Neutral Citation Number: [2011] EWCA Crim 2527
IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM EXTER CROWN COURT
Mr Recorder Bartlett
T200090276

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/11/2011

Before:

LORD JUSTICE MOSES
MRS JUSTICE NICOLA DAVIES
and
HIS HONOUR JUDGE GILBERT QC

- -

Between:

St. Regis Paper Company Ltd.	**Appellant**
- and -	
The Crown	**Respondent**

- -

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

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Mr P Blair QC (instructed by **Osborne Clarke Solicitors**) for the **Appellant**
Mr T Crowther (instructed by **The Environment Agency**) for the **Respondent**

Hearing date: 11th July 2011

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Judgment

Lord Justice Moses:

1. This appeal raises the issue as to the extent which the appellant, St. Regis Paper Company Limited (St. Regis), could be held criminally liable for intentionally making a false entry in a record required for environmental pollution control. St. Regis manufactures coloured paper and board from waste paper. It owns five mills, the smallest of which is Higher Kings Mill, Cullompton. Amongst the 129 employees there was Mr Steer, its technical manager. He was required to produce daily environmental report sheets in respect of suspended solids in the outflow from the plant into the nearby river. False readings were recorded and misleading reports returned to the Environment Agency. Mr Steer was convicted of deliberately falsifying the records. He was convicted at Exeter Crown Court on 18 October 2010 of offences contrary to Regulation 32(1)(g) of the Pollution Prevention and Control (England and Wales) Regulations 2000 ("the 2000 Regulations") by which it is an offence for a person:-

> "(g) intentionally to make a false entry in any record required to be kept under the condition of a permit."

The Higher Kings Mill plant had been granted a permit that set out how it should operate and the limits of the pollutants allowed to flow into the river. St. Regis was also convicted of offences under that Regulation.

2. In a careful and full written judgment, which constituted a binding ruling pursuant to s.40(1)(b) Criminal Procedure and Investigations Act 1996, HHJ Wassall ruled that the intentional actions of Mr Steer could be attributed to St. Regis because his mind could be identified as the controlling mind and will of St. Regis, the appellant. Mr Recorder Bartlett, who conducted the trial, did not reconsider that binding ruling. It is, therefore, necessary to recall HHJ Wassall's reasoning and conclusions.

3. HHJ Wassall, founding himself on the observations of Lord Hoffman in *Meridian Global Funds Management Asia Limited v The Securities Commission* [1995] 2 AC 500 at 507B-C, concluded that St. Regis could be identified at law as having committed the offence contrary to Regulation 32(1)(g) through the acts and state of mind of Mr Steer. He said that Mr Steer had been entrusted with the management of the disposal of the company's waste products and since he was entrusted with that management role:-

> "his acts can properly be said to be the company's acts and…his state of mind in carrying out his work can properly be said to be that of the company."

He cited Lord Diplock in *Tesco Supermarkets Limited v Nattrass* [1972] AC 153 at 187 in concluding the position of Mr Steer fitted him into the category described by Viscount Dilhorne (although the judge attributed it to Lord Diplock), namely that he was:-

> "a person who is in actual control of the operations of a company or of part of them and who is not responsible to another person in the company for the manner in which he

> discharges his duties in the sense of being under his orders." (187G)

(I shall have occasion to refer to those passages again.) HH Judge Wassall was of the view that the Regulation created:-

> "liability for a company in respect of the acts of an employee who could not be said to be the directing mind and will of the company but one who carried out management functions and in doing so was in actual control of the operations of a company in the area in question." (44)

He reached that conclusion not merely by interpreting the Regulation but fortified by his view that the purpose of the legislation:-

> "across the area of environmental protection is to control the activities of companies seeking to profit from industry to ensure that the environment is adequately protected from the impact of those activities"

and that if the Regulation did not create offences applying to corporations through the acts of their employees it would emasculate the legislation (paragraphs 50 and 56).

4. Bound as he believed he was by this ruling, Mr Recorder Bartlett directed the jury on a basis which was derived from the ruling of HHJ Wassall. He told the jury that:-

> "Normally the board of directors, the managing directors, and perhaps other superior officers of a company carry out the functions of management, and make decisions as the company – as the company. Their subordinates do not; the subordinates carry out orders from above, and it can make no difference that they are given some measure of discretion; but the board of directors may delegate some part of their management functions to subordinates, giving such a subordinate full discretion to act independently of their instructions without being accountable to his superiors. The intention of such a subordinate who is in actual control of the operations of the company, or part of them – in this case, of course, that part of the company which was the effluent treatment plant of the Higher Kings Mill site in Cullompton – and who is not responsible to another person in the company for the manner in which he discharges his duties in the sense of being under that other person's orders, he may then be attributable to the company … his intention may then be attributable to the company. It is for you to decide, applying those principles to the facts of this case as you find them, whether Mr Steer's intention was attributable to the company or not."

