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being an exclusive power of the Commonwealth. I agree that there is no substance in this submission (See *Crothers* v. *Sheil* (1)).

It follows that the convictions were right. The appeals should be dismissed.

Appeals dismissed with costs.

Solicitor for the appellants, *R. M. Warner.*

Solicitor for the defendant, *F. G. Menzies*, Crown Solicitor for Victoria.

H. D. W.

[HIGH COURT OF AUSTRALIA.]

MILLER . . . . . APPELLANT
COMPLAINANT,

AND

HILTON . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

H. C. OF A. 1937. MELBOURNE, *May* 17, 18, 28. Latham C.J., Rich, Dixon and McTiernan JJ.

Road Transport—Controlled route—Unlawfully "causing" vehicle to be driven on route—Contract to deliver goods—Goods delivered by employee in employer's absence—No instructions given by employer—Road and Railway Transport Acts 1930 *and* 1931 (*S.A.*) (*Nos.* 1967 *and* 2020), *sec.* 14.

The defendant was charged with causing a motor vehicle to be driven on a controlled route contrary to sec. 14 of the *Road and Railway Transport Acts* 1930 *and* 1931 (S.A.). He had agreed with the vendor of a tractor to deliver it to the purchaser. When the tractor was ready for delivery the defendant was absent and had left his business in charge of his son. The vendor informed the son that the tractor was ready for delivery. The defendant had not given any instructions to his son about delivering the tractor, and the son was not

(1) (1933) 49 C.L.R. 399.

aware that his father had previously agreed to deliver it. The son delivered it, and in doing so drove a motor lorry on a controlled route without the licence required by the Acts.

Held, by *Rich*, *Dixon* and *McTiernan* JJ. (*Latham* C.J. dissenting), that the defendant did not "cause" the lorry to be driven in contravention of sec. 14.

Decision of the Supreme Court of South Australia (Full Court): *Hilton* v. *Miller*, (1936) S.A.S.R. 380, affirmed on different grounds.

APPEAL from the Supreme Court of South Australia.

A complaint was laid by William Charles Miller, police prosecutor, of Adelaide, against Percival Robert Joseph Hilton, of Westbourne Park, in South Australia, alleging that the defendant, on or about 20th January 1936, between Adelaide and Halbury, in South Australia, not being the holder of a licence under the *Road and Railway Transport Acts* 1930 *and* 1931 (S.A.), or a person employed by the holder of such a licence, unlawfully caused to be driven a vehicle, to wit, a motor lorry, for the purposes of carrying goods for hire on the road between Tarlee and Gladstone, *via* Auburn, Clare, Yacka and Gulnare, which road was on or about 20th January 1936 a controlled route within the meaning of the said Acts, having been on 29th April 1931 declared by order of the Transport Control Board, constituted by the said Acts, to be a controlled route for the purposes of the said Acts and in relation to which controlled route the said board did on 17th January 1931 by order fix 18th July 1931 as the "appointed day" within the meaning of sec. 14 of the said Acts for the carriage of goods for hire, and that in so doing the defendant acted contrary to the provisions of sec. 14.

It appeared from the evidence that the South Australia Tractor Co., on or about 8th January 1937, sold a tractor to one Gregor at Halbury and that the defendant agreed with the company to deliver the tractor at Halbury. On Friday, 17th January, the defendant went to Iron Knob and left his business, which was that of a general merchant, in charge of his son. His intention was to return on the following Sunday, but he was delayed and did not get back till late at night on Monday, 20th January. On the afternoon of 20th January the son, whose ordinary employment by the defendant was that of a driver, was informed by the vendor that the tractor was ready for delivery, and in ignorance of

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the fact that his father had previously agreed to deliver it, and without having received any instructions from his father, took delivery of the tractor, placed it upon a lorry, and drove the lorry over portion of a controlled route to the purchaser's place at Halbury. He thereby committed an offence against the section, for which he was convicted and fined. When the defendant returned on the night of 20th January his son told him what he had done. The defendant was annoyed when he heard about it, and said to his son that he should not have done it at all. He said that he would have taken the lorry by an uncontrolled route if he had been at home, but there was a dispute of fact as to whether this would have been possible. The son was convicted of having driven the vehicle. The defendant, his father, was charged with having caused the vehicle to be driven. It was common ground that the defendant was not the holder of a licence, that the tractor was carried for reward, and that the motor vehicle was driven by the son on portion of a controlled route.

