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July 17.

[COURT OF CRIMINAL APPEAL.]

THE KING *v.* SOLOMONS.

Criminal Law—Falsification of Accounts—Machine—Taximeter—Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1.

By s. 1 of the Falsification of Accounts Act, 1875, it is enacted that if any servant shall wilfully and with intent to defraud falsify any account which belongs to his employer, or has been received by him on behalf of his employer, the person so offending shall be guilty of a misdemeanour:—

Held, that a servant may be convicted under the above enactment who wilfully and with intent to defraud tampers with a mechanical instrument used by his employer for registering figures from which an account is subsequently prepared as between the parties.

A company were the owners of certain motor cabs and had in their service a number of cabdrivers. Each cab was fitted with a taximeter, that is, a mechanical instrument which, when in action, registers upon a dial the amount earned by the driver from persons hiring the cab. The taximeter was put into and out of action by the driver depressing and raising a lever respectively. From the figures appearing on the dial at the end of the day an account was prepared stating the proportions due to the company and to the driver for the use of the cab.

For several successive days a driver in the company's service took certain passengers on a definite round, receiving from them on each day the same fare. While taking the passengers on this round, the driver wilfully and with intent to defraud drove the cab with the lever of the taximeter raised, so that the instrument was put out of action and registered nothing:—

Held, that the driver was properly convicted of falsifying an account within the meaning of the above enactment.

APPEAL from a conviction.

The General Motor Cab Company, Limited, were the proprietors of a number of motor cabs, each fitted with a taximeter, that is to say, an instrument which by mechanical means registers upon a dial or face numbers indicating the amount chargeable for the hire of the cab. The taximeter is put into action by depressing a lever to which is attached a piece of metal made to imitate a flying flag and bearing upon it the words "For hire." When this lever is in a vertical position the cab is understood to be for hire; the taximeter is out of action and registers nothing. When the lever is horizontal the taximeter is in action. When a person

hires a cab the driver depresses the lever; the taximeter thereupon while the cab is in motion registers 8*d.* for the first mile and 2*d.* for each succeeding quarter of a mile, and while the cab is at rest registers 2*d.* for every two and a half minutes.

The prisoner was in constant employment as a driver of the cabs of the company. As such driver he was bound to conform to a number of directions posted up in the company's garage. The breach of these directions involved in many cases the suspension or dismissal of the driver.

The course of conduct pursued by drivers of the company's cabs was as follows :

A driver, on returning to the company's garage after a day's work, is met by a clerk in the company's service, called a taximeter reading clerk. This clerk enters upon a slip of paper the date, the number of the returning cab, and the figures appearing on the face of the taximeter. These figures shew the total number of charges at 2*d.*, charges at 8*d.*, and extras respectively earned on that day together with those, if any, earned on previous days. The driver signs this slip with his name and adds his badge number. The slip so filled in is handed by the taximeter reading clerk to the night watchman, who hands it to the night clerk on his arrival.

The night clerk has before him a document called the taximeter sheet, which, with former sheets, constitutes the record of the work done and money earned by the driver of the cab. The taximeter sheet contains a statement of the total amount of work done and money earned up to and including the day before, the amount being entered in a space opposite the word "Yesterday" on the sheet. Above this word and the entries opposite it is the word "To-day," and opposite it a space to be filled in with the day's readings. Into this space the night clerk copies the figures appearing on the slip; he then subtracts the figures opposite "Yesterday" from the figures opposite "To-day" and enters upon the sheet the difference as the result of the day's work. Of the takings so computed he enters three-fourths as due to the company and one-fourth to the driver.

When the night clerk has completed these entries on the

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taximeter sheet he sends the sheet to the cashier's office with the reading slip attached to it. From these materials the cashier begins to prepare the taximeter sheet for the coming day by copying into the space opposite the word "Yesterday" in the new sheet the figures opposite the word "To-day" in the old sheet.