After directing the jury in relation to Mr Steer the judge continued:-

> "Can Mr Steer's intention be attributed to the company so that his intention equates with its intention? The prosecution say he did not report on technical matters to anyone in the mill; he represented the company in technical documentation. It was he who got Mr Haydon and others to falsify the documents…" (42E-G)

Identification of the actions and intention of the technical manager with the appellant company

5. The essential issue which arises on this appeal is whether HH Judge Wassall was correct in permitting the jury to conclude that the guilty intention of the technical manager Mr Steer could be attributed to the company with the result that the company was guilty of an offence which required proof of *mens rea*. The judge and Mr Recorder Bartlett in his directions departed from the conventional approach to attributing criminal liability to a corporate body for offences which required proof of *mens rea*. The conventional approach would have been that the company could only be found liable for offences which required proof of *mens rea* in cases where the controlling officers of the corporation performed the proscribed conduct with the relevant guilty intention. The question for a jury would be whether those who had committed the offence with the requisite intention constituted the "directing mind and will" of the corporation.

6. The question in *Tesco Supermarkets Limited v Nattrass (q.v.supra)* was whether the Tesco store manager, the most senior employee at the site, who had failed to ensure that the washing powder was sold at a discounted price, was "another person" for the purposes of the defence provided by s.24(1) of the Trades Description Act 1968. If that employee could be identified as the directing mind and will of Tesco, then it could not have relied upon the statutory defence. The manager was "another person", and thus that defence was open to Tesco. That authority has long been recognised as identifying the rules by which criminal liability in cases requiring proof of *mens rea* can be attributed to a corporation. Such persons were described by Lord Reid as normally:-

> "the board of directors, the managing director, and perhaps other superior officers of a company [who] carry out the functions and management and speak and act as the company." (171)

Apart from Viscount Dilhorne's description (quoted in paragraph 3), Lord Diplock described them as persons who, by the memorandum and articles of association or as a result of action taken by the directors or by the company in general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company (200). Lord Morris pointed out that the manager did not function as the directing mind or will of the company (180) and Lord Pearson described the manager as being in a relatively subordinate post and not one who was "in the position of managing the affairs of the company" (190).

7. Such an approach to attribution has persisted. In *Attorney General's Reference (No. 2 of 1999)* [2002] Cr App R 207 Rose LJ described *Tesco v Nattrass* as still authoritative and said:-

> "it is impossible to find a company guilty unless its *alter ego* is identified." (216B)

8. It is, accordingly, necessary to consider whether that which was believed to be the rule for attributing liability for a criminal offence requiring *mens rea* is to be modified in the light of the decision of the Board in *Meridian Global*.

9. In *Meridian Global* the Board, in the opinion delivered by Lord Hoffman, was concerned to identify the rule of attribution as a matter of statutory construction. Lord Hoffman said:-

> "The company's primary rules of attribution together with the general principles of agency, vicarious liability and so forth are usually sufficient to enable one to determine its rights and obligations. In exceptional cases, however, they will not provide an answer. This will be the case when a rule of law, either expressly or by implication, excludes attribution on the basis of the general principles of agency or vicarious liability. For example, a rule may be stated in language primarily applicable to a natural person and require some act or state of mind on the part of that person "himself", as opposed to his servants or agents. This is generally true of rules of the criminal law, which ordinarily impose liability only for the actus reus and mens rea of the defendant himself. How is such a rule to be applied to a company?
>
> One possibility is that the court may come to the conclusion that the rule was not intended to apply to companies at all; for example, a law which created an offence for which the only penalty was community service. Another possibility is that the court might interpret the law as meaning that it could apply to a company only on the basis of its primary rules of attribution, i.e. if the act giving rise to liability was specifically authorised by a resolution of the board or a unanimous agreement of the shareholders. But there will be many cases in which neither of these solutions is satisfactory; in which the court considers that the law was intended to apply to companies and that, although it excludes ordinary vicarious liability, insistence on the primary rules of attribution would in practice defeat that intention. In such a case, the court must fashion a special rule of attribution for the particular substantive rule. This is always a matter of interpretation: given that it was intended to apply to a company, how was it intended to apply? Whose act (or knowledge, or state of mind) was *for this purpose* intended to count as the act etc. of the company? One finds the answer to this question by applying the usual canons of interpretation, taking into account the language of the rule (if it is a statute) and its content and policy.
>
> The fact that the rule of attribution is a matter of interpretation or construction of the relevant substantive rule is shown by the

