

MARTIN, APPELLANT *v.* WHITE, RESPONDENT.

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Jan. 12.

Motor Car—Exceeding Speed Limit—Indorsement of Licence—Previous Convictions—Evidence of Identification—Contents of Licence—No Notice to produce—Identity of Name and Address—“Proof of the identity”—Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 18—Motor Car Act, 1903 (3 Edw. 7, c. 36), ss. 3, 4, 9.

The appellant, Lionel Walker Birch Martin, of Ryder Street Chambers, St. James's Street, London, who held a licence to drive a motor car issued by the London County Council and numbered 5080, was in 1909 convicted by a Court of summary jurisdiction of driving a motor car on a public highway at a speed exceeding twenty miles an hour contrary to s. 9 of the Motor Car Act, 1903. It was then proved that the driver of a motor car of the name of Lionel Martin and of the same address as the appellant had been convicted of a similar offence in 1907; and that a person having the same four names and of the same address as the appellant had held a licence from the London County Council from a date before 1907 continuously down to the present time, that the licence was numbered 5080, and that no one having a London address could have that number except the person having those four names and that address. A police constable gave evidence that he stopped the motor car upon the occasion in 1907, and the driver upon demand produced to him a licence which was issued by the London County Council and numbered 5080. No notice to produce the licence was given. It was next proved by the production of a certified copy of the conviction that a person with the same four names and of the same address as the appellant was convicted of a similar offence in 1908. The appellant, who was represented by counsel at the hearing, absented himself from the Court and was not called as a witness. The justices found upon the above evidence that the appellant was the person who had been convicted on both the former occasions, and they imposed a fine of 20*l.* and ordered his licence to be indorsed:—

Held that, with regard to the conviction in 1907, the evidence of the police constable as to the contents of the licence produced to him on the occasion when the offence was committed was admissible as evidence of the identity of the appellant with the person who was then convicted, and that no notice to produce the licence was necessary; that, with regard to the conviction in 1908, the identity of the names and of the address was some evidence of the identity of the appellant with the person who was then convicted; and that the justices were entitled to have regard to the appellant's wilful absence, and conclude that he was the person who was convicted on both those occasions and to order his licence to be indorsed.

“Proof of the identity” of the person against whom it is sought to prove the conviction with the person named in the record of the

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conviction, required by s. 18 of the Prevention of Crimes Act, 1871, does not mean conclusive proof, but means such evidence as will entitle a jury to find that the identity is proved.

CASE stated by justices acting in and for the borough of Richmond in the county of Surrey.

At a Court of summary jurisdiction sitting in and for the borough of Richmond an information was laid by the respondent, an inspector of the metropolitan police, against the appellant, Lionel Walker Birch Martin, for that he the appellant on April 15, 1909, did unlawfully drive a motor car on a certain public highway at a speed exceeding twenty miles per hour contrary to s. 9 of the Motor Car Act, 1903.

The information came on for hearing on May 6, 1909, when the justices were informed by the inspector of police on duty in Court that the case was one in which it was necessary to identify the person summoned. The justices ascertained that the appellant was not then present, and the counsel who appeared for him informed the justices that the appellant was not so present on his (counsel's) advice. The justices accordingly adjourned the further hearing of the information to May 13, when the respondent was represented by the solicitor to the Commissioner of Police and the appellant by the same counsel as before.

It was then proved that the summons issued upon the information had been duly served upon the appellant on May 3, 1909, by warrant officer Taylor by leaving it with the appellant's servant at 3, Ryder Street Chambers, St. James's Street, London. It was further proved that the appellant was on April 15, 1909, driving a motor car along Kew Road, in the borough of Richmond, at a speed of 26 miles 828 yards per hour, and that the officers then engaged in timing the car stopped him and asked for his licence, which was produced, and the following particulars were taken from it: "Issued by the London County Council; Licensee, Lionel Walker Birch Martin; Address, 3, Ryder Street Chambers, St. James's Street, S.W.; Number 5080; Date 4th March, 1909, expiring 3rd March, 1910." The facts upon which the charge was made were not disputed by the appellant's counsel, nor was any evidence called

upon the appellant's behalf. The justices came to the conclusion that the offence charged was proved against the appellant, and as they were informed that there were previous convictions of the appellant under s. 9 of the Motor Car Act, 1903, and as the appellant was not then personally present, upon the application of the respondent's solicitor they issued a warrant for the apprehension of the appellant in order that he should be personally present when evidence of his previous convictions was being tendered, the previous convictions not being admitted by the appellant's counsel, and no undertaking being given by his counsel that the appellant would be present at any further adjournment of the information. The warrant so granted was upon June 17, 1909, quashed by the King's Bench Division of the High Court of Justice. (1)