The special magistrate who heard the complaint held that in acting as he did the defendant must be taken to have intended the natural and probable consequences of his act, and that he in fact did cause the vehicle to be driven on the controlled route on the occasion in question. He accordingly convicted the defendant. The defendant appealed to *Angas Parsons* J., who allowed the appeal and quashed the conviction. From this decision the complainant appealed to the Full Court of South Australia, which dismissed the appeal: *Hilton* v. *Miller* (1).

From this decision the complainant, by leave, appealed to the High Court.

Hannan K.C. (with him *Besanko*), for the appellant. The words "on any controlled route" in sec. 14 of the *Road and Railway Transport Acts* 1930 *and* 1931 refer to the place where the vehicle is not to be driven and not to the place where the defendant must be in order to be guilty of the offence. This is the only logical construction of which the section is capable, though grammatically the contrary construction may be suggested.

(1) (1936) S.A.S.R. 380.

[McTiernan J. referred to *Dignan* v. *Australian Steamships Pty. Ltd.* (1); *Sumner* v. *Campbell* (2).]

The defendant left his son in charge of the business and of the tractor, and the controlled route was the natural, if not the only, route to take. Sec. 14 imposes an absolute liability and proof of *mens rea* is not necessary. "Cause" includes any cause direct or indirect, and means the doing by the defendant of any act which directly or indirectly brings about or results in the doing of the prohibited act. It has the same meaning in both the civil and criminal jurisdiction. The defendant's son had authority to do an unlawful act which was within the scope of his employment, and the defendant is criminally liable as causing it.

Ligertwood K.C. (with him *Mathews*), for the respondent. The Order in Council purporting to prescribe a controlled route is void for uncertainty or misdescription, and there is, therefore, no controlled route. The son was not acting within the scope of his employment, and on the true construction of sec. 14 no causation is proved. In order to prove that the defendant caused the vehicle to be driven unlawfully it must be proved that he intended it to be so driven (*Cooper* v. *Slade* (3); *Hardcastle* v. *Bielby* (4); *Stroud* on *Mens Rea* (1914), p. 218).

[Dixon J. referred to *Burns* v. *Scholfield* (5).]

To be a cause, there must be an active intention that the servant should break, or at least be in a position to break, the law (*Wilson* v. *Rankin* (6)). To come within sec. 14 the causation must be on a controlled route.

Hannan K.C., in reply. The point that the Order in Council was void for uncertainty or misdescription was not taken before (*Standfield* v. *Byrne* (7)). The defendant aided or abetted his son within the meaning of sec. 53 of the *Justices Act* 1921, and "cause" is wider than "aid" or "abet." There is no need to prove intention, as the section imposes an absolute liability. *Hardcastle* v. *Bielby* (4)

(1) (1931) 45 C.L.R. 188, at p. 197.
(2) (1935) 53 C.L.R. 196, at p. 204.
(3) (1858) 6 H.L.C. 746; 10 E.R. 1488.
(4) (1892) 1 Q.B. 709.
(5) (1923) 128 L.T. 382.
(6) (1865) 34 L.J.Q.B. 62, at p. 67.
(7) (1929) S.A.S.R. 352, at pp. 357, 358.

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does not apply, as " allowing " was there part of the offence (*R.* v. *Wilson* (1); *Moses* v. *Midland Railway Co.* (2)).

Cur. adv. vult.

May 28.

The following written judgments were delivered :—

LATHAM C.J. The respondent Hilton was convicted of an offence under sec. 14 of the *Road and Railway Transport Act* 1930 in that about 20th January 1936 between Adelaide and Halbury, in the State of South Australia, not being the holder of a licence under the Act or a person employed by a holder of such a licence, he unlawfully caused to be driven a vehicle, to wit, a motor lorry, for the purpose of carrying goods for hire on the road between Tarlee and Gladstone, *via* Auburn, Clare, Yacka and Gulnare, which road was on the said day a controlled route within the meaning of the Act.

