

**20/78****COURT OF APPEAL (UK)*****P FOSTER (HAULAGE) LTD v ROBERTS*****Lord Widgery LCJ, O'Connor and Lloyd JJ****26 January; 2 March 1978****[1978] 2 All ER 751; [1978] RTR 302; *The Times Newspaper*, 14 March 1978**

**PRACTICE AND PROCEDURE – PLEA OF GUILTY ENTERED BY LEGAL PRACTITIONER REPRESENTING THE DEFENDANT – MISTAKE BY LEGAL PRACTITIONER AS TO WHETHER OFFENCE WAS ABSOLUTE OR NOT – WHETHER COURT UNDER A DUTY TO ENTER A PLEA OF NOT GUILTY – WHETHER PLEA OF GUILTY WAS UNEQUIVOCAL – EXERCISING DISCRETION TO PERMIT CHANGE OF PLEA.**

A court cannot accept an equivocal plea of guilty, and must obtain an unequivocal plea of guilty or enter a plea of not guilty. However, the court has a discretionary jurisdiction to permit a plea of guilty to be changed to one of not guilty at any time up to sentence, but the jurisdiction is to be exercised only in clear cases and very sparingly. The Divisional Court dismissed an appeal by P. Foster (Haulage) Ltd from the dismissal by Bedford Crown Court (Judge Counsel) of the company's appeal against conviction by North Bedfordshire justices of offences of permitting drivers to work excessive hours, contrary to section 96 of the *Transport Act 1968*. Before the justices the company, who were legally represented, pleaded guilty to 48 such offences and were fined £4,800 with £500 costs. Upon appeal—

**HELD: Appeal dismissed.**

**When the company's solicitor said that the company had pleaded guilty because the offence was absolute the justices were not under a duty to enter pleas of not guilty. They were under a duty to exercise their discretion by testing the validity of the assertion that the sole reason for the plea was their solicitor's mistake about the law. That was exactly what had happened, and the justices had concluded that the company must have known that excessive hours were being worked.**

**O'CONNOR J** in a reserved judgment said that the basis of the company's appeal to the Crown Court was that the justices should have appreciated that the solicitor appearing for the company had mistakenly thought that an offence under section 96 was an absolute offence, that lack of actual or constructive knowledge by the company afforded no defence, and that as soon as that position had emerged the justices themselves ought to have ordered a plea of not guilty to be entered.

The Crown Court, directing itself correctly, limited its inquiry to trying to discover what had happened before the justices. The Crown Court found as facts that the prosecuting solicitor's case was that drivers had been required to work excessive hours because the journeys they were required to make could not be carried out within the permitted hours. In mitigation the company's solicitors, said that as the directors had had no knowledge of how to manage a haulage company, they had employed an experienced transport manager. He called evidence to show that the directors had not been aware that the offences had been committed but had pleaded guilty because the charges were such that they could be guilty without knowledge. The bench, after retirement, said that the company must have been aware of the drivers' excessive hours because of the number of trips they were doing. In refusing to remit the case to the justices the Crown Court said that the fact that there had been a mistake in law by the solicitor did not make the plea equivocal; and that the court had no duty to treat the pleas as one of not guilty when the company was legally represented.

The Crown Court determined three questions of law for the Divisional Court: whether the Crown Court:

- (1) could reasonably have concluded that the plea of guilty was not equivocal;
- (2) was right in law in holding that a mistake by the company and its solicitor as to the nature of the offence charged did not make the plea equivocal; and
- (3) was right in law in holding that although the offence and the Magistrates' Court knew the

company was pleading guilty on the basis that it was absolute nevertheless, because the company was legally represented the court was not obliged to treat its plea as equivocal.

A clear distinction had to be drawn between the duties of a court faced with an equivocal plea at the time it was made and the exercise of the court's jurisdiction to permit a defendant to change an unequivocal plea of guilty at a later stage of the proceedings. A court could not accept an equivocal plea of guilty: it had no discretion in the matter: faced with an equivocal plea the court had either to obtain an unequivocal plea of guilty or enter a plea of not guilty. For a plea to be equivocal a defendant had to add a qualification which, if true, might show that he was not guilty of the offence charged, for example, where a man charged with handling a stolen car pleaded 'guilty but I didn't know that it was stolen'. Not every qualification made a plea equivocal: for instance the burglar charged with stealing spoons, forks and a camera who pleaded guilty, adding 'but I didn't take the camera' was making an unequivocal plea to burglary.

Once an unequivocal plea had been made the position was entirely different. From that stage forward until sentence the court had power to permit the plea to be changed to not guilty, but the exercise of that power was entirely a matter of discretion. That was clearly stated by the House of Lords in *S v Recorder of Manchester* (1971) AC 481. Lord Upjohn, at page 507 said that the discretionary power should be exercised only in clear cases and very sparingly.

In the light of the *Manchester case* three questions had to be answered —

- (1) Were the pleas equivocal? There was no doubt that they were unequivocal pleas of guilty.
- (2) During the proceedings did anything happen which made it clear to the justices that they should consider exercising their discretion to permit a change of plea? The Crown Court answered in the negative because the company was legally represented. That was too drastic a view of legal representation. Where a defendant was legally represented and no application was made to change the plea, it could be rare indeed for the justices to consider exercising their discretion to permit a change of plea. However, the presence of an incompetent lawyer could not act as a bar to the use of the discretionary power. On its findings of fact the Crown Court ought to have answered 'yes' and gone on to inquire into the next question.
- (3) Had it been shown that by not inviting a change of plea the justices had exercised their discretion wrongly? There was only one answer; it had not. When the company's solicitor said that the company had pleaded guilty because the offence was absolute the justices were not under a duty to enter pleas of not guilty. They were under a duty to exercise their discretion by testing the validity of the assertion that the sole reason for the plea was their solicitor's mistake about the law. That was exactly what had happened, and the justices had concluded that the company must have known that excessive hours were being worked. His Lordship would dismiss the appeal.

The Lord Chief Justice and Mr Justice Lloyd agreed.

**APPEARANCES:** Mr Matthew Horton for the company; Mr M.R. Howley for Mr Roberts.

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