The information came again before the Court of summary jurisdiction on July 8, 1909, when the appellant was not present, but was represented by counsel as on the two former hearings. In the opinion of the justices the appellant on the occasion of each of the three hearings absented himself from the Court intentionally and on the advice of his counsel. It was then proved by Thomas Bristow, of the West Sussex police, who was timing motor cars at Crawley, in Sussex, on May 11, 1906, that he stopped a car on that day; that he had a conversation with the driver thereof, who produced to him upon demand a licence, and that he, Bristow, gave evidence afterwards before a Court of summary jurisdiction sitting at Horsham against the driver of the car so stopped by him; and that the driver was convicted of having on May 11, 1906, unlawfully driven on a public highway at Crawley a motor car at a speed exceeding twenty miles, to wit, thirty-one miles, per hour contrary to the Motor Car Act, 1903. Bristow produced a certified copy of the conviction (marked A), which stated that "Lionel Walker Birch Martin, of Chelsea, London (hereinafter called the defendant), is this day convicted for that he on the 11th day of May, 1906, at Crawley, in the said county of Sussex, on a certain public highway there situate did unlawfully drive a certain motor car at a speed exceeding

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(1) See *Rex v. Thompson*, [1909] 2 K. B. 614.

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twenty miles, to wit, thirty-one miles, an hour," and he was fined 1*l.* 1*s.* and ordered to pay 1*l.* 10*s.* 6*d.* for costs.

It was further proved by police sergeant Baker that on May 16, 1907, he was engaged in timing motor cars near Barnet, in the county of Hertford, and stopped a car which was then being driven on a public highway; that a licence was produced to him by the driver thereof at his request; and that on June 5, 1907, he gave evidence against the driver before a Court of summary jurisdiction sitting at Barnet, before which the driver was convicted of having driven the motor car on the highway at a speed exceeding twenty miles per hour. Baker produced a certified copy of the conviction (marked B), which stated that "Lionel Martin, of Ryder Street Chambers, St. James's Street, S.W. (hereinafter called the defendant), is this day convicted for that he on the 16th day of May, 1907, at the parish of Barnet Vale did unlawfully drive a motor car on a public highway at a speed exceeding twenty miles an hour," and he was fined 8*l.* and ordered to pay 5*s.* 6*d.* for costs. Baker on May 16, 1907, took particulars from the licence produced to him by the driver of the motor car, and he was asked by the respondent's solicitor to give in evidence the said particulars. The appellant's counsel objected to the admissibility of such particulars. The justices were of opinion that evidence from Baker as to the particulars taken from the licence was not at that stage of the hearing admissible. There was then called before the justices the registration officer of the London County Council, who gave evidence that one Lionel Walker Birch Martin, of 3, Ryder Street Chambers, St. James's Street, S.W., had held from the London County Council a licence to drive a motor car since February 13, 1904, continuously down to the present time, with the exception of the period from February 12, 1906, to March 2, 1906; that the licence was renewed annually to him in that name; that the number during the whole period of the licence since February 13, 1904, was 5080, and that there was no other person of the name of Lionel Walker Birch Martin in the register of such licences kept by the London County Council; and that no one giving a London address for the purposes of registration under the Motor Car Act, 1903, could have the number 5080 except the person

named Lionel Walker Birch Martin, of 3, Ryder Street Chambers, St. James's Street, S.W. The said registration officer, who produced the register of the London County Council, said that the issue of a licence bearing the same number to each of two different persons had never to his knowledge occurred.

The justices were of opinion that the person summoned before them was the person who throughout the period of the licence was licensed in the name of Lionel Walker Birch Martin and was the person driving the car stopped by Sergeant Baker. They therefore, on Sergeant Baker being recalled, admitted the evidence of the particulars taken by him of the licence produced by the driver of the car on May 16, 1907, which was that the number of the licence so produced was 5080 and that it had been issued by the London County Council. No notice to produce the licence had been served upon the appellant.

