

1914.

Present : Lascelles C.J. and Ennis J.MENON *v.* PERERA.506—*M. C. Colombo, 5,874.**Motor Car Ordinance, 1907—Rule 43—Sounding horn—Unnecessary annoyance—Interpretation of statute.*

Rule 43 of the rules of February 11, 1909, made under the Motor Car Ordinance, 1907, is as follows:—"He (driver) shall, whenever necessary, by sounding a bell or other instrument give audible and sufficient warning of the approach or position of the motor car, care being taken that such bell or other instrument is not used so as to cause unnecessary annoyance or alarm to persons and animals on the road."

Held, that the latter portion of the rule (care being taken, &c.) should be construed as a rule the breach of which is punishable.

THIS case was reserved for argument before two Judges by Ennis J. The facts are set out in the judgment.

J. S. Jayewardene, for accused, appellant.—Rule 43 makes the omission to sound the horn whenever necessary an offence. The sounding of the horn is not made punishable. The latter portion of the rule beginning with the words "care being taken" is only directory. The unnecessary blowing of a horn is not an offence. The intention of the law is to get the driver to sound the horn and nothing more.

The evidence in this case shows that annoyance was caused to only one person. The words of the rule are "unnecessary annoyance to persons." In any event, to justify a conviction, there should have been evidence that more than one person was annoyed by the sounding of the horn.

Anton Bertram, K.C., A.-G. (with him *Mahadeva, Acting C.C.*), for respondent.—Rule 43 contains a caution or admonition which the driver is bound to comply. Rule 38 enacts that every driver shall comply with the rules thereafter set forth. Rule 43 is one of the rules referred to in rule 38.

There is no difference between "care being taken" and "care shall be taken." Although the rule is not happily expressed, the meaning is clear when the rule is read along with the other rules—see rule 43.

[Ennis J.—The rule does not provide for a case like the present, where the horn was sounded unnecessarily. The rule only says that

whenever it is necessary to sound the horn, as when overtaking a person, the horn should be sounded, care being taken not to cause unnecessary alarm, &c. "]

1914.
Menon vs
Perera

There was practically one continuous blowing of the horn. The present case therefore comes within the rule.

Cur. adv. vult.

June 29, 1914. ENNIS J.—

This is an appeal from a conviction and sentence for an alleged breach of rule 45 of the rules of February 11, 1909, made under the Motor Car Ordinance, 1908.

Rule 38 provides that every person driving a motor car on any public thoroughfare, street, or road shall comply with the rules thereafter set forth.

Rule 43 runs: "He shall, whenever necessary, by sounding a bell or other instrument, give audible and sufficient warning of the approach or position of the motor car, care being taken that such bell or other instrument is not used so as to cause unnecessary annoyance or alarm to persons and animals on the road."

The facts are that accused passed the complainant on the Colpetty road about 10 o'clock one Sunday morning. He blew a horn, a shrill whistle, and continued to blow it for several seconds at a time, with short intervals, until the car was out of sight. The complainant was annoyed by the unnecessary blowing of the horn. The learned Magistrate held that the horn was being blown unnecessarily, and said, "It is clearly a breach of the by-laws if the horn is kept sounding continuously, instead of being sounded only when used to warn people in the way or turning corners."

It was urged on appeal that the unnecessary blowing of the horn was no offence under the section. As this involved a difficult question of law, I referred the case for hearing before two Judges.

It will be observed that rule 43 makes the sounding of a bell or other instrument imperative when necessary to give audible and sufficient warning of the position of the motor car. It contains no express prohibition on the sounding of a bell or the like when there is no necessity to give warning of the position of the car, and the care enjoined by the concluding words of the rule, on the face of them, appears to refer only to the causing of unnecessary annoyance when the horn must be used to give warning.

Two questions arise: first, whether the concluding words can be extended to include the causing of annoyance to the public when it is not necessary to give warning of the position of the car; and second, whether the concluding words can be construed as an imperative prohibition on causing unnecessary annoyance to the public by the use of the horn; which would involve a penalty for breach of the rule, or whether they are merely directory.