Upon appeal to the Supreme Court of South Australia (*Angas Parsons* J.) the conviction was quashed. The Full Court of South Australia affirmed the decision of *Angas Parsons* J.

Sec. 14 of the *Road and Railway Transport Act* 1930 provides that the Transport Control Board may by order in relation to any controlled route fix a day (called the " appointed day ") after which it shall not be lawful for any unlicensed person to operate a vehicle on the route for the carriage of passengers or goods or both for hire. The appointed day was 18th July 1931. Sub-sec. (2) of sec. 14 provides that after the appointed day " no person shall on any controlled route drive any vehicle or cause any vehicle to be driven for the purpose of carrying passengers or goods or both for hire—(*a*) unless he is the holder of a licence or is a person employed by the holder of a licence to drive such vehicle ; (*b*) otherwise than in accordance with every term and condition of a licence granted to himself or the person by whom he is employed."

The first objection to the conviction is that the defendant was not " on the controlled route " on the day in which the motor lorry was driven thereon, or at any time at which it could be alleged that he caused the driving thereof.

The words " on any controlled route " are an adverbial extension of place. They modify the verb " drive." In relation to driving, the

(1) (1856) 26 L.J.M.C. 18. (2) (1915) 113 L.T. 451, at p. 453.

prohibition is plainly that of driving on a controlled route unless the conditions imposed by (*a*) and (*b*) are satisfied. The words follow the word " shall " and, from a grammatical point of view, it cannot be disputed that they modify " cause " in the same way as they modify the word " drive." But this strict grammatical reading of the provision makes it quite absurd in relation to the offence of causing a vehicle to be driven. The provision would then only apply to persons who, themselves being on a controlled route, caused a vehicle to be driven. The vehicle might be driven anywhere in South Australia and the section would apply. The section would apply whether the vehicle were driven upon a controlled route or upon an uncontrolled route. In the case of an uncontrolled route there could not possibly be a licence authorizing the vehicle to be driven thereon, because sec. 18 requires that every licence granted by the board shall specify (*inter alia*) the route or routes over which the licensed person is licensed to operate vehicles. A licence cannot be granted in respect of any uncontrolled route. Therefore it is impossible for any person driving a vehicle upon an uncontrolled route to be a holder of a licence for that route or of a licence containing any term or condition applying to that route. Thus no person could bring himself within the conditions (*a*) and (*b*) set out in sub-sec. (2), and any driving of a vehicle upon an uncontrolled route which was " caused " by a person who at the time of causing happened to be himself upon a controlled route would be an offence. Such a provision is beyond reason and can have no possible relation to the objects of the Act. If any construction other than that which brings about such a result is possible it ought to be adopted. There is another possible construction and the only objection to it is that it does some violence to strict grammatical principles. The intention of the provision, having regard to the objects of the Act, is clear. The mischief sought to be prevented is the driving of vehicles upon controlled routes without proper licences. If the words " on any controlled route " are read in the first place as attached to the word " drive " and in the second place as attached to the word " driven," the result is a perfectly intelligible provision which is relevant to the objects which the legislation is evidently designed to achieve. Such an interpretation gives effect to the intention of

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the legislature as derived from the Act read as a whole, and the fact that the interpretation fails to pay a compliment to the draftsmanship of the Act from a grammatical point of view, is not in my opinion, a fatal obstacle to its adoption (*Rosenthal* v. *Rosenthal* (1)).