It was further proved by the said Thomas Bristow that he was on duty timing motor cars on January 5, 1908, at Crawley, and that he stopped the same car which he had stopped on May 11, 1906, and which was being driven by the same person as had been driving it on May 11, 1906; that he gave evidence against the driver before a Court of summary jurisdiction sitting at Horsham; and that the driver was convicted of unlawfully driving on a public highway a motor car at a speed exceeding twenty miles, to wit, thirty-nine miles, per hour contrary to the Motor Car Act, 1903. Bristow produced a certified copy of the conviction (marked C), which stated that "Lionel Walker Birch Martin, of Ryder Street, St. James's, London, S.W. (hereinafter called the defendant), is this day convicted for that he on the 5th day of January, 1908, at Ifield . . . on a certain public highway there situate did unlawfully drive a certain motor car at a speed exceeding twenty miles, to wit, thirty-nine miles, an hour," and he was fined 7*l.* 10*s.* and ordered to pay 11*s.* 3*d.* for costs.

Upon the above facts it was contended on behalf of the appellant that as regards the two convictions of which A and C were the certified copies there was no legally admissible evidence upon which the justices could hold that the appellant was the person who was convicted on either occasion; that the

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certified copies A, B, and C of the convictions were in themselves insufficient to afford evidence on which the justices could act to prove that the appellant was the person convicted on any of those occasions, and s. 18 of the Prevention of Crimes Act, 1871, was cited as an authority for such submission; and with regard to the conviction at Barnet (marked B) that the evidence of Baker giving the contents of the licence produced to him on May 16, 1907, was not legally admissible or admitted.

It was contended on behalf of the respondent that the evidence of Baker as to the contents of the licence produced to him on May 16, 1907, was legally admissible, having regard to the decision in *Marshall v. Ford* (1); and that with regard to each of the three convictions, of which A, B, and C were certified copies, the evidence of the registration officer of the London County Council and the fact that the summons issued on the information before the justices was addressed to Lionel Walker Birch Martin, of 3, Ryder Street Chambers, St. James's Street, S.W., and had been there duly served, and that counsel representing the person so summoned answered and appeared to the information, and the other facts proved before the justices hereinbefore set forth, were evidence upon which the justices could in law find that the appellant had been on the said three occasions previously convicted of offences against s. 9 of the Motor Car Act, 1903.

The justices were of opinion that there was legally admissible evidence before them that the appellant was the person who had on each of the three occasions mentioned in the three certified copies of the convictions, marked A, B, and C respectively, been so convicted, and they imposed a fine of 20*l.*, and in pursuance of s. 4 of the Motor Car Act, 1903, they ordered the conviction of the offence charged in the information to be indorsed on the licence held by the appellant under the Motor Car Act, 1903.

The questions for the Court were :

(1.) Whether there was any legally admissible evidence before the justices from which they could come to the conclusion that the appellant was the person convicted on the occasions

(1) (1908) 72 J. P. 480.

mentioned in the certified copies A, B, and C respectively or on any two of such occasions.

(2.) Whether the evidence of Sergeant Baker was properly admitted.

If the Court should be of opinion that there was legally admissible evidence as to the appellant being the person who was convicted as shewn in the certified copies marked A and C, the conviction was to stand. If the Court should be of opinion that there was legally admissible evidence to shew that the appellant was the person convicted on one only of such occasions as were referred to in the certified copies marked A and C, and if the evidence of Sergeant Baker was properly admitted and there was legally admissible evidence from which the justices could hold that the appellant had been convicted on the occasion referred to in the certified copy marked B, then the conviction was to stand; if otherwise, the conviction was to be quashed.

Danckwerts, K.C. (Lord Tiverton with him), for the appellant. There was no such proof of identity of the appellant with the person who was convicted on any of the three previous occasions as is required by s. 18 of the Prevention of Crimes Act, 1871. With regard to the two convictions marked A and C there was no evidence of identity. There was no evidence beyond the mere production of the certified copies of the convictions. Sect. 18 of the Act requires proof of identity to be given as well as the production of a record of the conviction. That means that external evidence of identity must be given, and no such evidence was given here. There was therefore no sufficient evidence of identity of the appellant with the persons who were convicted on those two occasions. With regard to the conviction at Barnet, marked B, the evidence of identity was not sufficient to satisfy the section. The conviction only shewed that a person of the name of Lionel Martin, of the same address as the appellant, was convicted. The evidence of the police constable who stopped the car upon that occasion, and to whom the driver produced a licence, as to the contents of that licence was not admissible. Secondary evidence as to the contents of a document is not admissible unless notice

