[HIGH COURT OF AUSTRALIA.]

BROAD . . . . . APPELLANT;
PLAINTIFF,

AND

PARISH AND OTHERS . . . . . RESPONDENTS.
DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

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SYDNEY, *July* 29; *Sept.* 8.

Rich A.C.J., Starke, McTiernan and Williams JJ.

Insurance—Compulsory insurance of motor car—Accident while car driven by uninsured person—Car held by that person under hire-purchase agreement—"Permit" to use car—Traffic Act 1925 (*Tas.*) (16 *Geo. V. No.* 38—26 *Geo. V. No.* 83), *secs.* 3 (1), 63 (1), (2).

Sec. 63 of the *Traffic Act* 1925 (Tas.) provides as follows:—"(1) Notwithstanding anything in this Act it shall not be lawful for any person . . . to use, or to cause or permit any other person to use, a motor vehicle unless there is in force in relation to the use of that vehicle by that person or that other person, as the case may be, such a policy of insurance as complies with the provisions of this Act. (2) For the purpose of this Part and of every policy of insurance thereunder, every person other than the owner who is at any time in charge of a motor vehicle, with the authority or acquiescence of the owner, shall be deemed to be the agent of the owner, and to be acting within the scope of his authority in relation to such motor vehicle; and any such person is in this Part called an 'agent.'"

Held, by *Rich* A.C.J., *Starke* and *Williams* JJ. (*McTiernan* J. dissenting), that the driving of a motor car by the hirer thereof under a hire-purchase agreement is a use "permitted" by the other party to the agreement within the meaning of sec. 63 (1) of the *Traffic Act* 1925-1935 (Tas.) so as to render such other party liable to an action for damages resulting from the breach of the duty imposed by sec. 63 (1).

Decision of the Supreme Court of Tasmania (*Clark* J.) reversed.

APPEAL from the Supreme Court of Tasmania.

In March 1938 an agreement was made between Perpetual Insurance and Securities Ltd., hereinafter referred to as the company, and Maxwell James Parish, for the hire and purchase of a motor car. It was in common form. Parish was entitled to the use of the car, paying rent or hire therefor, for the term mentioned in the agreement, unless sooner determined pursuant to the terms of the agreement. Subject to the payment of all sums due under the agreement he was also given an option at any time during the hiring to purchase the motor car. The agreement contained a stipulation that Parish should throughout the term of the agreement comply in all respects with the requirements of the *Traffic Acts* and *Regulations*. It also provided that the company should be entitled to insure for its own benefit the motor car against damage by fire or accident, and that Parish should pay on demand all premiums for keeping the insurance on foot.

The *Traffic Act* 1925 (Tas.) provides, by sec. 3, that unless the contrary intention appears " owner," when used in reference to a motor vehicle, means the person registered in the record of motor vehicles kept in accordance with sec. 11 of the Act as the owner of such vehicle, and by sec. 63 :—" (1) Notwithstanding anything in this Act it shall not be lawful for any person . . . to use, or to cause or permit any other person to use, a motor vehicle unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance as complies with the requirements of this Act. (2) For the purpose of this Part and of every policy of insurance thereunder, every person other than the owner who is at any time in charge of a motor vehicle, with the authority or acquiescence of the owner, shall be deemed to be the agent of the owner, and to be acting within the scope of his authority in relation to such motor vehicle ; and any such person is in this Part called an 'agent.' "

In March 1938 Parish, whilst driving the motor car along a public highway, collided with a motor cycle then being driven by one Bertie James Broad, who was seriously injured and subsequently died. The road where the accident occurred had a surface of bitumen, fourteen feet wide, with two feet of gravel outside the bitumen on Parish's proper side, and six feet of gravel outside it on Broad's proper side. Both the motor car and the motor cycle were carrying proper headlights, the motor car having two and the motor cycle having one, and each driver should have been able to see the lights on the other vehicle when they were one hundred yards apart. At the moment of impact the wheels of the motor

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cycle were two feet four inches from the edge of the bitumen on its proper side. The impact took place between the front wheel of the motor cycle and the right-hand front wheel of the motor car. The motor car was therefore entirely on its wrong side of the road. Whilst the two vehicles were approaching one another over the one hundred yards already mentioned, the motor car was travelling at thirty-five miles per hour and the motor cycle at twenty miles per hour, and the motor car was travelling continuously on its wrong side of the road, while the motor cycle was travelling continuously on its proper side about the same distance from the edge of the bitumen as when the accident occurred.

An action was commenced in the Supreme Court of Tasmania by Kathleen Isabel Broad, the widow of Broad, for the benefit of herself and the children of the marriage, against Parish, the company and certain other defendants not material to this report, alleging that Broad's death was caused by the negligence of Parish, that he, Parish, was not possessed of sufficient means to satisfy any judgment against him, that no policy of insurance had been obtained in relation to the use of the motor car by Parish in accordance with the provisions of the *Traffic Act* 1925 (Tas.), that the company had permitted Parish to use the motor car, and that he was in charge of it at the time of the collision with the authority or acquiescence of the company.

The trial judge formed the opinion that Broad had been guilty of contributory negligence because he should have realized, when the vehicles were about fifteen yards apart, that the car would continue to travel on its then course, so that an accident was inevitable unless he went, as he could have done, onto the gravel, or at least onto the very edge of the bitumen. The defendants, in their respective defences, had each alleged contributory negligence on the part of Broad, and had given particulars of the alleged breaches of his duty to take care, but only one defendant had given particulars wide enough to include this particular breach. The judge therefore held that the action failed against that defendant, but succeeded against the company and the other defendants so far as it depended upon proof that Parish had acted negligently and that his negligence was the substantial cause of the accident. He refused to allow the company and the other defendants to amend their particulars by including therein the failure by Broad to exercise due care on which that one defendant had succeeded. Parish having been found guilty of negligence, judgment was entered against him for £1,400 damages, but judgment was entered for the company and the other defendants, on the ground that they respectively had not permitted the use of

the motor car by Parish ; that neither the company nor any of those other defendants was the owner of the motor car within the meaning of sec. 63 (2) of the *Traffic Act* 1925 (Tas.); and that, in any case, Parish was not in charge of the motor car with their authority or acquiescence.

The plaintiff appealed, *in forma pauperis*, to the High Court against the judgment entered for the company, on the grounds that the trial judge was wrong in law and in fact so far as he had held that the company did not permit Parish to use the motor car, and that he was wrong in holding that Parish was not in charge of the motor car with the authority or acquiescence of the company. The company cross-appealed against the refusal of the trial judge to allow it to amend its particulars and include the failure to use due care on which one defendant had succeeded.

