KANDSAMI

v.

REGINAM

[SUPREME COURT, 1964 (Mills-Owens C.J.), 28th August, 1st October]

Appellate Jurisdiction

Road Traffic—third party insurance—disqualification—existence of "special reasons" matter of law—discretion of court an additional question—division of responsibilities between partners—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 236) s.4(1) (2).

Criminal law—traffic offences—using motor vehicle without third party insurance — disqualification—special reasons—discretion—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 236) s.4(1) (2).

Criminal law—practice and procedure—evidence of "special reasons"—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 236) s.4(1) (2).

The appellant was convicted in the Magistrate's Court of using a motor vehicle without insurance against third party risks. Having taken evidence on the question whether special reasons existed why disqualification should not be ordered, the magistrate disqualified the appellant for the statutory period of twelve months.

The appellant was a partner in a firm operating taxi cabs and the vehicle in question was one of four owned by the firm. The vehicle had been in garages for repairs from the 6th January, 1964, to the 7th February, 1964, on which date the offence was committed while the appellant drove the vehicle to another garage for further repairs. The insurance policy had lapsed on the 18th January, 1964, but the appellant was unaware of this. Another partner (who was also the manager) of the firm, dealt with the insurance of the firm's vehicles. He had not renewed the policy because he was aware that the car was under repair and he did not know that the appellant intended to drive the car on the 7th February.

Held: 1. When the question of "special reasons" is being considered, the question must be borne in mind whether such reasons exist as a matter of law, and if, and only if, that is the case the court must decide how its discretion should be exercised in the particular circumstances.

Motor Vehicles (Third Party Insurance) Ordinance, s.4 (2) :— Any person acting in contravention of this section is guilty of an offence . . . and a person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence for a period of twelve months from the date of conviction.

2. The accepted facts in the present case satisfy the test laid down in *R. v. Wickins* (1958) 42 Cr. App. R. 236, as to what amounts to a special reason as a matter of law.

A 3. On the question of discretion, the matter of insurance was an "occupational risk" of the business and one to which particular attention was required to be given. Each case depends on its own circumstances but the court was entitled to take into account that by a simple division of responsibilities the purpose of the Ordinance might be frustrated, in that neither the partner responsible for arranging
B the insurance nor the partner driving the vehicle might be liable to be disqualified. It was not a case in which discretion should be exercised in favour of the appellant.

Semble: Evidence as to "special reasons" should be given on oath.
Authorities on the question of "special reasons" discussed.

C Cases referred to: *Jones v. English* [1951] 2 All E.R. 853; [1951] 2 T.L.R. 973: *Pilbury v. Brazier* [1950] 2 All E.R. 835; [1951] 1 K.B. 340: *Blows v. Chapman* [1947] 2 All E.R. 576; 63 T.L.R. 575: *Reay v. Young and another* [1949] 1 All E.R. 1102; 65 T.L.R. 315: *Harnam Singh and another v. the Police* (1957) 5 F.L.R. 58: *Whittall v. Kirby* [1946] 2 All E.R. 552; [1947] K.B. 194: *R. v. Recorder of Leicester, Ex*
D *parte Gabbitas* [1946] 1 All E.R. 615; 175 L.T. 173: *Knowler v. Rennison* [1947] K.B. 488; [1947] 1 All E.R. 302 *(sub. nom. Rennison v. Knowler): Chapman v. O'Hagan* [1949] 2 All E.R. 690: *Jowett-Shooter v. Franklin* [1949] 2 All E.R. 730; 65 T.L.R. 756: *R. v. Wickins* (1958) 42 Cr. App. R. 236; 122 J.P. 518.

Appeal against order of disqualification by a Magistrate's Court.

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K. C. Ramrakha for the appellant.

G. N. Mishra for the Crown.

The facts appear from the judgment of the Chief Justice.

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MILLS-OWENS C.J.: [1st October, 1964]—

The appellant was convicted in the Magistrate's Court of using a motor vehicle without insurance against third-party risks, contrary to sections 4(1) and (2) of the Motor Vehicles (Insurance) Ordin-
G ance (Cap. 236). He pleaded guilty and his counsel addressed the Magistrate in mitigation; in the course of doing so he stated certain facts to which no objection was taken by the prosecution. The Magistrate imposed a fine and stated that he considered that there were special reasons why disqualification should not be ordered.