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to produce the original has been given, and the rule is the same in civil and in criminal cases: *Rex v. Watson* (1); *Attorney-General v. Le Merchant* (2); *Goodered v. Armour* (3); Taylor on Evidence, 10th ed., s. 440. The general rule is that what is in a writing can only be proved by the writing itself: *The Queen's Case* (4); *Vincent v. Cole*. (5) The present case is not within any of the three exceptions stated in *Colling v. Treweek* (6) to the rule that a copy of a document is not admissible unless notice to produce the original has been given. A defendant in a criminal case has a right to rely upon the strict rules of evidence, and he is not bound to render any assistance to the prosecution in making out their case. The decision of this Court in *Marshall v. Ford* (7), that it is not necessary to give to the driver of a motor car, who is being prosecuted for exceeding the speed limit, notice to produce his licence so as to let in secondary evidence of its contents, was decided by inadvertence and ought not to be followed. Even if notice to produce the licence was not necessary, secondary evidence of its contents was not admissible until the identity of the person who then produced the licence with the appellant was proved: *Corfield v. Parsons*. (8) The mere production of a licence by the driver of a motor car does not prove the identity of the person named therein. Sect. 1, sub-s. 2, of the Motor Car Act, 1903, empowers a police constable to apprehend without warrant the driver of a car who commits within his view an offence under that section, namely, reckless driving, if he refuses to produce his licence on demand. That sub-section therefore does not apply, because the conviction in the present case and the previous convictions were under s. 9 of the Act for exceeding the speed limit. Sect. 3, sub-s. 4, empowers a police constable to require a driver of a motor car to produce his licence to him, but the offence aimed at in that section is driving without a licence, and the requirement as to the production of the licence is only to enable the constable to see if the driver has a licence to drive, and not for the purpose of identifying the driver. Sect. 9

(1) (1788) 2 T. R. 199, at p. 201.

(2) (1772) 2 T. R. 201n, at p. 203n.

(3) (1842) 3 Q. B. 956.

(4) (1820) 2 Brod. & B. 286.

(5) (1828) Moo. & M. 257.

(6) (1827) 6 B. & C. 394, at p. 398.

(7) 72 J. P. 480.

(8) (1833) 1 Cr. & M. 730.

deals with the offence of exceeding the speed limit, and there is nothing in that section with reference to the production by the driver of his licence. The evidence here only shewed that somebody who was afterwards convicted produced a licence to a police constable on May 16, 1907, at Barnet. Before the contents of that licence can be given in evidence against the appellant the identity of the two persons must be proved. Therefore the contents cannot be given in evidence as proof of identity. In *Simpson v. Dismore* (1) the plaintiff, who was an apothecary, produced the original licence granted by the Apothecaries' Company to a person bearing the christian name and surname of the plaintiff, and the Court held that that was evidence to shew the identity of the plaintiff with the person named in the licence. In that case the original licence was produced by the plaintiff himself in support of his own case, and therefore that decision has no application to the present case. The production of a licence by the driver of a motor car is not *prima facie* evidence that he is the person named therein : it is not a statement by him that he is the person named therein. He may have been wrongfully carrying another person's licence at the time. The evidence of the registration officer of the London County Council does not carry the case further, because there is no evidence that the document spoken to by him was the same document as was produced to the police constable at Barnet, except the statement of the constable as to its contents, which is not admissible until the identity was proved. The prosecution cannot advance a step until they first prove identity. The decision of the justices was therefore wrong.

Horace Ivory, K.C. (Bodkin with him), for the respondent. The question is whether there was any evidence before the justices which entitled them to come to the conclusion that the appellant was the person who had been twice previously convicted. In considering that question the justices were entitled to take into consideration the fact that the appellant, knowing what the question before the justices was, deliberately absented himself from the Court and refused to give evidence. In such a case the justices would accept evidence of a much lighter degree than

(1) (1841) 9 M. & W. 47.

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they would accept if the appellant was there to contradict it : per A. T. Lawrence J. in *Rex v. Thompson*. (1) The appellant here, knowing the issue before the justices, absented himself intentionally from the Court, and no application was made on his behalf for an adjournment to enable him to answer the case made against him. By the combined operation of the Motor Car Act, 1903, and of the Motor Car (Registration and Licensing) Order, 1903, made by the Local Government Board, three things are clear. No person is entitled to drive a motor car without a licence from the county or borough council where he resides; each licence when granted by a county or borough council has a distinctive number; and every driver of a motor car must carry his licence with him when he is driving and must produce it to a police constable on demand. No question really arises here as to notice to produce or as to the right to give secondary evidence in the absence of such a notice. Even if it did arise, the case would be governed by the decision in *Marshall v. Ford*. (2) The only question is whether there was evidence of identity of the appellant with the person who was convicted on any two of the former occasions. With regard to the Barnet conviction, marked B, the production of the licence with its distinctive number was some evidence of the identity of the driver with the appellant, who had a licence bearing the same number. The evidence of the registration officer of the London County Council shewed that a licence with that number was renewed annually to a person of the same name and address during the material period of time. A licence to drive a motor car is like a cabman's badge or a policeman's number on his collar, which are both marks of identification. The production of a licence is not the production of a document; it is the production of an article, like a mark or badge, and therefore the number 5080 was some evidence of identity of the appellant with the person who was convicted at Barnet, and the appellant might have answered that evidence, but deliberately abstained from doing so.

