on the one hand, and the States of Queensland and Tasmania on the other hand, and do not as a law treat all the States alike.

The demurrer should, therefore, be overruled.

Demurrer overruled.

Solicitors for the plaintiff, *Edmunds, Jessop & Ward*, Adelaide, by *Dawson, Waldron, Edwards & Nicholls.*

Solicitor for the defendants, *W. H. Sharwood*, Crown Solicitor for the Commonwealth.

J. B.

[HIGH COURT OF AUSTRALIA.]

BLYTH . . . . . APPELLANT;
INFORMANT,

AND

HUDSON . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

Motor Omnibus—Licensing—Definition of "motor omnibus"—"Carrying passengers for reward at separate and distinct fares"—Offence—Owner of vehicle operating on road—Vehicle not licensed as motor omnibus—Owner employed for lump sum for journey—Fares collected by employers—Motor Omnibus (Urban and Country) Act 1927 (*Vict.*) (*No.* 3570), *secs.* 3, 31, 40.

The definition of "motor omnibus" in sec. 3 of the *Motor Omnibus (Urban and Country) Act* 1927 (Vict.) may be satisfied although the reward at separate and distinct fares for each passenger is not paid to a person who is an "owner" of the vehicle.

The defendant, who was the owner of a motor vehicle which was not licensed under the *Motor Omnibus (Urban and Country) Act* 1927 (Vict.), was charged

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under sec. 40 with being the driver on a certain day of a motor omnibus which operated on a road between Geelong and Melbourne without the same being licensed as a " motor omnibus " in accordance with that Act. A firm of shopkeepers sold at separate and distinct fares tickets for a journey from Geelong to Melbourne, and the defendant, for a lump sum paid by them to him, carried in his motor vehicle the passengers who had bought the tickets. Before beginning each journey he and the shopkeepers signed a written agreement whereby in consideration of the lump sum paid by them to him he agreed to convey one load of passengers upon the specified journey and return.

Held, upon these facts, that the motor vehicle was " used or intended to be used for carrying passengers for reward at separate and distinct fares for each passenger," notwithstanding the fact that the defendant was remunerated at a lump sum, and that the vehicle in question, as it otherwise fell within the definition, was a " motor omnibus " as defined in sec. 3 of the *Motor Omnibus (Urban and Country) Act* 1927.

Decision of the Supreme Court of Victoria (*Lowe* J.): *Blyth* v. *Hudson*, (1928) V.L.R. 587, reversed.

APPEAL from the Supreme Court of Victoria.

On the information of William Frederick Blyth it was alleged that on 12th August 1928 the defendant, George Hudson, was the driver of a motor omnibus which operated on a road between Geelong and Melbourne without the said motor omnibus being licensed in accordance with the provisions of the *Motor Omnibus (Urban and Country) Act* 1927 (Vict.).

The information was heard at the Court of Petty Sessions at Geelong on 4th September 1928, when evidence was given for the informant that on the afternoon of 12th August 1928 Albert Harry Johnson, an inspector of the Country Roads Board, booked a seat at 136 Moorabool Street, Geelong, which was a fruit shop kept by persons named Sangiolo and Virgona, who were registered as a firm carrying on business under the name of Geelong Motor Tourist Bureau at that address and at 166 Flinders Street, Melbourne; that on the date in question Johnson told Virgona that he wished to book a seat to Melbourne in a motor-bus running to Melbourne; that he paid four shillings and received a ticket; that when he was in the shop he saw other people book seats and pay four shillings for a seat; that Johnson boarded a motor-bus which had seating capacity for fourteen passengers; that when the bus left Geelong there were nine passengers seated and George Hudson was driving;