A further point was raised for the first time in this court. It was contended that the description of the route in the order made by the Transport Control Board was not authorized by the provisions of the Act. Sec. 13 provides that the board may by order declare that any road or roads mentioned therein shall be a controlled route or routes for the purposes of the Act, and that the roads to which such order relates may be individually named in the order or may be all the roads within the portion of the State described in the order or may be otherwise indicated either individually or collectively. The order made on 29th April 1931 declared that "the roads described in the schedule hereto shall be controlled routes for the purposes of the said Act." The schedule included "Route No. 9 between Tarlee and Gladstone *via* Auburn, Clare, Yacka, and Gulnare." It has been contended that this is not a sufficient description of a route because it would be possible to travel between the places mentioned, by making divagations, by any of the roads in the State. In my opinion this is not a fair interpretation of the order. The defendant gave his evidence by reference to a road map and that road map shows a road running between Tarlee and Gulnare through the four other places named. Reference to the map shows that there is no real ambiguity in the description and that the description is adequate to describe the road used by the defendant's son for carrying a tractor.

The next question is whether the defendant "caused" the vehicle to be driven on a controlled route for the purpose of carrying goods for hire. There was no relevant licence, and it is therefore unnecessary to consider the terms of the conditions (*a*) and (*b*) in sec. 14 (2). It is established that the vehicle was driven on a controlled route for the purpose of carrying goods for hire. The vehicle was driven by the defendant's son. The evidence shows that the defendant arranged to carry a tractor from Adelaide to Halbury. It is

(1) (1910) 11 C.L.R. 87, at p. 94.

unnecessary to determine whether there was a binding contract to this effect. It is undisputed that the defendant told the representative of the South Australian Tractor Company that he would carry the tractor. On the Friday prior to 20th January the defendant went to Iron Knob and returned late on Monday evening 20th January. In his evidence he said :—" When I went to Iron Knob I left my son in charge of my business. He was not given instructions to do any particular work while I was away." The son was employed as a driver. On 20th January in response to a telephone message from the tractor company he went to the tractor company's establishment with his father's lorry, picked up the tractor, and carried it to Halbury on a controlled route. The question is whether it is established that the defendant caused the lorry to be driven on a controlled route for the purpose of carrying goods for hire.

It is clear that the defendant's son carried the tractor because and only because he was employed by the defendant as a driver, and that he, the son, selected the route by which to travel. He was placed in a position to do this because he was left in charge of the defendant's business. The defendant said that his practice was to give his son directions as to the roads which he should follow—though, as the defendant professed in evidence that he limited his carrying to his own goods, and as the Act permits any person to carry his own goods even on a controlled route without any licence, it is difficult to understand why there should be any particular practice in the defendant's business of defining the route to be taken by a driver. However this may be, the defendant left the son in charge of the business without any instructions, and therefore placed him in the position to give himself his own instructions. In any matter arising in civil litigation there can be no doubt that the defendant would be fully responsible for what his son did in connection with the carrying and delivery of the tractor. The question, however, arises in a criminal case. The substance of the offence is not merely " causing " a vehicle to be driven, or causing a vehicle to be driven for the purpose of carrying goods, or causing a vehicle to be driven for the purpose of carrying goods for hire—all of which are lawful actions. The question which arises is whether it can properly be held that the defendant caused the vehicle so to be

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driven " on any controlled route." This is the precise thing which the defendant must " cause " before he can be held to be guilty of the offence charged. It has not been argued that mens rea is necessary in any other sense than that of an intention to cause that to be done which the law condemns—namely, the driving of a vehicle for the purpose mentioned on what is in fact a controlled route. The members of the court are agreed upon all the questions of law which arise in this case, but I take a different view of the facts from that which has commended itself to my colleagues. I find it difficult to take any other view than that, before the special magistrate, everybody knew and in effect admitted that in fact there was no way of getting the tractor to Halbury without using a controlled route. The magistrate, however, used rather vague language in stating this fact, so that the defendant has been able to argue the case in other courts upon what, I suspect, is a false basis of fact. It is necessary, therefore, in my view, to consider carefully the findings of the magistrate in relation to the evidence which was given.

