

a tap placed at the bottom of the can. It is clear from the statements in the case that the Sheriff-Substitute was of opinion that the milk at the bottom of the can was poorer as regards fat than the milk at the top of the can. He states that he held "that there was a duty on the appellant to restore the milk as far as possible to its original condition as regards the distribution of milk fat before selling it, and in respect of his failure to do so I convicted the appellant of the offence charged and fined him £5." I am far from saying that this view may not be a very sensible one. It may be that there is a duty on the dairyman to restore the milk as far as possible to its original condition as regards the distribution of milk fat before selling it. All that I say as regards such a case is that I do not think the facts proved in the present case are sufficient to warrant a conviction on that ground. Further, speaking for myself, I should hold that if such a case is to be made, the accused is entitled to specification in the body of the complaint, otherwise if the complaint is in the ordinary form the result would only be a successful motion for adjournment. I do not think there was a sufficient specification in this complaint of a case of that kind as against the dairyman.

LORD SKERRINGTON—I concur with your Lordships, for the reason explained by your Lordship in the chair.

The Court answered questions 2 and 3 in the negative.

Counsel for the Appellant—Macmillan, K.C.—Hamilton. Agents—Burns & Waugh, W.S.

Counsel for the Respondent—Constable, K.C.—C. H. Brown, A.-D. Agents—Skene, Edwards, & Garson, W.S.

Friday, December 21.

(Before the Lord Justice-General, Lord Mackenzie, and Lord Skerrington.)

MACLEAN v. MAXWELL.

*Justiciary Cases—War—Defence of the Realm—Motor Spirit—"Public Duty"—Attending Church—Order in Council, Dated 10th May 1917 (S.R. and O. 1917, No. 440), Amending the Defence of the Realm Regulations—Defence of the Realm Regulations Consolidated, Article 8 G G.*

A hotelkeeper who held a permit granted under the Defence of the Realm Regulations authorising him to let a motor car for hire, "provided it [was] used only for business purposes, or public duties, or for the conveyance of passengers to and from a railway station or port," hired the car on a Sunday to take the hirer and his wife to church. They attended the Scottish Episcopal Church, and the church was about nine miles from their home. Held that it was a question of circumstances to be

determined by the magistrate whether the hiring of a motor car to enable the hirer to attend church was a contravention of the Regulations regulating the use of motor spirit, and that in the circumstances of the case there was nothing to show that the sheriff-substitute had gone wrong in finding no contravention.

The Order in Council, dated 10th May 1917 (S.R. and O. 1917, No. 440), amending the Defence of the Realm Regulations, and forming Article 8 G G of the Defence of the Realm Regulations Consolidated, provides—"On and after the twelfth day of May Nineteen hundred and seventeen motor spirit shall not be used for the purpose of any motor car let for hire except where the letting of the car—(a) is in connection with ambulance or hospital work, or the conveyance of wounded soldiers, or is to a duly qualified medical practitioner for the purposes of his profession; or (b) is in connection with naval or military or munition service, or the conveyance of munition workers to or from their work; or (c) is authorised by the Board of Trade for any special purpose. If any person uses motor spirit, or causes or permits motor spirit to be used in contravention of this regulation, he shall be guilty of a summary offence against these Regulations. In this regulation the expression "motor spirit" has the same meaning as in Part VI of the Finance (1909-10) Act 1910. Nothing in the regulation shall apply to any motor cab or motor omnibus standing or plying for hire in any street or public place, or in any railway station; but any question as to whether or not a car is exempt under this provision shall be referred to the Board of Trade, whose decision shall be conclusive."

John James Maclean, Procurator-Fiscal, appellant, brought in the Sheriff Court at Kirkcudbright a summary complaint against Samuel Hart Maxwell, hotelkeeper, Twynholm, respondent, in the following terms:—"Samuel Hart Maxwell, hotelkeeper, Star Hotel, Twynholm village, in the parish of Twynholm and Stewartry of Kirkcudbright, you are charged at the instance of the complainer that on Sunday, 7th October 1917, between Barwhinnock House in said parish, occupied by William M'Kie, and Castle-Douglas, in the parish of Kelton and said Stewartry, you did cause or permit motor spirit to be used for the purpose of a motor car let by you for hire to convey passengers to church, contrary to Regulation 8 G G of the Defence of the Realm Regulations and the Defence of the Realm Consolidation Act 1914."

The permit granted to the respondent by the Board of Trade was in the following terms:—"In accordance with the provisions of section (c) of the Regulations 8 G G of the Defence of the Realm Regulations, Motor Car No. , owned by S. H. Maxwell, Star Hotel, Twynholm, N.B., is hereby authorised to be let for hire for the period ending 30th November 1917, provided it is used only for business purposes, or public duties, or for the conveyance of passengers to and from a railway station or port."

