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After discussing the matters which may properly be considered in determining whether the presumption that the rule, as stated, applies to statutory offences, his Honour proceeded:—"There may be no longer any presumption that *mens rea*, in the sense of a specific state of mind, whether of motive, intention, knowledge or advertence, is an ingredient in an offence created by a modern statute; but to concede that the weakening of the older understanding of the rule of interpretation has left us with no prima facie presumption that some mental element is implied in the definition of any new statutory offence does not mean that the rule that honest and reasonable mistake is prima facie admissible as an exculpation has lost its application also" (1). From these observations it is clear that the mere circumstance that guilty knowledge is not an ingredient of a particular offence does not necessarily mean that the defence of honest mistake on reasonable grounds is not open.

Upon a consideration of s. 141, we are of the opinion that such a defence has not been excluded by the terms of that section. The obvious purpose of the section may tend at first sight to support the contrary view, but when it is found that the section relates not only to the sale of liquor but also to the giving or supply of it, that it is directed not only to publicans but also to any person in the Northern Territory and that the class of person in relation to whom the offence may be committed constituted, at the date of the enactment, a comparatively large and yet indeterminate and variable class, there cannot be attributed to the section an intention to exclude the defence of honest belief based on reasonable grounds. This view is reinforced by the fact that the new section, which differs so substantially in operation from that which it replaced, prescribes stringent penalties which cannot, according to the express terms of the section, be reduced or mitigated in any circumstances.

The learned judge, after much reflection, reached the conclusion that the belief held by the applicant was not based on reasonable grounds. He says that, "in the long run, the grounds of the appellant's belief were that Shannon was a more or less regular customer of the Parap Hotel and was there treated by the appellant and others engaged in serving liquor as a half-caste who had been exempted, *the reason for so treating him being that the appellant believed he had seen Shannon's name on a list of exempt persons*". We do not think that this is an accurate statement of the ground advanced by the appellant for his belief that Shannon was an exempt person. It is true that the appellant, in his written statement, agreed with the police officer that he had said at the hotel

(1) (1941) 67 C.L.R., at pp. 540, 541.

that he thought he had recollected that he had seen Shannon's name on a list, and that he was so certain that he had seen his name on one of the lists that he went with the police officer to examine them. But the lists came into prominence at this stage not as the basis of the appellant's belief but as documents which though not necessarily complete, might have established that Shannon was, in fact, an exempt person. It is a strange thing that if a belief that Shannon's name was on the lists was the substantial ground for the appellant's belief that he was an exempt person, he did not swear to this at any stage of his evidence. Indeed, at no stage of his evidence did he say that he believed he had seen Shannon's name on the list, so that if such a belief was the ground of the defence of honest belief on reasonable grounds there was no evidence to establish it. The defendant did, however, say that after he was asked by the police officer if he knew whether Shannon was an unexempt person, he replied that he was sure he was not, and then said " we will go and have a look at my list ". They then checked through the lists which were available at the hotel and failed to find Shannon's name. Even if the appellant had sworn that he believed he had seen Shannon's name on one of the lists, it is difficult to see how, as the learned judge on appeal appears to have thought, this belief could have constituted any reason why over a period of years not only the appellant, but also other persons had served Shannon with liquor in the Parap Hotel. There is, indeed, no evidence that this was so, and the finding that this was the reason would not be supportable on the facts as they appear in the transcript. Moreover, such a finding would in no way dispose of the evidence of the appellant, who appears to have been acceptable as a witness, that he had over a period of years seen Shannon at other hotels in Darwin where he appeared to have been drinking. If, as appears to have been the case, Shannon frequented hotels in Darwin over a period of years and there purchased and consumed liquor openly, the appellant may well have had reasonable grounds for his belief that Shannon was an exempt person. There is evidence that, in fact, Shannon did obtain liquor over a long period openly at different hotels and it would not be unreasonable for the appellant to assume that those concerned were acting lawfully. In these circumstances, we are of the opinion that there is sufficient evidence that the belief which the appellant was held both by the magistrate and the learned judge on appeal to have entertained was based on reasonable grounds.

For these reasons leave to appeal should be granted, the appeal allowed and the conviction quashed.

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FULLAGAR J. I agree with the judgment of the Chief Justice and I have nothing to add.

KITTO J. I agree that the appeal should be allowed, for the reasons stated by the Chief Justice.

Leave to appeal granted. Application to be treated as an appeal. Appeal allowed. Order of the Supreme Court of the Northern Territory discharged. In lieu thereof order that the conviction be quashed.

Solicitors for the appellant: *Kelly, Travers, Melville & Hague*, Adelaide, by *Ellison, Hewison & Whitehead.*

Solicitor for the respondent: *D. D. Bell*, Crown Solicitor for the Commonwealth of Australia.

R. D. B.

[HIGH COURT OF AUSTRALIA.]

IN RE COURTAULDS LIMITED'S PATENT.