> contrast between two decisions of the House of Lords, *Tesco Supermarkets Ltd. v Nattrass [1972]* A.C. 153 and *In re Supply of Ready Mixed Concrete (No. 2)* [1995] 1 A.C. 456."

In *Meridian* the acts of the company's investment manager were attributed to the company by construing the New Zealand Securities Act 1988. Lord Hoffman emphasised that the origin of the quest for the "directing mind and will" of the company, was *Lennard's Carrying Co. Ltd. v Asiatic Petroleum Co. Ltd.* [1915] A.C. 705, and rested on the construction of s.502 of the Merchant Shipping Act 1894 which attributed the fault of the company to the:-

> "person whose functions in the company, in relation to the cause of the casualty, were the same as those to be expected of the individual ship owner to whom the language primarily applied. Who in the company was responsible for monitoring the condition of the ship, receiving the reports of the master and ship's agents, authorising repairs etc.? This person was Mr Lennard, whom Viscount Haldane LC, at pages 713-714, described as the 'directing mind and will' of the company. It was therefore his fault or privity which s.502 attributed to the company." (509D-E)

10. Lord Justice Buxton, in his dissenting judgment in *Odyssey (London Ltd) v OIC Run-Off Ltd* [2000] QB CMF 1999/0512/A3 (unreported) (CA) regarded the principle expressed in *Tesco v Nattrass* as an authoritative formulation of the binding law of corporate liability (page 108). He regarded that case, and *Seaboard Ltd. v Secretary of State for Transport* [1994] 1 WLR 541 as expounding a general test of attribution unconstrained by the facts of the cases that were being instantly addressed (page 107). The narrow formulation of the rule of attribution was designed to avoid corporations being convicted of *mens rea* crimes when in truth they have no guilty mind (page 107).

11. In *Attorney General Reference (No. 2 of 1999)* Rose LJ described Lord Hoffman's speech in *Meridian* as a re-statement and not an abandonment of existing principles (page 216). He said:-

> "It therefore seems safe to conclude that Lord Hoffman (and similarly the members of the Court of Appeal (Criminal Division) in *British Steel* [1995] 1 WLR 1356 and in *Gateway Food Markets Ltd.* [1997] 2 Cr App R 40) did not think that the common law principles as to the need for identification have changed. Indeed, Lord Hoffman's speech in *Meridian*, in fashioning an additional special rule of attribution geared to the purpose of the statute, proceeded on the basis that the primary 'directing mind and will' rule still applies, although it is not determinative in all cases. In other words, he was not departing from the identification theory but reaffirming its existence."

The essential question, therefore, is whether HH Judge Wassall was right to construe Regulation 32(1)(g) as justifying a departure from the normal rule of attribution of liability to a corporation.

12. It seems to us that as a matter of statutory construction it is impossible to impose criminal liability for a breach of Regulation 32(1)(g) to the company in circumstances other than those where an intention to make a false entry can be attributed by operation of the rule in *Tesco Supermarkets*. There is, in our view, no warrant for imposing liability by virtue of the intentions of one who cannot be said to be the directing mind and will of St. Regis Paper Company.

13. First, it is necessary to consider Regulation 32(1)(g) in the context of the Regulation as a whole. Regulation 32 provides:-

> "It is an offence for a person –
>
> (a) to contravene regulation 9(1);
>
> (b) to fail to comply with or to contravene a condition of a permit;
>
> (c) to fail to comply with regulation 16(1);
>
> (d) to fail to comply with the requirements of an enforcement notice or a suspension notice;
>
> (e) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under regulation 28(2);
>
> (f) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made –
>
> (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; or
>
> (ii) for the purpose of obtaining the grant of a permit to himself or any other person, or the variation, transfer or surrender of a permit;
>
> (g) intentionally to make a false entry in any record required to be kept under the condition of a permit;
>
> (h) with intent to deceive, to forge or use a document issued or authorised to be issued under a condition of a permit or required for any purpose under a condition of a permit or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;

(i) to fail to comply with an order made by a court under regulation 35."