Upon the hearing of the appeal and cross-appeal there was not any appearance by or on behalf of the respondents other than the company.

The relevant statutory provisions and further facts appear in the judgments hereunder.

Sugerman (with him *R. Else Mitchell*)—for *R. C. Wright*, on military service, for the appellant. Sec. 63 of the *Traffic Act* 1925 forms part of a scheme of compulsory insurance. The damage, which is the gist of a civil action thereunder, is the loss of the right of recourse to an insurer in a case where a driver of a motor vehicle is unable, by reason of his poverty, to satisfy a judgment obtained against him. A civil action lies by a person who suffers damage as a result of infringement of the terms of sec. 63. *Monk* v. *Warbey* (1), *McLeod* v. *Buchanan* (2), *Goodbarne* v. *Buck* (3), and *Richards* v. *Port of Manchester Insurance Co. Ltd.* (4) establish that there may be permission within the meaning of sec. 63 (1) either specifically or in general terms ; there may be a permitting of a general course of conduct, as well as a permitting of a particular act of driving, and that permitting may be either express or may be inferred from the circumstances. For the purpose of determining whether a person has permitted another person to drive nothing turns upon the precise juristic nature of the relationship between those persons, that is to say, it does not matter whether the vehicle is bailed or not, or the nature of the bailment, e.g., a bailment for a fixed term or determinable at will, or for a hire consideration, or a mere gratuitous

(1) (1935) 1 K.B. 75.
(2) (1940) 2 All E.R. 179.
(3) (1940) 1 K.B. 771.
(4) (1934) 152 L.T. 261, 413.

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loan. The respondent Perpetual Insurance and Securities Ltd., which remained the owner of the motor car throughout by force of the hire-purchase agreement, permitted the use of the car for the term of that hire-purchase agreement. That permission was a general permission, given at the commencement of the agreement. Having regard to the different considerations which apply, the word "permit" does not necessarily bear the same meaning wherever it appears in the Act. The trial judge was in error in finding as a fact that there was contributory negligence on the part of the deceased. There was not any evidence to support such a finding; the finding was based on mere speculation as opposed to proper inferences from the facts. Principles relating to contributory negligence, and also the doctrine of "the agony of the moment", were dealt with in *The Bywell Castle* (1), *Admiralty Commissioners* v. *S.S. Volute* (2), *United States Shipping Board* v. *Laird Line Ltd.* (3), and *Wheare* v. *Clarke* (4). The deceased was entitled to assume that the driver of the oncoming car would observe relevant traffic regulations and prudent driving practice and thereby avoid a collision (*Toronto Railway Co.* v. *King* (5))—See also *Wallace* v. *Burgius* (6) and *Hindmarsh* v. *Guthrie*; *Shell Co. of New Zealand* v. *Guthrie* (7).

Barwick (with him *Wilmshurst*), for the respondent Perpetual Insurance and Securities Ltd. Regard must be had to the definitions respectively given in sec. 3 of the *Traffic Act* 1925 of the words "owner" and "motor vehicle." The way in which the civil cause of action is established through *Monk* v. *Warbey* (8) is that one finds a breach of sec. 63 of the Act in permitting a use which causes damage. The breach of duty, the statutory cause of action, is the permitting that use of the vehicle which in fact causes damage at a time when there is not any policy in existence to cover that use. It follows that permission to use the vehicle on other occasions, when damage is not caused, would be irrelevant: it is a permission, it need not be particular to that occasion, but it must be a permission which exists to the particular use which causes damage when a policy does not exist to cover that use. The mere entering into a hire-purchase agreement does not confer a permission within the meaning of sec. 63, that is, a general permission in respect of all the uses to which the vehicle may be put, uses which may not have been covered by a policy at the time when the permission was given. It is a question

(1) (1879) 4 P.D. 219.
(2) (1922) 1 A.C. 129, at p. 136.
(3) (1924) A.C. 286, at p. 291.
(4) (1937) 56 C.L.R. 715, particularly at pp. 729-736.
(5) (1908) A.C. 260, at p. 269.
(6) (1915) S.C. 205; 52 Sc.L.R. 130.
(7) (1930) N.Z.L.R. 15.
(8) (1935) 1 K.B. 75.

of fact as to whether in any given circumstances the inference of permission to use within the meaning of sec. 63 ought to be drawn. That question is not concluded by the form of the transaction: regard must be had to its substance. The permission, if granted, was not a continuing permission. The user and the right to use is a consequence of the bailment. Upon the execution of the agreement the hirer acquired a right of exclusive possession, subject to the terms of the agreement, and the other party to the agreement was not entitled to refuse or forbid the user of the vehicle by the hirer. Permission must be correlative to the right to refuse. Here, the property passed to the hirer and no control or dominion over his user of the vehicle was retained by this respondent; therefore there was not any permission by this respondent (*Peters* v. *General Accident, Fire and Life Assurance Corporation Ltd.* (1); *Watkins* v. *O'Shaughnessy* (2)). The words used by Lord *Wright* in *McLeod* v. *Buchanan* (3) are not apt to deal with a case of the divesting of a right to possession. The trial judge was justified on the evidence in finding that there was contributory negligence on the part of the deceased.

Sugerman, in reply. The respondent did not exercise the right conferred upon it by the agreement to determine the agreement upon the breach of any of its terms; therefore it follows that it permitted and continued to permit the hirer to use the vehicle.

Cur. adv. vult.

The following written judgments were delivered:— Sept. 8.

RICH A.C.J. In this appeal two questions fall for determination. The initial question is whether the deceased was guilty of contributory negligence. As I am unable to agree with the finding of the learned trial judge on this point I pass to consider the construction of sec. 63 of the *Traffic Act* 1925 (Tas.). This section is adapted from sec. 35 of the English *Road Traffic Act* 1930, with the exception of sub-sec. 2, which comes from the New-Zealand Act.

The relevant facts are that the owner of a motor car let it on hire under a hire-purchase agreement to the defendant Parish. The car, while being driven by Parish, collided with a motor cycle ridden by B. J. Broad, the husband of the plaintiff, and B. J. Broad was killed in the accident. Parish was not insured against third-party risks at the time he took possession of the car, or at the date of the accident.

(1) (1938) 2 All E.R. 267. (2) (1939) 1 All E.R. 385, at pp. 386, 387.
(3) (1940) 2 All E.R., at p. 187.

