

IN THE SUPREME COURT OF JUDICATURE
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE QUEEN'S BENCH DIVISION
(LORD JUSTICE SCHIEMANN)
(MR JUSTICE SMEDLEY)

QBCOF 96/1153/D

Royal Courts of Justice
Strand
London W2A 2LL

Friday 1st November 1996

Before

LORD JUSTICE STUART-SMITH
LORD JUSTICE MORRITT
SIR JOHN MAY

—
REGINA

v.

THE PARKING ADJUDICATOR

Respondent

ex parte THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF WANDSWORTH

Appellant

—
(Computer Aided Transcription of the Stenograph Notes of
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—
MR ALAN WILKIE QC and MR RANJIT BHOSE (instructed by the Borough Solicitor) appeared on behalf of the Appellant.

MR RICHARD GORDON QC (instructed by Parking Committee for London) appeared on behalf of the Respondent.

—
J U D G M E N T
(As approved by the court)

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LORD JUSTICE STUART-SMITH: This is an appeal from the decision of the Divisional Court consisting of Lord Justice Schiemann and Mr Justice Smedley given on 10th July 1996, whereby they dismissed the appellants' application for judicial review of a decision of the Parking Adjudicator given on 18th October and amended on 2nd November 1995. In his decision the Parking Adjudicator had allowed Miss Francis's appeal against penalty charge notices issued by the appellant local authority on 21st October and 4th November 1994. The case concerns the proper constructions of certain provisions relating to parking penalties in London and contained in section 66 and Schedule 6 of the Road Traffic Act 1991. The material facts can be shortly stated.

On 18th October 1994 Miss Francis, the registered keeper of motor vehicle index number PNT 596G, entrusted it to Mr Baker for repair. It remained in his charge until 10th November of that year. During that period on two occasions the car was parked in contravention of the regulations and the appellants' parking attendants fixed penalty charge notices on the car on 21st October and 4th November. When Miss Francis recovered her car there were no penalty charge notices on the vehicle and she was not told of them. In due course the appellants served notices upon Miss Francis pursuant to non-payment of the penalty charge notices. Miss Francis made representations in respect of each notice to the appellants to the effect that she was not the owner of the vehicle at the material time as she had given it to Mr Baker for repair. The appellants rejected this representation and on 10th July 1995 Miss Francis gave notice of appeal to the Parking Adjudicator who after an oral hearing upheld her appeal.

The statutory provisions are contained in section 66 of the Road Traffic Act 1991 and in summary are as follows. If a parking attendant sees a vehicle which is improperly parked he or she either fixes a penalty charge notice to the vehicle or gives it to the person who appears to him to be in charge of the vehicle - subsection (1).

If a penalty charge is payable it is payable by the "owner" of the vehicle - subsection (2).

The penalty charge is payable before the end of 28 days beginning with the date of the notice. If it is paid within 14 days, the sum payable is reduced. If it is not paid within 28 days, a notice to the owner may be served on the person appearing to the authority to be the owner - subsection (3).

A penalty charge notice shall not be removed or interfered with except by the owner, the person in charge or the relevant local authority, and contravention of that constitutes an offence; see subsections (5) and (6). By subsection (7) Schedule 6 of the Act has effect in respect of notices to owners and other matters supplementary to the section.

Going to the schedule, it is headed "Parking Penalties - The notice to owner". Paragraph 1 provides:

"(1) Where -

(a) a penalty charge notice has been issued

(b) the period of 28 days for payment of the penalty charge has expired without that charge being paid,

the London authority concerned may serve a notice ('a notice to owner') on the person who appears to them to have been the owner of the vehicle when the alleged contravention occurred."

Subparagraph (2) provides various matters which must be contained in the notice to the owner, including a notice that the charge must be paid before the end of the period of 28 days; that failure to pay the penalty charge may lead to an increased charge being payable; the amount of that increased charge; and that the person on whom the notice is served, namely the recipient, may be entitled to make representations under paragraph 2.

