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April 4;
May 14.

COPPEN v. MOORE (No. 2).

Master and Servant—Criminal Liability of Master for Act of Servant—Sale of Goods to which False Trade Description is applied—Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28), s. 2, sub-s. 2.

The provisions of s. 2, sub-s. 2, of the Merchandise Marks Act, 1887, which make it an offence to sell goods to which a forged trade-mark or false trade description is applied, make a master criminally liable for acts done by his servants in contravention of the section when acting within the general scope of their employment, although contrary to their master's orders, unless the master can shew that he has acted in good faith and has done all that it was reasonably possible to do to prevent the commission of offences by his servants.

ARGUMENT of point reserved by a Divisional Court upon the hearing of a case stated by a metropolitan police magistrate.

The facts are fully stated in the preceding report.

Asquith, Q.C. (*Bonsey* with him), for the appellant. The conviction should be quashed. The general rule that a master is not criminally liable for the unauthorized acts of his servants applies to the present statute, and the only difficulty arises from the fact that in interpreting different statutes various exceptions have been engrafted on the rule. In *Reg. v. Stephens* (1) it was held that the principal was liable for the act of his agent in obstructing the navigation of a public river by casting rubbish into it; but this proceeded upon the ground that the proceeding was criminal in form only, and was in substance civil. In *Newman v. Jones* (2), the trustees and managing committee of a club were held not to be criminally responsible for the act of their steward in selling intoxicating liquors contrary to their orders to persons who were not members. In *Bond v. Evans* (3) a licensed person was held criminally responsible for the act of his servant in suffering gaming on the premises; but in that case the servant had been placed in

(1) (1866) L. R. 1 Q. B. 702.

(2) (1886) 17 Q. B. D. 132.

(3) (1888) 21 Q. B. D. 249.

charge of the premises and the master's authority had been delegated to him, on which ground the case is distinguishable from *Somerset v. Hart* (1) and *Somerset v. Wade* (2), in the former of which cases it was held that a licensed person could not be convicted of suffering gaming which had taken place without his knowledge but to the knowledge of his servant, and in the latter that he could not be convicted of permitting drunkenness if he was in fact ignorant that the person was drunk. In *Mullins v. Collins* (3) a licensed person was held liable for the act of his servant in knowingly supplying liquor to a constable on duty; but this decision proceeded on the ground of its being a serious offence against public order. The master has been held not liable where his stoker negligently used a furnace so that the smoke was not consumed: *Chisholm v. Doulton* (4), and where a representation was made by his servant without his knowledge as to the weight of coal: *Roberts v. Woodward*. (5) [He also cited *Reg. v. Holbrook* (6); *Massey v. Morriss* (7); *Sherras v. De Rutzen* (8); *Commissioners of Police v. Cartman* (9); *Derbyshire v. Houliston* (10); *Kearley v. Tylor* (11); *Brown v. Foot*. (12)]

Upon the present sub-section there is no direct authority, although in *Budd v. Lucas* (13) there is a strong expression of opinion by the Court that the master is not criminally responsible for his servant's unauthorized acts. There is nothing in the statute itself to require the Court to hold that the ordinary presumption of law does not apply. The important penal clause is s. 2—sub-s. 1 of which deals with persons who themselves apply the false trade description, and to a charge under this sub-section it is a complete defence if the accused can shew that he acted without intent to defraud; there can be no clearer indication of the intention of the Legislature to make the condition

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(1) (1884) 12 Q. B. D. 360.

(2) [1894] 1 Q. B. 574.

(3) (1874) L. R. 9 Q. B. 292.

(4) (1889) 22 Q. B. D. 736.

(5) (1890) 25 Q. B. D. 412.

(6) (1877) 3 Q. B. D. 60.

(7) [1894] 2 Q. B. 412.

(8) [1895] 1 Q. B. 918.

(9) [1896] 1 Q. B. 655.

(10) [1897] 1 Q. B. 772.

(11) (1891) 65 L. T. 261.

(12) (1892) 66 L. T. 649.

(13) [1891] 1 Q. B. 408.

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of mind the criterion of whether a criminal offence has been committed. Sub-s. 2 (1) applies to the case of a person selling or receiving into his possession goods to which a false trade description has already been applied; in the present case the false trade description, if applied at all, was not applied until after the contract of sale was complete. The finding of the justices that the appellant had not taken all reasonable precautions is wholly irrelevant.

