Privy Council Appeal No. 1 of 1973

Keppel Bus Company Limited – – – – – *Appellants*

v.

Sa'ad bin Ahmad – – – – – *Respondent*

FROM

THE COURT OF APPEAL IN SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH MAY 1974

Present at the Hearing:
LORD CROSS OF CHELSEA
LORD KILBRANDON
SIR HARRY GIBBS

[*Delivered by* LORD KILBRANDON]

The respondent (plaintiff) was a passenger in a bus belonging to the appellants (first defendants). They employed as conductor of the bus the second defendant, who was a party neither to the proceedings before the Court of Appeal in Singapore nor to the present appeal. In the course of his journey the respondent was assaulted by the conductor. He brought an action claiming damages against both the conductor and also the appellants, as vicariously liable for the wrong committed by their servant. Kulasekaram J., before whom the case was tried, decided for the respondent against both defendants, and assessed the damages at $20,290. The Court of Appeal dismissed the appeal of the first defendants, and gave leave to appeal to the Board.

The facts, as they were found by the learned judge, may be stated as follows. At one point on the journey, an elderly Malay lady indicated that she wanted to get off the bus. The conductor ordered her "in a loud and rude manner" to go and wait near the exit. The respondent took exception to this instruction and the manner in which it was given; he remonstrated that it was not safe for the lady to stand by the exit, which was also the entrance. An altercation broke out between him and the conductor, in the course of which each tried to hit the other. The passengers intervened and separated them. The bus stopped, the lady got off, and some passengers got on. The conductor began collecting fares. As he did so he abused the respondent in Chinese, using a very rude expression, of which an English translation has not been furnished. The respondent stood up and asked the conductor not to use abusive language; he then sat down. After he had sat down the conductor struck him in the eye with the ticket-punch, breaking his glasses, and causing the loss of the sight of the eye. The learned judge specifically rejected the conductor's version that the ticket-punch accidentally struck the glasses. The learned judge's account of these facts was accepted by the Court of Appeal; there are therefore concurrent findings of these facts, which, in accordance with their usual practice, their Lordships would not review.

The question in the case is whether the conductor did what he did " in the course of his employment ". The course of the employment is not limited to the obligations which lie on an employee in virtue of his contract of service. It extends to acts done on the implied authority of the master. In *Poland v. John Parr & Sons* [1927] 1 K.B. 236 a carter, who had handed over his wagon and was going home to his dinner, struck a boy whom he suspected, wrongly but on reasonable grounds, of stealing his master's property. The master was held liable for the consequences, since a servant has implied authority, at least in an emergency, to protect his master's property.

> " Maybe his action was mistaken and maybe the force he used was excessive; he might have pushed the boy instead of striking him. But that was merely acting in excess of what was necessary in doing an act which he was authorized to do. The excess was not sufficient to take the act out of the class of authorized acts "—*per* Scrutton L.J. at p. 244.

There is no dispute about the law. The Court of Appeal relied on the well-known passage from Salmond on Torts which was approved in *C.P.R. v. Lockhart* [1942] A.C. 591 at p. 599; it is not necessary to repeat it.

The Court of Appeal rightly point out that the question in every case is whether on the facts the act done, albeit unauthorised and unlawful, is done in the course of the employment; that question is itself a question of fact. In *Baker v. Snell* [1908] 2 K.B. 352 (approved [1908] 2 K.B. 825), Channell J., after saying that the defendant's liability would depend on whether his servant's wrongful act was done in the course of his employment, went on, " the question is one of fact which ought to have been left to the jury." A jury, however, would be entitled to find that the act was done in the course of the employment only if there were facts proved which established the extent of the master's delegated authority, express or implied, and that the servant's act was done under that authority, as part of his duty to his employer. In *Riddell v. Glasgow Corporation* (1911) S.C. (H.L.) 35 it was alleged that a rate-collector had defamed the appellant by charging her with forging a receipt, and that the Corporation, his employers, were vicariously liable. The question was whether the pleadings disclosed a relevant case. Lord Atkinson observed at p. 36,

> " There is nothing, in my opinion, on the face of the pleadings to show expressly or by implication that Gilmour was clothed with authority to express on behalf of the Corporation to ratepayers any opinion he might form on the genuineness of any receipts which might be produced to him for payment of rates; . . . it was not shown by the pursuer's pleadings, as I think it should be, that the expression of such an opinion was within the scope of Gilmour's employment; from which it follows, on the authorities, that the Corporation are not responsible for a slander uttered by him in the expression of that opinion."

It is necessary, accordingly, in the present appeal to examine the grounds upon which the learned judge held that, on the facts, this assault was committed in the course of carrying out, by a wrong mode, work which the conductor was expressly or impliedly authorised and therefore employed to do, and to see whether there is any evidence to support them. If there be no evidence, it is matter of law that his conclusions could not stand. The passage in which those grounds are stated is as follows:

> " I find that the conductor when he hit the plaintiff was acting in the course of his duties. He was then maintaining order among the passengers in the bus. He was in effect telling the plaintiff by his act

> not to interfere with him in his due performance of his duties. He may have acted in a very high handed manner but nonetheless I am of the opinion that he was acting in the due performance of his duties then."