The defendant was at pains to give evidence that the tractor could have been delivered at Halbury without travelling on any controlled route. The cross-examination of the defendant, however, showed that the only suggestion which he made to demonstrate this possibility cannot be accepted. He drew out in detail what he described as an uncontrolled route, but he admitted that part of this route was portion of the road between Gepp's Cross and Virginia. It was shown that this portion of the route was a controlled route, as it is part of route number 42 from Adelaide to Kulpara via Gepp's Cross and Two Wells. Thus not only did the defendant not show that it was possible to carry the tractor from Adelaide to Halbury without using a controlled route, but the evidence taken as a whole showed that the contrary was the case. It must, therefore, be taken that, as he intended his son to do what was necessary to be done in the business and as the carrying of the tractor from Adelaide to Halbury was part of his business, and as this could not be done without using a controlled route, he caused his son to carry the tractor over a controlled route.

Upon argument before this court the respondent did not contend that the tractor could be taken from Adelaide to Halbury without using a controlled route, but it was urged that even though this conclusion may appear to follow necessarily from the evidence, the special magistrate who heard the charge did not so find. The findings of the special magistrate are perhaps not expressed as clearly as they might have been, but there is a definite finding that the defendant left his son in charge of the business and that the son, being advised that the delivery of a tractor was urgent, picked up the tractor and delivered it at Halbury. There is a finding that the defendant did not give the son any instructions not to deal with the matter of the delivery of the tractor. The special magistrate also said: "I think it improbable that the father intended to carry the goods himself on an uncontrolled route." Thus the magistrate certainly did not find that the father had the positive intention of carrying the tractor on an uncontrolled route. The magistrate says: "However, in my opinion, although the prosecution must prove this aspect of its case beyond all reasonable doubt, and I think that mens rea is a necessary ingredient of this part of the offence, bearing in mind the objects of this legislation, it appears to me in acting as he did the defendant must be taken to have intended what I think are the natural and probable consequences of his act, and that he in fact did cause this vehicle to be driven on a controlled route on this occasion, and I think, therefore, there must be a conviction." It appears to me that the proper interpretation of this finding is that the defendant must be taken to have known that if the tractor had to be delivered during his absence the delivery would naturally and probably be made by using a controlled route and that for this reason the special magistrate held that "he did in fact cause the vehicle to be driven on the controlled route on this occasion." On any other view the statement that mens rea is a necessary ingredient of the offence is, in its setting, unintelligible. Accordingly there is a finding of the special magistrate which, properly construed, is a finding that the defendant, having left his son in charge of the business at a time when it might become necessary to do this job of carrying the tractor, intended that the tractor should be carried along the natural and probable

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route, which was a controlled route. This conclusion is one which is open on the evidence, and, indeed, it is a necessary conclusion from the evidence that there is no way of getting goods from Adelaide to Halbury without using a controlled route. To this evidence there should be added the evidence given by the defendant himself that he was very familiar with the routes in this district and knew a route which he specified as not including any part of a controlled route. As this evidence is inaccurate the defendant is not able to escape liability upon the basis that, though he meant his son to carry the tractor if necessary, his intention was that he should do it on an uncontrolled route. The mistake of the defendant (if there was such a mistake) in thinking that a particular portion of the route was uncontrolled when in fact it was controlled cannot be relied upon to relieve him from liability.

For these reasons I am of opinion that the appeal should be allowed, the orders of the Full Court and of *Angas Parsons* J. set aside, and the conviction restored.

RICH J. It is difficult to avoid a feeling that, if the magistrate had given complete expression to the views which he formed as to the facts of this case, the legal difficulties which have been argued before this court and the Supreme Court or many of them would have been found to be academical. The defendant who describes himself as a general merchant, professed great knowledge of the road system of South Australia and possessed a lorry said to be owned by his wife which was found suitable for heavy carrying work showed no hesitation in accepting an order over the telephone for the carriage of an agricultural tractor from Adelaide to Halbury. The time for the delivery of the tractor to him was not fixed by the consignor and the defendant went away for the week end from Friday, 17th January 1936. When he returned on the evening of Monday, 20th, he found that his son, who, in his father's absence had charge of the business, had received a telephone message that the tractor was ready for delivery and that the job was urgent, and acting on the message had obtained the tractor and carted it to the consignee. The natural route to Halbury lay over a controlled route within the meaning of the *Road and Railway Transport Acts* 1930