In the exercise of its revisional jurisdiction the Supreme Court re-
H mitted the case to the Magistrate in order that evidence as to the circumstances of the case might be heard. The learned Judge pointed out that it had been held by the Divisional Court in *Jones v. English* [1951] 2 All E.R. 853 that evidence as to special reasons should be

given on oath. He also stated that consideration should be given to the decisions in *Pilbury v. Brazier* [1950] 2 All E.R. 835 and *Blows v. Chapman* [1947] 2 All E.R. 576. The revisional judgment indicates that in remitting the case to the Magistrate the Judge was acceding to an application made by counsel for the appellant that that should be done. Further proceedings then ensued in the Magistrate's Court and evidence was given on behalf of the appellant that the motor vehicle had been under repair, first in one garage and then in another from the 6th January, 1964, until the 7th February, which was the date of the offence. The insurance policy had lapsed on the 18th January. The offence was committed when the appellant drove the car from the second garage to a third garage for the purpose of further repairs. The appellant was a partner in a firm operating taxi cabs and the vehicle in question was one of four vehicles owned by the firm. The other partners were the appellant's brother and father. It was given in evidence that the brother was the manager of the firm and, in particular, dealt with the insurance of the firm's vehicles. The brother gave evidence that he had not renewed the policy because he was aware that the car was under repair; he was unaware that the appellant intended to drive the car on the 7th February. No rebutting evidence was called on the part of the prosecution.

In a careful judgment the Magistrate accepted that the matter of insurance of the firm's vehicles was dealt with by the appellant's brother and took into consideration the fact that the insurance was but shortly overdue, together with the additional fact that the car was off the road under repair and was being made use of for a short journey and for the purpose only of taking it to a garage for repair. He went on to say that although the appellant took no part in the management of the firm so far as insurance of their cars was concerned, he was a partner and had taken no steps to ensure that the management of the firm was being carried on properly in respect of insurance matters, and whilst he did not know that the insurance policy had lapsed he should have done so and was in a position to make himself aware of the fact by taking proper care. He therefore disqualified the appellant for the statutory period of 12 months.

On this appeal counsel for the appellant has referred to the following authorities: *Reay v. Young and Anor.* [1949] 1 All E.R. 1102; *Blows v. Chapman* (supra) and *Harnam Singh and Raghunath Singh v. The Police* (1957) 5 F.L.R. 58; Crown Counsel cited *Pilbury v. Brazier* (supra).

It is of assistance to review some of the authorities. *Whittall v. Kirby* [1946] 2 All E.R. 552 was said by the Divisional Court to be the first occasion on which the question what can amount to special reasons had arisen, although the Court had, earlier in that year in the case of *R. v. Recorder of Leicester, Ex parte Gabbitas* [1946] 1 All E.R. 615, laid it down that where any court refrained from imposing a disqualification on a conviction which carried this penalty it was its duty to state the facts which it found constituted special reasons entitling it to refrain from imposing disqualification. Earlier in its judgment the Divisional Court had referred to Parliament having

"given a discretion to the court which obviously is a limited discretion to be exercised only for special reasons. The limited discretion must be exercised judicially".

A At this stage in the judicial history of the matter of special reasons, it appears, the distinction between special reasons in point of law and special reasons in point of discretion had not become the subject of precise definition. But it arose shortly afterwards, in *Knowler v. Rennison* [1947] 1 All E.R. 302, where the defence was that the respondent, convicted of causing a motor-vehicle to be used without a B policy of insurance, had acted under an honest belief that the vehicle was covered. The Divisional Court held that the question whether, on the facts found by the trial court, it is open to be held that special reasons exist, is one of law; belief, however honest, could not be regarded as a special reason unless based on reasonable grounds. It was also said that forgetfulness to renew a policy of insurance could C not be a special reason. Neither was the unlikelihood that the offender would drive again without satisfying himself that he was insured, although that was a matter which could be taken into account in considering, where there are special reasons, whether the court will exercise the discretion which is then given to it.

D The distinction between special reasons in point of law and in point of discretion was also adverted to in *Chapman v. O'Hagan* [1949] 2 All E.R. 690, and in *Jowett-Shooter v. Franklin* (ibid 730).