Patent—Extension of term—Originating summons—Rayon thread or yarn—Continuous spinning process—Applicant—Patentee's assignee—Negotiations for acquisition by applicant—Outbreak of war—Negotiations suspended until cessation of hostilities—"Loss or damage" due to hostilities suffered by patentee—Patents Act 1903-1950 (*No.* 21 *of* 1903—*No.* 80 *of* 1950), *s.* 84 (6).

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Inability to earn profits by the exploitation of a patent constitutes loss or damage within the ambit of sub-s. (6) of s. 84 of the *Patents Act* 1903-1950, only where the person who is claimed to have suffered such loss or damage was, or should be deemed to have been, the patentee during the period of such inability. The section has no application to a business loss occasioned primarily by delay in negotiations for the acquisition of the patent.

In re Brearley's Patent, (1933) V.L.R. 5, and *In re Western Electric Co. Ltd.'s Patent*, (1931) 1 Ch. 68, referred to and distinguished.

The circumstance that the predecessor in title of the applicant for the extension of the term of letters patent was for at least four years virtually prevented by hostilities of the nature specified in s. 84 (6) of the *Patents Act* 1903, as amended, from selling its Australian letters patent and thereby suffered a corresponding delay in the receipt of such of the purchase money as was attributable to those letters patent, was sufficient to require an extension to the letters patent for that period.

APPLICATION BY ORIGINATING SUMMONS.

Courtaulds Ltd. applied to the High Court by originating summons pursuant to s. 84 (6) of the *Patents Act* 1903-1950 for an extension of the term of letters patent granted with respect to an invention in relation to a continuous spinning process for rayon thread or yarn.

The application came on to be heard before *Taylor* J., in whose judgment the facts sufficiently appear.

N. H. Bowen and *J. G. Penman*, for the applicant.

G. B. Thomas, for the Commissioner of Patents.

Cur. adv. vult.

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IN RE COURTAULDS LTD.'S PATENT.

Oct. 21.

The following written judgment was delivered :—

TAYLOR J. This is an application made by originating summons pursuant to s. 84 (6) of the *Patents Act* 1903-1950 for an extension of the term of letters patent granted with respect to an invention in relation to a continuous spinning process for rayon thread or yarn. The term of the letters patent will, unless extended, expire on 17th November, 1952, and this application seeks an extension for a period of ten years from that date or such other term as the Court may see fit to order.

The applicant, Courtaulds Ltd., which is an English company, acquired its interest in the letters patent by an assignment from the Industrial Rayon Corporation in May 1947. The latter company is a company incorporated in the United States of America, and the evidence shows that in or about 1938 or 1939 it had introduced the subject invention into its continuous spinning plants at Painsville and Cleveland in the United States. During 1938 and 1939 the applicant commenced negotiations with the Industrial Rayon Corporation with a view to the acquisition by the former, or by the American Viscose Corporation, a United States company in which the controlling interest was, until 1941, held by the applicant, of various patent rights with respect to the invention, including the Australian letters patent, which were then the property of the Industrial Rayon Corporation. The outbreak of war brought an end to these negotiations for the time being and by 1940 it was quite certain that negotiations could not be resumed until at least after the cessation of hostilities.

In May 1945, after the cessation of hostilities in Europe, negotiations were recommenced and by October 1945, it is said, arrangements had been completed for the purchase by the applicant from the Industrial Rayon Corporation of the whole of the latter's patent rights with respect to the subject invention in European countries and in the countries of the British Commonwealth of Nations.

Upon the evidence before me, it is, I think, extremely probable that, but for the intervention of the war, the applicant or the American Viscose Corporation would have acquired the interest in the letters patent, the subject of this application, at a much earlier stage than 1945 or 1947, when a formal transfer was executed and duly registered. No doubt arrangements for the acquisition of this interest would have been completed some four or five years before 1945, and, probably, steps would then have been taken to carry out the preliminary work necessary for the establishment of a factory in Australia. The whole history of the matter seems

to me to support this view. But, as I have already said, there was no agreement between the applicant and the International Rayon Corporation until 1945 and no formal assignment until 1947. Nevertheless, the applicant began even as early as 1940 to consider the possibility of undertaking the establishment in Australia of a factory for the purpose of manufacturing rayon and rayon products. Beyond an interchange of views, however, nothing of a positive nature took place until 1944, when a representative of the applicant visited Australia for the purpose of making a preliminary investigation of the prospects of establishing such a factory. Further investigations were undertaken in 1946 by a technical mission on behalf of the applicant and this was succeeded in 1947 and in 1948 by further investigations of the many matters which arose for consideration in commencing an undertaking of this magnitude. From the evidence it appears that as a result of the reports following upon the investigations in 1948, the board of the applicant company decided that, provided satisfactory arrangements could be made for establishing an Australian company a substantial part of the capital of which would be furnished from Australian sources, a rayon industry would be set up in Australia by the applicant and that its factories would be located at Tomago, near Newcastle, in the State of New South Wales. This decision was reached in 1949 and later in that year a company called Courtaulds (Australia) Ltd. was formed. This company was formed to enter into and carry into effect agreements embodying the provisions contained in an agreement entitled " Heads of Agreement between Courtaulds and the Australian Company ". This document provided, among other things, that the applicant should sell to the Australian company such technical data and information as it would be necessary or desirable for the Australian company to have in order that it might be able to manufacture tyre yarn, tyre fabric and acetate yarn in the best manner known to the applicant and it also provided that the applicant should grant to the Australian company royalty free licences or sub-licences for the use in Australia of all processes covered by all Australian letters patent in so far as they might relate to the manufacture of tyre yarn, tyre fabric or acetate yarn. As consideration for the above, it was stipulated that the Australian company should pay to the applicant the sum of £75,000 in cash and issue and allot to the applicant 675,000 fully paid deferred shares in its capital.