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The section in question provides that it shall not be lawful for any person to use, or permit any other person to use, a motor vehicle, unless there is in force in relation to its use by that person or that other person a policy of insurance which complies with the Act. The question turns upon the meaning in the section of the word "permit." As a matter of English, and apart from any arbitrary definition, it connotes an authorization by a person who has at least a *de-facto* control. If such a person lends a motor vehicle for a day for use by a friend, this is a clear case of permitting user. It makes no difference if a charge is made for the loan. If the hiring is for a longer period, the position is still the same. A contract of letting of a chattel, whatever the length of the term, creates no right *in rem*, but rights which are contractual only. In such a case, the hiring agreement creates once and for all a permission to use, which is referable to nothing but a consensual arrangement between the parties. On the other hand, a sale and delivery of a vehicle to a purchaser vests in the purchaser rights *in rem*, and, prima facie, the purchaser thereafter depends on his ownership, and not on any authorization by the vendor, for his right to use the car. As it appears to me that the appellant is entitled to succeed under sub-sec. 1, it is unnecessary to consider the construction of sub-sec. 2, and I need only say that, whether "owner" there means "registered owner" or has a wider meaning, the sub-section is consistent with and in fact assists me in coming to the above conclusion as to the ambit of the word "permit" in its predecessor.

The appeal should be allowed and the cross-appeal dismissed.

STARKE J. Under the *Road Traffic Act* 1930 (Eng.), (20 & 21 Geo. V. c. 43), sec. 35, the owner of a motor car who permits his car to be used by a person who is not insured against third-party risks is liable in damages to a third party who has been injured by the negligent driving of the uninsured person (*Monk* v. *Warvey* (1) C.A. and not contested in the House of Lords; *McLeod* (*or Houston*) v. *Buchanan* (2)). The *Traffic Act* 1925 of Tasmania makes in Part VII. (Insurance against Accident) provisions which, though not identical in terms, have the same legal effect. Sec. 63 (1): "Notwithstanding anything in this Act . . . it shall not be lawful for any person . . . to use, or to cause or permit any other person to use, a motor vehicle unless there is in force in relation to the use of the vehicle by that person or that other person, as the

(1) (1935) 1 K.B. 75. (2) (1940) 2 All E.R. 179.

case may be, such a policy of insurance as complies with the requirements of this Act." And there is a further provision in the Tasmanian Act, sec. 63 (2), as follows: "For the purpose of this Part and of every policy of insurance thereunder, every person other than the owner who is at any time in charge of a motor vehicle, with the authority or acquiescence of the owner, shall be deemed to be the agent of the owner, and to be acting within the scope of his authority in relation to such motor vehicle; and any such person is in this Part called an 'agent.'"

The word "permit" means "intentionally allow" (*Goldsmith* v. *Deakin* (1), per *Lawrence* J.). But intention to commit a breach of the statute is not required (*McLeod* v. *Buchanan* (2)). Permission may be given expressly, or it may be inferred from circumstances which "carry with" them a "reasonable implication of a discretion or liberty to use" the motor vehicle "in the manner in which it was used" (3). But, subject to the proper construction of the section, the question whether a person has been permitted to use a motor vehicle is one of fact. The provision of sec. 63 (2) also imposes a civil liability upon an owner in respect of the acts of persons in charge of a motor vehicle with his authority or acquiescence, but possibly only to the extent of the liability in respect of which insurance is required by the Act: Cf. *Stewart* v. *Bridgens* (4).

The relevant facts in the present case are that in 1938 an agreement was made between the Perpetual Insurance and Securities Ltd., hereinafter referred to as "the company," and one Parish, for the hire and purchase of a motor vehicle. It was in common form. Parish was entitled to the use of the vehicle, paying rent or hire therefor, for the term mentioned in the agreement, unless sooner determined pursuant to the terms of the agreement. And, subject to payment of all sums due under the agreement, he was also given an option at any time during the hiring to purchase the vehicle. He was thus entitled to the use of the vehicle. He also had a special property in the vehicle during the continuance of the agreement and for the purposes expressed or implied by it, and an option to buy it on making certain stipulated payments and observing the agreement (*Helby* v. *Matthews* (5)). The agreement contained a stipulation that Parish should throughout the term of the agreement comply in all respects with the requirements of the *Traffic Acts* and *Regulations*, and it also provided that the company should be entitled to insure for its own benefit the motor vehicle against damage by fire

(1) (1933) 50 T.L.R. 73, at p. 74.
(2) (1940) 2 All E.R., at p. 186.
(3) (1940) 2 All E.R., at p. 187.
(4) (1935) N.Z.L.R. 948.
(5) (1895) A.C. 471.

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or accident, and that Parish should pay on demand all premiums for keeping the insurance on foot.

In March 1938 Parish, whilst driving the motor vehicle along a public roadway, collided with a motor cycle ridden by one Broad, who was seriously injured and subsequently died. An action was commenced in the Supreme Court of Tasmania by the widow of Broad, for the benefit of herself and her children, against Parish, alleging that her husband's death was caused by the negligence of Parish, that he, Parish, was not possessed of sufficient means to satisfy any judgment against him, that no policy of insurance had been obtained in relation to the use of the motor vehicle by Parish in accordance with the provisions of the *Traffic Act* 1925, and that the company had permitted Parish to use the motor vehicle and that he was in charge of it at the time of the collision with the authority or acquiescence of the company. Parish was found guilty of negligence, and judgment was entered against him for £1,400 damages, but judgment was entered for the company on the ground that it had not permitted the use of the motor vehicle by Parish and that it was not the " owner " within the meaning of sec. 63 (2) of the *Traffic Act* 1925 and that Parish in any case was not in charge of the motor car with the authority and acquiescence of the company.

The appellant contends that the hire-purchase agreement already mentioned handed " over complete control of the vehicle to Parish and had the effect of sanctioning its general use." Parish's right to the use of the motor vehicle flowed from the hire-purchase agreement. The company, though the owner of the car, was not in a position to forbid the unrestricted use of the car because of that agreement. In *Goodbarne* v. *Buck* (1) *MacKinnon* L.J. observed : " In order to make a person liable for permitting another person to use a motor vehicle, it is obvious that he must be in a position to forbid the other person to use the motor vehicle." But the bearing of the test adopted by the learned Lord Justice is indicated in the next sentence : " As at present advised, I can see no ground on which anyone can be in a position to forbid another person to use a motor vehicle except where he is the owner of the car " (1). The company in the present case was the owner of the car, and was not in a position to forbid the use of the motor vehicle only because it had conferred upon Parish the unrestricted right of using the vehicle during the continuance of the agreement and for the purposes expressed or implied by it. The only reasonable conclusion in fact, in these circumstances, is that the company permitted the use by Parish of

(1) (1940) 1 K.B., at p. 774.

the motor vehicle on the occasion when Broad was injured by his negligence (*Richards* v. *Port of Manchester Insurance Co. Ltd.* (1); *Goldsmith* v. *Deakin* (2); *Osborne* v. *Richards* (3); *Daniels* v. *Vaux* (4)). And, as already stated, no policy of insurance had been obtained in relation to the use of the motor vehicle by Parish in accordance with the *Traffic Act* 1925. The liability of the company to the appellant in damages is thus established.