14. It will be seen, immediately, that a contrast can be drawn between offences of strict liability such as Regulation 32(b)-(e) and those which require proof of *mens rea* such as (g) and (h). We should recall that St. Regis pleaded guilty to fourteen offences of contravening a permit condition contrary to Regulation 32(1)(b) and was sentenced for those offences at the Crown Court. There is, in those circumstances, no basis for suggesting that the Regulations, designed as they are to protect the environment and prevent pollution, cannot function without imposing liability on the company in respect of one who is not the directing will and mind of the company. We do not, accordingly, agree with the judge that it is necessary to relax the rule in *Tesco v Nattrass* to avoid emasculating the legislation, as he put it. Parliament has chosen to protect the environment against pollution in circumstances to which the Regulations apply by imposing strict liability in some cases but requiring *mens rea* in others.

15. Thus the only question, in relation to attribution, is whether it was open to the jury to conclude that the technical manager Mr Steer was, within the meaning of *Tesco v Nattrass*, the controlling mind and will of St. Regis for the purposes of the submission of records of emissions. As the Recorder put it, was Mr Steer in actual control of the operations of the company in relation to the submission of records and not responsible to another person for the manner in which he discharged his duties in the sense of being under that other person's orders?

16. In our view, it was not open to the jury to conclude that Mr Steer fell within the category of one whose state of mind can be attributed to the company. We do not agree with HH Judge Wassall that the facts which, of course, he had to assume on the basis of the prosecution case, admitted such a conclusion.

17. As we have mentioned, the Higher Kings Mill plant was but one of five mills and the smallest. As Technical and Environmental Manager, Mr Steer reported to the Mill Operations Manager, Mr Stoddart, who reported to the mill's Managing Director. The mill's Managing Director reported to divisional technical managers and a Divisional Environmental Director, who formed part of the senior management team of some 8-10 divisional directors.

18. The directors set an express company environmental policy which formed part of the prosecution exhibits: this did not grant any discretion to falsify records. On the contrary, the company's key objectives required achievement of environmental targets set by the relevant standards and reporting daily the previous day's performance of effluent plant operation. The "key accountability" statement of Mr Steer required him to ensure environmental standards and promote and develop "best practice in health and safety and environmental performance at Higher Kings Mill". On those facts, it was not open to any jury to conclude that Mr Steer fell within the category described by Viscount Dilhorne as someone who was in actual control of the operations of a company or part of them and not responsible to another person in the company for the manner in which they were discharged.

19. In those circumstances, the judge was wrong to rule that Mr Steer's intention to make a false entry could be attributed to St. Regis and the Recorder was wrong to leave it open to the jury to reach that conclusion.

20. Our conclusion does not require any resolution of the controversy between Buxton LJ and Brooke LJ in *Odyssey London Limited*. It seems to us that the lesson to be learned from *Meridian* is the importance of construing the statute which creates the statutory offence in order to determine the rules of attribution applicable to the statutory offence in question (see the illuminating passage in *Smith and Hogan's Criminal Law 13th Edition, Chapter 10, page 262*). The importance of construing the statute so as to identify the rule of attribution appropriate to the relevant statutory offence was stressed with clarity by Mance J in *Shanks & McEwan (Teeside) Ltd v Environment Agency* [1999] QB 333 at 345:-

> "The rule of attribution appropriate to a particular situation (e.g., the nature and level of conduct or knowledge which will be regarded as satisfying a requirement in a statute that a company should have done or known something) is in truth no more than a matter of interpretation or construction of the relevant substantive rule, according to its language, content and the policy: see especially per Lord Hoffman at page 507B-F (*Meridian*)."

Later he said:-

> "It is a matter of interpretation of each subsection in the context of each piece of legislation what rule of attribution is appropriate under each. In the case of statutes dealing with activities such as selling or offering to sell, it is unlikely to be difficult to treat the company (as well as, in probability, the relevant salesman) as selling or offering to sell." (348B)

