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Criminal Law—Statutory Construction—"Knowingly Authorize or Permit Operation of Auto by Unlicensed Driver"

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103.0 of the Administrative Code of the City of New York prohibiting the maintenance at gas stations of signs larger than twelve inches by twelve inches "referring directly or indirectly to the price of gasoline."[102] Therefore it was improper for the Court of Special Sessions to dismiss the complaint upon appeal from a conviction in the Magistrate's Court. Since the reversal by Special Sessions was upon the facts as well as the law, however, a new trial was ordered.[103]

Statutory Construction — "Knowingly Authorize or Permit Operation of Auto by Unlicensed Driver"

In *People v. Shapiro*[104] the defendant was convicted of a violation of Section 20(4-a) of the Vehicle and Traffic Law, which provides in part: "Nor shall any person knowingly authorize or permit the operation or driving of a motor vehicle owned by him or in his charge upon a public highway of the state by any person who is not duly licensed." At the trial, a police officer testified that he had stopped an automobile and found that the operator was unlicensed and that defendant, who was seated in the front seat, was admittedly the owner. Upon this factual basis, defendant was convicted. The Appellate Division reversed this conviction on the ground that there was no proof that defendant authorized or permitted the operation of his automobile by a person whom he knew to be an unlicensed driver. On appeal, the People argued that the prosecution was not required to so prove, since the statute should be construed as imposing a duty upon the automobile owner to inquire whether a person is licensed to operate a motor vehicle before permitting him to drive. Rejecting this argument, however, the Court of Appeals affirmed the order of the Appellate Division for a new trial.

Since violation of section 20(4-a) of the Vehicle and Traffic Law is not merely a traffic infraction, but a misdemeanor,[105] the Court construed the statute strictly against the party seeking its enforcement.[106] Thus the Court concluded that the word "knowingly" as used in the statute imposes upon the prosecution the burden of proving knowledge on the part of the accused of facts sufficient to constitute the crime.[107] Knowledge that the operator was not licensed is an

102. People v. 25 Stations, Inc., 3 N.Y.2d 488, 168 N.Y.S.2d 962 (1957).
103. In *People v. Bellows*, 281 N.Y. 67, 22 N.E.2d 238 (1939), which was followed in the present case, it was held, "It is a question of law whether from any view of the testimony, there was a question of fact regarding the defendants' guilt which should have been submitted to the trial judge or to the jury and not disposed of by dismissal in the appellate court." Thus review by the Court of Appeals did not constitute a review of the facts as prohibited by Article VI §7 of the Constitution of the State of New York. But since reversal by the apellate court below was on the facts as well as well as the law a new trial was required.
104. 4 N.Y.2d 597, 176 N.Y.S.2d 632 (1958).
105. N. Y. VEHICLE AND TRAFFIC LAW, §70.
106. See MCKINNEY'S CONSOLIDATED LAWS, STATUTES, §271.
107. N. Y. PENAL LAW, §3.

essential ingredient of this crime and therefore proof that defendant authorized the operator to drive his car, without more, will not suffice.

The dissent took issue with the majority on the ground that the legislative intent would be undermined by placing such a burden on the prosecution since the aim of the statute is to impose criminal responsibility upon the owner whenever an unlicensed person operates the motor vehicle with the authorization of the owner. It argued that the majority, in holding it incumbent upon the People to establish that the owner knew the person he had permitted to operate his motor vehicle was unlicensed, attributed to the legislature the enactment of a self-defeating measure.

In the light of traditional interpretation of penal statutes, the majority's position seems a sound and reasonable expression of the common law maxim that mens rea is an essential ingredient of a crime.[108] Unless the legislature expressly provides otherwise, the burden of proof of such intent is on the prosecution.[109] So-called public welfare offenses have been held punishable without regard to any mental element, but these have been offenses of a merely regulatory nature, involving monetary fines rather than imprisonment.[110]

Validity of Plea Made on Sunday

Section 5 of the Judiciary Law prohibits, with certain exceptions, the transacting of any business by the courts on Sunday. The exception upon which the case of *People v. Reedy*[111] turned was added by amendment in 1930 and reads: "except . . . for the receipt by a court of special sessions of a plea of guilty and the pronouncement of a sentence thereon in any case in which such court has jurisdiction."

The defendant was arrested on Saturday for driving while intoxicated and was brought before the court the following day when he pled guilty to the charge and was fined. On appeal, the Court rejected the contention that section 5 had been violated. The facts came within the express language of the exception.

Absence of Exit Speed Signs Not Fatal to Conviction for Speeding Where Reasonable Notice of Speed Limit Given — Per Curiam

A village ordinance proscribed traffic within the village at a speed greater than twenty-five miles per hour, imposed a fine for violation of the ordinance, and

108. See People v. D. H. Ahrend Co., 308 N.Y. 112, 123 N.E.2d 799 (1954); People v. McHugh, 271 App.Div. 135, 63 N.Y.S.2d 319 (3d Dep't 1946); compare People v. Rosenthal, 197 N.Y. 394, 90 N.E. 991 (1910), aff'd, 226 U.S. 260 (1912).
109. People v. Pieri, 269 N.Y. 315, 199 N.E. 495 (1936).
110. See Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55 (1933).
111. 4 N.Y.2d 123, 173 N.Y.S.2d 1 (1958).