Further, it appears to me that the provision of sec. 63 (2) also involves the company in liability to the appellant. The facts already detailed warrant the conclusion in fact that Parish was at the time of the accident to Broad in charge of the motor vehicle with the acquiescence of the company. The hire-purchase agreement involves the company's assent to his possession and use of the motor vehicle. It was said, however, that the company was not the "owner" of the vehicle within the meaning of the *Traffic Act* 1925, by reason of the definition in sec. 3 (1) of "owner." In this Act, unless the contrary intention appears, "'owner,' when used with reference to a motor vehicle, means the person registered in the record of motor vehicles kept in accordance with section eleven as the owner of such vehicle." Registration as owner is evidence of ownership and sufficient proof of the fact, but both the subject matter and the context of sec. 63 (2) indicate that registration is not the only evidence of ownership but that it also extends to persons who are in fact owners although not so registered.

The notice of motion by way of cross-appeal should be dismissed. In my opinion, there was no evidence, or no sufficient evidence, of any fault on the part of Broad. He was on the right side of the road and Parish simply ran over him in circumstances that gave Broad little or no chance of avoiding the collision. I agree with the view of the facts in relation to this aspect of the case taken by my brother *Dudley Williams*.

The result is that the judgment in favour of the company should be set aside and judgment entered for the appellant against the company for £1,400 damages, apportioned amongst the appellant and her children in the same amounts as appear in the judgment against Parish.

McTiernan J. The appellant was the plaintiff in an action in which all the respondents were the defendants. She claimed compensation from each of them severally for the pecuniary loss suffered by herself and children in consequence of the death of her husband.

(1) (1934) 152 L.T. 261, 413.
(2) (1933) 50 T.L.R. 73.
(3) (1933) 1 K.B. 283.
(4) (1938) 2 K.B. 203, at p. 206.

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He was fatally injured on 26th March 1938, in a collision on a road in Tasmania with a motor car driven by the defendant Parish. Against this defendant the action was for negligence in driving the car. Against each of the other defendants it was for breach of the statutory duty created by the *Traffic Act* 1925 (Tas.), sec. 63 (1). This sub-section is in these terms :—" Notwithstanding anything in this Act it shall not be lawful for any person, after the thirty-first day of January, 1937 to use, or to cause or permit any other person to use, a motor vehicle unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance as complies with the requirements of this Act." The penalty for offending against the sub-section is £50 or three months imprisonment. No insurance policy complying with these provisions was in force in relation to the use of the car by Parish or any other person.

This offence is similar to that for which a penalty is imposed by the *Road Traffic Act* 1930 (Eng.) (20 & 21 Geo. V. c. 43), sec. 35. In *Monk* v. *Warbey* (1) it was decided that a personal action for damages would lie at the suit of any person who suffers loss in consequence of a contravention of that section : See also *McLeod* v. *Buchanan* (2).

By the aid of sec. 63 (2) of the *Traffic Act* 1925, the appellant also sought to establish against each defendant other than Parish a vicarious liability for the damage caused by his alleged negligence. This sub-section is in these terms : " For the purposes of this Part and of every policy of insurance thereunder, every person other than the owner who is at any time in charge of a motor vehicle, with the authority or acquiescence of the owner, shall be deemed to be the agent of the owner, and to be acting within the scope of his authority in relation to such motor vehicle ; and any such person is in this Part called an 'agent'."

How Crawford and the two companies came to be sued will appear from these facts. Crawford had been the owner of the motor car which took part in the collision. He sold it on 17th February 1938 to the defendant, City Motors (1933) Pty. Ltd., which continued to own it until 22nd February 1938, when it sold the car to the defendant, Perpetual Insurance and Securities Ltd. This company on that date entered into a hire-purchase agreement, pursuant to which the car was on the same day delivered to Parish at the premises of the former company on the authority of Perpetual Insurance and Securities Ltd. Parish continued in possession of the motor car pursuant to his rights under the hire-purchase agreement down to

(1) (1935) 1 K.B. 75. (2) (1940) 2 All E.R., at p. 186.

the time of the accident. The former company was a dealer, the latter a finance company. At the time of the accident Parish was in default under the agreement. He had broken his covenant for the payment on the stipulated rental, and had not registered the motor car under the *Traffic Act*. The motor car was then registered in the name of Crawford. *Clark* J., who tried the case, gave judgment in the sum of £1,400 for the appellant against the defendant Parish, but for each of the other defendants. He held that Parish was guilty of negligence. The defendant Crawford set up the defence of contributory negligence and his Honour held that this defence was established. An application by the other defendants to enable them to get the benefit of this defence in their cases respectively was refused. His Honour reached the conclusion that the action for breach of statutory duty should fail on the ground that none of the defendants who was sued on that count caused or permitted Parish to use the car. The proof that the appellant had suffered loss in consequence of the failure to comply with sec. 63 (1) of the *Traffic Act* 1925 was complete. It was shown that Parish was without means to satisfy the judgment which the appellant recovered against him. His Honour held also that Parish was not in charge of the motor vehicle with the authority and acquiescence of any of the other defendants and that the claim which the appellant made with the assistance of sec. 63 (2) therefore failed.

The notice of appeal questions the decision of *Clark* J. on two only of the many questions raised by the pleadings and decided by him. These two questions are, first, whether Perpetual Insurance and Securities Ltd. did permit Parish to use the motor car, the subject of the hire-purchase agreement, and secondly, whether Parish was in charge of the motor car with its acquiescence or authority. The company cross-appeals against his Honour's refusal to allow it to add to its defence the plea of contributory negligence. This question would not be material unless the appeal succeeded. The appellant, however, contests the finding of contributory negligence besides resisting the cross-appeal.