and 1931. Sec. 14 (1) of those Acts says that "the board may by order, in relation to any controlled route or routes, fix a day after which it shall not be lawful for any unlicensed person to operate any vehicle on that route or those routes for the carriage of passengers or goods or both for hire." The son was caught using the controlled route and the father says that when he learnt what the son had done he said he should not have done it on any consideration whether urgent or not. According to the defendant his own intention had been to deliver the tractor himself without driving on the controlled route but following a road or roads which he said he knew. On the part of the complainant it is said that he could not have avoided crossing or using some controlled route. But upon this dispute of fact no finding seems to have been made. The son was convicted of an offence against sec. 14 (2) consisting in driving on a controlled route a vehicle for the purpose of carrying goods for hire not being the holder of a licence or a person employed by one. The father was then prosecuted under the same sub-section for causing the vehicle to be driven on the controlled route for the purpose of carrying goods for hire. He was convicted before a special magistrate, the material part of whose findings is as follows :—"I am bound to say I am not very satisfied with this part of the evidence. I think it improbable that the father intended to carry the goods himself on an uncontrolled route. It seems more probable that the son being employed for the purpose of delivering goods would have received his father's instructions on the matter. However, in my opinion, although the prosecution must prove this aspect of its case beyond all reasonable doubt, and I think that mens rea is a necessary ingredient of this part of the offence, bearing in mind the objects of this legislation, it appears to me in acting as he did the defendant must be taken to have intended what I think are the natural and probable consequences of his act, and that he in fact did cause this vehicle to be driven on the controlled route on this occasion, and I think therefore there must be a conviction." Not without some hesitation I have come to the conclusion that we ought not to treat this statement as necessarily meaning that it was the defendant's purpose to drive the lorry himself on a controlled route or that he actually knew or anticipated that his son would do so. In the

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Supreme Court *Angas Parsons* J., before whom the appeal from the special magistrate came, treated the facts as being that the son acted without the father's knowledge or express authority. On the appeal *Murray* C.J. and *Richards* J. treated the case as one in which a person in the position of a servant acts within the course of his authority but without the master's privity or direction. We did not give special leave for the purpose of reviewing the findings of fact or the interpretation of the special magistrate's decision and I think we should accept the view on these matters of the Supreme Court. *Angas Parsons* J. quashed the conviction on grounds which are fully set out in his judgment but which may perhaps be compendiously stated as that the defendant, having no guilty knowledge of what his son was about to do or did, could not have caused him to do it. In the Supreme Court *Murray* C.J. and *Richards* J. upheld this decision on a different ground—a ground depending upon a strict grammatical construction of the sub-section constituting the offence. That sub-section is as follows:—"After the appointed day no person shall on any controlled route drive any vehicle or cause any vehicle to be driven for the purpose of carrying passengers or goods or both for hire—(*a*) unless he is the holder of a licence or is a person employed by the holder of a licence to drive such vehicle: (*b*) otherwise than in accordance with every term and condition of a licence granted to himself or the person by whom he is employed." Their Honours gave it the meaning which would grammatically result from the position of the words "on any controlled route" after the word "shall" and before the words "drive . . . or cause." Omitting the words "drive any vehicle" which are not relevant to the charge the section says "no person shall on any controlled route cause to be driven." Their Honours accordingly, construing the section strictly, regarded it as making it necessary that the causing as opposed to the driving should be done on a controlled route. I concede that grammatically this is the literal meaning of the words. But, as I said in *Dignan* v. *Australian Steamships Pty. Ltd.* (1), "English being a positional language, it is sometimes impossible to be certain how adjectival and adverbial phrases should be attached." In the present case it appears to me

(1) (1931) 45 C.L.R., at p. 197.

