**IN THE HIGH COURT OF JUSTICE - QUEENS BENCH DIVISION (DIVISIONAL COURT)**

**Monks V Pilgrim**

**ROYAL COURTS OF JUSTICE - FRIDAY 29TH JUNE 1979**

Before; Lord Justice Shaw
and
Mr Justice Lloyd

**John Paul Monks V Daphne Ellen Pilgrim**
(From the shorthand notes of Walsh, Cerer & Co Ltd., 55-57 Cliffords Inn, Fetter Lane, London, EC4A 1BU.)

Mr D Wright (instructed by Mr Saul Rothstein, Post Office Solicitor) appeared on behalf of the appellant.
The respondent did not appear and was not represented.

**Judgement**

(As approved by Judge)

**Lord Justice Shaw**

I will ask Mr Justice Lloyd to give the first judgement.

**Mr Justice Lloyd**

This is a case stated by the Luton Justices raising a point on the meaning of section 1 of the Wireless Telegraphy Act 1949.

On the 2nd February, 1977 an officer of the TV Records Office visited the home of Mr & Mrs Pilgrim. Mrs Pilgrim was there at the time, but Mr Pilgrim was not. Mrs Pilgrim according to the facts found in the case, would not allow the officer to enter the house but invited him to come back later when her husband had returned. She admitted that there was a television set in the house. She admitted having used it on the day in question. She admitted that there was no licence in force in respect of the television set.

An information was laid against her on the 14th February, 1977 charging her with an offence under section 1 of the Act, and it came before the magistrates on the 21st April, 1977. Her defence was that it was her husband's responsibility to get the television licence. He had always done so in the past and previous licences had been taken out in his name.

The justices accepted that defence and dismissed the information. The question is: were they right to do so in law?

I regret that, in my judgement, they were not. I have some sympathy for the justices for they received no assistance on the point from the authorised prosecutor who appeared for the Post Office on that occasion.

Section 1 of the Wireless Telegraphy Act provides as follows: "No person shall establish or use any station for wireless telegraphy or install or use any apparatus for wireless telegraphy except under the authority of a licence in that behalf granted by the Postmaster General, and that any person who establishes or uses any station for wireless telegraphy or installs or uses any apparatus for wireless telegraphy except under and in accordance with such a licence shall be guilty of an offence under this Act…."

The question, in simple terms, is whether Mrs Pilgrim had installed or used a television set without a licence.

Her contention before the magistrates is put very succinctly in the case as follows: "The person liable was the person who installed or accepted responsibility for the set and subsequently used it; and a person was not liable merely because he or she was in the house and happened to switch on the set". It is right that I should refer to the contention because Mrs Pilgrim has not been represented in these proceedings before us today.

Mr Wright, who appears for the appellant, referred us to a line of authorities in which the word "use" has been construed in the courts. We started with The Queen against Bodkin Vol.3 Ellis & Ellis's Reports 271. But we found it unnecessary to hear this argument to its conclusion or to look at the other cases which he was proposing to cite because in our view this case can be disposed of on a short ground.

It is unnecessary for us to decide in this case whether a casual visitor who switches on the television set in somebody else's house uses the television within the meaning on the section. It may well be that he does not. Even if he does, it would seem inconceivable that he would ever be prosecuted for an offence under section 1 of the Act.

The position however as between husband and wife seems to me to be different, and to be beyond any real doubt. Both are using the television set when they turn it on or watch it, even if the television set belongs to the one and not the other. They both use it, it seems to me, if they switch it on or watch it, even though the licence has always been paid for by one or the other in the past. They are therefore, both capable of committing offences under section 1 of the Act, and each can be separately charged.

The justices were of the opinion that a person who uses a television set is the owner or the person who accepts responsibility for getting the licence and nobody else. They considered that the only person who could be charged under the Act was that person. In the present case they have evidently taken the view that that person was the husband, since he was the person who had accepted responsibility for getting the licence as between the husband and the wife.

I regret that the approach of the justices is one with which I cannot agree. It seems to me for the reasons that I have already given that it is contrary to the plain language of this section.

I would therefore allow this appeal and remit the case to the justices.

**Lord Justice Shaw**

I agree, and for my part I would limit our decision to the facts as found by the magistrates providing the foundation for the resolution of the problem at large because one can see that

enormous complications can arise when casual visitors to a particular house use a television set there in ignorance of the fact that the owner has, for some reason or other, omitted to obtain or renew a licence in time.

On the facts found it is quite clear that, at the lowest, it could be said here that the wife was aiding and abetting her husband in the use of the set which had been put there by him and for which he had not got a current licence.

This matter must go back to the justices with a direction to convict.

**Mr Wright**
I do not apply for costs

**Lord Justice Shaw**
That shows your usual discretion, Mr Wright.