It is stated by Maxwell (*On the Interpretation of Statutes*, 4th ed., p. 396), in the chapter on the construction of penal laws, that

1914.
 ENNIS J.
 Menon v.
 Perera

“ the rule of strict construction requires that the language be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. Where an enactment may entail penal consequences, no violence must be done to its language in order to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language. To determine that a case is within the intention of a statute, its language must authorize the Court to say so; but it is not admissible to carry the principle that a case which is within the mischief of a statute is within its provisions, so far as to punish a crime not specified in the statute, because it is of equal atrocity or of a kindred character with those which are enumerated. If the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent to a Court to extend them. ”

It would seem that the rule of construction is less strict where a pecuniary penalty is imposed than in other cases (*Maxwell 397*), and that it comes attended with qualifications and other rules no less important. Among them is the rule that that sense of the words is to be adopted which best harmonizes with the context and promotes in the fullest manner the policy and object of the Legislature (*Maxwell 412*).

It is necessary, therefore, to consider the construction of the rule so as to give effect to the intention of the Legislature. Here again, I would quote the words of Maxwell (*page 425*): “ The tendency of modern decisions, upon the whole, is to narrow materially the difference between what is called a strict and a beneficial construction. All statutes are now construed with a more strict regard to the language, and criminal statutes with a more rational regard to the aim and intention of the Legislature than formerly. It is unquestionably right that the distinction should not be altogether erased from the judicial mind, for it is required by the spirit of our free institutions that the interpretation of all statutes should be favourable to personal liberty; and it is still preserved in a certain reluctance to supply the defects of language, or to eke out the meaning of an obscure passage by strained or doubtful inferences. ”

Was it the intention of the rules to regulate the use of motor cars to prevent unnecessary annoyance from noise? Had rule 43 stood alone it would not have been sufficient to infer such an intention. But I find another rule (48) providing that a driver shall stop his engines for the prevention of noise when the car is stationary; so I think it can be said the intention was to provide against the making of noise causing unnecessary annoyance. What was the particular intention in the concluding words of rule 43, in which the imperative found in rule 48 is not used? It is argued that the rule would not have been made, and a compliance have been required

by rule 38, unless it was intended to provide a remedy for unnecessary noise; while, on the other hand, it was urged that the first part of the rule clearly shows an intention only to protect persons and property from danger and damage. I do not know of, and have been unable to find, any other law in Ceylon under which the annoyance contemplated in rule 43 could be checked. Had there been such a law the presumption would have been against any intention to provide an additional remedy, and the concluding words of the rule could properly have been construed as a caution, that the direction to sound a bell or other instrument contained in the opening words of the rule could not be relied upon as a defence to an action under such other law. In the absence of any such law the concluding words would be nugatory, unless the rule, read with the rules 38 and 53, is construed as showing an intention to provide a remedy for the nuisance contemplated. I therefore conclude, with some diffidence, that the care enjoined in rule 43 is not merely cautionary, and that a failure to observe the necessary care is punishable as a breach of the rule. Having arrived at this conclusion as to the Legislative intent, the words should, I consider, as a pecuniary penalty only is imposed, be taken in the widest sense they are capable of to effectuate the intention to suppress the mischief, and that the concluding words of the rule must be taken as an imperative direction to take care not to use the warning instrument at any time so as to cause unnecessary annoyance or alarm to persons and animals on the road.

As to the other point raised on the appeal, the number of witnesses sufficient to prove the offence will vary with the circumstances of each case, and in the present case I see no reason to interfere with the finding, on the evidence of one witness only, that unnecessary annoyance was caused.

I would dismiss the appeal.

LASCELLES C.J.—

I agree. The question is whether the latter portion of regulation No. 43 is to be construed as a rule the breach of which is punishable, or whether, as the appellant contends, it merely amounts to an admonition or direction.

Reading the regulation alone, the phraseology of this portion of the regulation gives some colour to the appellant's contention. But reading the regulations as a whole, I cannot doubt that it was the intention of the Governor in Council to prohibit the causing of unnecessary annoyance or alarm by sounding bells or other instruments.

Regulation No. 43 is one of a group of regulations introduced by regulation No. 34, which requires drivers to comply with "the rules hereinafter set forth." Most of the following rules are imperative

1914.
 ENNIS J.
 ———
Menon v.
Perera

1914.
LASORIELLES
C.J.
Menon v.
Perera

inform, but the clause in question begins with the words " care being taken that." In view of the clearly expressed intention to lay down a code of rules for the conduct of drivers, I am of opinion that this clause, notwithstanding its grammatical form, must be construed as a rule not less imperative than the other rules with which it is associated. That it was intended to carry out the object in view, namely, the prevention of unnecessary noise in the streets by means of admonitions or exhortations, is a proposition which I cannot accept.

Appeal dismissed.