21. Mance J's reference to statutes dealing with activities such as selling, echoes the principles expressed by the House of Lords in *Director General of Fair Trading v Pioneer Concrete (U.K.) Ltd. and Another* (previously known as *In re Supply of Ready Mixed concrete (No. 2)* [1995] 1 AC 456. Companies were found guilty of contempt on the basis that their employees, contrary to express instructions and without knowledge of those companies, made unlawful arrangements to fix prices contrary to the Restrictive Trade Practices Act 1976. The companies could not escape liability for contempt on the basis that they had expressly forbidden the unlawful arrangements. Lord Nolan said that liability could only be escaped by completely effective preventative measures (475D) and Lord Templeman said, in overruling an earlier decision of the Court of Appeal in *Smith*'s case [1992] QB 213:-

> "The first principle is that a company is an entity separate from its members but, not being a physical person, is only capable of acting by its agents. The second principle is that a company in its capacity as a supplier of goods, like any other person in the capacity of taxpayer, landlord, or in any other capacity, falls to be judged by its actions and not by its language. An employee who acts for the company within the scope of his employment is the company. Directors may give instructions, top management may exhort, middle management may question, and workers may listen attentively. But if a worker makes a

> defective product or a lower manager accepts or rejects an order, he is the company." (465C-E)

22. Those principles have no application to Regulation 32 which distinguishes between offences of strict liability and offences which require proof of *mens rea*. The principles expressed in *re Supply of Ready Mixed Concrete* were based on a proper construction of the Restrictive Practices Act where the defaults of the employee are treated in law as the defaults of their employer. A proper construction of the 2000 Regulations does not allow such an approach.

23. In our view, HH Judge Wassall applied the correct approach. But the structure of Regulation 32, for the reasons we have given, does not permit any rule of attribution other than that which is identified in *Tesco v Nattrass*. If the Regulations, properly construed, imposed criminal liability upon St. Regis for dishonestly making false entries in records, then the fact that it had no knowledge of that dishonesty and that it was contrary to its written instructions, would be nothing to the point. But it is not, for the reasons we have given, possible to construe the relevant Regulation in that way. The importance of avoiding environmental pollution cannot be overstated. But the Regulation has sought to meet that danger in a carefully graduated way imposing both offences of strict liability and those which require proof of intention such as in 32(1)(g) and (h).

24. Mr Crowther, for the prosecution, in his frank and helpful submissions, drew attention to cases in which the court appears to have imposed liability in respect of offences requiring *mens rea* where the employee could hardly be described as the directing mind and will of the company. For example, in *Moore v I. Bresler Ltd.* [1944] 2 All E.R. 515 the Divisional Court imposed liability on the company for false returns in respect of purchase tax made with an intention to deceive, notwithstanding that those who had falsified the returns were the company secretary and a branch sales manager. The Divisional Court focussed on the question whether the officers were acting within the scope of their authority and concluded that they were, notwithstanding that the purpose of the dishonest purchase tax returns was to conceal the defendant's own theft from the company. Viscount Caldecott LCJ described the officers as important officials of the company (516) and Humphreys J said that it was difficult to imagine two persons whose acts would "more effectively bind the company" and who could be said to be more obviously agents of the company (517). This decision and two others, (*DPP v Kent & Sussex Contractors Ltd.* [1944] KB 146 and *R v ICR Haulage Ltd.* [1944] KB 551) were the subject of trenchant criticism in an article by R.S. Welsh in "*The Criminal Liability of Corporations*" [1946] 62 LQR 345. He points out that the court appears to be applying a doctrine of vicarious liability which he suggests is "fundamentally unsound" (360). He says there can be no justification for the courts to extend to the field of criminal law the doctrine of vicarious liability. He describes those decisions as being contrary to the principle expressed by Viscount Haldane LC in *Lennard's Carrying Co.* in cases where *mens rea* must be established.

25. It should be noted that this article was written long before *Tesco v Nattrass*. The author quotes Cave J in *Chisholm v Doulton* [1889] 22 QBD 736-741 expressing the principle that the master is not criminally responsible for negligence, still less for "the servant's malice". Cave J continued:-

> "and this principle of the common law applies also to statutory offences, with this difference, that it is in the power of the Legislature, if it so pleases, to enact…that a man may be convicted and punished for an offence although there was no blameworthy condition of mind about him."

That principle seems to us to be the same principle as expressed in *Meridian* in relation to a corporation as opposed to what in 1889 was described as a master. For the reasons we have given, the statutory construction of the 2000 Regulations did not permit Mr Steer's dishonest intention to be attributed to St. Regis Paper Company. But Mr Crowther's reference to an application of those cases and in particular the apparent application of vicarious liability in *Moore v I. Bresler Ltd.* leads conveniently to consideration of his reliance upon a doctrine of vicarious liability in the instant appeal.