With regard to the convictions marked A and C there was no evidence as to the number of the licence, the only evidence being the production of the convictions. The rule of evidence as

(1) [1909] 2 K. B. 614, at p. 622.

(2) 72 J. P. 480.

to identity is the same in criminal as in civil cases. Identity of name and address is some evidence of identity, especially so if the name is uncommon: *Simpson v. Dismore* (1); *Greenshields v. Crawford* (2); *Russell v. Smyth* (3); *Roden v. Ryde* (4); Taylor on Evidence, 10th ed., ss. 1858, 1860. In both the convictions A and C the names, Lionel Walker Birch Martin, are the same as the appellant's names. This combination of names is uncommon, and the address of the person convicted on the last of these occasions (conviction C) was the same as the appellant's address. Those matters afford some evidence of the identity of the appellant with the person who was then convicted. This evidence the appellant did not go into the witness-box to answer. The police constable who stopped the motor car on that last occasion stated that the driver was the same person whom he had stopped on the occasion of the first conviction. There was therefore evidence, upon which the justices were entitled to act, of the identity of the appellant with the person who was convicted upon both those occasions. The result is that the justices were entitled to draw the conclusion that the identity of the appellant with the person convicted on each of the three previous occasions was made out.

Danckwerts, K.C., in reply. The cases cited for the respondent are not applicable. The mere fact that the name and address of the appellant are the same as in the record or extract of the previous conviction is not proof of identity under the Prevention of Crimes Act, 1871. There must be proof of identity outside the record or extract produced. Sect. 18 requires more than *prima facie* evidence of identity; it requires "proof of the identity," and that is made a condition precedent to the proof of the previous conviction.

LORD ALVERSTONE C.J. In this case the appellant is Lionel Walker Birch Martin, who resides at 3, Ryder Street Chambers, St. James's Street, London, and was on May 13, 1909, convicted of having on April 15 driven a motor car along the Kew Road

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(1) 9 M. & W. 47.

818, 819.

(2) (1842) 9 M. & W. 314.

(4) (1843) 4 Q. B. 626, at pp. 632

(3) (1842) 9 M. & W. 810, at pp. —634.

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at a speed exceeding twenty-six miles an hour. At that hearing it was admitted that the appellant, whose name and address were those given above, was driving the motor car; the appellant was not personally present in Court, but appeared by counsel, and the justices found that the charge had been proved against him. The justices thereupon, upon being informed that the prosecution desired to prove previous convictions against him under s. 9 of the Motor Car Act, 1903, and for that purpose to identify the appellant as the person who had been so convicted, issued a warrant for his apprehension so as to ensure his presence in Court when the evidence as to the previous convictions was being given. An application was thereupon made to quash the warrant, and this Court thought (1) that, as the appellant had appeared by counsel, the justices had no jurisdiction to issue a warrant for the purpose of compelling him to attend in Court that he might be identified, and the warrant was accordingly quashed. The case came again before the justices, and the appellant, who appeared by the same counsel as on the previous occasion, was not personally present at the hearing. It is truly said that, according to the law of England, a person who is charged with a criminal offence is not bound to render any assistance to the prosecution in making out the case against him; it is for the prosecution to prove their case. The justices, having on the former hearing adjudged that the charge of having driven a motor car on April 15, 1909, at a speed exceeding twenty miles an hour was proved, had only to consider the question whether the previous convictions or any of them were proved against the appellant, and they proceeded to hear the case upon that footing, and heard it, if I may say so, with very great care.

The prosecution sought to prove three previous convictions against the appellant, and in order to justify the imposition of a fine of 20*l.* one previous conviction for the offence of exceeding the statutory limit of speed had to be proved, and in order to justify the indorsement of the conviction on the licence proof of two previous convictions was necessary. The first conviction sought to be proved was that of a person of the name of Lionel

(1) *Rex v. Thompson*, [1909] 2 K. B. 614.