Paragraph 2 is headed "Representations against notice to owner" and provides in (1):

"Where it appears to the recipient that one or other of the grounds mentioned in sub-paragraph (4) below are satisfied, he may make representations to that effect to the London authority who served the notice on him".

Sub-paragraph (4), which lies at the heart of this case, so far as is material provides as follows:

"The grounds are -

(a) that the recipient -

(i) never was the owner of the vehicle in question;

(ii) had ceased to be its owner before the date on which the alleged contravention occurred; or

(iii) became its owner after that date."

There are various other grounds upon which representations can be made, including that a contravention did not occur; that the vehicle was parked by somebody who was in control of the vehicle without consent of the owner; or that the relevant designation order is invalid; and that the charge exceeded the amount applicable. But the only other material one is:

"(e) that the recipient is a vehicle-hire firm and -

(i) the vehicle in question was at the material time hired from that firm under a vehicle hiring agreement; and

(ii) the person hiring it had signed a statement of liability acknowledging his liability in respect of any penalty charge notice fixed to the vehicle during the currency of the hiring agreement."

Sub-paragraphs (5) and (6) are of some importance and provide as follows:

"(5) Where the ground mentioned in sub-paragraph (4)(a)(ii) above is relied on in any representations made under this paragraph, those representations must include a statement of the name and address of the person to

whom the vehicle was disposed of by the person making the representations (if that information is in his possession)"

(6) Where the ground mentioned in sub-paragraph (4)(a)(iii) above is relied on in any representations made under this paragraph, those representations must include a statement of the name and address of the person from whom the vehicle was acquired by the person making the representations (if that information is in his possession)."

Sub-paragraph (7) then provides that it is the duty of the authority to consider any representations and supporting evidence and to serve a notice of their decision as to whether they accept that the ground in question has been established.

Paragraph 3 concerns cancellation of the notice to the owner and, in summary, it provides that if they accept the ground put forward in the representation the local authority can cancel the notice to the owner and state that the notice served has been cancelled. Sub-paragraph (2) provides:

"The cancellation of a notice to owner under this paragraph shall not be taken to prevent the London authority concerned serving a fresh notice to owner on another person."

By sub-paragraph (3) it is provided that where the ground put forward is paragraph 2(4)(e) the person hiring the vehicle shall be deemed to be its owner for the purposes of the schedule.

Then there are provisions if the local authority reject the representations; there is provision for payment of the penalty or for appeal by the recipient, and there are provisions for the adjudication by the Parking Adjudicator of the issue. It is only necessary I think to refer to paragraph 5(2), which defines the jurisdiction of the adjudicator and this provides as follows:

"On an appeal under this paragraph, the Parking Adjudicator shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in paragraph 2(4) above and may give the London authority concerned such directions as he considers appropriate."

That makes it clear that the questions which the Parking Adjudicator has to consider are those set out in paragraph 2(4) to which I have referred.

There are then provisions whereby, if the local authority view is accepted or upheld, a charging certificate can be issued and the debt recovered as a civil debt.

I must next refer to certain definitions and provisions contained in section 82 of the Act. Subsection (2) provides as follows:

"For the purpose of this Part of this Act, the owner of a vehicle shall be taken to be the person by whom the vehicle is kept."

Subsection (3) states:

"In determining, for the purposes of this Part of this Act, who was the owner of a vehicle at any time, it shall be presumed that the owner was the person in whose name the vehicle was at that time registered under [the Vehicle Excise and Registration Act 1994]."

The original reference was to the previous Act which was replaced by the 1994 Act.

There are material provisions in the Vehicle Excise and Registration Act 1994. By section 21(2) it is provided that:

"[Subject to subsection (3)] Where particulars in respect of a vehicle are furnished to the Secretary of State in accordance with regulations under section 24 before he first issues a vehicle licence for the vehicle, he shall so register the vehicle on receiving the particulars."