On 26th October the Sheriff-Substitute (NAPIER), after repelling objections to the relevancy of the complaint, held the respondent not guilty, against which decision an appeal was taken by Stated Case.

The Case stated—"The respondent owns a motor car, and let it out for hire on Sunday, 7th October, to William M'Kie, Esq., who resides at Barwhinnock, a house near Twynholm, of which he is tenant, in order to take him and his wife to the Scottish Episcopal Church at Castle-Douglas. Castle-Douglas is about nine miles distant from Barwhinnock, and the church there is the church which Mr M'Kie and his wife, who are Episcopalians, attend. Mr and Mrs M'Kie went in the motor car, attended the service, and after it was over Mr M'Kie went to a chemist to get some medicine for his wife which she required, and which he deferred getting until the Sunday, because as he had hired the motor car he expected to be able to get to Castle-Douglas on that day. But whatever Mr M'Kie may have intended to do, I held that the respondent let the car to take Mr M'Kie and his wife to church. At the diet in the case the respondent produced a 'permit for a motor car to be let for hire,' and at the debate quoted the Motor Restriction Order No. 2, 1917. Founding on these he contended that in respect that Mr M'Kie bought the medicine above referred to the car was hired for business purposes, or alternatively, that it was hired to enable the passengers to perform a public duty, to wit, to attend church. I held that the motor car on the date in question was not hired out to be used for business purposes. But in respect that it was hired to convey people to church I held that it was used for 'public duties.' Accordingly I found that the respondent was not guilty."

The questions of law included—"2. Ought the respondent to have been convicted? 3. Was the respondent entitled to let the motor car to Mr M'Kie to convey him and his wife to church?"

Argued for the appellant—The respondent could escape conviction only if the car was hired for public duties, as the car was neither used for business purposes nor for conveyance of passengers to or from a station or port. Attending church was not performing a public duty. Neither the State nor individuals had a right to insist on it. Further, the church attended was not the Parish Church, but was at a distance, and was not an established church. Public duties were duties in connection with the working of departments of State only—The Motor Spirit Restriction Order No. 2, 1917, dated October 11, 1917 (S.R. and O. 1917, No. 1046).

Argued for the respondent—The respondent was entitled to hire the car for the purposes set forth in the permit. Those included public duties. In this realm where the worship of God was a public matter, and the Church was maintained by the State, attending church was a public duty. It did not cease to be so because the respondent may have got a benefit to himself.

LORD JUSTICE-GENERAL—In the view I take of this case it is a question of circumstances to be determined by the magistrate. I can see nothing in this Special Case to indicate to me that the magistrate took a wrong view of the circumstances laid before him. Accordingly I am for answering the second question in the negative and the third question in the affirmative.

LORD MACKENZIE—I am of the same opinion. I am not to be considered as deciding any general question in this case. All I say is that it is not enough to bring a man within the prohibition merely to say that he went to church. Nor am I to be held as saying that in every case any of the lieges can take a motor car on Sunday and go to any church at any distance they think proper.

LORD SKERRINGTON—I am of the same opinion. I protest emphatically against the theory on which the case for the appellant is based, namely, that a person who uses a motor car for the purpose of going to church is necessarily guilty of an offence against these Regulations.

The Court answered the second question of law in the negative and the third in the affirmative.

Counsel for the Appellant—Mitchell, A.-D. Agent—W. J. Dundas, W.S., Crown Agent.

Counsel for the Respondent—Sandeman, K.C.—A. M. Mackay. Agent—H. Bower, S.S.C.

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Saturday, December 22.

(Before the Lord Justice-General, Lord Mackenzie, and Lord Skerrington.)

MACKENNA v. BRADY.

*Justiciary Cases—Public-House—War—Liquor Control—Publican Taking Liquor for his Own Use from his Own Premises—"Supply"—Order of the Central Control Board (Liquor Traffic) for the Scotland West Central Area, dated 12th August 1915, Article 2—Order (Amendment) of the Central Control Board (Liquor Traffic) for the Scotland East Central and the Scotland West Central Areas, dated 16th November 1916, Article 2.*

The licensee of a public-house during prohibited hours removed for his own use from his licensed premises spirits which were part of the stock therein, and contained in bottles which were unlabelled.

Held that the licensee had "supplied" himself with the spirits, and consequently that he had been guilty of offences against the Liquor Control Regulations.

The Order of the Central Control Board (Liquor Traffic) for the Scotland West Central Area, dated 12th August 1915, provides—Article 2, sub-section (2)—"The days and hours on and during which exciseable