Walker Birch Martin, of Chelsea, who was convicted of driving a motor car at Crawley on May 11, 1906, at a speed exceeding twenty miles an hour. The second conviction was that of a person named Lionel Martin, of Ryder Street Chambers, St. James's Street, who was convicted of a similar offence at Barnet on May 16, 1907; and the third conviction was that of a person named Lionel Walker Birch Martin, of Ryder Street, St. James's, who was convicted of a similar offence at Ifield on January 5, 1908.

I propose to deal with the second of the above-mentioned convictions first. The evidence relevant to that conviction was that given by Sergeant Baker. Baker was the police officer who had been engaged in timing motor cars at Barnet on May 16, 1907. He stated in his evidence that upon that date he stopped a motor car, and upon his request the driver, who was afterwards convicted as above mentioned, produced a licence to him. He took particulars of the licence, and he was asked to give those particulars. To the admission of this evidence objection was taken on behalf of the appellant, and the justices declined to admit those particulars at that stage of the hearing. Thereupon the prosecution called a witness from the London County Council, who proved that a licence numbered 5080 had been continuously, except for a few days not material to this case, issued to Lionel Walker Birch Martin, of 3, Ryder Street Chambers, St. James's Street, from February, 1904, down to the present time, that there was no other person of that name in the register of licences kept by the London County Council, and that a licence with that number would not be issued by the council during that period to any person giving a London address other than the person who bore those four names. That is important because the point was made on behalf of the appellant that mere identity of name was not sufficient, inasmuch as several persons might well have the same names. Therefore the number of the licence as pointing to the same individual is of great importance. The justices thereupon admitted the evidence of Baker as to the particulars contained in the licence produced to him on May 16, 1907, at Barnet, that the number of the licence was 5080, and that it had been issued by the London County Council.

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It is contended on behalf of the appellant, quite independently of any question as to the necessity of a notice to produce, that the evidence of Baker as to the contents of the document produced to him at Barnet by the driver of the car which was then stopped was not admissible, because there was no proof that the driver was the appellant. That contention is not consistent with the judgment of this Court in *Marshall v. Ford* (1), but I wish to state the reasons why, in my opinion, that contention is not sound. It seems to me to be quite plain that, whatever other object the Legislature may have had in requiring a driver of a motor car to take out a licence, it certainly intended that a licence should be the means of identifying the person who is driving the car. We are dealing with an Act which authorizes the driving of motor cars at high rates of speed along public highways, and which at the same time contains provisions for the protection of the public. Sect. 1, sub-s. 2, of the Motor Car Act, 1903, has no direct bearing upon this case; but at the same time it is of importance as shewing, in the interests of the public and for facilitating the prosecution of offenders, that the Act intends the licence to be the means of identifying the driver of a motor car. That sub-section provides that "any police constable may apprehend without warrant the driver of any car who commits an offence under this section within his view, if he refuses to give his name and address or produce his licence on demand." It is said, and I think with some force, that that particular requirement is only to ensure the production of the licence where the driver commits the graver offence of driving to the public danger. But s. 3 shews that the requirement as to production of the licence is not confined to that particular case. It is contended on behalf of the appellant that s. 3 only deals with the offence of driving without a licence. To my mind it is impossible to say that s. 3 is intended to limit the protection afforded to the public to the mere purpose of seeing whether the driver has a licence to drive. In my opinion counsel for the respondent correctly stated the effect of s. 3 of the Act and the Local Government Board Regulations made

(1) 72 J. P. 480.

under s. 7, namely, that no person is entitled to drive a motor car without a licence, that every licence must have a distinctive number, and that every driver of a motor car must carry his licence with him when driving, and must produce it when called upon by a police constable to do so. Sect. 3, sub-s. 1, says: "A person shall not drive a motor car on a public highway unless he is licensed for the purpose under this section, and a person shall not employ any person who is not so licensed to drive a motor car. If any person acts in contravention of this provision he shall be guilty of an offence under this Act." By sub-s. 2, "The council of a county or county borough shall grant a licence to drive a motor car to any person applying for it who resides in that county or county borough on payment of a fee of five shillings, unless the applicant is disqualified under the provisions of this Act." By sub-s. 4, "A licence must be produced by any person driving a motor car when demanded by a police constable. If any person fails so to produce his licence, he shall be liable on summary conviction in respect of each offence to a fine not exceeding five pounds." That sub-section cannot, in my opinion, mean that the obligation upon a motor car driver to produce his licence is merely for the purpose of seeing whether the driver has a licence to drive a car. In *Marshall v. Ford* (1) it seemed to us that one of the objects for which the Act requires the production of the licence is to afford a means, in the interests of the public, for the identification of the driver, without which proceedings cannot be taken against him, because in most cases the constable cannot know the name of the driver. As I said in *Marshall v. Ford* (1), "when in the course of his duty a constable acting under the Act gets the name of a person who afterwards appears in Court, that is evidence on which the magistrates may act." In that passage I did not mean to limit it to appearance personally in Court. I meant appearance in the proceedings, and that is apparent from what I said in the subsequent case of *Rex v. Thompson* (2), where we laid it down that personal appearance is not necessary in the case of a summons before justices for an offence punishable on summary conviction, but that appearance

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(1) 72 J. P. 480.

