

notches, being thus slightly retarded the customer would lose up to forty pounds per weighing.

The Alberta Pacific Grain Company was charged under Section 64 of the Weights and Measures Act, c. 212 R.S.C., for having in its possession a "scale or weighing machine, which was false or unjust." Information was laid by Robert Marshall, District Inspector under the Weights and Measures Act, and he was assisted throughout by members of the R.C.M. Police. The case was heard by Police Magistrate R. F. Scott of Swift Current; counsel for the Crown was J. E. Friesen, Swift Current, and for the accused, J. A. Cross of Regina.

Smalley, called for the prosecution, was given "the protection of the court." He admitted that he had interfered with the scale and argued that he had done this to get the proper dockage. The accused corporation's Superintendent testified as to his inspection of the elevator—three days before the tampering, and twelve days afterwards. Both counsel argued the facts of the charge and cited cases to which reference is made in the written judgment of Magistrate Scott dated February 19, 1940.

In summing up his judgment and referring to the responsibility of the accused grain company for the acts of its agent Smalley, the learned Magistrate stated:

"Clearly, on the evidence, there was no *culpa*¹ on the part of the accused corporation. The whole point is, was the accused corporation liable for the acts of its agent? It is my opinion that, under the circumstances herein, the accused corporation was. Truly, as has been said by a prominent jurist, a corporation has "neither body to kick nor soul to damn", and, therefore, cannot have a *mens rea* or any other kind of *mens*, except through its agent or agents, under the maxims *qui facit per alium facit per se*,² which might be transposed in this case into *qui habet per alium habet per se*,³ and *respondeat superior*.⁴ I fully realize that the accused corporation's agent in this case may have been acting fraudulently when he altered the scale, and that without the knowledge of the accused corporation; but the statutory provision, under which the accused corporation has been charged, is a prohibitory one, and it seems to me that the accused corporation must take the responsibility for its agent's actions, however fraudulent. The local elevator at Burnham was vested with full responsibilities, some of which might be termed executive, and the accused corporation cannot, in my opinion, escape responsibility for its actions.

"As already indicated, I am sorry to reach this conclusion but I feel that I must, on the authorities, convict the accused corporation, and I sentence the corporation to a fine of \$100.00 and costs, my own costs being waived."

* * *

R. v. Brown, Mancuso and Costello

Public Mischief and Theft—Feigned Assault and Robbery—

Story Not Convincing—Accomplices

An employee of the Dominion Public Building, Toronto, reported to the R.C.M. Police that a man had been found unconscious in a lavatory in the basement, and that when the man revived he claimed that he had been robbed of \$50.00.

Maxwell Brown was found to be in a very nervous condition and had a swelling on his left cheek. When interviewed he was able to stand and

¹Blameworthiness. ²That which he does by another, he does (by) himself. ³That which he has (controls) by another, he has (by) himself. ⁴Let the superior answer (for it).