that the defendant drove about three miles and picked up two more passengers, who showed the defendant their tickets; that Johnson informed the defendant who he was, and the defendant informed Johnson that he was the owner of the motor-bus, and Johnson told the defendant he was driving an unlicensed bus on a banned route; that the bus was not licensed under the Motor Omnibus Acts. Being cross-examined, Johnson admitted that the booking of the ticket had nothing to do with the defendant, that he did not hand the defendant his ticket when getting on to the bus, that he saw no money being paid to the defendant, that no money passed to the defendant and the defendant did not in the presence of witness collect any tickets. The defendant deposed that he was the owner of certain omnibuses, that on 12th August 1928 he drove a motor omnibus between Geelong and North Geelong, that he was engaged by Virgona to take a load of passengers to Melbourne for £3 10s., that Virgona and Sangiolo were the Tourist Bureau and were not his agents, that on 12th August they asked him whether he could supply a bus or some buses to go to Melbourne, that defendant said if they came to a satisfactory price he would take the trip, that he had been paid £3 10s. for the trip, that he did not sell or issue or collect any tickets, that he was licensed under the *Motor Car Act* (Vict.) and the *Carriages Act* (Vict.). Being cross-examined, he said that he did not stop for casual persons standing at the roadside, that people had to arrange with the Bureau beforehand, and if they had so arranged that he transported them. The defendant was convicted and fined £10 with costs.

The defendant obtained an order nisi to review this decision on the ground that the evidence did not establish that the vehicle the subject matter of the information was a motor omnibus within the meaning of the *Motor Omnibus* (*Urban and Country*) *Act* 1927. The order nisi was heard by *Lowe* J., who made the order absolute: *Blyth* v. *Hudson* (1).

The informant now, by special leave, appealed to the High Court.

Ham K.C. (with him *Shelton*), for the appellant. The defendant was the driver of a motor omnibus as defined in sec. 3 of the *Motor*

(1) (1928) V.L.R. 587.

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Omnibus (*Urban and Country*) *Act* 1927, which should have been licensed under sec. 31. The motor omnibus was on the occasion in question being used for the purpose of carrying passengers for reward at separate and distinct fares. The Act is not concerned with who gets the reward, and there is no need for the fares to find their way into the owner's pocket as separate and distinct fares. Secs. 9 (2) (*b*), 20 and 27 show that vehicles of this kind were intended to be kept off the road unless licensed. There is no warrant for implying any further element in the definition.

Robert Menzies K.C., for the respondent. The interpretation put on sec. 3 of the Act by *Lowe* J. was correct. The definition of "motor omnibus" in that section contemplates separate and distinct fares being paid to the owner of the motor omnibus in order to bring the vehicle within the terms of the definition of the section. In this view the persons who received the separate fares were not the "owners" of the vehicle as defined in sec. 3 of the Act. Alternatively, the word "used" is directly associated with the word "reward," and the definition contemplates reward to the user by payment of separate and distinct fares. In this view the defendant, who used the vehicle, did not collect separate and distinct fares. Either the word "reward" is quite unattached, or it means reward to the user. Whichever view is taken, the case falls outside the definition.

Ham K.C., in reply.

Cur. adv. vult.

Feb. 21.

The following written judgments were delivered :—

KNOX C.J., RICH, STARKE AND DIXON JJ. Special leave to appeal was given to the informant in this case in order that the interpretation which *Lowe* J. placed upon the definition of "motor omnibus" in sec. 3 of the *Motor Omnibus* (*Urban and Country*) *Act* 1927 might be considered by this Court. The statutory definition limits the meaning of the expression "motor omnibus" by the requirement that the vehicle shall be "used or intended to be used for carrying passengers for reward at separate and distinct fares

for each passenger." His Honor was of opinion that this meant that the reward at separate and distinct fares must be received by the owner of the motor omnibus. He said (1):—"The Act does not specify in this definition to whom the reward is to be paid; but an examination of the Act, and particularly of secs. 9 (*e*) (*f*), 12, 15, 24, 25, 28, 30 and 39, indicates that it is the owner of the omnibus who is contemplated as applying to be licensed as operating the motor omnibus and being the person who by himself or by his servants or agents must perform the duties imposed by the Act. This furnishes a clue to the person to whom the reward must be paid by separate and distinct fares for each passenger in order to constitute the motor-car a motor omnibus within the meaning of the definition set out in the Act."

