

basis of the law as it stood with reference to this case, the taxpayer's contention appears to us correct and the appeal should be allowed.

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1919.

MELROSE
v.
FEDERAL
COMMISSIONER OF
TAXATION.

Appeal allowed. Order appealed from discharged with costs. Objection of the taxpayer sustained. Respondent to pay costs here and below.

Solicitors for the appellant, *Homburg, Melrose & Homburg.*

Solicitor for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.

[HIGH COURT OF AUSTRALIA.]

MUNICIPAL TRAMWAYS TRUST AND }
OTHERS. } APPELLANTS;
DEFENDANTS,

AND

SCOTT RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF
SOUTH AUSTRALIA.

Assault—Defence—Justification—Tramway owner and passenger—Obstruction of tramway official in performance of his duty—Breach of by-law—Refusal by passenger to give his name and address—Municipal Tramways Trust Act 1906 (S.A.) (6 Edw. VII., No. 913), secs. 95, 96.

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ADELAIDE,
Sept. 30.

Sec. 95 of the *Municipal Tramways Trust Act 1906* (S.A.) provides that no person shall "obstruct any person employed on" a tram-car "in the performance of his duty," and imposes a penalty upon a breach of the provision.

Barton, Isaacs,
Gavan Duffy
and Rich JJ.

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Sec. 96 authorizes any officer of the Trust to seize and detain any person who commits or attempts to commit that offence and whose name or residence is unknown to the officer.

One of the by-laws of the Trust made under the Act provided that “ Every passenger whilst travelling upon a tram or upon quitting a tram shall upon request by the conductor give to such conductor his full name and address,” and imposed a penalty in respect of a breach of the by-law.

Held, that the refusal by a passenger to give his name and address upon a request by the conductor to him to do so did not amount to obstruction of the conductor in the performance of his duty, and therefore would not justify the seizure and detention of the passenger.

Decision of the Supreme Court of South Australia affirmed.

APPEAL from the Supreme Court of South Australia.

An action was brought in the Supreme Court by William Charles Scott against the Municipal Tramways Trust and three of its employees, Edward John Turver, Thomas William Edward Lang and Albert Edward Ovenden, to recover £500 damages for an assault and wrongful detention alleged to have been committed by the three individual defendants upon the plaintiff shortly after he had alighted from a tram-car of the defendant Trust in which he had been a passenger. The action was heard before *Buchanan J.* and a jury. The material defence of the defendants was based on secs. 95 and 96 of the *Municipal Tramways Trust Act 1906* and by-laws 24 and 30 made under that Act. Sec. 95 provides (*inter alia*) that “ No person shall—(1) While travelling, or after having travelled in any carriage belonging to the Trust, avoid or attempt to avoid payment of his fare; or . . . (5) Obstruct any person employed on a tramway or any such carriage in the performance of his duty . . . Penalty, Two pounds.” Sec. 96 provides that “ Any officer or servant of the Trust . . . may seize any person discovered either in or after committing or attempting to commit any offence mentioned in any of the three last preceding sections, whose name or residence is unknown to such officer or servant, and may detain him until he can be conveniently taken before a justice, or until he is lawfully discharged.” By-law 24 provides that “ (1) Every passenger during the journey for which he has been furnished with a cash check . . . shall retain such cash check . . . and

shall produce and hand over for inspection if required by the conductor" (which term includes an inspector and a ticket examiner) "and as often as so required such cash check . . . (if any) in an undefaced state or condition except for the conductor's snip. (2) Any passenger failing to comply with any of the requirements of clause 1 of this by-law shall pay the fare legally demandable for the distance travelled over by such passenger. Penalty, Five pounds." By-law 30 provides that "(1) Every passenger whilst travelling upon a tram or upon quitting a tram shall upon request by the conductor give to such conductor his full name and address. Penalty, Five pounds." In support of this defence evidence was given that, before the plaintiff alighted from the tram-car in which he was travelling, the defendant Turver, who was a ticket examiner, asked the plaintiff for his ticket; that the plaintiff did not produce it, but alighted from the tram-car, which had then stopped; that Turver then asked the plaintiff for his name and address, which the plaintiff refused to give; that Turver and the two other individual defendants thereupon seized the plaintiff and kept him in custody until a police officer arrived, to whom the plaintiff gave his name and address.