Section 22 provides that the Secretary of State may make regulations, inter alia, to:

"(d) require a person by[, through] or to whom any vehicle is sold or disposed of to furnish the particulars prescribed by the regulations in the manner so prescribed,

[(dd) require a person by [or through] whom any vehicle is sold or disposed of to furnish the person to whom it is sold or disposed of with such document relating to the vehicle's registration as may be prescribed by the regulations, and to do so at such time as may be so prescribed.]

(e) provide for the issue of registration documents in respect of the registration of a vehicle,

(f) provide for the transfer, surrender and production of registration documents."

By section 46A, which was introduced at a later time and was not in force at the time of these alleged offences, it is provided in subsection (1):

"Subsection (2) applies where it appears to the Secretary of State -

(a) that a person is a person by, through or to whom a vehicle has been sold or disposed of and that he has failed to comply with regulations made by virtue of section 22(1)(d) requiring him to furnish particulars prescribed by the regulations;

(b) that a person is a person by or through whom a vehicle has been sold or disposed of and that he has failed to comply with regulations made by virtue of section 22(1)(dd) requiring him to furnish a document prescribed by the regulations..."

Then subsection (2):

"The Secretary of State may serve a notice on the person in question requiring him to give the Secretary of State such information as it is in his power to give -

(a) as to the identity of any person who is keeping a specified vehicle or who has kept it at a specified time or during a specified period;

(b) as to the identity of any person by, through or to whom a specified vehicle has been sold or disposed of at a specified time or during a specified period."

Then it is made an offence not to provide that information.

I must next turn to the regulations made pursuant to section 22. They are the Road Vehicles (Registration and Licensing) Regulations 1971; under Regulation 3 it is provided:

"In these Regulations, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say

'owner' in relation to a vehicle means the person by whom the vehicle is kept and the expression 'ownership' shall be construed accordingly."

Regulation 8 enables the Secretary of State before issuing a registration book or a duplicate to the owner to require the owner to satisfy him that the vehicle accords with the prescribed particulars.

Sub-regulation 8(2) provides that the owner must produce the registration book when required to do so by a police officer or a person acting on behalf of the Secretary of State. Sub-regulation (3) relates to surrender of that document in certain circumstances.

Regulation 12, so far as is material, provides as follows:

"(1) On a change of ownership of a mechanically propelled vehicle the previous owner of the vehicle shall deliver the registration book (a) issued in respect of the vehicle ... to the new owner and shall notify in writing forthwith (b) the change of ownership to the Secretary of State stating the registration mark of the vehicle, its make and class and the name and address of the new owner."

Then there are various provisions in relation to the acquiring of a vehicle by a new owner.

The approach taken by the Parking Adjudicator was to say that the presumption contained in section 82(3) was rebuttable; that the critical question was whether Miss Francis was the keeper of the vehicle at the material time or the garage owner, Mr Baker. He considered that the word "keep" was an ordinary English word and that it was a question of fact and degree in each case whether at any time someone other than the person registered as such was the keeper. He was impressed by the fact that a motor car repairer who takes a vehicle for repair is a bailee of it and has a lien which he can exercise against the owner. He went so far as to express the view that a garage owner who had the vehicle for an hour or less might still be keeping the car for the purpose of the Act.

The Divisional Court upheld his decision on the ground that, once it was accepted by counsel for the local authority that the presumption in section 82(3) was rebuttable, the question was at large as to whether on the facts the registered keeper is the owner and the Parking Adjudicator's decision could not be interfered with; it was not Wednesbury unreasonable.