This view has what may seem an advantage, in ascertaining definitely who must be the other party to what, no doubt, is a bilateral act, namely, the payment of reward, and at the same time confining the application of the words "used or intended to be used" to use or intended use by or with the consent of the owner. But it has the important result that a motor omnibus service may be lawfully conducted without regard to the restrictions imposed by the statute so long as there is interposed, between the owner and the passengers, an intermediary who receives the separate and distinct fares but pays the owner a lump sum only, or some other consideration not being a separate and distinct fare, for the performance by him of the intermediary's obligation to carry the passengers. This is well illustrated by the facts of this particular case. The defendant, after unsuccessfully applying under the Act for a licence for his motor vehicle, commenced a course of dealing with a firm of shopkeepers by which they sold at separate and distinct fares tickets for a journey, while he supplied for a lump sum paid by them to him the means of performing the contracts of carriage which the shopkeepers made with the persons who bought tickets from them. Before beginning each journey he and the shopkeepers signed a written agreement whereby, in consideration of the lump sum paid by them to him, he contracted and agreed to convey one load of passengers upon the specified journey and return. Upon the interpretation of the

(1) (1928) V.L.R., at p. 589.

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definition of motor omnibus adopted by *Lowe* J. the defendant's vehicle did not come within it because it was not he who received the reward at separate and distinct fares for each passenger. In considering the correctness of this interpretation of the language in which the definition is expressed, it is desirable to begin by noticing the manner in which the prohibitive and penal provisions of the Act are framed. Secs. 10 and 31 forbid the operation of an urban and of a country motor omnibus respectively unless licensed. But both sections are expressed in impersonal language, and say simply that the vehicle shall not "operate," which means by the definition in sec. 3 "carry passengers for reward." Sec. 40 provides that the driver and the owner of any motor omnibus which operates and is not licensed shall severally be guilty of an offence; and sec. 42 deals generally with infringements upon the directions and prohibitions of the statute and makes "every person offending against such direction or prohibition" guilty of an offence against the Act.

These sections, so framed, suggest that the first concern of the Legislature was to prohibit the carriage of passengers for reward by any unlicensed motor omnibus, and to do so without any discrimination among the classes of persons who might be responsible for the operation of the vehicle. Having thus made a general prohibition, it then, in secs. 40 and 42, proceeded to the imposition of penalties upon persons who might offend and, in doing so, selected the owner and driver as the objects of its particular sanctions (sec. 40). Indeed, it is plain from the whole scope of the statute that its object was to restrict and control passenger transport by motor vehicle considered as an operation, not to regulate the conduct of individuals by reference to the character in which they concerned themselves in that operation. But it was necessary to define the class of traffic and of vehicle to which the restrictions were to apply; and apparently this was attempted in the definition of "motor omnibus" which is now to be interpreted. Here again impersonal language was chosen. The vehicle must have a certain capacity. It must be used or intended to be used for carrying passengers and for reward and at separate and distinct fares. There is no description of or express allusion to any class of persons who must so use it or intend it to be so used, or to any class to whom the reward must be paid. This may well

be because it was not desired to limit these requirements by reference to persons. The Legislature doubtless supposed that the person who used the vehicle or intended it to be used would in some way be able to direct it, and that the person to whom the fares were paid would somehow be able to procure its use. But in a statute so calculated as this is to provoke the ingenuity of those who desire to avoid its operation, and affecting as it does a class of chattel commonly made the subject of so many curious and involved dealings, it would be natural for the Legislature designedly to refrain from limiting the definition by reference to any class of person by whom the vehicle must be used or intended to be used or to whom the reward or fare must be paid.

If, by adopting an unrestricted interpretation of the definition of motor omnibus, an interpretation which did not treat it as requiring that the distinct fares should be paid to or that the vehicle should be used or be intended to be used by the owner or a person having some other specific connection with the vehicle, the penal provisions of the Act were necessarily extended so as to include owners, drivers and other persons who were themselves unaware and whose servants and agents were unaware of the facts which brought the vehicle within the definition of a motor omnibus, there would be a real advantage in the construction which confined the application of the words "used or intended to be used" to use or intended use by the owner. But upon a proper construction of sec. 40 and sec. 42 neither provision would impose penal consequences upon those who have not themselves and whose servants and agents have not any reason to believe that the facts exist which would make their provisions applicable; a class within which the defendant in this case certainly did not come.

The sections to which *Lowe* J. refers do, as he says, indicate that it is the owner of the motor omnibus who is contemplated as applying to be licensed and as operating the motor omnibus, and as being the person who by himself or through his servants must perform the duties imposed by the Act. But from this it cannot be inferred that the definition of motor omnibus is narrowed by an implied reference to the owner. And in fact all *Lowe* J. seems to base upon it is that if there is a limitation of the definition by

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reference to some class, as he thought there was, then a clue may be found in these considerations as to the identity of the class. The truth is, however, that the language of the definition expresses no limitation by reference to any particular person or class who should receive the reward at separate and distinct fares; and, having regard to the considerations mentioned, no reason for implying one can be found in the context or subject matter of the enactment.