The authorities thus establish that two matters have to be borne in mind when considering the question of special reasons, namely whether such reasons exist as a matter of law, and if so, but only if E so, how the discretion of the court should be exercised in the particular circumstances of the case.

Here I may perhaps revert to the question of what is a special reason by referring to the summary given by the Court of Criminal Appeal in *R. v. Wickins* (1958) 42 Cr. App. R. 236, 239-40 where it was said that four conditions have to be satisfied: It must be a F mitigating or extenuating circumstance not amounting in law to a defence; directly connected with the commission of the offence; and a matter which the court ought properly to take into consideration.

The main substance of the argument for the appellant in the present case is that once it is established that the driver of the vehicle G had no direct responsibility for the insurance thereof this amounts to a special reason within the meaning of the Ordinance. In *Blows v. Chapman* (supra) the driver was a mere employee who had driven the vehicle or similar vehicles for many years and could have no reason to suppose that his employer had omitted to keep the vehicle covered by insurance on the occasion in question. This was held to be a special reason: likewise in the case of *Harnam Singh and* H *Raghunath Singh*. Therefore, according to counsel's argument, once it is shown that the driver had no responsibility in the matter of insurance it becomes irrelevant to consider whether he is an owner, a part owner or a mere servant. Crown Counsel submits that the fact

that the appellant, as a partner, had a proprietary interest in the vehicle, is decisive; it it immaterial that for business or management reasons the matter of insurance had been delegated or assigned to another partner. In *Pilbury v. Brazier* (supra) the justices had thought it reasonable for the proprietor of a taxi-cab business, charged with permitting a vehicle to be driven uninsured, to delegate the duty of insurance to his manager. This, they considered, afforded special reasons for not disqualifying him. But in the Divisional Court that was not accepted; the decision of the Court upholding the justices' decision not to disqualify rested entirely on the insurance company's statement that they would have regarded the vehicle as covered.

I agree with Crown Counsel that the decision in *Pilbury v. Brazier* turned on the acceptance of liability by the insurance company. In his judgment Lord Goddard said that he did 'not think that the fact that (the proprietor) had left it to his manager to see to the insurance of the cabs would have been any excuse, if there had been an accident'. It is not, however, clear to me whether that was said as a statement of law or in reference to the justices' discretion.

The present case, on the uncontradicted and accepted evidence, appears to me to satisfy the test laid down in *R. v. Wickins* (supra) as to what amounts to a special reason as a matter of law. It is a different matter how the discretion then arising should be exercised. On the one hand it is not unreasonable for a partner to leave the matter of insurance to another partner, as a person who might be expected to deal with the matter responsibly. On the other hand this was a firm whose business it was to operate motor-vehicles, a business which clearly called for careful arrangements ensuring that third-party risks were properly insured against. As a partner the appellant had an equal responsibility in this respect. Also, in that capacity, he was armed with the necessary authority to ensure that cover had been duly provided, or, if not, was obtained; and in a position, further, to seek confirmation from the records of the firm that the firm's vehicles were covered. In effect, the matter of insurance was an 'occupational risk' of the business and one, therefore, to which particular attention was required to be given. The question is whether it is enough for it to be shown that by some internal arrangement another partner was to exercise particular powers of management in this respect. I can appreciate that in a case such as *Pilbury v. Brazier* (supra) it would be very difficult for the proprietor of a taxi-cab business to claim that discretion should be exercised in his favour simply on the ground that he had delegated his responsibility to a manager, and, at the other extreme, that discretion might properly be exercised in favour of a mere employee, as in *Blows v. Chapman* (supra). Into what category does a partner fall in a case such as the present where another partner deals with insurance matters but where he is the actual driver? Each case must depend on its own circumstances. Here I am entitled to take into account the practical result that the partner responsible for arranging insurance and the appellant as the actual driver, while both guilty of an offence, might neither of them be liable to be disqualified, so that the purpose of the Ordinance would be frustrated by a simple administrative division of responsibilities.

I have come to the conclusion that it is not a case in which discretion should be exercised in favour of the appellant and accordingly the appeal is dismissed.

Appeal dismissed.