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HOUSE OF LORDS

R v TERRY

Lord Fraser of Tullybelton, Lord Scarman, Lord Bridge of Harwich, Lord Brandon of Oakbrook and Lord Brightman

28 November, 15 December 1983

[1984] AC 374; [1984] 1 All ER 65; [1984] 2 WLR 23; [1984] RTR 129; 78 Cr App R 101.

MOTOR TRAFFIC – REGISTRATION LABEL – USE OF LABEL FROM ONE VEHICLE IN RESPECT OF ANOTHER – WHETHER FRAUDULENT USE OF LABEL: MOTOR CAR ACT 1958, S84.

Section 84(1) of the *Motor Car Act 1958* (Vic.) provides:

"Every person who

(a) forges;

(b) fraudulently alters or uses; or

(c) fraudulently lends or allows to be used by any other person—

any notice registration label certificate licence or other instrument or any identifying number or general identification mark ... shall be guilty of an offence against this Act."

Section 26(1) of the *Vehicles (Excise) Act 1971* (UK) ('Act') provides (so far as relevant):

"If any person forges or fraudulently alters or uses ...

(a) any mark to be fixed or sign to be exhibited on a mechanically propelled vehicle; or ...

(b) any licence or registration document under this Act,

he shall be liable on summary conviction to a fine ...

T. hired a motor car. When he returned it 3 days later, the registration label was missing. 10 days later when driving his own motor car without a registration label affixed, T. was intercepted by a police officer. When asked why there was no label affixed, T. picked up the label he had taken from the hire car and said: "I don't think this is the right one". Upon inspection of the label, the police officer noticed that the label did not relate to T.'s motor car. Subsequently T. was charged with fraudulently using the registration label and was convicted. On appeal to the Court of Appeal, Criminal Division, the conviction was quashed on the ground that it had not been shown that T. had used the label in an attempt to evade paying the proper registration fee and thereby had not acted "fraudulently" within the meaning of s26(1) of the Act. On appeal to the House of Lords—

HELD: Appeal allowed. Conviction restored.

(1) There is no relevant difference of meaning between "with intent to defraud" as considered in *Welham v DPP* [1961] AC 103; [1960] 2 WLR 669; [1960] 1 All ER 805; (1960) 44 Cr App R 124; and the word "fraudulently" as used in s26(1) of the Act.

(2) The word "fraudulently" should not be applied only to attempts to avoid payment of the proper registration fee. It should be given a wide meaning to cover cases where a person by deceit, causes a person responsible for a public duty to act – or refrain from acting – in a way in which he otherwise would not have acted.

***Welham v DPP* (supra), applied.**

***R v Manners-Astley* [1967] 1 WLR 1505; [1967] 3 All ER 899, overruled.**

LORD FRASER OF TULLYBELTON (with whom the other Law Lords agreed) [*after setting out the facts, the course of the case and the relevant provisions of s26(1) of the Act, continued*]: ... **[All ER at 66]** My Lords, the meaning of the words 'with intent to defraud' was considered by this House in *Welham v DPP* [1961] AC 103; [1960] 1 All ER 805; (1960) 44 Cr App R 124; [1960] 2 WLR 669. For the purposes of this appeal there is in my opinion no relevant difference of meaning between 'with intent to defraud' and 'fraudulently'. In *Welham v DPP* the appellant was convicted under s6 of the *Forgery Act 1913* on a charge of having 'with intent to defraud' uttered a forged hire-purchase proposal and a forged hire-purchase agreement. His defence was that he [67] had no intention of defrauding the finance companies which advanced money and that the reason for bringing the forged documents into existence was to evade credit restrictions by misleading

the relevant authorities into thinking that the finance companies were advancing money not as straight loans (which would have been illegal) but under hire-purchase agreements (which would have been legal). His appeal against conviction was dismissed by the Court of Criminal Appeal, whose decision was affirmed by this House. The grounds of decision by this House were that "with intent to defraud" was not confined to the idea of depriving a person by deceit of some economic advantage or inflicting on him some economic loss, but that they applied where a document was brought into existence for no other purpose than of deceiving a person responsible for a public duty into doing something that he would not have done but for the deceit, or not doing something that but for it he would have done. I shall cite two passages from the speech of Lord Radcliffe (see [1960] 1 All ER 805 at 808, [1961] AC 103 at 123-124), with whose speech Lord Tucker, Lord Keith and Lord Morris agreed. The first is as follows:

"Now I think that there are one or two things that can be said with confidence about the meaning of this word "defraud". It requires a person as its object; that is, defrauding involves doing something to someone. Although in the nature of things it is almost invariably associated with the obtaining of an advantage for the person who commits the fraud, it is the effect on the person who is the object of the fraud that ultimately determines its meaning. Secondly, popular speech does not give, and I do not think ever has given, any sure guide as to the limits of what is meant by "to defraud". It may mean to cheat someone. It may mean to practise a fraud on someone. It may mean to deprive someone by deceit of something which is regarded as belonging to him or, though not belonging to him, as due to him or his right."