The first question for decision then is whether the company did permit Parish to use the car, the subject of the hire-purchase agreement. There is no ground for saying that it permitted him to do so except that it entered into this contract of hire with an option to purchase and delivered the car to him for use subject to the terms of the agreement. The real nature of the transaction was that Parish was to obtain possession of the motor car and to be entitled to its use for the term of the hiring so long as he paid the company the stipulated rental and performed his

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covenants, and he was bound to do this so long as he retained possession of the motor car. If he continued to pay the rental for the term of the hiring the motor car was to become his property, or he might exercise the option to purchase it before the end of the term. But he might at any time return it, and then there would be no liability to make any further payments except what had fallen due. It was an expressed condition of the contract that it did not give or should not be deemed to give the hirer any property or interest in the motor vehicle " except as a bailee thereof " until the option was exercised or the terminal instalment was paid. The bailment was a lending and hiring of the motor car for use as bailee. Parish had legal possession of the car, which is a right in itself. By the bailment it was detached from the numerous rights which the company had over the car constituting ownership. The possession with which the company parted was *de-facto* and legal possession. It no longer retained the legal possession, as it would if the motor car were in the custody of a servant or a licensee. Is the transaction given its proper name and quality by saying that the company permitted Parish to use the car ?

It has been observed by the courts that the word " permits " has a very extensive connotation. Its primary meaning, according to the *Oxford Dictionary*, is to " allow, suffer, give leave : not to prevent." That meaning has obtained judicial endorsement (*Adelaide Corporation* v. *Australasian Performing Right Association Ltd.* (1)). If any of these synonyms, for example, " allow " or " not to prevent," were the words of authorization under which a person used a car, it would not suggest that he obtained more than a personal right—a licence annexed to himself—to use the car and custody of it. The word " permission " is commonly applied to the gratuitous bailment described as a loan of a chattel for use or *commodatum*. Referring to this bailment, the authors of the article on *Bailment* in *Halsbury's Laws of England*, 2nd ed., vol. 1, p. 744, wrote : " Generally speaking, the permission accorded by the owner of a chattel to a borrower to use it is purely personal, and cannot, except by the consent of the owner, be extended to a third party." In *Bringloe* v. *Morrice* (2) *North* C.J. drew the distinction between the case where a certain time is limited for the loan of a horse and where not. He said :—" In the first case, the party to whom the horse is lent, hath an interest in the horse during that time, and in that case his servant may ride, but in the other case not. A difference was taken betwixt *hiring* a horse to go to York, and *borrowing* a horse ; in the first place the party may set

(1) (1928) 40 C.L.R. 481.

(2) (1676) 1 Mod. Rep. 211 [86 E.R. 834].

his servant up, in the second not." In *Lotan* v. *Cross* (1) and in *Hall* v. *Pickard* (2) Lord *Ellenborough* distinguished a bailment in which the legal possession remained in the owner and a hiring under which the bailee obtained the legal possession of the chattel. In the former case he used these words : " Show a letting for a certain time to Brown, and the possession would be in him ; but a mere gratuitous permission to a third person to use a chattel does not, in contemplation of law, take it out of the possession of the owner, and he may maintain trespass for any injury to it while so used." In *Hall* v. *Pickard* (2) Lord *Ellenborough* said :—" This is not like a gratuitous permission to use a chattel, as in *Lotan* v. *Cross* (3) where the possession constructively remained in the owner. The horses were let to hire for a certain time to Dr. Carey, who had a right to retain them till that was expired, and who was driving them by his own servants when the mischief was done." It was there held that the owner's remedy was case and not trespass. The substance of each of the transactions to which these authorities referred as involving a permission to use a chattel was a personal licence to use it. The word permission may have a more extensive meaning than gratuitous bailment. It may mean a licence, leave or liberty to use a chattel.

But the word " permit " does not, in my opinion, suggest or imply a transaction which has the attributes of that now in question. The company did not reserve to itself the control of the car out of the rights passing to Parish under the contract. In the present case the owner did not by its contract say that it permitted Parish to use the motor car or employ any synonym for the word " permit." The operative words whereby Parish obtained the car were " let on hire," expressing the owner's act, and " take on hire," expressing Parish's act. These words have a well-known significance. The owner thereby parted with legal possession of the motor car and its right to recover possession of the property for the term of the bailment. As Parish became entitled to use the car because of the legal effect of these operative words in the contract, I do not think that it would be in accordance with ordinary usage to say that Parish was permitted by the company to use the car, and it is to be remembered that the intention of sec. 63 (1) is primarily to create an offence : Cf. *Abrahams* v. *The King* (4). No-one would doubt that a sale is not a permission to use the article sold. It seems to me that it would be equally erroneous to say that " when goods are

(1) (1810) 2 Camp. 464 [170 E.R. 1219].
(2) (1812) 3 Camp. 187 [170 E.R. 1350].
(3) (1810) 2 Camp. 464 [170 E.R. 1350].
(4) *Ante*, p. 577.

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left with the bailee to be used by him for hire " (*Coggs* v. *Bernard* (1), per *Holt* C.J.) the owner " permits " the bailee to use the goods. It is interesting to notice that in *Croft* v. *Alison* (2), for the purposes of the particular case, the court treated the hirer of a chariot for a day as the owner and proprietor. The *Traffic Act* 1925 does not define the words " cause or permit." The word " cause " was expounded in *Miller* v. *Hilton* (3), a case arising under the *Road and Railway Transport Act* of South Australia.

Sec. 63 (1) of the Tasmanian *Traffic Act* 1925, is in all material respects similar to sec. 35 (1) of the English *Road Traffic Act* 1930. Sec. 35 (4) of this Act provides that sec. 35 shall not apply to a vehicle owned by, among other persons, a person who has deposited and keeps deposited with the Accountant-General of the Supreme Court for and on behalf of the Supreme Court the sum of £15,000, " at any time when the vehicle is being driven by the owner or by a servant of the owner in the course of his employment or is otherwise subject to the control of the owner." If the deposit under sec. 35 (4) is a method alternative to the policy of insurance required by sec. 35 (1), the words " by a servant of the owner in the course of his employment or is otherwise subject to the control of the owner " would appear to afford a guide to the scope of the words " cause or permit " in sec. 35 (1). When a servant drives his master's car in the course of his employment it is true to say that the master causes him to drive the car, and when a car driven by a person other than the owner is subject to the owner's control, it is true to say that the owner permits that person to drive the car.