When the driver returns for the new day's work he presents himself at the cashier's office, pays the amount entered as due from him on the old taximeter sheet, and signs a certificate at the foot thereof in these words: "I the undersigned driver hereby certify that the above figures are correct." He then receives a driver's pass, that is to say, a piece of paper upon which the cashier has entered the date, the driver's name and badge number, the number of the cab on the taximeter sheet which the driver has just signed, the date of that sheet, the amount paid in by the driver, the hour at which that payment was made, and the signature of the cashier who has received it. The driver takes this pass to the cab allotment department, where a clerk allots him a cab for the day and enters on the pass the licence number and police number of the cab and initials the pass so filled in. The driver then goes with the pass to the taximeter sheet department. There a clerk fills in from the pass into the taximeter sheet for the day the name and badge number of the driver and the police number and licence number of the cab. After the words "Day ending" the clerk fills in the date. Then follows a declaration, which the driver signs, in these words: "I the undersigned driver hereby declare that I have taken the cab bearing the above numbers in good condition," &c. Below the driver's signature a space is left in which the hour of his departure is to be entered. The clerk then initials the pass and hands it to the driver; the driver presents it to the gate-keeper, who enters the hour of the driver's departure and initials the pass. The driver then goes out for the day.

On the evening of Monday, March 29, 1909, two music hall artistes hired a motor cab driven by the prisoner from their abode to the Holborn Empire Music Hall, thence to the Crouch End Hippodrome, thence back to the Holborn Empire Music Hall, and thence back to their abode. For this the fare of 9s.

was demanded by the prisoner and paid by the passengers. The same thing happened on each succeeding night up to and including Saturday, April 3. On March 31, April 1, April 2, and April 3 the prisoner was observed by officials in the company's service to be driving his cab on this round with the lever and flag of the taximeter in a vertical position or so slightly depressed that the taximeter would not register any fare in respect of the distances travelled or time during which the cab was kept in attendance. On each of these days, when the prisoner returned to the company's garage, the taximeter shewed figures from which, if true, amounts varying from 19s. to 25s. 4d. would be due from him. These sums he paid to the company; but nothing was registered by the taximeter or paid by the prisoner in respect of the sums of 9s. received by him as aforesaid upon the days in question.

Upon these facts the prisoner was indicted under s. 1 of the Falsification of Accounts Act, 1875 (1), for falsifying an account and for committing other offences contrary to that Act.

The first count of the indictment charged that Alfred Solomons, the prisoner, was employed as servant to the General Motor Cab Company, Limited, on March 31, 1909, and did then unlawfully, wilfully, and with intent to defraud make a certain false entry in a certain account, to wit, a taximeter attached to a motor cab, which said account then belonged to and was in the possession of the said company, his employers, by entering in the said account certain figures meaning and intended by him to mean that the said Alfred Solomons as such servant of the said company had while driving a motor cab belonging to the said company for hire

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(1) By the Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), s. 1, "if any servant or any person employed or acting in the capacity of a servant shall wilfully and with intent to defraud falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or con-

cur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document, or account, then in every such case the person so offending shall be guilty of a misdemeanour, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years."

1909 on their behalf earned fares amounting to a total sum of
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" whereas in truth and in fact he the said Alfred Solomons had as
SOLOMONS. such servant while driving the said cab for hire as aforesaid
earned fares amounting to more than the said sum of 1l. 5s. 4d.,
as he the said Alfred Solomons knew when he made the said
false entry.

The third, fifth, and seventh counts charged the prisoner with similar offences on April 1, 2, and 3 respectively.

The second count charged that the prisoner was employed as servant to the company on April 1, 1909, and did then unlawfully, wilfully, and with intent to defraud make and concur in making a false entry in a certain account, to wit, a driver's sheet belonging to and in the possession of his employers, by entering and concurring in entering in the said account certain words and figures meaning and intended by him to mean that he as such servant of the said company had while driving a motor cab belonging to the said company for hire on their behalf earned fares amounting to a total sum of 1l. 5s. 4d. and no more on the day ending March 31, 1909, whereas in truth and in fact he had as such servant while driving the said cab for hire as aforesaid earned fares amounting to more than the said sum of 1l. 5s. 4d. on the said last-mentioned day, as he knew when he made and concurred in making the said last-mentioned false entry.