indisputable that the draftsman has made a grammatical error. I do not think that his error so obscures his meaning or clouds it with so much doubt that we ought to refrain from interpreting the sub-section at the expense of strict grammar. I feel quite clear that the adverbial phrase " on any controlled route " was intended to modify the verb " to be driven " and not the verb " cause." Being clear about it there is no reason why I should not interpret the section accordingly. In this view the fact that the defendant was not upon a controlled route when he did the acts which the magistrate found to amount to causing the offence of the son is no answer to the charge against the defendant. But upon the facts of the case as I have stated them I do not think that the magistrate's conclusion that the defendant did cause the son's offence is correct. " Cause " may have very many different meanings and applications. In the present case we are dealing with the causation of a criminal offence. When it is expressly made an offence for one man to " cause " another to commit what is forbidden as a crime we ought not to give any wide or general application to the word " cause." In this sub-section I take it to mean to procure or bring about. It refers to some intentional or conscious production of the effect. Consequences are infinite and I think that the present section meant to forbid only doing an act knowing or intending that it should produce the consequence that a vehicle is driven upon a road for the purpose of carrying persons or goods for hire if it turns out that the road is a controlled route. For this reason I think the judgment of the Supreme Court is correct. I may add that I do not think that the point argued by Mr. *Ligertwood* that the order of the Transport Control Board was invalid is well founded.

The appeal should be dismissed with costs.

DIXON J. The charge against the respondent was for causing to be driven a motor lorry for the purpose of carrying goods for hire on a road which was a controlled route within the meaning of the *Road and Railway Transport Acts* 1930 *and* 1931. The charge was laid under sub-sec. 2 of sec. 14, which provides that no person shall on any controlled route drive any vehicle or cause any vehicle to be driven for the purpose of carrying passengers or goods or both

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for hire, unless, stating it briefly, he or his employer is licensed to do so and unless the conditions of the licence are complied with. Sub-sec. 3 makes it unnecessary to show that the whole of the journey on which the offence was committed took place on a controlled route. In the Supreme Court, *Murray* C.J. and *Richards* J. construed sub-sec. 2 according to its strict grammatical structure, and attached the words "on any controlled route" to the word "cause" and not to the words "to be driven" occurring in the alternative expressed by the words "or cause any vehicle to be driven." It may be said that the language of sub-sec. 3 supports this construction, because it speaks upon the assumption that the offence under sub-sec. 2 will be committed on a controlled route. Nevertheless I am unable to adopt it as the proper interpretation of the sub-section. If the words "on any controlled route" modify the verb "cause," and not the verb "to be driven," the causing itself must take place on a controlled route although the driving may take place anywhere, whether the road be a controlled route or an uncontrolled route or not even a public road at all. In spite of the grammatical form of the sentence, it sufficiently appears, in my opinion, that it was intended in the second alternative expressed in sub-sec. 2 that the words "on any controlled route" should be attached to the words "to be driven" just as in the first alternative they are attached to the word "drive." The explanation of the language of sub-sec. 3 is that driving on a controlled route is treated as the principal offence. The sub-section refers to that offence. Causing a vehicle to be driven is the offence of an accessory, or at any rate of a principal in the second degree and cannot be committed unless there is a principal offender, or an offender in the first degree. But it does not follow from the construction of sub-sec. 2 which I adopt that the magistrate was right in convicting the defendant. He appears to have considered that the offence of causing a vehicle to be driven on a controlled route might be committed by the doing of any act which resulted as a natural and reasonable consequence in some person driving the vehicle on a controlled route for the purpose of carrying passengers or goods for hire. This, in my opinion, goes much too far. In forbidding a person to cause a vehicle to be driven, the section is not dealing with conduct contributing to the