The case of *Monk* v. *Warbey* (4) was an action for a breach of sec. 35 (1). *Greer* L.J. said : " The Act requires a person who runs a car to have an insurance on the use of the car " (5). In that case the facts were that the owner of a motor car " out of the kindness of his heart " lent his car to a person who, with the owner's consent, had it driven by another person who in driving it caused injuries to the plaintiff. Neither the person to whom the car was lent nor the person who drove it was insured against third-party risks. In that case there was a gratuitous permission or bailment. In *Daniels* v. *Vaux* (6) there was also a gratuitous bailment of a car by the registered owner to her son. In *Peters* v. *General Accident Fire and Life Assurance Corporation Ltd.* (7) the motor car was sold at a price payable by instalments and the property had passed to

(1) (1704) Lord Raym. 909, at p. 913 [92 E.R. 107, at p. 109].
(2) (1821) 4 B. & Ald. 590 [106 E.R. 1052].
(3) (1937) 57 C.L.R. 400.
(4) (1935) 1 K.B. 75.
(5) (1935) 1 K.B., at p. 80.
(6) (1938) 2 K.B. 203.
(7) (1938) 158 L.T. 476.

the purchaser before the accident occurred. Sir *Wilfrid Greene* M.R. said :—" When Pope " (the purchaser) " was using that car he was not using it by permission of Coomber " (the seller). " It is an entire misuse of language to say that. He was using it as owner and by virtue of his rights as owner and not by virtue of any permission of Coomber " (1). In *Watkins* v. *O'Shaughnessy* (2) it was held that as the purchaser of a car had driven it from an auctioneer's premises by virtue of his rights as purchaser, it could not be said that they permitted him to drive the car. In *Goodbarne* v. *Buck* (3) *MacKinnon* L.J. said that a person could not be liable for permitting another person to use a motor vehicle unless he was in a position to forbid it and that only the owner can forbid or permit. This proposition would not apply if the owner parted with those rights by virtue of which he could forbid or permit. In *McLeod* v. *Buchanan* (4) there was no suggestion that the owner of the car had let the car on hire to his brother. It was held that the inference from the evidence should be that the driver of the car was permitted to use the car for private purposes as well as for commercial purposes. This case affords no ground for interpreting the word " permit " in the wide sense which it would need to have if the appellant's contentions are correct. The only other case cited which arose under the provisions of the English Act (sec. 35), corresponding to sec. 63 of the Tasmanian Act, is *Richards* v. *Port of Manchester Insurance Co. Ltd.* (5). In that case the car was a " drive-yourself car," and the statement of claim alleged that the owner of the car had hired it out to a third person, and " by reason of the said hiring . . . unlawfully caused or permitted " (that party) " to use the said motor car " contrary to and in breach of the statutory duty. The meaning of the word " permitted " was not explained in the judgment, and the case is, in my opinion, not an authority for holding that in the present case Parish used the car by permission of the company.

But at the time of the collision Parish had not registered the car and had not paid the instalment which fell due on 25th March 1938. In these respects he had not complied with the contract of hiring and the company had the right under its terms to put an end to the hiring. For this additional reason it is said that Parish was driving with the company's permission. There is no evidence that the company became aware of these matters before the date of the accident. But the breaches did not determine the whole agreement, and, in my opinion, at the date of the accident Parish was using the

(1) (1938) 158 L.T., at p. 477.
(2) (1939) 1 All E.R. 385.
(3) (1940) 1 K.B. 771.
(4) (1940) 2 All E.R. 179.
(5) (1934) 152 L.T. 261, 413.

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car by virtue of his rights under the contract. It follows that the company did not permit him to use it.

There remains a second ground of appeal relating also to the responsibility of Perpetual Insurance and Securities Ltd. It raises the question whether " owner " in sec. 63 (2) means registered owner. The word is defined by sec. 3 to mean the registered owner. But, if the definition does not apply to this sub-section, I think that the ground should fail because Parish was not in charge of the motor car with the authority and acquiescence of the company, but, as has already been explained, by virtue of the act of the company in letting the car on hire to him.

In my opinion the decision of *Clark* J. was right on each of the questions raised by the notice of appeal. It follows that the question raised by the cross-appeal has no materiality. But if it is necessary to determine that question the cross-appeal should, in my opinion, be dismissed, because in the view which *Clark* J. took that the company was not guilty of a breach of statutory duty I am unable to say that he exercised his discretion erroneously by refusing to amend the company's defence.

In my opinion the appeal and cross-appeal should be dismissed.

WILLIAMS J. Between 9.30 p.m. and 10.15 p.m. on the night of 26th March 1938 a collision occurred, on the road leading from Beaconsfield to Beauty Point in Tasmania, between a motor car driven by M. J. Parish and a motor cycle ridden by B. J. Broad, as a result of which the latter was killed.

On 19th July the plaintiff, as the widow of the deceased, brought an action for damages on behalf of herself and their children against Parish and three other defendants, C. V. Crawford, City Motors (1933) Pty. Ltd. and Perpetual Insurance and Securities Ltd., alleging that the deceased had been killed by the negligence of Parish. The learned trial judge held that the accident had been caused partly by the negligence of Parish and partly by that of the deceased, but much more by the negligence of the former than of the latter.

The road where the accident occurred had a surface of bitumen fourteen feet wide, with two feet of gravel outside the bitumen on Parish's proper side, and six feet of gravel outside it on the deceased's proper side thereof. Both vehicles were carrying proper headlights, the car having two and the cycle one, and each should have been able to see the lights of the other when they were one hundred yards apart. At the moment of impact the wheels of the cycle were two feet four inches from the edge of the bitumen on its proper side.

The impact took place between the front wheel of the cycle and the right-hand front wheel of the car. The car was therefore entirely on its wrong side of the road. Whilst the two vehicles were approaching one another over the hundred yards already mentioned, the car was travelling at thirty-five miles per hour and the cycle at twenty miles per hour, and the car was travelling continuously on its wrong side of the road, while the cycle was travelling continuously on its proper side about the same distance from the edge of the bitumen as when the accident occurred.

The learned judge formed the opinion that the deceased had been guilty of contributory negligence because he should have realized when the vehicles were about fifteen yards apart that the car would continue to travel on its then course, so that an accident was inevitable unless he went, as he could have done, on to the gravel or at least on to the very edge of the bitumen. The defendants, in their respective defences, had each alleged contributory negligence on the part of the deceased, and had given particulars of the alleged breaches of his duty to take care, but only the defendant Crawford had given particulars wide enough to include this particular breach. He, therefore, held the action failed against Crawford, but succeeded against the other defendants, so far as it depended upon proof that Parish had acted negligently, and his negligence was the substantial cause of the accident. He refused to allow the last-mentioned defendants to amend and include in their particulars the failure to exercise due care on which Crawford had succeeded.