Vicarious Liability

26. Mr Blair QC correctly pointed out that HH Judge Wassall had not given any ruling on whether St. Regis could be held liable for the acts of Mr Steer on the basis that St. Regis had delegated to Mr Steer duties to make entries in records in such a way as to impose liability on St. Regis, even though those records were intentionally falsified. Mr Crowther persisted, in his written argument, in contending that St. Regis was vicariously liable for Mr Steer's actions and dishonest intention. But he accepted that no such ruling had been made by the judge. We shall subsequently point out the difficulties that were caused by blurring the issue as to whether Mr Steer's dishonest intention could be attributed to St. Regis and the application of some doctrine of vicarious liability. We shall deal with the point although, in our view, it cannot be said to be the basis upon which the jury convicted.

27. The difficulty of holding a corporation liable for the acts of another on the basis of what is described as vicarious liability in part relates to a confusion identified in *Smith & Hogan* Chapter 10, page 276. Questions of delegation are distinct, as the author points out, from questions of strict liability. It is one thing to hold a corporation liable for the acts of another on the basis that it has delegated to that employee the performance of certain duties cast by the Act on the employer and quite another to hold an employer liable on the basis that the statute imposes strict liability and the corporation is liable for the acts of its employees.

28. The delegation principle derives from certain licensee cases where liability has been imposed upon a licensee, notwithstanding that the offence requires proof of *mens rea*, on the basis that the licensee delegated the management of the licensed premises to a manager. Thus in *Allen v Whitehead* [1931] KB 211 the keeper of a refreshment house was liable for knowingly permitting or suffering ladies of ill-repute to meet at his premises, notwithstanding his ignorance. Liability was imposed because he had delegated management of the café to a manager. More recent licensing cases adopt the same approach (*Harper v Robinson* [1973] QB 178). The principle that liability can be imposed by virtue of delegating responsibility for undertaking statutory duties was doubted in *Vane v Iannopoulos* [1965] AC 486. But despite the advocacy of Mr Crowther, it is unlikely to be extended, as the author of *Smith & Hogan* suggests. It certainly cannot be extended in this case. The responsibilities of Mr Steer cannot be equated with the responsibilities of the manager of a public house. In no real sense

could it be said that St. Regis had delegated its responsibilities under the 2000 Regulations to Mr Steer. True it is that he was required to submit the necessary records. But that is miles away from the type of delegation necessary to be established in licensing cases. We would also emphasise that the extent of delegation is a matter of fact for the jury. The issue of the extent of delegation in the instant case was never clearly left to the jury by the Recorder for the simple reason that questions of vicarious liability had never been concluded by HH Judge Wassall, whose ruling the Recorder followed. If in truth the prosecution was relying upon the principle of vicarious liability it would have been necessary to obtain a ruling as to whether the legitimacy of the delegation principle could be established in the context of the 2000 Regulations. That again is a matter of construction. For the reasons we have already given in relation to the structure of Regulation 32, in our view it is not possible to rely upon any principle of delegation, even if it could be applied to offences which impose criminal liability only when *mens rea* has been proved, in circumstances other than in the licensing cases.

29. Moreover, if the principle were to be relied upon, it would be necessary to direct the jury as to the facts which had to be proved to establish delegation. No such issue was left with sufficient clarity to the jury. On the contrary, for reasons for which the Recorder cannot be blamed, there was some confusion between whether the prosecution were relying on principles of attribution or upon vicarious liability. We recall that the judge told the jury that the board of directors "may delegate some part of their management function to subordinates, giving a subordinate full discretion to act independently of their instructions without being accountable to his superiors". In those circumstances, he directed the jury that Mr Steer's intention may be attributable to St. Regis. We suspect that the judge was doing no more than following the approach of Viscount Dilhorne in *Tesco*. But there is at least a hint that the judge had in mind some species of vicarious liability. For the reasons we have given, even if there may be statutory regimes in which the approach the courts have adopted in licensing cases as to delegation may be applied, we are confident that the 2000 Regulations do not come within that category. The contrast between strict liability offences and offences which require *mens rea* in Regulation 32 is too striking to permit such a conclusion. In any event, that was not the way the case was left to the jury.

30. For the reasons we have given, these convictions must be quashed. There was no basis in law for attributing Mr Steer's dishonest intention to the appellant company. We therefore quash the convictions against St. Regis on Counts 2, 4 and 6 on indictment T20090276.