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by clause (b) is that of omitting to obtain the sanction of the Collector to making any addition to an existing embankment within the prohibitory area. We must, therefore, hold that the conviction and sentence in this case are correct, and the Rule must be discharged.

Rule discharged.

E. H. M.

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.

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Jan. 25

THORNTON

v.

EMPEROR.*

Motor Car—Bengal Motor and Cycle Act (III of 1903), ss. 3 and 4—Use of Motor car with permission of the owner to convey his friends in his absence—Liability of Owner for the acts of his Driver in contravention of the rules framed under the Act—Rules 4, 20.

The owner of a motor car who expressly or impliedly permits his car to be used or driven by his servant is, if it is so used or driven as to contravene rule 20 of the rules framed under the Bengal Motor Car and Cycle Act (III of 1903), himself liable therefor under Rule 4 and s. 4 of the Act, though he was not in the car at the time and had given his servant general directions to observe the regulation speed, unless the latter has used it improperly for his own purposes.

Somerset v. *Wade* (1), *Somerset* v. *Hart* (2), *Collman* v. *Mills* (3) and *Commissioners of Police* v. *Cartman* (4) referred to.

THE petitioner, Edward Thorton, was tried before the Chief Presidency Magistrate, on the 5th November, 1910, charged with "driving his motor car, on the 23rd October, so rashly and negligently and at an excessive speed as to endanger human life and property," in violation of Rule 20 framed under the Bengal Motor Car and Cycle Act (III of 1903), and convicted and sentenced to a fine of Rs. 15.

* Criminal Revision, No. 1609 of 1910, against the order of T. Thornhill, Chief Presidency Magistrate of Calcutta, dated Nov. 5, 1910.

(1) [1894] 1 Q. B. 574.
(2) (1884) 12 Q. B. D. 360.
(3) (1896) 66 L. J. Q. B. 170.
(4) [1896] 1 Q. B. 655.

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It appeared that the petitioner's car containing two of his friends, he himself not being present, was driven by his chauffeur, one Gazi, along Chowringhee Road at 5-45 P.M., and nearly collided, close to the United Service Club, with a trap driven by Mr. Watson, the Additional Sessions Judge of Alipore. The Magistrate, after recording the evidence of Mr. Watson, asked the petitioner if he had anything to say, to which he replied that he did not impeach the evidence of Mr. Watson, but that he was not in the car at the time and that the driver was not now in his service. The Magistrate thereupon convicted the petitioner without recording his statement. The driver was subsequently prosecuted by the police and fined Rs. 20 by the same Magistrate, on the 9th November, in respect of the same occurrence.

Rule 4 of the rules framed under the Act (*vide* notification No. 1180 J. D., dated the 22nd June, 1908), is as follows:—

> No person shall drive, or have charge of, or cause or permit to be used, any motor car, motor cycle or trailer which does not in all respects conform to these rules, or which is so driven or used as to contravene any of these rules:

Rule 20 runs as follows:—

> A motor car or motor cycle shall not be driven recklessly or negligently, or at any speed or in any manner which is likely to endanger human life, or to cause hurt or injury to any person or animal or damage to any goods carried in any vehicle or by any person, or which would be otherwise than reasonable and proper, having regard to all the circumstances of the case, including the nature, condition and use of the street or public place and the amount of traffic which is actually on it at the time or which may reasonably be expected to be on it.

The petitioner moved the High Court and obtained a rule to set aside the conviction and sentence on the grounds that his statement was not recorded and that there was no finding that he was in the car, but a clear finding in a subsequent case that he was not driving it.

Babu Manmatha Nath Mukerjee, for the petitioner.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown.

HOLMWOOD AND SHARFUDDIN JJ. This was a rule calling upon the Chief Presidency Magistrate to show cause why the

conviction and sentence passed upon the petitioner, Mr. E. Thornton, should not be set aside on the ground that his statement was not recorded, and there is no finding that he was not in the car and there is a clear finding in a subsequent case that he was not in the car.

As regards the first point we think it is to be regretted, considering that this is a case of first impression as to the interpretation of a rule which is not altogether free from difficulties, that a fuller record of the evidence and the plea of the petitioner was not made. It is now clear from the explanation of the Chief Presidency Magistrate that Mr. Thornton did not seek to impeach Mr. Watson's evidence, and in the absence of the chauffeur merely denied all knowledge of the offence. The only question, therefore, to be considered is the responsibility of the owner under the bye-law 4 read with rule 20 when the owner is not himself present in the car.

This is a mixed question of law and fact, and we will first consider the question of law. It appears that Mr. Thornton was summoned under rule 20 and not under rule 4. The indictment was worded "driving his motor car No. 545 so rashly and negligently and at an excessive speed as to endanger human life and property, and thus committing an offence under rule 20 of Act III of 1903."