If I considered that this finding of contributory negligence was justified on the evidence, I would not feel any doubt that the learned judge ought to have allowed the other defendants to amend their particulars, and that the cross-appeal ought to succeed. But it appears to me that this finding was erroneous, and the proper conclusion on the facts is that the accident was caused by the negligence of Parish in driving on his wrong side of the road without keeping a proper look out. If he had kept such a look out, he would have seen the deceased at a distance of one hundred yards, so that there was ample time for him to have crossed to his proper side of the road. The deceased acted properly in riding straight along well on his proper side of the bitumen. He carried a proper headlight. He could see a car approaching on its wrong side of the road with adequate lights and apparently under control. He was entitled to expect until the last moment that the driver of the car would act properly and move over to his proper side. The overlap was so slight that this action would have prevented the collision until almost the very last moment prior to the actual impact. When the vehicles

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were a few yards apart the deceased would have been to some extent dazzled by the headlights of the car, and to have pulled over to the edge of the bitumen or on to the gravel would not have been easy. If he had done so, the accident would in fact have been avoided, but mere failure to avoid a collision by taking some extraordinary precaution does not of itself constitute negligence (*Swadling* v. *Cooper* (1)). The circumstances establish that Parish was entirely in the wrong, and that the deceased acted in a proper and prudent manner. The finding of fact against all the defendants should have been that it was the negligence of Parish which caused the death of the deceased. The plaintiff was, therefore, entitled to succeed against Parish.

The further question then arose whether, having regard to this finding, upon Parish being unable to satisfy the judgment, she was entitled to succeed against the defendant the Perpetual Insurance and Securities Ltd.

The *Traffic Act* 1925 (Tas.), sec. 63, sub-sec. 1, provides that notwithstanding anything in the Act it shall not be lawful for any person, after 31st January 1937, to use or to cause or permit any other person to use, a motor vehicle, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, such a policy of insurance as complies with the requirements of the Act.

This provision is similar to that contained in the English *Road Traffic Act* 1930, sec. 35. In *McLeod* v. *Buchanan* (2) Lord *Wright*, after referring to this section and to *Monk* v. *Warbey* (3), said :— " The courts below proceeded on the footing that the construction and effect of the *Road Traffic Act* 1930, sec. 35, were as stated by the Court of Appeal in *Monk* v. *Warbey* (3). This was rightly not questioned before your Lordships. Sec. 35 of the Act, while in express terms merely creating a criminal offence, punishable by the penalties stated in the Act, does also by implication, on principles well settled and now familiar in the case of offences under similar statutes, create a civil liability in favour of any one of the class of persons whom the statute is intended to protect when such person is injured by reason of a breach of the statutory duty or obligation. The class of persons whom the section is intended to protect includes those who are likely to be injured by the negligent user of the vehicle —that is, prima facie and generally, persons using the highway. The appellant's son, who was killed by James Buchanan's negligence in driving the van, clearly falls within that class. That particular

(1) (1931) A.C. 1.

(2) (1940) 2 All E.R., at p. 186.

(3) (1935) 1 K.B. 75.

mischief which the section is aimed at averting is the danger that the user of the wrongdoing vehicle (if I may call it so) is not covered against third-party risks, so that the injured person has not the right, which he would have had if there had been an insurance, of recourse against the insurers under the *Claims against Insurers Act* 1930, if the wrongdoer cannot personally answer in damages. The provision is an important element in the policy of the legislature to secure the benefit of insurance for sufferers from road accidents."

The only question in the present case is whether the company, in the circumstances disclosed in the evidence, permitted Parish, who was not insured, to use the car without the required insurance being in force to cover this use. On 22nd February 1938 the company as owner had bailed the car to Parish by delivering it to him under an agreement of hire purchase. Clause 1 of the agreement provided that the owner should let on hire to the hirer, and the hirer should take on hire from the owner, the motor vehicle and accessories in question, from the date thereof until the last date mentioned in the 2nd Schedule, i.e., 25th February 1940, unless such period should be sooner determined by either party as provided for therein. The agreement provided for the payment of monthly instalments of £2 9s. 3d. by Parish. At the date of the accident he was in arrears with two of these instalments, so that the company had become entitled to determine the agreement and to repossess the car, but the company was not bound to do so. In fact, clause 14 provided that if the hirer should make default in payment of any sum or sums payable under the provisions thereof, such sum or sums should bear interest at the rate of ten per cent per annum until the time of payment or up to and until the time when the owner should receive or retake possession of the car.

Counsel for the company submitted that all the company had done was to bail the car to Parish, and that his right to use it was derived from the bailment and not from any permission given to him by the company. The contention was one which had found favour with the learned trial judge, but it appears to me that to adopt it would place an unduly narrow construction on the Act. In *Goodbarne* v. *Buck* (1) *MacKinnon* L.J. said :—"In order to make a person liable for permitting another person to use a motor vehicle, it is obvious that he must be in a position to forbid the other person to use the motor vehicle. As at present advised, I can see no ground on which anyone can be in a position to forbid another person to use a motor vehicle except where he is the owner of the car. The owner of a car can forbid another person to use it, or can permit the other to use it."

(1) (1940) 1 K.B., at p. 774.

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I respectfully agree with his Lordship's statement. So long as a person remains the owner of a car it is under his control. Any lawful use of the car is by his permission. When he has sold the car and parted with the possession of it to a purchaser the latter then uses the car by virtue of his ownership, and not by the permission of the vendor, and, unless it has been transferred, the vendor's policy becomes void (*Rogerson* v. *Scottish Automobile and General Insurance Co. Ltd.* (1); *Peters* v. *General Accident Fire and Life Assurance Corporation Ltd.* (2); *Watkins* v. *O'Shaughnessy* (3)). Whilst he remains the owner he can permit another person to use it either for a specific purpose or generally. The most usual case is that of an owner permitting a member of his family or a servant or agent to drive his car, but there does not appear to me to be any distinction between permitting such a use and permitting the car to be used under a bailment. A loan of a car to another person is a voluntary bailment (*commodatum*), and it has been held that the section applies to such a case (*Monk* v. *Warbey* (4); *Daniels* v. *Vaux* (5)).