Mr Wilkie QC challenges that conclusion. He submits that the proper approach to the Parking Adjudicator's task should be a step by step process. In the first place the person who will appear to the local authority for the purpose of paragraph 1 of Schedule 6 to be the owner will be the registered keeper. That is a starting point against which the representations under paragraph 2(4)(a) have to be considered. There are only three ways that the presumption can be rebutted, namely by showing that, although he is the registered keeper, he never owned the car - this must involve the proposition that there has been some error in the registration and that he ought not to have been so registered; alternatively, that he has ceased to be the owner before the date of the contravention - here light is shed by paragraph 2(5): there must have been a disposition of the vehicle to another person who should be and in due course will be the registered owner; or, thirdly, that he became the owner after the date of the offence. Here, too, paragraph 2(6) is of assistance because there must have been an acquisition of the vehicle from another after the relevant date. The registration may be correct in that by the time the local authority consult the register the recipient may be the registered keeper and the person from whom the recipient acquired the vehicle was the owner at the material time.

Mr Wilkie submits that the disposition or acquisition referred to in paragraphs 2(5) and 2(6) must be the sort of the disposition that would require the notification of change of ownership as required by Regulation 12 of the 1971 Regulations. This was not the approach of the Parking Adjudicator and if it had been he could not have concluded that merely entrusting the vehicle to Mr Baker for repair amounted to a sufficient disposition to divest Miss Francis of the ownership which was hers by virtue of the registration.

Mr Gordon QC submits that it is not permissible to construe the ordinary English word "keeper" in section 82(2) by reference to the Regulations, which are subordinate legislation, and were, he submits, administrative only and until section 46A of the Vehicle Excise and Registration Act 1994 was enacted, without sanction. He submits that the presumption in section 82(3) does not colour or affect the nature of the enquiry to be conducted by the Parking Adjudicator under paragraph 2(4)(a), which is simply to decide as a matter of fact and degree who was the keeper at the relevant time. He also invited us to consider the corresponding provisions of the Road Traffic Offenders Act 1988. The regime under that Act is different in that it is the driver of the car which is improperly parked who commits a criminal offence. There is a rebuttable presumption that the registered owner is the driver and in many respects similar considerations arise. But I do not derive any assistance in the construction of paragraph 2(4)(a) in Schedule 6 of the 1991 Act from the earlier Act. There is no authority upon it which assists.

Mr Gordon accepted that a disposition which was sufficient for the purpose of paragraphs 2(4)(a) and 2(5) would be one which would require registration under the 1971 Regulations. In my view this plainly must be so. The disposal and

acquisition of the vehicle referred to in paragraphs 2(5) and 2(6) must involve the right to keep the vehicle. Clearly a sale or gift to another would satisfy the requirement but the keeper does not necessarily have to be the owner. The concept does, however, involve both a degree of permanence and the right to use the vehicle for the purpose for which it was manufactured, namely use on the road. Thus, a friend who borrows a car even for a comparatively long period would not as a rule become the keeper, nor would a garage proprietor who takes a vehicle for repair, since he has no right to use it for his own purposes and the duration of his possession of the car is insufficient. It is possible to envisage circumstances where a vehicle repairer might become the keeper, if, for example, the cost of repair was uneconomic and the owner asked the garage to dispose of the vehicle. Special provisions relate to hired vehicles; see paragraph 2(4)(e).

In my judgment it is necessary, when considering whether there has been a sufficient disposition of the vehicle, to satisfy paragraph 2(4)(a)(ii) to rebut the presumption of ownership required by section 82(3) to consider whether it was the sort of disposition which would require notification within Regulation 12 of the 1971 Regulations. The whole concept of ownership for the purpose of this part of the 1991 Act is related to what is or what should be the position in the public record. One starts with what is the position because of the presumption in section 82(3). One then considers what ought to be the position at the time of the offence if there were instantaneous registration of a material disposition or acquisition. Had the Parking Adjudicator approached the matter in this way he could not, in my view, have reached the conclusion which he did.

I would therefore allow the appeal.

LORD JUSTICE MORRITT: I agree.

SIR JOHN MAY: I also agree.

Order: Appeal allowed with costs here and below;
order for certiorari to local authority;
application for leave to appeal to the House
of Lords refused.