In the circumstances which I have briefly set out the applicant put its case on a number of grounds—(1) that the suspension of

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the negotiations with the International Rayon Corporation in 1939 and 1940 and the delay which thereafter occurred until the resumption of negotiations in 1945 occasioned loss or damage to the applicant as patentee; (2) alternatively, that there is evidence upon which a finding should be made that International Rayon Corporation, the predecessor in title of the applicant, suffered loss and damage during this period as patentee; and (3) that after 1945, when, it was conceded, the applicant became beneficially entitled to the Australian letters patent, the work of investigating the possibility of establishing an Australian factory and proceeding with its establishment was unduly delayed and hindered.

The applicant claims that the delays referred to in (1) and (3) above resulted in loss and damage and that such loss and damage, and also that referred to in (2) above, were the direct result of hostilities of the nature referred to in s. 84 (6).

The first ground raises for consideration the question whether a patentee, who has secured his letters patent by assignment, can in an application under s. 84 (6), rely upon a business loss suffered by him before he became the patentee, and, indeed, at a time when he had no beneficial interest in the patent.

The ground upon which this sub-section permits an application by originating summons is that the patentee, as such, has suffered loss or damage by reason of hostilities between His Majesty and any foreign State. The expression "loss or damage" includes loss of opportunity on the part of the patentee of dealing in or developing his invention owing to his having been engaged in work of national importance connected with such hostilities. But, of course, the loss or damage to which the sub-section is directed is loss or damage suffered by the patentee as such. In my view, inability to earn profits by the exploitation of a patent constitutes loss or damage within the ambit of the sub-section only where the person who is claimed to have suffered such loss or damage was, or should be deemed to have been, the patentee during the period of such inability. The section has no application to a business loss occasioned primarily by delay in negotiations for the acquisition of the patent in question, even though it may appear that if the negotiations had been completed without delay and a formal transfer executed, the transferee would have been prevented or impeded by circumstances directly attributable to the war from dealing in or developing the subject invention or otherwise exploiting his patent. In support of his argument to the contrary,

counsel for the applicant referred me to *In re Brearley's Patent* (1), in which the Supreme Court of Victoria followed the decision in *In re Western Electric Co. Ltd.'s Patent* (2). I think it is clear, however, that *Brearley's Case* (1) does not cover the position of the applicant in the present case. Neither of the two cases to which I have referred goes further than to establish, in the words of *Luxmoore* J. in the latter case, " that the phrase ' patentee as such ' covers not only all those persons who were the owners of letters patent granted before or during the War but also all those persons who were entitled to apply for the grant of letters patent which when granted would be as of a date antecedent to the date of the actual application, this date itself being either before or during the War period " (3). The critical period to which the applicant has directed its evidence on this aspect of the matter is the period between 1939 and 1945, and it is clear to me that any business loss or damage which it may have sustained during this period by reason of the intervention of the war and the consequent suspension of negotiations, was not loss or damage to which the sub-section refers.

On this view of the matter it is unnecessary to consider whether the applicant, in fact, suffered loss or damage by reason of the delay in, or the suspension of, the negotiations for the purchase of the letters patent under consideration. I should mention, however, that on the evidence it is a matter for speculation whether, if the negotiations in 1939 had then been carried to completion, the letters patent in question would have passed to the applicant or to the American Viscose Corporation. Indeed, upon the evidence, it seems likely that they would have passed to the latter and in these circumstances and notwithstanding the fact that at that time the applicant held a majority of the shares in that company, I should find it impossible to hold that the applicant as distinct from the American Viscose Corporation suffered the loss complained of.

The second ground upon which the application is based requires some consideration of the position of the International Rayon Corporation between 1939 and 1945 when negotiations were resumed and then completed. Counsel for the applicant has pressed upon me that during this period this corporation was prevented by hostilities of the nature specified in s. 84 (6) from exploiting its Australian patent and that this circumstance resulted in loss or damage appropriate to found this application. Whilst

(1) (1933) V.L.R. 5.
(2) (1931) 1 Ch. 68.
(3) (1931) 1 Ch., at pp. 75, 76.