Since it applies to a voluntary bailment, there is every reason in principle to hold that it also applies to one for valuable consideration. In *Richards* v. *Port of Manchester Insurance Co. Ltd. and Brain* (6) the Court of Appeal evidently considered that where an owner hired a car to another person for the purpose of that person driving it, the use of the car by the latter was a use by the permission of the owner within sec. 35 of the English Act. Moreover, sec. 72 of this Act, relating to the issue of road-service licences, provides that the commissioners may grant to any person applying therefor a licence to provide such road service as may be specified therein and a vehicle shall not be used as a stage carriage or an express carriage except under such a licence. In *Osborne* v. *Richards* (7) a proprietor of motor coaches hired a coach to a football club under a half-yearly contract and the club then caused passengers to be driven in it from a certain starting point to the ground of the club. It was held that the proprietor had permitted it to be used as a stage coach by the club without such licence having been obtained: See also *Westminster Coaching Services Ltd.* v. *Piddlesden* (8), *Goldsmith* v. *Deakin* (9), and cases referred to by Lord *Pitman* in *Houston* v. *Buchanan* (10). If the car is hired for a particular purpose, the permission would be limited to that particular use, but, if it is hired for general

(1) (1931) 48 T.L.R. 17.
(2) (1938) 158 L.T. 476.
(3) (1939) 1 All E.R. 385.
(4) (1935) 1 K.B. 75.
(5) (1938) 2 K.B. 203.
(6) (1934) 152 L.T. 413.
(7) (1933) 1 K.B. 283.
(8) (1933) 149 L.T. 449.
(9) (1933) 50 T.L.R. 73.
(10) (1940) S.C. (H.L.) 17, at p. 29.

purposes, the permission would apply to any ordinary use of the car. Indeed, as Lord *Carmont* said in *Houston* v. *Buchanan* (1) in the court below, in the passage which received the approval of Lord *Caldecote* and Lord *Romer* in the House of Lords, " any one who parts with the control of a motor vehicle completely, without making any definite arrangement with the custodian as to use, impliedly permits all uses, and it is for the permitter to see that there is the requisite insurance cover in force in relation to a use which is in fact unrestricted " (2). The hirer is, of course, entitled to possession of the car and can therefore maintain trover, but the property in the car remains in the owner, and the rights created by the hiring between the owner and the hirer are contractual only. The fact that the contract of hire contains an option of purchase is immaterial. Unless and until the option has been exercised the hirer does not acquire any proprietary rights (*Helby* v. *Matthews* (3); *Whiteley* v. *Hilt* (4); *Scammell & Nephew Ltd.* v. *H. C. & J. G. Ouston* (5); *Australian Provincial Assurance Co. Ltd.* v. *Coroneo* (6)). At the date of the contract the owner has the control of the car and can determine the extent to which he will permit the hirer to use it. The lawful use of the car by the hirer, therefore, depends upon the rights conferred upon him for this purpose by the bailment, expressly or by implication. Any use of the car otherwise than in accordance with these rights would be a breach of contract and the owner would not be liable.

It is also material to consider sec. 63 (2). This provides that for the purposes of Part VII. of the Act and of every policy of insurance thereunder, every person other than the owner, who is at any time in charge of a motor vehicle with the authority or acquiescence of the owner, shall be deemed to be the agent of the owner and to be acting within the scope of his authority in relation to such motor vehicle. If the company was an owner within the meaning of this sub-section, then Parish was a person who was in charge of the car with its authority and acquiescence. Sec. 3 of the Act provides that, unless a contrary intention appears, " owner ", when used in reference to a motor vehicle, means the registered owner; but it seems to me that in Part VII. the word has a wider meaning and that from the contents of secs. 66, 67, 68, 69 and 70, particularly the last-mentioned section, a contrary intention does sufficiently appear that it shall include the true owner. The sub-section constitutes the person in charge of the vehicle the agent of the owner to the extent to which

(1) (1940) S.C. (H.L.) 17.
(2) (1940) S.C. (H.L.), at p. 33.
(3) (1895) A.C. 471.
(4) (1918) 2 K.B. 115.
(5) (1940) 164 L.T. 379, at p. 383.
(6) (1938) 38 S.R. (N.S.W.) 700, at pp. 714, 715.

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that person should have been insured, so as to make the latter liable to members of the public to that extent in respect of bodily injury or death caused by the agent's use of the car. The injured party could therefore sue either the owner or the person in charge. The owner would be insured and entitled to enforce his indemnity against the insurer, if the policy covered accidents caused by such use of the vehicle; and the person in charge would also be entitled to enforce the indemnity against an insurer by virtue of sec. 64 (3) (*Stewart* v. *Bridgens* (1); *Tattersall* v. *Drysdale* (2)). But sub-sec. 2 is chiefly important in the present case to show the intention of the legislature that while a person remains the owner of the vehicle any authorized use of it would be by his permission.

Counsel for the company referred the court to clause 24 of the agreement and contended that any permission which the company gave Parish to drive the car was contingent upon Parish complying with its provisions. The clause provided that the hirer would throughout the term of the agreement comply in all respects with the requirements of the *Traffic Acts* affecting the use of the car, and keep the car duly registered and pay all licence and other fees payable thereon, and would not allow any unlicensed person to use the same; and, if and when required, would produce to the owner or its agents the certificate of registration of the motor vehicle or licence of the driver thereof for the time being and the receipts for all such licence and other fees as aforesaid. I do not think that this clause applies to the requirements of sec. 63 at all, but, even if it does, it could not be effective to avoid the company's obligations thereunder. In fact its effect might then be to enlarge the permission to use the car so as to include any licensed person whom Parish permitted to drive the car. But the extent of the permission does not arise on the present appeal, because Parish was driving the car himself at the time of the accident.

The appeal should be allowed and the cross-appeal dismissed.

Appeal allowed. Order that the judgment of the Supreme Court of Tasmania dated 14th February 1940 so far as it relates to the respondent Perpetual Insurance and Securities Ltd. be discharged and in lieu thereof order that judgment be also entered in the action for the appellant against the said respondent and the appellant do recover against the said respondent the sum of £1,400 to the extent that the plaintiff does not recover the said sum from the defendant Parish. The said sum of £1,400 to be apportioned as follows:—The appellant £750, John

(1) (1935) N.Z.L.R. 948. (2) (1935) 51 T.L.R. 405.

Henry Broad £30, *Bertie Edward Broad* £100, *Gladys Emily Broad* £250, *Daryell Lance Broad* £270. *Order the said respondent to pay the costs of the action of the appellant against the defendant M. J. Parish and itself other than the costs exclusively attributable to the defence of the defendants Crawford and City Motors Ltd. Liberty to the said respondent to apply if the total sum payable should exceed* £2,000. *Cross-appeal dismissed. As the appeal is in forma pauperis no order as to costs except that the said respondent must pay the out-of-pocket expenses of the appellant's solicitor.*

Solicitors for the appellant, *Shields, Heritage, Stackhouse & Martin*, Launceston, by *Allen, Allen & Hemsley*.

Solicitors for the respondent Perpetual Insurance and Securities Ltd., *Ogilvie, McKenna & Co.*, Hobart, by *John Hickey*.

J. B.