

GARNER v. BURR AND OTHERS.

1950
July 21.

Road traffic—Tractor towing empty poultry shed on iron wheels—Failure to comply with regulations as to construction, weight and equipment—Whether poultry shed a trailer—"Land implement"—Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 1; s. 3, sub-ss. 1 and 3—Motor Vehicles (Construction and Use) Regulations (St. R. & O., 1947, No. 670), regs. 3, 49, 50, 51 and 60.

Lord Goddard
C.J.,
Hilbery and
Byrne JJ.

The Road Traffic Act, 1930, s. 1, provides that the Act shall apply to all mechanically propelled vehicles intended or adapted for use on roads (in the Act called motor vehicles) and to vehicles (in the Act called trailers) drawn by motor vehicles.

By s. 3, sub-s. 1 "... it shall not be lawful to use on any road a ... trailer which does not comply with the regulations applicable to the class or description of vehicles to which the vehicle belongs, as to the construction, weight and equipment thereof".

An empty poultry shed fitted with iron bogie wheels was drawn along the highway by a tractor for sale at the market. The tractor driver was charged under ss. 1 and 3 of the Road Traffic Act, 1930, with using a trailer which did not comply with the Motor Vehicles (Construction and Use) Regulations, 1947, in respect of construction, weight and equipment.

Held, that, as s. 1 of the Act was aimed at anything capable of running on wheels which was drawn by a motor vehicle, the poultry shed was a trailer, and that, as it did not comply with the regulations, an offence had been committed; for it was not exempt from those regulations since it was not a "land implement" within the definition in reg. 3 (1).

CASE STATED by Norfolk justices.

An information was preferred by the prosecutor against the first defendant, Lawrence Godfrey Burr, under the Road Traffic Act, 1930, alleging that on March 5, 1950, on a road at Aylsham, Norfolk, he used a trailer which did not comply with the regulations applicable to the class or description of vehicles to which the vehicle belonged, concerning construction, weight and equipment, contrary to s. 3, sub-ss. 1 and 3, of the Act. An information was also preferred against the second defendant, Edmund Burr, for permitting the offence contrary to s. 3, sub-ss. 1 and 3, of the Road Traffic Act, 1930; and a further information was preferred against the third defendant, Thomas Atlee Grix, for aiding and abetting Lawrence Godfrey Burr to commit the offence charged in the first information, contrary to s. 5 of the Summary Jurisdiction Act, 1848.

At the hearing of the informations the following facts were proved or admitted:—On March 5, 1950, the first defendant, accompanied by the third and with the consent of the second

[Reported by Miss SHEILA COBON, Barrister-at-Law.]

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defendant, drove along the road a Ferguson tractor which was towing an empty poultry shed fitted with and drawn on four ordinary iron bogie wheels 10 to 12 inches in diameter. The tractor was the property of the second defendant, and the poultry shed, which belonged to the third defendant, was being towed to Aylsham to be sold. The tractor was a land tractor as defined by reg. 3 (1) of the Motor Vehicles (Construction and Use) Regulations, 1947. The overall width of the poultry shed as defined by reg. 3 (1) was 8 feet 10 inches; it had no brakes or braking system; it was not equipped with pneumatic tyres or tyres of soft or elastic material; and there was not exhibited on its back a distinguishing mark in the form required by the regulations.

It was contended for the prosecutor that the poultry shed was a trailer within the meaning of s. 1 of the Act of 1930 (1); that it was not a land implement within the meaning of reg. 3 (1) of the regulations; and that it did not comply with regs. 49, 50, 51 and 60 of the Regulations of 1947.

It was contended for the defendants that the poultry shed was a land implement within the meaning of reg. 3 (1) and that it was not a trailer within the meaning of s. 1 of the Act of 1930.

The justices, being of the opinion that s. 3, sub-ss. 1 and 3, of the Act of 1930 concerned "motor vehicles" and "trailers" and that "trailers" were defined by s. 1 of the Act as "vehicles "drawn by motor vehicles", held that the poultry shed was not a vehicle because it was not an instrument or thing by which persons or goods were conveyed and so did not fall within the definition of "trailer" contained in s. 1 of the Act. They further considered that, even if the poultry shed were a vehicle, it was a land implement and therefore excluded from the requirements of regs. 49, 50, 51 and 60. They accordingly found the defendants not guilty of the offences charged.

The prosecutor appealed.

Southall for the prosecutor.

The defendants did not appear and were not represented.

(1) Road Traffic Act, 1930, s. 1:
 "This part of this Act shall apply to
 "all mechanically propelled vehicles
 "intended or adapted for use on roads
 "(in this Act referred to as 'motor
 "'vehicles') and to vehicles (in this
 "Act referred to as 'trailers') drawn
 "by motor vehicles."