Buchanan J., in his summing-up, directed the jury that there was no evidence that the plaintiff had avoided or attempted to avoid payment of his fare; that the failure of the plaintiff to produce his ticket when requested was not an obstruction of Turver in the performance of his duty, for his proximate duty upon such failure was to demand another fare, which he did not do; and that, if the jury found that the failure by the plaintiff to produce his ticket was a reasonable ground for Turver requesting the plaintiff to give his name and address, they might find that the plaintiff by refusing to give his name and address had obstructed Turver in the performance of his duty. He also directed the jury that under by-law 30 a request for the name and address of a passenger might be made after the passenger had alighted from the car and so long as it remained apparent that the passenger had just left the car. The jury found a verdict for the defendants. Thereupon the plaintiff obtained an order *nisi* for a new trial, one of the grounds being misdirection, and the Full Court by a majority (*Murray C.J.*

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H. C. OF A. and Gordon J., Buchanan J. dissenting) made the order *nisi* absolute,
 1919. holding (*inter alia*) that there was no evidence upon which it was
 ~~~~~ competent for the jury to find that it was Turver's duty to obtain  
 MUNICIPAL the plaintiff's name and address.  
 TRAMWAYS  
 TRUST

v. From that decision the defendants now appealed to the High  
 SCOTT. Court.

On the appeal coming on for hearing, objection was taken that an appeal did not lie as of right, but the Court, without deciding the point, granted special leave to appeal, the appellant Trust undertaking to abide by any order as to costs which the Court might make.

*Villeneuve Smith* K.C. (with him *Alderman*), for the individual appellants. Both the failure of the respondent to produce his ticket when requested to do so and his refusal to give his name and address were obstructions of Turver in the performance of his duty, within the meaning of sec. 95 of the *Municipal Tramways Trust Act* 1906. It was Turver's duty to obtain the name and address of the respondent; his evidence is to that effect, and that duty is implied in by-law 30. There being a duty imposed upon Turver to obtain the respondent's name and address and a correlative duty upon the respondent to give it when requested so to do, a breach by the respondent of his duty is an obstruction of Turver in the performance of his duty.

[ISAACS J. By-law 30 does not put any duty upon a conductor. Even if it does, the duty is to request the passenger's name and address, and that duty was performed by Turver.]

The words "upon quitting" in by-law 30 cover the case of a passenger who has just alighted from a tram-car.

*O'Halloran*, for the appellant Trust, referred to *Borrow v. Howland* (1). The failure of the respondent to produce his ticket was an obstruction of Turver in the performance of his duty to examine the respondent's ticket.

*C. T. Hargrave* and *W. J. Gunson*, for the respondent, were not called upon.

The judgment of the COURT, which was delivered by BARTON J., H. C. OF A.  
was as follows :— 1919.

On the facts which are before us we are all of opinion that the conduct of the plaintiff in refusing to give his name and address does not amount to obstruction of the servants of the defendant Trust in the performance of their duties. That was the only question as to obstruction on which a new trial was ordered, being the only such question left to the jury, and therefore we think the verdict cannot stand. We are not prepared to assent to the proposition that it was not competent to the jury to base a verdict for the defendants on the non-production of the ticket, because we are not called upon to express our opinion upon it, and the question has not been argued here. We forbear from any expression which might hamper the new trial, but we dismiss the appeal with costs on the ground stated.

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*Appeal dismissed, with costs.*

Solicitors for the appellants, T. S. O'Halloran ; Villeneuve Smith  
& Alderman.

Solicitors for the respondent, W. & G. Gunson.

B. L.