Now although this indictment does not meet the facts, inasmuch as the petitioner was not driving, we have to see what the rule under which he was summoned requires, for it is clear that, if the rule makes it an offence to allow the car to be driven at an excessive speed, Mr. Thornton is amenable to that rule as owner and his responsibility is only limited by the terms of rule 4. Rule 20 says: "A motor car shall not be driven recklessly or negligently," and no personal responsibility is imputed to any one. When the owner, therefore, appears on a summons issued under that rule, it is no defence to say he was not driving himself if the responsibility for such driving is by law imputed to the owner by the rule which governs the person who is amenable to the law. Now rule 4 is that rule, and it appears on the face of that rule that the

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owner is responsible at law for the acts of his chauffeur. The wording of the rule is somewhat curious; it runs as follows:—"No person shall drive or have charge of, or cause or permit to be used, any motor car, motor cycle or trailer which does not in all respects conform to these rules, or which is so driven or used as to contravene any of these rules."

It is evidently intended to import the doctrine of *post hoc ergo propter hoc* into the law, a doctrine which is ordinarily contrary to the spirit of the law. But that it is known to the law is clear from the case of presumptions under s. 114 of the Evidence Act and of certain decisions under the licensing laws in England which have been cited before us.

In this case the fact has to be proved that the petitioner permitted the car to be used, and then it follows under the rule that, if it is so driven or used by any one whom the owner permitted to use it as to contravene rule 20, the owner is liable to conviction. We have considered the cases of *Somerset* v. *Wade* (1), *Somerset* v. *Hart* (2), *Collman* v. *Mills* (3), and *Commissioners of Police* v. *Cartman* (4). In the case of *Collman* v. *Mills* (3) the other three cases were cited and discussed at the Bar, and we need only cite a passage from the judgment of Wills J., where it is clearly laid down that a bye-law couched in the terms of rule 20 is perfectly good. Wills J. says: "The bye-law must be generally consonant with the English law, otherwise it is bad. . . . . It must proceed to that extent upon principles which differ from those adopted in the construction of a statute, because a statute may go beyond the common law. Now the bye-laws before us are framed under a statute passed for regulating the conduct of the business of slaughterers of cattle. Section 4 provides that the local authority may from time to time make, alter, and repeal bye-laws for regulating the conduct of any business specified in this Act." This is the same as s. 3 of Act III of 1903, the words "modify" and "cancel" being used instead of the words "alter" and "repeal," which are terms more applicable to laws than to rules.

(1) [1894] 1 Q. B. 574.
(2) (1884) 12 Q. B. D. 360.
(3) (1896) 66 L. J. Q. B. 170.
(4) [1896] 1 Q. B. 655.

The learned Judge goes on to say "there is, of course, a distinction between things criminal in themselves—morally wrong and wicked—and things merely made criminal because Parliament forbids them. This bye-law has been made under statutory powers to regulate the 'conduct of the business.' I agree with counsel for the appellant that, had the Act contained the words 'no animal shall be slaughtered within public view or within the view of any other animal,' the bye-law, as it stands, would have been perfectly good; such a bye-law would, in my opinion, be within the authority to make bye-laws 'for regulating the conduct of business.' Such a bye-law would impose upon the person carrying on the business the obligation to see that his servants did not do the thing forbidden. If it could be done indirectly by such language, why may it not be done in the manner in which it has been effected? and, if so, there is no objection to construing this bye-law so as to make the master liable for the conduct of his servant."

It is clear from this *dictum* that it is rule 20 which makes the owner liable for the acts of his servant in using the motor car, and it is rule 4 which, as we shall presently see, defines the extent of that responsibility. The owner registers his car and gets permission to use it on the streets on certain terms by which he must abide as a licensee. One of these, as Wright J. points out, may be that he should be responsible for the acts of his servants. We, therefore, hold as a matter of law that the master is responsible for the act of his servant whom he permits to use his motor car.

But the learned Chief Presidency Magistrate has very properly pointed out that it is not in every case of improper user by the servant that the master should be punished. There must be permission, express or implied, to use the car. The hired driver is not permitted to ply the car for hire or for his own purposes, nor is he permitted, when he is merely taking the car home after dropping his master or his master's friends, to drive the car recklessly merely for his own amusement or caprice.

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But a general injunction to the chauffeur never to drive the car beyond the regulation speed is not sufficient to get rid of the owner's responsibility. It frequently happens, even when the owner is in the car, that the car is driven, often unwittingly, at an excessive speed. It requires an expert to estimate the actual speed at which a car is moving, but every one is supposed to know when the car is being driven recklessly or without due care and caution. Want of such knowledge cannot be pleaded by the owner who is in the car at the time, and the fact that he is unable to estimate the precise speed of the car is irrelevant. If then the owner who is in the car is liable to punishment for the conduct of his servant, although he may not at the time have realised that the car was being recklessly driven, it seems to us that he is similarly liable if he has placed the car at the disposal of his friends. He has authorised and permitted his servant to use the car to convey his own friends. Once the permission, express or implied, is given, any misuse of the car while that permission lasts is punishable, and the owner is responsible, especially so, as the Chief Presidency Magistrate points out, if, as in this case, the servant is not produced.

The Magistrates can, we think, be trusted not to strain the law so as to punish owners when the chauffeur is improperly using the car for his own purposes, but if the car is being used by the permission of the owner, he is undoubtedly liable to punishment under rule 4 and section 4 of the Act. We, therefore, discharge this rule.

E. H M. *Rule discharged.*