Section 3, sub-s. 1: "... it shall
 "not be lawful, to use on any road
 "a motor vehicle or trailer which does

"not comply with the regulations
 "applicable to the class or descrip-
 "tion of vehicles to which the vehicle
 "belongs, as to the construction,
 "weight and equipment thereof".

Sub-s. 3: "If a . . . trailer is used
 "on a road in contravention of this
 "section, any person who so uses the
 "vehicle or causes or permits the
 "vehicle to be so used shall be guilty
 "of an offence".

LORD GODDARD, C.J. The short point is whether an empty poultry shed fitted with iron bogie wheels is a trailer. If it is, there is no doubt that the offence charged has been committed, because it did not comply with the Motor Vehicles (Construction and Use) Regulations, 1947, which regulate, among other things, the use of trailers on a highway. The regulations are designed for a variety of reasons, among them the protection of road surfaces; and, as this vehicle had ordinary iron tyres, not pneumatic tyres, it was liable to damage the roads.

The justices have put what is in my opinion too narrow an interpretation on the word "vehicle" for the purposes of this Act. It is true that, according to the dictionary definition, a "vehicle" is primarily to be regarded as a means of conveyance provided with wheels or runners and used for the carriage of persons or goods; and also a receptacle in which anything is placed in order to be moved. It is true that the justices do not find that anything was carried in the vehicle at the time; but I think that the Act is clearly aimed at anything which will run on wheels which is being drawn by a tractor or another motor vehicle. Accordingly, an offence was committed here. The regulations in question clearly cover many vehicles which are not designed for the carriage of goods or passengers. They cover drying or mixing plant for the production of asphalt, and a vehicle for the purpose of road construction. Many things are trailers for the purposes of this Act, and I do not think that it can really be doubted that a trailer for those purposes includes anything which can be drawn on wheels. It follows that the justices ought to have found that this poultry shed was a vehicle within the meaning of s. 1 of the Road Traffic Act of 1930.

Reg. 3 (1) (ii) (b) excepts from the requirements of the regulations a land implement, which is defined as "any implement or machinery used with a land locomotive or a land tractor in connexion with agriculture, grass cutting, forestry, land levelling, dredging or similar operations and includes a living van and any trailer which for the time being carries only the necessary gear or equipment of the land locomotive or land tractor which draws it". This shed is not an implement or machinery used in connexion with agriculture, and is not a land implement within the meaning of that definition, which is designed to cover such things as reapers or binders, or rakes and harrows which are in daily use on a farm.

For these reasons I think that the justices were wrong, and the case must go back with an intimation that the offence was proved. At the same time the justices can regard this as a case brought to establish a principle. The question of penalty, or whether they should inflict a penalty at all, is entirely for them: they have an unfettered discretion.

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HILBERY, J. I agree. Having regard to the purpose of the Act to which my lord has called attention, I am satisfied that we ought to give a generous construction to the material words in the Road Traffic Act, 1930. I am satisfied that, for the purposes of the Act, this poultry house on wheels being drawn along the highway was a vehicle.

With regard to the finding of the justices that it could be regarded as a land implement, I think the matter too plain for words: it could not possibly be a land implement within the definition in reg. 3 (1) of the Motor Vehicles (Construction and Use) Regulations, 1947. I agree that the case must go back for conviction.

BYRNE, J. I agree.

Appeal allowed.

Solicitors: *Sharpe, Pritchard & Co. for H. O. Brown, Norwich.*

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15, 21.

Lord Goddard
C.J., Hilbery
and Byrne J.J.

KAT v. DIMENT

Merchandise marks—Applying false trade description to goods—“Non-brewed Vinegar”—Acting without intent to defraud—Sale of goods bearing false trade description—Vendor acting “innocently”—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, sub-ss. 1 and 2.

By s. 2, sub-s. 1 of the Merchandise Marks Act, 1887, “Every person who— . . . (d) applies any false trade description to goods . . . shall . . . unless he proves that he acted without intent to defraud, be guilty of an offence against this Act”.

By sub-s. 2, “Every person who sells . . . any goods . . . to which “any . . . false trade description is applied” shall be guilty of an offence unless he proves that he has taken all reasonable precautions against committing an offence against the Act “or that otherwise he “acted innocently.”

Except in the case of goods to which s. 18 of the Act applies, if a false trade description is in fact intentionally applied to goods, an offence is committed under s. 2, sub-s. 1, notwithstanding that that description is known to, and commonly used by, persons dealing in those goods and that its use has been sanctioned by official authority.