

Goulding J. Nationwide Bldg. Society v. Bateman (Ch.D.) [1978]

plaintiff's knowledge in accordance with R.S.C., Ord. 88, r. 6 (4). The deponent must show his office in the plaintiff's organisation, where the plaintiff is a corporation; he need not give sources of information and belief, since his unqualified assertion implies that he has ascertained the knowledge of those persons whose knowledge can be treated as the plaintiff's.

Declaration accordingly.

Solicitors: *Church Adams Tatham & Co.*

K. N. B.

[QUEEN'S BENCH DIVISION]

* CORBYN v. SAUNDERS

1977 Dec. 8; 20

Lord Widgery C.J., Cumming-Bruce L.J.
and Park J.

Railway—Carriage of passengers—Fare—Intent to avoid payment of—Purchase of ticket for journey shorter than intended journey—Intention to pay difference only if future request made—Whether “intent to avoid payment”—Regulation of Railways Act 1889 (52 & 53 Vict. c. 57), s. 5 (3) (a) (as amended by Transport Act 1962 (10 & 11 Eliz. 2, c. 46), s. 84 (2))

The defendant repeatedly, with the intention of making a journey on London Underground railway longer than one covered by a 10p fare, purchased a ticket for 10p. On leaving the station at his intended destination he handed to the ticket collector the 10p ticket and a form indicating that he intended to pay the appropriate additional fare only on request at some future date. He was charged with unlawfully travelling on the railway without having previously paid his fare and with intent to avoid payment thereof, contrary to section 5 (3) (a) of the Regulation of Railways Act 1889¹. His defence was that, since it had not been proved that he intended permanently to avoid payment of the proper fare, the information should be dismissed. The magistrate was of opinion that the intent to avoid payment was proved, and convicted the defendant.

On appeal against conviction:—

Held, dismissing the appeal, that there was no reason to import the word “permanently” into section 5 (3) (a); and that an intention not to pay unless later requested to pay was an intention to avoid payment within section 5 (3) (a) so that, since the defendant had no intention of paying unless London Transport pursued him for the money, his intent to avoid payment was proved.

Per curiam. If a person, when travelling, intends to travel beyond the destination of the fare paid, he travels the additional distance with intent to avoid the required payment therefor; and if he fails to tender the outstanding balance of the fare, at the latest, when passing the ticket collector on the station of destination, the requisite intent to avoid payment within section 5 (3) (a) is proved (post, p. 403c-d).

No cases are referred to in the judgment.

¹ Regulation of Railways Act 1889, s. 5: “(3) If any person—(a) Travels or attempts to travel on a railway without having previously paid his fare, and with intent to avoid payment thereof; . . . he shall be liable . . . to a fine . . .”

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- A The following cases were cited in argument:
Bremme v. Dubery [1964] 1 W.L.R. 119; [1964] 1 All E.R. 193, D.C.
Murphy v. Verati [1967] 1 W.L.R. 641; [1967] 1 All E.R. 861, D.C.

CASE STATED by Metropolitan Stipendiary Magistrate (P. W. Goldstone) sitting at Marylebone.

- B On November 30, 1976, 46 informations were preferred by the prosecutor, Robert Saunders, against the defendant, Piers Corbyn, charging that he on each of the occasions listed in the informations at the railway stations therein mentioned did unlawfully travel on the railway there situate without having previously paid his fare and with intent to avoid payment thereof, contrary to section 5 (3) (a) of the Regulation of Railways Act 1889 as amended by section 84 (2) of the Transport Act 1962.
- C The magistrate heard the informations together, with the consent of both parties, on May 10, 1977. The prosecutor put forward evidence by way of statements made under section 9 of the Criminal Justice Act 1967, by Christopher Patrick Daly, relief leading railman 550 of Marylebone Bakerloo Line Station, and Garard Pires, station inspector, of Oxford Circus Bakerloo and Central Line Station, the sworn evidence of ex-Police Constable 158LT Robert Saunders, and certain facts admitted under the provisions of section 10 of the Criminal Justice Act 1967. Evidence was neither given nor called by the defendant and the following facts were found. The defendant had made the journeys to and from the stations on the London Underground railway as shown in the schedule attached to the case [consisting of 46 entries showing a total of £9.95 fares outstanding]. On each occasion he purchased a 10p ticket for the fare as shown in the schedule at the commencement of the journey. On each occasion the fare he paid was less than the correct fare for the journey he intended to take as shown in the schedule. The magistrate was not satisfied, and indeed it was not contended on behalf of the prosecutor, that the defendant intended permanently to avoid payment of the fare, but was satisfied that prior to the commencement of each journey he intended, having only paid an insufficient amount for the journey he took,
- F to defer payment of the balance of the fare by giving his name and address on a form, at the conclusion of the journey taken; a sample form was exhibited to the case.

- G It was contended by the defendant that, since it had not been proved that he intended permanently to avoid payment of the proper fare, each of the informations should be dismissed. It was contended by the prosecutor that since the defendant did not intend to pay the proper fare either before or at any time while travelling he was guilty on the informations alleged since that was a sufficient intent for the purposes of section 5 (3) (a) of the Act of 1889 and the other ingredients of the offences were proved.

