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CRIMINAL LAW AND PROCEDURE -AUTOMOBILES -VIOLATION OF TRAFFIC REGULATIONS - LIABILITY OF REGISTERED OWNER

CRIMINAL LAW AND PROCEDURE — AUTOMOBILES — VIOLATION OF TRAFFIC REGULATIONS — LIABILITY OF REGISTERED OWNER — A traffic ordinance of the city of Boston provided, "No person shall allow, permit, or suffer any vehicle registered in his name to stand or park in any street . . . in violation of any of the rules and regulations of the Traffic Commission of the City of Boston." Under this ordinance defendant, the registered owner of a car, was convicted of overtime parking without any evidence that she herself had parked the vehicle. Defendant appealed. *Held*, under an ordinance such as this absence of criminal intent makes no difference and the registered owner is criminally liable. *Commonwealth v. Ober*, (Mass. 1934) 189 N. E. 601.

This case raises a difficult problem regarding the enforcement of traffic regulations. A policeman checking on overtime parking usually can do no more than take down the number of the car and have the registered owner prosecuted. If the latter demands a trial, the prosecution would probably have to be dismissed, for the officer could not identify the defendant as the driver of the car at the time of the violation.[1] It was apparently to avoid this difficulty that the ordinance in the principal case was passed making the owner criminally responsible for permitting his car to be parked illegally.[2] The court unfortunately treats the question as if it were simply one of whether intent must be proved to hold the defendant liable for violation of a police regulation. The decisions are numerous that absence of intent makes no difference in such a case.[3] But that is really beside the point. The question here is whether a statute can punish a man for the acts of another; for in such a case there may be not only entire lack of criminal intent on the part of the defendant owner, but actually no commission of any wrongful act at all. Cases on the point are almost entirely non-existent. Some courts hold that the owner is liable for a violation where the car is driven by his employee at the time of the offense,[4] or where he is riding in the car at the time; [5] but in the principal case there was no showing that either of these

[1] Rex. v. Ralston, 27 B. C. 563 (1919). *Cf.* City of Buffalo v. Thorpe, 132 Misc. 307, 230 N. Y. S. 187 (1928), where the remedy for a traffic offense was a civil action by the city to enforce a statutory penalty, and it was held that proof of the registration raised a presumption that the owner was the person who had illegally parked the car.

[2] For similar ordinances see Chicago Rev. Code (1931), sec. 2015; Detroit Comp. Ordinances (1926), p. 246; 1930 Supp. to Municipal Code of Cleveland, sec. 2445.

[3] Commonwealth v. Vartanian, 251 Mass. 355, 146 N. E. 682 (1925) (reckless driving); Commonwealth v. Coleman, 252 Mass. 241, 147 N. E. 552 (1925) (using vehicle without authority from owner); People v. Johnson, 288 Ill. 442, 123 N. E. 543, 4 A. L. R. 1535 (1919) (possession of car with manufacturer's serial number removed); Hays v. Schuler, 107 Kan. 635, 193 Pac. 311 (1920), 11 A. L. R. 1433 (1921) (driving without tail light). See the collection of cases in 11 A. L. R. 1434 (1921). For a discussion of the whole subject of intent in offenses under statutes, see Sayre, "Public Welfare Offenses," 33 COL. L. REV. 55 (1933).

[4] Griffiths v. Studebakers, Ltd., [1924] 1 K. B. 102 (violation of conditions of license for limited trade purposes).

[5] Commonwealth v. Sherman, 191 Mass. 439, 78 N. E. 98 (1906). See also Monroe v. State, 23 Ala. App. 441, 126 So. 614 (1930); People v. Colon, 85 Misc. 229, 31 N. Y. Cr. 159, 148 N. Y. S. 321 (1914); and BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW 2055 (1927). Note the dictum in Nager v. Reid, 240 Mass. 211,

