thread and the breaker strip was showing. It was in relation to those facts that the appellant company was subsequently prosecuted.

At the end of the prosecution's case the solicitor, who appeared on behalf of the appellant, submitted to the Court that there was no evidence of knowledge on the part of the appellant company. He submitted, in fact, that the evidence did not support the charge. There was no evidence of any permission, no evidence that the policeman went to the appellant company to find out if they had permitted the vehicle, or if the vehicle was on appellant company's business. There was no evidence of permitting on the part of the appellant company. The Court below overruled the submission and the appellant company then called evidence to the effect that they had taken the greatest care to ensure that their vehicles were kept in proper working order.

Learned Counsel for the appellant in this Court has submitted that the information has in fact charged the appellant company with the offence of permitting the use of the vehicle, rather than with the actual use of the vehicle, and he has pointed to certain authorities which indicate that where a person is charged with permitting, then, it is incumbent upon the prosecution to prove that knowledge of the facts which constitute the offence resided in some particular officer, or official of the company, and that mere user of the vehicle on a

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company's business is not enough. In support of his submission he has referred to the case of Dixon Bool Transport Ltd. v. Foresight which was decided in the Court of Appeal in England and which is to be found reported in the Times Newspaper of 17th November, 1966. He has also referred to the case of the Magna Plant Ld. v. Mitchell which was decided on the 27th of April, 1966, and is to be found in volume 110 of the Solicitors Journal at page 349. Further reference has been made to Gray's Haulage v. Arnold, 1966, 1 A.E.R. 896, and finally to Hart v. Bex, 1957, Criminal Law Review 622. With Counsel's assistance the Court has examined these cases and have come to the conclusion that they bear out the submission which learned Counsel for the appellant has made.

It appears, and I need only refer to the case of Hart and Bex which was a case where a driver employed by British Road Services was charged on an information alleging that he unlawfully used on a road a motor vehicle, to wit, an articulated lorry, in that the means of the operation of the braking system was not maintained in good and efficient working order and properly adjusted. There the Court held "that the James & Son Ltd. v. Smee, 1955, 1 Q.B. at page 78 had decided that the obligation to maintain the braking system in good and efficient working order was an absolute one, so that a person who drove a car with a defect in the brakes committed an offence even though the defect was due to a fault in the mechanism of some other part of the car. Therefore, B was technically guilty, but as it was not his duty to inspect the brakes, the Court regretted that he had

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been prosecuted and the justices should be told that this was a case for an absolute discharge. Had his employers been prosecuted for "using" the vehicle instead of "permitting" the use of it, the offence with which they had in fact been charged, they would have had no defence."

We therefore, are of the view, that the point taken by learned Counsel for the appellant is a valid one and ought to be sustained.

Mr. ChinSee on behalf of the Crown has pointed out another unusual feature about this case, that is, that the information purports to charge a non-existent offence. The regulation under which the defendant company was charged is to be found in the Road Traffic Law Regulation 1937 and is numbered Regulation 157 and that Regulation is to the following effect - "All the tyres of a motor vehicle or trailer shall at all times where the vehicle or trailer is used on the road be maintained in such a condition as to be free from any defects which might in any way cause damage to the surface of the road, or danger to persons, and or in the vehicle, or to other persons using the road. No pneumatic tyre - and these are the important words - "should be used" which is so worn that some portion of the textile material thereof known as the breaker strip has become visible." There is no offence he submits in respect of permitting the vehicle to be used on the part of the owners of the vehicle. Therefore, Counsel states he is unable to support the conviction.

In the circumstances, therefore, the Court allows the appeal, quashes the conviction against the appellant and sets the sentence aside.