Upon the facts as found by the learned judge, and after examining, with the assistance of learned counsel, the testimony of those witnesses whom the judge accepted as credible, their Lordships are unable to find any evidence which, if it had been under the consideration of a jury, could have supported a verdict for the plaintiff. It may be accepted that the keeping of order among the passengers is part of the duties of a conductor. But there was no evidence of disorder among the passengers at the time of the assault. The only sign of disorder was that the conductor had gratuitously insulted the plaintiff, and the plaintiff had asked him in an orderly manner not to do it again. Their Lordships do not consider the question whether the events of that morning are to be regarded as one incident, or as two incidents separated by a gap, to be of much importance. Certainly the end result can be related back to the treatment of the Malay lady; on the other hand she had by now left the bus, normalcy had been restored, except, apparently, for some simmering resentment in the conductor which caused him to misbehave himself. But to describe what he did in these circumstances as an act of quelling disorder seems to their Lordships to be impossible on the evidence; on the story as a whole, if any one was keeping order in the bus it was the passengers. The evidence falls far short of establishing an implied authority to take violent action where none was called for. In *Bank of New South Wales v. Owston* [1879] 4 App. Cas. 270, where the question was whether a bank manager was within his authority in bringing a criminal charge, Sir Montague Smith observed at p. 290, in relation to evidence that such an action might be taken in an emergency,

> "An authority to be exercised only in cases of emergency, and derived from the exigency of the occasion, is evidently a limited one and before it can arise a state of facts must exist which shews such exigency is present, or from which it might reasonably be supposed to be present."

Their Lordships are of opinion that no facts have been proved from which it could be properly inferred that there was present in that bus an emergency situation, calling for forcible action, justifiable upon any express or implied authority, with which the appellants could be said on the evidence to have clothed the conductor.

A similar criticism can be levelled at the second ground upon which the learned judge found that the conductor was acting under authority. There is no evidence that the plaintiff was interfering with the conductor in his due performance of his duty. His interference, if so it could be described, was a protest against the conductor's insulting language. Insults to passengers are not part of the due performance of a conductor's duty, as the learned judge seems to recognise in the paragraph of his judgment which follows.

The function of a bus conductor, from which could be deduced the scope of the authority committed to him, was attractively put by counsel for the respondent as "managing the bus"; it was said that what he did arose out of that power and duty of management. But this concept, it seems, if pushed to its extreme, could serve to bring anything which the conductor did during his employment within the class of things done in the course of it. There must be room for some distinction between the acts of a manager, however foreign to his authority, and acts of management,

properly so called. Probably this way of putting the case is fundamentally no different from that which the learned trial judge adopted and their Lordships reject, because there is no evidence of circumstances which would suggest that what the manager actually did was, although wrongful, within the scope of his authority, express or implied, and thus an act of management.

Although each case on this branch of the law must stand upon its own facts, it was natural and proper that their Lordships should have been referred to other cases by way of analogy. There is no difficulty about *Daniels v. Whetstone Entertainments Ltd.* [1962] 2 Lloyd's Rep. 1; in that case an assault was committed by a servant in circumstances which showed not a possibly excessive exercise of implied authority but, as Davies L.J. pointed out at p. 8, a contumacious repudiation of a direct order. In *Warren v. Henly's Ltd.* [1948] 2 All E.R.935 the master's business with the plaintiff, which had been transacted by the servant, was long over when the servant assaulted the plaintiff. As regards the two public-house cases cited, *Deatons Pty. Ltd. v. Flew* (1949) 79 C.L.R. 370 and *Petterson v. Royal Oak Hotel* [1948] N.Z.L.R. 136, their Lordships have some difficulty in reconciling them, except on the possible ground that while in both the servant was retaliating for a personal affront, in the latter, though not the former, he was also encouraging the undesirable he assaulted to leave the premises. If either of those cases assist, by analogy, the present, it would seem that more assistance might be obtained from the former.

A question which does not appear to have been argued below is whether, supposing that implied authority had been proved, there was not here that excessive violence which Scrutton L.J. (*supra*) held might pass beyond the description of an unauthorised mode of doing an impliedly authorised act. Their Lordships do not find it necessary to consider the point. They conclude that there was no evidence which would justify the ascription of the act of the conductor to any authority, express or implied, vested in him by his employers; there is, accordingly, no legal ground for holding that the facts of this case justify a departure from the ordinary rule of *culpa tenet suos auctores*.

Their Lordships will therefore allow the appeal, set aside the order of the Court of Appeal and also set aside the judgment of the trial judge in so far as it was a judgment against the appellants. The respondent must pay the costs of the appellants before the trial judge, in the Court of Appeal and before their Lordships.

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In the Privy Council

KEPPEL BUS COMPANY LIMITED

v.

SA'AD BIN AHMAD

DELIVERED BY
LORD KILBRANDON

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