facts existed. A British Columbia case [6] on the other hand clearly holds, in the absence of a statute making the owner liable, that it must be shown that the owner was the operator at the time of the offense, or that he had entrusted the car to the operator, and that evidence as to the license number is not enough to hold him. In the principal case, however, we are confronted with an ordinance making the owner liable for permitting his car to be parked illegally. The court assumes that the owner did permit his car to be so parked. If so there is really no question, for he must be criminally liable unless the ordinance is invalid. The only possible attack on it would be that it violated due process of law, but this contention could scarcely be sustained since the state has the right to regulate the use of the highways, and it is submitted that the ordinance in question is reasonably adapted to securing this end.[7] Pennsylvania has a more satisfactory method of attacking the problem. Under the Vehicle Code of that state, evidence as to the license number of the offending vehicle is prima facie evidence that the owner thereof was operating it at the time of the violation.[8] Whether this statute is valid or not depends upon the usual tests as to prima facie evidence statutes — whether the presumption set up is a reasonable one and not conclusive upon the defendant so as to infringe his right to jury trial, and whether it is not so arbitrary as to amount to a denial of due process.[9] In this regard it is submitted that

133 N. E. 98 (1921), to the effect that the owner cannot be held for driving away from the scene of an accident when he was not in the car.

[6] Rex v. Ralston, 27 B. C. 563 (1919) (driving past standing street car).

[7] A state by statute may make the owner personally liable for the negligence of the operator by virtue of ownership alone. See Stapleton v. Independent Brewing Co., 198 Mich. 170, 164 N. W. 520, L. R. A. 1918A 916 (1917); Seleine v. Wisner, 200 Iowa 1389, 206 N. W. 130 (1925); Young v. Masci, 289 U. S. 253, 53 Sup. Ct. 599 (1933) (holding non-resident lender of car liable). See the note in 18 MINN. L. REV. 350 (1934). The Uniform Act Regulating Traffic on the Highways contains two clauses in which the language is similar to that used in the Boston ordinance in the principal case, but so far as can be discovered no reported decision has passed upon the validity of these sections, adopted by 18 states in 1933. See sections 26 and 27 of the act as set forth in HANDBOOK OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, pp. 541-2 (1926).

[8] "In any proceeding for a violation of the provisions of this act or any local ordinance, rule or regulation, the registration plate displayed on such motor vehicle shall be prima facie evidence that the owner of such motor vehicle was then operating the same. If at any hearing or proceeding, the owner shall testify, under oath or affirmation, that he was not operating the said motor vehicle at the time of the alleged violation . . . and shall submit himself to an examination as to who at that time was operating such motor vehicle, and reveal the name of the person, if known to him, . . . then the prima facie evidence arising from the registration plate shall be overcome and removed and the burden of proof shifted." Purd. Pa. Stat. Ann., tit. 75, sec. 739 (Pocket Part 1934). The constitutionality of this statute has not yet been attacked before the appellate courts of the state, though it has been cited in several civil cases: Haring v. Connell, 244 Pa. 439, 90 Atl. 910 (1914); Reed v. Bennett, 276 Pa. 107, 119 Atl. 827 (1923); Coates v. Commercial Credit Co., 310 Pa. 330, 165 Atl. 377 (1933), all cases involving dealers' licenses and thus presenting problems similar to that in Griffiths v. Studebakers, Ltd., [1924] 1 K. B. 102 (supra, n. 4).

[9] See the cases collected in 51 A. L. R. 1139 (1927); Bailey v. Alabama, 219 U. S. 219, 31 Sup. Ct. 145 (1911); Mobile, J. & K. C. R. R. v. Turnipseed, 219

in view of the control an owner ordinarily has over his personal property, it can be presumed that the owner is the operator of the car.[10] The trouble with the principal case is that it is difficult to determine how the court arrived at the conclusion that the owner permitted the car to be parked overtime when the only evidence before it was that of the license number. The car might have been stolen or used by a bailee outside the scope of his authority, in which case it would be placing a strained construction on words to say that the owner "permitted" the illegal parking. The Pennsylvania statute more adequately deals with this difficulty and in such a case places the burden on the defendant of showing these facts. In any event the Pennsylvania statute represents a commendable attempt to make traffic laws enforceable, and since to declare it invalid would lead to chaotic conditions on the highways as the technical difficulty in enforcing the law became known, it is submitted that the courts should go a long way to uphold such an enactment.

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U. S. 35, 31 Sup. Ct. 136, 32 L. R. A. (N. S.) 226, Ann. Cas. 1921A 463 (1910); Commonwealth v. Williams, 72 Mass. (6 Gray) 1 (1856).

[10] City of Buffalo v. Thorpe, 132 Misc. 307, 230 N. Y. S. 187 (1928), though an action for a civil penalty, contains a good discussion of this point.