Jelf, Q.C. (A. J. David with him), for the respondent. The appellant was properly convicted. The expression in s. 2, sub-s. 2, "to which a trade description *is* applied," is wide enough to include the liability of the master where somebody else has applied the false trade description. Accepting the general proposition that a man is not as a rule criminally responsible for the unauthorized act of his servant, the object of the Act must be regarded: that object was the protection of legitimate trade by preventing the sale of goods under false trade descriptions. The effect of s. 2, sub-s. 2, may not be to render the master criminally liable in every case for his servant's acts, but it at any rate shifts the onus of proof, and imposes upon the master the burden of shewing that he had acted innocently or without fraudulent intent. He may excuse himself under paragraphs (a) and (b) by shewing that he had taken all reasonable precautions against committing an offence, and had no reason to suspect the genuineness of the trade description, and

(1) By s. 2, sub-s. 2, of the Act, "Every person who sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade-mark or false trade description is applied, or to which any trade-mark or mark so nearly resembling a trade-mark as to be calculated to deceive is falsely applied, as the case may be, shall, unless he proves—

(a) That having taken all reasonable precautions against committing an offence against this Act, he had at the time of the

commission of the alleged offence no reason to suspect the genuineness of the trade-mark, mark, or trade description; and

(b) That on demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently;

be guilty of an offence against this Act."

had given all the information in his power to the prosecutor; if he cannot for any sufficient reason comply with these requirements, then he may excuse himself under (c) by shewing that otherwise he had acted innocently. Here the appellant has clearly not complied with (a), for the justices have found affirmatively that he had not taken all reasonable precautions against committing an offence against the Act, and there is no finding under (c) that he had otherwise acted innocently.

Bonsey, in reply, referred to the judgment of Wills J. in *Reg. v. Tolson*. (1)

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Cur. adv. vult.

May 14. The judgment of the Court (Lord Russell of Killowen C.J., Sir F. H. Jeune P., Chitty L.J., Wright, Darling, and Channell JJ.) was read by

LORD RUSSELL of KILLOWEN C.J. This is a case stated by justices, who summarily convicted the appellant of an offence against the Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28).

The appellant was charged under s. 2, sub-s. 2, with having sold goods to which a "false trade description" was applied. The facts were as follows:—

On September 4, 1897, the respondent, at the London Supply Stores, 42, George Street, Richmond (one of several places of business of the appellant), asked the salesman at the door of the shop for a small English ham. The salesman pointed to a number of hams on a shelf, and said they were Scotch hams. In fact they were long-cut American hams. The salesman stated the price, 8½d. per lb., and the respondent said he would take one, which was then produced. The salesman then passed the ham selected through the open window to a shop assistant inside, saying, "Weigh up Scotch ham, 8½d." The respondent, before paying, asked the assistant to make him out an account and put on it "Scotch ham," as he had bought it as such. The assistant at first handed the respondent an invoice without the word "Scotch" on it. The respondent did not accept it so written, but told the assistant to put the word "Scotch,"

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“as he had bought it as such.” The assistant then did so, and handed the invoice to the respondent, who then paid the price, 5s. 5½d. Upon this being done, the respondent asked the assistant whether he still said it was a Scotch ham whereupon the assistant admitted it was not, but was an American ham. The salesman, in like manner, was asked, and he at once admitted it was an American ham.

On the part of the appellant evidence was given that he had sent out a notice to all his branch places of business, including that in question, in the following terms:—

“February 25th, 1897.

“Most important.

“Please instruct your assistants most explicitly that the hams described in list as breakfast hams must not be sold under any specific name of place or origin. That is to say, they must not be described as ‘Bristol,’ ‘Bath,’ ‘Wiltshire,’ or any such title, but simply as breakfast hams. Please sign and return.

“H. W. Coppen.”

The ham in question would come within the category of breakfast hams. Evidence was given that the terms of this notice were communicated to the manager and assistants, and the appellant stated that he had no reason to believe that his instructions were not being carried out.