In the second passage, after referring to a dictionary definition and to the writings of Rudyard Kipling, Lord Radcliffe went on:

"There is nothing in any of this that suggests that to defraud is, in ordinary speech, confined to the idea of depriving a man by deceit of some economic advantage or inflicting on him some economic loss. Has the law ever so confined it? In my opinion, there is no warrant for saying that it has. What it has looked for in considering the effect of cheating on another person and so in defining the criminal intent is the prejudice of that person ... Of course, as I have said, in ninety-nine cases out of a hundred the intent to deceive one person to his prejudice merely connotes the deceiver's intention of obtaining an advantage for himself by inflicting a corresponding loss on the person deceived. In all such cases, the economic explanation is sufficient. But in that special line of cases where the person deceived is a public authority or a person holding a public office, deceit may secure an advantage for the deceiver without causing anything that can fairly be called either a pecuniary or an economic injury to the person deceived. If there could be no intent to defraud in the eyes of the law without an intent to inflict a pecuniary or economic injury, such cases as these could not have been punished as forgeries at common law in which an intent to defraud is an essential element of the offence, yet I am satisfied that they were regularly so treated."

Lord Denning with whose speech Lord Radcliffe expressed his agreement, said ([1960] 1 All ER 805 at 816, [1961] AC 103 at 134):

"... it appears that the appellant on his own evidence had an intent to defraud; because he uttered the hire-purchase documents for the purpose of fraud and deceit. He intended to practise a fraud on whomsoever might be called on to investigate the loans made by the finance companies to the motor dealers. Such a person might be prejudiced in his investigation by the fraud. That is enough to show an intent to defraud."

Welham v DPP was considered by the Court of Appeal in *R v Manners-Astley* ([1967] 3 All ER 899; [1967] 1 WLR 1505), where the appellant had been convicted of fraudulently using an excise licence contrary to s17(1) of the 1962 Act by displaying a vehicle licence issued for one vehicle on another vehicle. The Court of Appeal quashed the conviction on two grounds, one of which was that the jury had not been directed to consider whether the appellant had intended to defraud the Excise by avoiding payment of the licence fee. The Court of Appeal distinguished the decision in *Welham* as being one limited to cases under the *Forgery Act* 1913. In taking that limited view of the decisions the court was, in my respectful opinion, wrong. The speeches in *Welham* were directed to the meaning of 'intent to defraud' in general and were not limited to its meaning in the *Forgery Act* 1913. I agree with the view expressed by Viscount Dilhorne in *Scott v Commr of Police for the Metropolis* [1974] UKHL 4; [1975] AC 819 at 838; [1974] 3 All ER 1032 at 1037; [1974] 3 WLR 741; (1974) 60 Cr App R 124, where he said:

"While the meaning to be given to words may be affected by their context and Lord Radcliffe (in

Welham) was only considering the meaning of intent to defraud in s4 of the *Forgery Act* 1913, the passages which I have cited from his speech are, I think, of general application ..."

(The passages cited by Viscount Dilhorne were those in the first quotation that I have made above). Lord Diplock, who also took part in the decision of *Scott v Commr of Police for the Metropolis* summarised the law in three propositions, of which the third was as follows ([1974] 3 All ER 1032 at 1040, [1975] AC 819 at 841):

"Where the intended victim of a "conspiracy to defraud" is a person performing public duties as distinct from a private individual it is sufficient if the purpose is to cause him to act contrary to his public duty, and the intended means of achieving this purpose are dishonest. The purpose need not involve causing economic loss to anyone."

In the present case I see nothing in s26(1) of the *Vehicles (Excise) Act* 1971 which leads me to think that the word "fraudulently" ought to be given a more limited meaning than that attributed to the words "intent to defraud" in *Welham v DPP*. On the contrary the context indicates that they should bear a wide meaning. One of the offences created by s26(1)(a) is fraudulently using any mark (i.e. a number plate) which is required to be fixed to a vehicle: see s19(1). It is easy to imagine cases where false number plates might be used by dishonest persons for the purpose of deceiving police officers and causing them to act in the way that they would not otherwise have acted, without any intention of evading payment of the licence fee, and I have no doubt that s26(1) is applicable to such cases. There is nothing in the section to exclude the application of the general rule stated in *Welham*.

I am accordingly of opinion that the decision in *R v Manners-Astley* was erroneous and should now be overruled. It follows that the decision of the Court of Appeal, Criminal Division in the present appeal was wrong. For these reasons I would allow the appeal and restore the conviction of the respondent. The first alternative in the certified question should be answered in the negative, and the second alternative in the affirmative.