occurrence of some physical event or condition independently of the intervention of the act of any other person. It is dealing with the act of another person which by the earlier part of the provision has already been made an offence. Its purpose is to forbid any person from causing another person to commit that offence. In other words, the sub-section is not content to leave to the general law the question of defining and penalizing the acts which make an accessory or other person inciting or otherwise contributing to the commission of an offence criminally liable. It specifically deals with such a case and provides that no person shall cause the forbidden act. In such a connection I think the word "cause" does not extend beyond acts or omissions of a person who does or makes them either for the purpose of bringing about the doing of the things which amount to the principal offence, or at least contemplating or foreseeing that they will or may have that result. To commit the offence of driving on a controlled route for the purpose of carrying passengers or goods for hire, it is not necessary to know that the route upon which the vehicle is driven is controlled. Similarly the offence of causing a vehicle so to be driven may be committed without this knowledge. But I think there must be some intention that a vehicle shall be driven on a route for the purpose of carrying passengers or goods for hire, or that this shall be contemplated or foreseen as a result of the act in fact causing it. Upon the facts of the case I have felt some difficulty because there appears to be evidence of circumstances from which an inference might have been drawn against the respondent that he had such an intention. The learned magistrate's reasons have been given different interpretations by the parties, but, on the whole, I do not think that they express or imply a definite finding against the respondent on this issue. Such a finding could not be made without disbelieving almost the whole of the evidence for the defence. In the Supreme Court the substantial correctness of much of that evidence seems to have been assumed or accepted, notwithstanding the doubts expressed by the magistrate. I do not think that this court would be warranted in treating the requisite intention or other state of mind as having been found as a fact, or as having been so clearly proved as to require such a finding.

Accordingly I think the appeal should be dismissed with costs.

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McTIERNAN J. The structure of sub-sec. 2 of sec. 14 of the *Road and Railway Transport Acts* 1930 *and* 1931 of South Australia has given rise to the question whether the offence under the sub-section is for any person on a controlled route to cause a vehicle to be driven, presumably on that or any other controlled route or even on any uncontrolled route, or whether it is for any person to cause a vehicle to be driven on a controlled route. The majority of the Full Court of South Australia felt constrained by the position of the words " on any controlled route " to adopt the first construction. The position of this phrase does not, in my opinion, preclude it from being read as qualifying " drive " and " to be driven." Besides, this construction is consistent with the other provisions of the Acts. In my opinion the offence created by the sub-section is to cause a vehicle to be driven on a controlled route.

The word " cause " is not a technical term and does not need exposition. In its widest meaning, the sub-section would expose to criminal liability any person between whom and the driving of a vehicle on a controlled route any relationship of cause and effect could in fact be worked out. But as applied to this subject matter its denotation does not, in my opinion, extend to any act or omission which results only accidentally in the driving of a vehicle on a controlled route. If it had been found that the controlled route on which the respondent's son drove the vehicle was the only available route, or that he was bound or expected to go by that route, or that to take the tractor by that route was part of or incidental to the whole plan or scheme which the respondent had conceived for having the job done, it could hardly be doubted that it was proved beyond reasonable doubt that the respondent caused the vehicle to be driven on the controlled route contrary to the intent of the sub-section. In none of these cases could it be said that the result was accidental.

But the magistrate's findings are, I think, inadequate to support the conviction. It is not inconsistent with the evidence that the son conceived and carried out the idea of driving on the controlled route independently of anything done or omitted by the father with a view to executing the contract of cartage on which the son was engaged, and the magistrate's findings do not exclude this hypothesis.

Nor is there any finding that the father intended that the son should use that route or that he anticipated or expected that he would do so. Hence there is no safe ground for the inference that the driving of the vehicle on the controlled route was other than an accidental consequence of the respondent's conduct.

The fact that the son was acting in the course of his employment, although it was an important link in the evidence adduced to establish a chain of causation issuing in the driving on the controlled route, was insufficient of itself to prove that the respondent caused that act. Here the principle of vicarious liability does not apply to attach responsibility, because the act which the principal is alleged to have done is of a different kind from that which his servant or agent is shown to have committed. The issue of fact was not whether the respondent drove a vehicle on a controlled route, but whether he caused it to be driven on such a route. In my opinion the respondent should not have been convicted of the offence of causing the vehicle driven by his son to be driven on the controlled route on the occasion alleged in the information.

I agree that if it were proved that the respondent caused the vehicle to be driven on that controlled route as alleged it would be no defence that he did not know that it was a controlled route.

In my opinion the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant, *A. J. Hannan*, K.C., Crown Solicitor for South Australia.

Solicitor for the respondent, *L. B. Mathews*.

H. D. W.