(2) [1909] 2 K. B. 614.

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by counsel or solicitor is sufficient. In my opinion, when a constable upon demand made by him is handed a licence by the driver of a car, that amounts to a statement by the driver that the licence is his and that the name and address mentioned in the licence are his name and address, and it is *prima facie* evidence at any rate that a person of that name and address was driving the car on that occasion. It is contended that the identity of the appellant with the driver who was stopped at Barnet and who produced the licence to the constable must first be proved before secondary evidence of the contents of the licence can be given. When it is borne in mind that the driver of a car is obliged to have his licence with him, it would be destroying the beneficial effect of this legislation if we were to accede to that argument. The name and address of the appellant are the same as those in the licence produced to the constable at Barnet, and the number of the appellant's licence is the same, and in my opinion that afforded some evidence of identity upon which the justices were entitled to act, more especially in a case like the present where the appellant appeared by counsel and abstained from coming to the Court, although he knew full well that the sole question before the Court was that of identity. Therefore with regard to the Barnet conviction I am of opinion that there was evidence of identity. I wish to add that, in order to avoid technicalities, it is advisable that notice to produce should be given, though the absence of a notice to produce was not the main point relied upon before us, the contention being that, even if a notice to produce had been given, evidence of the contents of the licence was not admissible until the identity of the two persons was first proved.

The other two convictions present more difficulty, because there was no evidence as to the contents of any licence produced to police constable Bristow when he stopped the cars on those two occasions at Crawley. Two convictions were put in evidence. The first was a conviction of a person named Lionel Walker Birch Martin, of Chelsea, London, and the second was a conviction of a person bearing the same four names, whose address was Ryder Street, St. James's, London. Dealing with the second of these two convictions, the question is whether in the circumstances it

affords in itself some evidence of identity of the appellant with the person who was so convicted. The combination of names is peculiar, and the names are the same as the appellant's names; the address is also the same as that of the appellant. Considering that the appellant appeared by counsel and deliberately absented himself from the Court and chose not to give evidence, though he knew that the question of identity was the only question before the justices, there was, in my opinion, evidence upon which the justices were entitled to come to the conclusion that the person convicted upon that occasion was the appellant. It is said, however, that by s. 18 of the Prevention of Crimes Act, 1871, under which these convictions were proved, there must be "proof of the identity of the person against whom the conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted," and that there was no "proof" in this case. In my opinion "proof" does not mean conclusive proof. It means evidence upon which a jury may find that the identity is proved. No doubt in most criminal cases the prosecution calls a warder or a police officer who was present at the previous trial to prove that the prisoner is the same person, and for a good reason, because in many cases the prisoner was passing under a different name when he committed the previous offence, and therefore his identity has to be proved. But the cases of *Simpson v. Dismore* (1) and *Russell v. Smyth* (2) are authorities to shew that the Court may act upon identity of name and address as evidence of the identity of the individual. In my opinion the identity of the names and of the address was evidence that the appellant was the person who was convicted of the offence on January 5, 1908, and as, in order to support the order of the justices directing the indorsement of the licence, two previous convictions for exceeding the statutory speed limit are sufficient, it is not necessary to deal with the conviction for exceeding the speed limit on May 11, 1906. For these reasons I think that there was evidence upon which the justices were entitled to come to the conclusion that the appellant was previously convicted upon at least two occasions, and I may add that I also think that there was evidence upon which they might

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(1) 9 M. & W. 47.

(2) 9 M. & W. 810.

1910 come to the conclusion that the appellant was the person who
MARTIN was convicted of the offence on May 11, 1906.

"
WHITE. The appeal must be dismissed.

BUCKNILL J. I agree with the judgment of my Lord, and have nothing to add.

BRAY J. As this is a case of some general importance, I wish to state in my own words my reasons for concurring in the judgment which we are now pronouncing.