It is now necessary to consider the statute in question and its application to the facts proved. Sect. 2 is the important section. Sub-s. 1 deals with the forging of any trade-mark and with the false application to goods of any such mark, or of any false trade description, and enacts that subject to the provisions of the Act an offence shall have been committed by such forging or application unless the party charged proves that he acted without intent to defraud. Sub-s. 2 enacts (omitting words immaterial in this case) that every person who sells any goods to which any false trade description is applied shall be guilty of an offence against the Act unless he proves (a) that having taken all reasonable precautions he had no reason to suspect the genuineness of the trade description; and (b) that

on demand duly made he gave all information in his power with respect to the persons from whom he obtained such goods; or (c) that otherwise he had acted innocently. By s. 3 it is enacted that trade description shall mean any description, statement, or other indication, direct or indirect, as to (amongst other things) the place or country in which any goods were made or produced. Later in such section it is enacted that the expression "false trade description" shall mean a trade description false in any material respect as regards the goods to which it is applied. By s. 5, sub-s. 1, it is enacted (inter alia) that a person shall be deemed to apply a trade description to goods who applies it to the goods themselves, or uses a trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

In *Budd v. Lucas* (1) it was decided that where certain casks of beer were delivered accompanied by an invoice, in which the casks were falsely described as "barrels" (which word had acquired the character of a trade description), an offence under s. 2, sub-s. 1, of the Act in question had been committed, although the invoice containing the false description was not physically attached to the casks. We think this case was well decided: in other words, we think that it is not necessary to constitute the offence that there shall be any physical connection between the false trade description and the goods to which it is applied. It was admitted that the description "Scotch ham" was a trade description, and it is found that it was applied to the ham sold by the appellant's employees, and it was admittedly false. It was not contended that it was not material. In these circumstances it is clear that an offence against the Act was committed by the salesman and by the assistant of the appellant. But the question which the Court is now called upon to decide is whether the appellant also is not personally liable to be convicted. This was the question argued before us.

The appellant's contention was that the charge here preferred

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was a criminal charge, and that the general principle of law applied, "Nemo reus est nisi mens sit rea." There is no doubt that this is the general rule, but it is subject to exceptions, and the question here is whether the present case falls within the rule or within the exception. Apart from statute, exceptions have been engrafted upon the rule: for example, in the case of *Reg. v. Stephens* (1) the defendant was held liable on an indictment for obstructing navigation by throwing rubbish into a river from a quarry owned by him but managed by his son, although it was proved that the men employed at the quarry had been by order prohibited from doing the acts complained of. No doubt in that case the fact that the proceedings were only in form criminal was adverted to by the judges who decided it, but the fact remains that the defendant was criminally indicted. But by far the greater number of exceptions engrafted upon the general rule are cases in which it has been decided that by various statutes criminal responsibility has been put upon masters for the acts of their servants. Amongst such cases is *Mullins v. Collins* (2), where a licensed victualler was convicted of an offence under s. 16 of the Licensing Act, 1872, for supplying liquor to a constable on duty, although this was done by his servant without the knowledge of the master. Again, in *Bond v. Evans* (3), a licensed victualler was convicted of an offence against s. 17 of the same Act, where gaming had been allowed in the licensed premises by the servant in charge of the premises although without the knowledge of his master. The decisions in these and in other like cases were based upon the construction of the statute in question. The Court in fact came to the conclusion that, having regard to the language, scope, and object of those Acts, the Legislature intended to fix criminal responsibility upon the master for acts done by his servant in the course of his employment, although such acts were not authorized by the master, and might even have been expressly prohibited by him.

The question, then, in this case, comes to be narrowed to the

(1) L. R. 1 Q. B. 702.

(2) L. R. 9 Q. B. 292.

(3) 21 Q. B. D. 249.

simple point, whether upon the true construction of the statute here in question the master was intended to be made criminally responsible for acts done by his servants in contravention of the Act, where such acts were done, as in this case, within the scope or in the course of their employment. In our judgment it was clearly the intention of the Legislature to make the master criminally liable for such acts, unless he was able to rebut the *primâ facie* presumption of guilt by one or other of the methods pointed out in the Act. Take the facts here, and apply the Act to them. To begin with, it cannot be doubted that the appellant sold the ham in question, although the transaction was carried out by his servants. In other words, he was the seller, although not the actual salesman. It is clear also, as already stated, that the ham was sold with a "false trade description," which was material. If so, there is evidence establishing a *primâ facie* case of an offence against the Act having been committed by the appellant. But it is only a *primâ facie* case. The burden of proof is shifted upon the appellant, and he might meet successfully that *primâ facie* case, if he is able, where the charge is under sub-s. 1 of s. 2, to prove that he acted without intent to defraud; or, where the charge is under sub-s. 2 of s. 2, if he is able to prove (*a*) that he had taken all reasonable precautions against committing an offence against the Act, and had no reason to suspect the genuineness of the trade description in question; *and* (*b*) that on demand he had given full information; *or* (*c*) if he is able to prove that otherwise he had acted innocently. It seems clear that clauses (*a*) and (*b*) of sub-s. 2 apply to cases where the goods in question are in the possession of the accused for sale or are sold with the forged trade-mark or false trade description already stamped upon them or otherwise applied to them, and not to a case like the present, where the false trade description is applied upon the occasion and as part of the terms of sale; and in the latter case the accused must rely for his exculpation upon clause (*c*), namely, by shewing that he had acted innocently.