The fourth, sixth, and eighth counts charged the prisoner with similar offences on April 2, 3, and 5 respectively.

The ninth count charged the prisoner with omitting on April 3, 1909, certain material particulars from an account, to wit, a taximeter, by omitting to enter in the said account particulars of the full amount of a fare due from a passenger which it was his duty to enter. The tenth count charged him with falsifying the taximeter by omitting to set and keep the flag thereof in such a position that the taximeter fully and truly recorded the fare due, whereby a less sum than the true fare was recorded in the taximeter.

The last four counts in the indictment charged the prisoner under s. 1 of the Larceny Act, 1901 (1 Edw. 7, c. 10), with having received various sums of money for and on account of the

General Motor Cab Company and having converted them to his own use.

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The trial took place at the Central Criminal Court before the Common Serjeant and a jury. The prisoner was convicted on all the above counts and was sentenced to five months' imprisonment with hard labour.

The prisoner appealed.

George Elliott, K.C., and *Cecil Fitch*, for the prisoner. Granting for the sake of argument that the prisoner was a servant within the meaning of s. 1 of the Falsification of Accounts Act, 1875, he has not falsified any account within the meaning of that enactment. The words of the section are "book, paper, writing, valuable security, or account." Neither has he made or concurred in making any false entry in an account; the words relating to this offence are "any such book, or any document, or account." The Act therefore clearly contemplates an account in writing and has no application to a mechanical contrivance such as a taximeter. (1)

Rufus Isaacs, K.C. (*R. D. Muir* and *Bigham* with him), for the Crown, was called upon to argue the point whether a taximeter was an account within the meaning of s. 1 of the Falsification of Accounts Act, 1875.

The Act nowhere says the account must be in writing. A tally stick would be an account within the section. An account may be brought into existence by means of a typewriter or by some other mechanical means. If the mechanical process is falsified the account is falsified; otherwise the Act might easily be reduced to a dead letter.

The judgment of the COURT (Lord Alverstone C.J. and Darling and Jelf JJ.) was delivered by

LORD ALVERSTONE C.J. It was not seriously contended that the taximeter sheet was not an account or that it had not been

(1) Counsel for the prisoner also contended that the prisoner was not a clerk, officer, or servant, or a person employed or acting in the capacity of a clerk, officer, or servant within the meaning of s. 1 of the Falsification of Accounts Act, 1875. The Court held that the finding of the jury on this point was amply justified by the evidence.

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falsified. The sheet purports to state the total amount received on the day to which it relates. It is not disputed that the figures on these sheets were incorrect on the days in question, because the prisoner had driven the cab with the flag up, and so the taximeter from which the figures are taken gave no record of the miles actually run. The record of the day's work was therefore an incorrect record; if truly kept it would have recorded a number of miles greater than that actually shewn on the taximeter and from thence entered on the taximeter sheet. The prisoner has kept back three-fourths of the difference between the amount recorded and the amount received and has certified that the amount recorded is the correct amount received. He has therefore clearly concurred in making a false entry in the taximeter sheet, which is an account or document which it was his duty to render to or see prepared for his employers. It follows that the prisoner was properly convicted on counts 2, 4, 6, and 8 of the indictment.

But, further than this, in our opinion an offence under this statute was committed when the prisoner falsified the mechanical record from which the calculation of the amount received was made up. There are now in use a number of mechanical means for counting money and calculating sums received or paid, and it would be a serious thing to say that to falsify the mechanical means whereby an account is brought into existence is not to falsify an account within the meaning of this Act.

Therefore in our opinion counts 1, 3, 5, and 7, which charge the prisoner with falsifying the taximeter itself, are also good, and this appeal must be dismissed.

Appeal dismissed. (1)

Solicitor for appellant: *Henry George Danger.*

Solicitors for the Crown: *Van Praagh & Gaylor.*

(1) The Court also held that the prisoner was properly convicted on the last four counts of the indictment charging the prisoner under s. 1 of the Larceny Act, 1901 (1 Edw. 7, c. 10).

W. H. G.