The question before us is whether there was evidence upon which the justices were entitled to find that the defendant had been twice previously convicted. There were three previous convictions alleged against him for offences against s. 9 of the Motor Car Act, 1903. I will deal with the Barnet case first because, in my opinion, it is the strongest of the three. The evidence with reference to that conviction was first of all that given by the registration officer of the London County Council, who stated that a person having the same names and having the same address as the appellant had held a licence, bearing a particular number, to drive a motor car from February, 1904, continuously down to the present time, with the exception of a few days at the beginning of 1906, the licence being renewed annually, and that a licence bearing that number was issued to that person and to that person alone. The appellant was the holder of a licence bearing that number. That seems to me to trace the possession of a licence bearing that number to the appellant. That would not, however, afford evidence of the identity of the appellant with the person who was convicted at Barnet, and for that purpose Sergeant Baker stated in evidence that when he stopped the car at Barnet he asked the driver for his licence, and the licence was produced, which was in terms identical with the licence referred to by the registration officer of the London County Council.

The first objection taken to that evidence was that no notice to produce the licence had been served upon the appellant, and that therefore no secondary evidence of its contents could be given. That point came before this Court in *Marshall v. Ford*. (1)

(1) 72 J. P. 480.

I cannot say that I am free from doubt as to the decision in that case and as to the grounds upon which the decision was based. But, whether I differ from it or not, it was a decision upon the very point, and I am quite content to be bound by it. I think that the decision may be supported by the consideration that the licence is more than a mere document; it is an article, and there is no rule of evidence that notice to produce is necessary when the question is the identity of an article. Therefore it may be that notice to produce is not necessary when the document is something more than a document and is an article. Accordingly I take the evidence as admissible. It is then said that that evidence does not prove that the person who produced that licence at Barnet was the appellant. Now is the fact that that licence was in the possession of the driver of the car on that occasion evidence upon which the justices were entitled to come to the conclusion that that person was the appellant? Having regard to the nature of the licence and the reason why a motor car driver is required to take out a licence and to produce it when required, I think that it is some evidence. Sect. 3 of the Motor Car Act, 1903, requires that every person driving a motor car shall have a licence to drive granted by the county or borough council. It requires that person to carry his licence about with him when he is driving, because he must produce it when demanded by a police constable, and it is made an offence if he fails to produce it. The driver must produce, not somebody else's licence, but his own licence. Therefore it seems to me that the fact that the driver of the motor car who committed the offence of which he was convicted at Barnet produced this licence to Sergeant Baker upon that occasion is, when taken together with the evidence given by the registration officer of the London County Council, some evidence that he was the person who was mentioned in the licence and the person to whom that licence was issued, and therefore some evidence of his identity with the appellant. There is therefore some evidence of identity of the driver of that motor car with the appellant, upon which, in the particular circumstances of this case, the justices might act. The appellant, knowing full well that the question in dispute at the second hearing was whether

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he was the person who was convicted at Barnet, deliberately upon the advice of his counsel stayed away from the Court so as to make identification as difficult as possible. Bearing in mind that the appellant had simply to come forward and state that he was not the person who was convicted on that occasion, and that he abstained from doing so, I am of opinion that the justices were at liberty to act on very slight evidence, there being no evidence to the contrary. For these reasons I think that there was evidence of identification in the Barnet case.

I now come to the conviction marked C for an offence on January 5, 1908. That was a conviction of a person of the name of Lionel Walker Birch Martin, of Ryder Street, St. James's, London. I quite agree that there must be more than the mere production of a conviction; there must be evidence of identity; that is to say, there must be evidence of identity upon which a jury may properly act. But the copy of the conviction itself may afford evidence of identity. It is admitted that the appellant bears those four names and that he lives at Ryder Street, St. James's, and further that he holds a motor car driver's licence. It seems to me that that evidence, though it is somewhat slight, is, in the circumstances of the case, sufficient to entitle the justices to say that the identity of the person who was convicted of the offence near Crawley with the appellant is proved. With regard to the other conviction marked A, the name of the person convicted is the same, but the address is different. That would be a matter of some moment, but it is disposed of when once it is found that the appellant is the person who was convicted on the occasion of the later offence at Crawley, because it is stated in the case that the motor car which police constable Bristow stopped on the second occasion at Crawley was being driven by the same person who had been driving the car on the previous occasion.

The result is that there was evidence upon which the justices were entitled to arrive at the conclusion they did in regard to all three convictions.

Appeal dismissed.

Solicitors for appellant: *Kenneth Brown & Co.*

Solicitors for respondent: *Wontner & Sons.*

W. F. B.