In the present case there was ample evidence to justify the conclusion of the magistrates that the appellant was *primâ facie* guilty of the offence charged, and that *primâ facie* case

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has not been met in the manner required by the Act. The magistrates indeed have affirmatively found (in the terms of clause (a)) that the appellant had not in fact taken all reasonable precautions against committing an offence against the Act; but we have already pointed out that that clause does not directly apply to the facts of this case. This finding is therefore not strictly relevant, although it suggests an important element in determining whether the accused is innocent; but what is material to note is that the magistrates do not appear to have been asked to find, and certainly they do not in fact find, that the appellant had acted innocently within the meaning of clause (c). There was evidence before them that the American hams in question were dressed so as to deceive the public, and this probably explains the reason of the affirmative finding to which I have adverted, and the absence of the finding that the appellant had acted innocently within the meaning of clause (c).

In answer, then, to the question which alone is put to us, namely, whether upon the facts stated the decision of the magistrates convicting the appellant was in point of law correct, our answer is that in our judgment it was. When the scope and object of the Act are borne in mind, any other conclusion would to a large extent render the Act ineffective for its avowed purposes. The circumstances of the present case afford a convenient illustration of this. The appellant, under the style of the "London Supply Stores," carries on an extensive business as grocer and provision dealer, having, it appears, six shops or branch establishments, and having also a wholesale warehouse. It is obvious that, if sales with false trade descriptions could be carried out in these establishments with impunity so far as the principal is concerned, the Act would to a large extent be nugatory. We conceive the effect of the Act to be to make the master or principal liable criminally (as he is already, by law, civilly) for the acts of his agents and servants in all cases within the sections with which we are dealing where the conduct constituting the offence was pursued by such servants and agents within the scope or in the course of their employment, subject to this: that the master or principal may be

relieved from criminal responsibility where he can prove that he had acted in good faith and had done all that it was reasonably possible to do to prevent the commission by his agents and servants of offences against the Act. The result, therefore, is that the conviction will be affirmed, and with costs.

We wish to add that the form in which this case is stated is not satisfactory. It does not throughout clearly distinguish between what was merely evidence and what was proved to the satisfaction of the magistrates. It is important that it should be borne in mind that when a case is submitted to the Court it ought to state clearly what the facts proved were, and not merely what the evidence was.

SIR F. H. JEUNE P., CHITTY L.J., WRIGHT, DARLING, and CHANNELL JJ., concurred.

Conviction affirmed.

Solicitors for appellant: *Neve & Beck.*

Solicitors for respondent: *Weekes & Co.*

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BAYLIS AND ANOTHER v. JIGGENS AND ANOTHER.

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Landlord and Tenant—Lease—Covenant to Pay Rates, Taxes, and Assessments—Expenses of Paving Street—Summary Recovery from Owner—Claim by Owner against Tenant—Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 150.

June 17, 27.

Expenses of paving, &c., a street, recovered in a summary manner, by an urban authority, from the owner of premises outside the metropolis, under the Public Health Act, 1875, s. 150, cannot be recovered by the owner from his tenant, under a covenant by the tenant to pay "all rates, taxes, and assessments whatsoever, which now are, or during the term shall be, imposed or assessed upon the premises, or the landlords or tenants in respect thereof, by authority of Parliament or otherwise, except the landlord's property tax."

TRIAL before Channell J. without a jury.

The action was brought by the plaintiffs, the trustees of the will of W. Garrett deceased, who were the owners of certain premises situate outside the metropolis, at Southall in Middlesex, to recover from their tenants the sum of 49*l.* 17*s.* 8*d.*,

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