PRASAD

v.

REGINAM

[SUPREME COURT, 1963 (MacDuff C.J.), 15th, 28th February]

Appellate Jurisdiction

Criminal law—construction—statute—criminal offence—Traffic Ordinance (Cap. 235) ss. 32 (1), 65—Road Traffic Act, 1960 (Imperial) s. 104—Traffic Ordinance 1953 (Kenya)—Penal Code (Cap. 8) s. 263 (*a*).

In s. 26 (1) of the Traffic Ordinance the words " criminal offence in connexion with the driving of a motor vehicle " mean an offence contrary to a section of the Traffic Ordinance itself or an offence of the same nature created by any other Ordinance.

Appeal against disqualification.

Ramrakha for the appellant.

Palmer for the Crown.

The judgment is reported only in relation to disqualification.

MACDUFF C.J. (in part) [28th February, 1963]—

The appellant was convicted on his plea of guilty of the offence of " Dangerous driving contrary to sections 32 (1) and 65 of the Traffic Ordinance (Cap. 235, Laws of Fiji) ". He was fined £30 together with 5s. costs in default two months' imprisonment, and was disqualified from holding or obtaining a motor vehicle driver's licence for a period of 2 years.

The grounds of appeal are—

" (*a*) That the sentence is severe, excessive and unreasonable having regard to all the circumstances of the case;

(*b*) That the learned Magistrate erred in law in disqualifying your petitioner from holding or obtaining a driver's licence for the first offence as it is not provided for by the Traffic Ordinance, Cap. 235 Laws of Fiji, under which the learned Magistrate purported to disqualify;

The second ground of appeal was argued in Criminal Appeal No. 5 of 1963. Since I allowed that appeal on another ground I propose to deal with it in this appeal. The contention of the appellant is founded on the wording of section 26 of the Traffic Ordinance which, so far as is relevant, reads—

" 26.—(1) Any court before which a person is convicted of any criminal offence in connexion with the driving of a motor vehicle—

(*a*) may in any case, and shall when so required by this Part of this Ordinance, order him to be disqualified for holding or obtaining a driving licence for such period as the court thinks fit; . . ."

It is contended by counsel for the appellant that unless some meaning is given to the words " criminal offence " the use of the word " criminal " is so much surplus verbiage. It is a principle of interpretation that if a word is used in a statute it must be presumed that the legislature intended that word to be given a meaning. Unfortunately counsel has found little authority to support his contention in this instance.

Reliance was first placed on a statement appearing in Halsbury's Laws of England, 3rd Ed., Vol. X at page 271 to the effect that—

> " If a statute prohibits or commands an act, disobedience to the statute is criminal and punishable by indictment, unless proceedings by indictment manifestly appear to be excluded by the statute. An act may, however, be prohibited or commanded by a statute in such a way that a person contravening the statute is liable to a pecuniary penalty recoverable as a debt by civil process; in such a case contravention is an offence against the statute, but is not a crime."

This goes no further than to say that an act may be a civil wrong giving rise to a civil liability as against a crime entailing a criminal liability. The definition of " crime " is set out on the same page in these words—

> " A crime is an unlawful act or default which is an offence against the public, and renders the person guilty of the act or default liable to legal punishment. While a crime is often also an injury to a private person, who has a remedy in a civil action, it is as an act or default contrary to the order, peace, and well-being of society that a crime is punishable by the State."

and on that definition counsel was constrained to concede that the whole fabric of the Traffic Ordinance was such as to make an offence against its provisions a criminal offence.

Counsel referred to the provisions of the Road Traffic Act, 1960. Section 104 of that Act which empowers a court to disqualify from holding a licence uses the word " offence " simpliciter but the phrase is " an offence specified in the first schedule . . .". In some colonies the wording used is—

> " Any court before which a person is convicted of any offence in connexion with the driving of a motor vehicle may . . ." (Traffic Ordinance, No. 39 of 1953—Kenya).

On the ordinary rules of interpretation it would certainly appear that the addition of the word " criminal " to describe " offence " may be meaningless.

To endeavour to assign a meaning to the word " criminal " counsel for the appellant suggests that it may be possible to draw a distinction between those offences which are of so gross a nature as to be " criminal " in the popular sense of that word and those which are not. I am afraid I cannot see that any such distinction can or should be drawn.

It appears to me that the word " criminal " has been used more in the declaratory sense or to put it in another way—*ex abundanti cautela.* Offences under the Traffic Ordinance are criminal offences beyond doubt and the wording of paragraph (*a*) makes it clear that a court " may in any case " impose a disqualification. Taking the ordinary meaning of the words used in the section, a criminal offence in connexion with the driving of a motor vehicle means no more and no less than it says, that is to say, an offence contrary to a section of the Traffic Ordinance itself, which I hold to be a criminal offence, together with an offence of the same nature created by any other Ordinance, e.g., section 263 (*a*) of the Penal Code. I see no merit in this ground of appeal.

In the result the appeal is dismissed.

Appeal dismissed.

Solicitor for the appellant: *A. M. Raman.*

Solicitor-General for the Crown.