

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 148/84

1189

BETWEEN POST OFFICE

Appellant

AND JOYCE STONE

Respondent

Hearing: 2 October 1984
 Counsel: Appellant for self
 Mr Morgan for respondent
 Judgment: 2 October 1984

ORAL JUDGMENT OF HILLYER J

This is an appeal by way of case stated, brought on behalf of the Post Office through Terence Leslie Louisson, the informant. The case stated is in respect of the dismissal of a charge by District Court Judge Green, of being in possession of a television set without a licence.

S.164(4) of the Post Office Act (1959) provides:

"Subject to the provisions of any such regulations, every person who is in possession of any radio apparatus capable of receiving radiocommunications otherwise than pursuant to and in conformity with the terms and conditions of a licence issued under this section commits an offence against this Act."

S.164(6) provides:

"The occupier of any premises on which is situated any radio apparatus capable of receiving radiocommunications shall be presumed to be in possession of the apparatus unless and until the contrary is proved."

The prosecution was brought against the respondent, Mrs Stone, who lives on a farm with her husband. The husband owns the farm and owns the television set. The case stated by the learned District Court Judge sets out as one of the findings he made, that the primary obligation to obtain a television

licence fell on the owner of that set. The question for the opinion of the court was :

"Should I have on the basis of the findings I made, dismissed the information?"

Before me Mr Morgan has submitted accurately that the question asked by the learned District Court Judge was not the real question involved in the case stated. The real question was whether the respondent, Mrs Stone, living in the premises with her husband, therefore being an occupier of the premises, was presumed to be in possession of the television set. He submitted therefore, that the question was not one that I could answer, and that the matter should be remitted to the District Court, pursuant to the provisions of S.111 of the Summary Proceedings Act, 1957, for amendment.

Mrs Stone has left her farm and come to the court today to answer the appeal, and I do not think it would be proper for the matter to be put off so that the case could be amended, with the result that she would again have to take time off from her duties and come to the court. I am therefore not prepared to remit the case to the District Court for amendment.

That clearly is enough to dispose of the case stated, but I think it proper to say that on the evidence given that the television set was owned by Mr Stone, that Mr Stone owned the farm, it would in my view be proper to hold that even though Mrs Stone may have been the occupier of premises in which an unlicensed television set was situate, it was proven that she was not in possession of the television set because it was her husband's.

If for example there had been a boarder in the house, he would have been occupying the premises, but it would be absurd to suggest in those circumstances that he was in possession of the television set. I think it has been proved that Mrs Stone was not in possession of the set, and in any event the appeal would not succeed. That however, is not a finding because the

only finding I can make on the case stated is that the question that has been asked is not one that I can answer. For the reasons I have given however, I am not prepared to remit the case to the District Court Judge for amendment, and the appeal is dismissed.

Mrs Stone having advised me she has not had any expenses, I do not allow costs against the Post Office.

P.G. Hillyer J
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P.G. Hillyer J

Solicitors:

Crown Law Office for respondent