For these reasons the conviction was right and the order nisi to review it should have been discharged. The appeal should be allowed, the appellant paying the respondent's taxed costs pursuant to his undertaking. The judgment of the Supreme Court should be reversed and the order nisi discharged with costs.

ISAACS J. But for the fact that in a careful judgment the learned primary Judge took a different view, I should have thought this a clear case. Respect for his Honor's opinion in a matter of considerable importance leads me to state explicitly the reasons for my own conclusion.

From its title to its final section, the Act No. 3570, read according to the natural meaning of its words, is a plainly stated legislative regulation with respect to what it calls "motor omnibuses," as public conveyances and without discrimination as to persons, except in the case of the Victorian Railways Commissioners. The expressed objects of the Act are public, and include the safety of the travelling public, the prevention of unreasonable damage to public roads, undue competition with other travelling facilities, and provision for renewal, repair and maintenance of roads. These are cogent reasons for not weakening the actual words of the enactment. The definition of "motor omnibus" is a description of the article itself, the use of which the Legislature has set itself in the public interest to regulate. Part of that description is the actual use or the intended use of the article. "Intended use" is introduced for the purpose of obtaining a licence before actual use. The "use" or the "intended" use is necessarily that of the person lawfully controlling the use, and is inserted in the definition as part of the descriptive character of the article the use of which is regulated by the Act.

It is the motor omnibus itself which is licensed. (See secs. 4 (2), 11, 14, 22 and 31.) Of course, human agency is requisite to obtain the licence, and the person required generally to conform to the statutory requirements, both before and after the licence is granted, is the "owner." By its extended statutory connotation, "owner" is made to include all persons having the right to control the use of the vehicle. That to my mind demonstrates very convincingly the intention of Parliament to make its regulation of vehicles used in the designated way complete and not partial. When, therefore, sec. 31 says that "a country motor omnibus shall not operate on any road or route unless . . . it is licensed as a stage motor omnibus," that is a general prohibition affecting the use of such a vehicle irrespective of the persons beneficially receiving the fares paid by the passengers. If the "owner" for his own reasons chooses to permit other persons to put the fares in their pockets, that in no way obliterates the fact that he has authorized his vehicle to be used in the manner described in the statute, so as to constitute it a "motor omnibus." He cannot, by any financial juggling, while still retaining control of his vehicle, renounce his liability, either as owner or driver under the statute. If an unlicensed "motor omnibus" does "operate"—that is, "carry passengers for reward" —on any road, then the "driver" and the "owner," both of whom are instrumental in breaking the prohibition, are by sec. 40 liable to penalties. If by some unusual arrangement the same man fills both capacities, that does not afford any reason for total immunity. On a literal reading of the Act, no doubt can exist that the respondent incurred this penalty. Having regard to the frame of the statute and its declared purposes, I can find no reason for reading it differently. The objective form in which the prohibitions are expressed—as, for instance, that a motor omnibus shall not operate, or carry passengers for reward, &c.—is a very usual form of expression both colloquially and by statute. Very close counterparts are found, for instance, in shipping legislation. Ships are referred to as clearing, or proceeding to sea, or carrying passengers and intended for the carriage of passengers; and so on. All that is meant by such expressions is that the vehicle is identifiable as one which the person having the right to control its use in some way permits or

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intends to be used in the manner designated. Making that person responsible for a prohibited use which he had the power to prevent —as by sec. 40 and other sections—indicates a legislative intention to enforce, but not to limit, its provisions for the public welfare.

The interpretation I have followed preserves the language of Parliament unaltered, leaves the Act to apply uniformly, and prevents evasion; that which is urged to support the judgment appealed from, leads, as the facts in the present case show, either to complete inefficacy or to an erratic and unfair operation of the statute.

In my opinion, the appeal should be allowed, and the magistrate's decision restored.

Appeal allowed with costs of appeal to be paid by informant according to the terms of his undertaking.

Solicitor for the informant, *Menzies*, Crown Solicitor for Victoria.

Solicitors for the defendant, *R. H. Rodda & Ballard*, agents for *A. O. Hall*, Geelong.

H. D. W.