- H The magistrate was of opinion that the defendant could "previously pay his fare" certainly up to the exit barrier and perhaps even up to the point of leaving railway property but that, since he commenced each journey alleged intending not to pay the proper fare at any time before reaching or at the time of leaving the railway property but only on request at some future date, he was guilty of each offence, and accordingly the defendant was convicted on each information.

The defendant appealed. The question for the opinion of the court was whether the intent to avoid payment referred to in section 5 (3) of the Regulation of Railways Act 1889 was an intention permanently to

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avoid payment, as the defendant maintained, or whether an intention to avoid "previous payment" of the fare was sufficient. A

H. N. Spooner for the defendant.

Anthony Scrivener Q.C. and *Anthony Porten* for the prosecutor.

Cur. adv. vult. B

December 20. LORD WIDGERY C.J. Cumming-Bruce L.J. will give the first judgment.

CUMMING-BRUCE L.J. read the following judgment. This is an appeal by case stated by a Metropolitan stipendiary magistrate (P. W. Goldstone), in respect of his adjudication on May 10, 1977, sitting at Marylebone. C

On November 30, 1976, 46 informations were preferred by the prosecutor against the defendant that he on each of the occasions listed in the informations at the railway stations therein mentioned did unlawfully travel on the railway there situate without having previously paid his fare and with intent to avoid payment thereof, contrary to section 5 (3) (a) of the Regulation of Railways Act 1889 as amended by section 84 (2) of the Transport Act 1962. D

The facts are in a short compass. On the 46 occasions specified in the information the defendant travelled on the London Underground. On each occasion he purchased a ticket for 10p, and the fare he paid was less than the correct fare for the journey he intended to take, and in fact took. On arrival at his destination he delivered to the ticket collector his ticket for 10p and a form which read: E

"To London Transport Executive. Date 19-7-76" (or the appropriate date) "I have today travelled from . . . to . . . and tendered a ticket for 10p. Should you wish to recover the outstanding sum, my name and address is: Name P. P. Corbyn. Address 14 Rust Square S.E.5. Signed. . ."

In the blank spaces he entered on each occasion the station of departure and arrival, and he signed his name in the appropriate space. The outstanding sum due in respect of the journeys specified in the informations was £9.95. F

There is no issue upon the fact alleged in each information that on each occasion he travelled on the railway to the railway station at the destination alleged without having previously paid his fare. The magistrate convicted him, holding that the intent to avoid payment was proved. The defendant submits that that intent was not proved. G

The facts as to his intent that are found in the case are (a) prior to the commencement of each journey he intended, having only paid an insufficient amount for the journey he took, to defer payment of the balance of the fare by giving his name and address on the form I have described at the conclusion of the journey taken; and (b) he commenced each journey intending not to pay the proper fare at any time before reaching or at the time of leaving the railway property but only on request at some future date. H

It is, therefore, perfectly plain that throughout the period that he was travelling on the railway he did not intend to pay the prescribed fare until after he had ceased to travel, and that his intention was only to pay if the railway authorities requested payment.

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Cumming-Bruce L.J.

A It was contended on his behalf that, in order to prove an offence under section 5 (3) (a), the prosecution had to prove an intention never to pay the proper fare, i.e., an intent permanently to avoid payment. There is no reason for importing into the section the adverb "permanently." It is clear on the facts that he did not intend to pay the proper fare unless and until the railway authorities tracked him down and requested payment. That is quite enough to constitute an intent to avoid payment. It is perfectly plain that he had no intention of paying unless London Transport pursued him for the money. His intention was not an unqualified intention to make the prescribed payment, but an intention not to pay unless later requested to pay. That is an intention to avoid payment.

B That is enough to dispose of this appeal, but the same result is reached by another route. It is clear from the first clause of section 5 (3) (a) that the traveller is not to travel on the railway without paying the fare for the intended journey before he begins that journey. The intention that has to be proved is intention to avoid that obligation, i.e., payment of the proper fare before he begins his journey. Likewise, if he buys a ticket which is the prescribed fare to a destination, but when he travels he intends to travel beyond that destination without previously paying for the additional distance, he travels that additional distance with intent to avoid the required payment therefor. In that case, if he fails to tender the outstanding balance of the fare, at latest, when passing the ticket collector on the station of destination, the requisite intent to avoid payment is proved.

E PARK J. I agree.

LORD WIDGERY C.J. I also agree.

*Appeal dismissed.
Prosecutor's costs out of central funds.*

F Solicitors: *Douglas-Mann & Co.; V. J. Moorfoot.*

L. N. W.

[COURT OF APPEAL]

G * LEWIS AND ANOTHER v. WOLKING PROPERTIES LTD.

1977 May 31;
June 1

Orr and Geoffrey Lane L.JJ.

H *Landlord and Tenant—Business premises (security of tenure)—Application for new tenancy—Application not served within one month from issue—Jurisdiction of county court to extend time—County Court Rules 1936 (S.R. & O. 1936 No. 626 (L. 17)) (as amended 1936–1976), Ord. 8, r. 35; Ord. 13, r. 5¹*

On August 23, 1976, the respondent tenants applied to the county court under section 24 of the Landlord and Tenant Act 1954 for a new tenancy of business premises. The county

¹ County Court Rules 1936, Ord. 8, r. 35: see post, p. 406C-E. Ord. 13, r. 5: see post, p. 406H.