[HIGH COURT OF AUSTRALIA.]

THE KING . . . . . APPLICANT;

AND

COVENTRY . . . . . RESPONDENT.

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL OF SOUTH AUSTRALIA.

H. C. OF A. 1938.

MELBOURNE, *May* 12; *June* 6.

Latham C.J., Rich, Starke, Dixon and McTiernan JJ.

Criminal Law—Motor vehicle—Driving in manner dangerous to public—Death caused thereby—Objective test of liability—"Manner" of driving—Criminal Law Consolidation Act 1935 (*S.A.*) (*No.* 2252), *sec.* 14.

Sec. 14 of the *Criminal Law Consolidation Act* 1935 (S.A.) provides: "Any person who—(*a*) drives a motor vehicle in a culpably negligent manner, or recklessly, or at a speed, or in a manner, which is dangerous to the public; and (*b*) by such negligence, recklessness, or other conduct, causes the death of any person, shall be guilty of a misdemeanour."

Held that upon a prosecution under that section for driving in a manner dangerous to the public the test of liability was objective and impersonal and did not depend on the state of mind of the accused at the time of the alleged offence.

Per Latham C.J., *Rich*, *Dixon* and *McTiernan* JJ.:—The expression "driving at a speed, or in a manner, which is dangerous to the public" describes the actual behaviour of the driver and, in general, does not require any given state of mind as an essential element of the offence; but the section does not exclude a defence of mistake of fact on reasonable grounds or involuntariness or other exceptional excuse to which a state of mind may be material. "Manner" of driving includes all matters connected with the management and control of a car by a driver when it is being driven. It includes starting and stopping, signalling or failing to signal, and sounding a warning or failing to sound a warning, as well as other matters affecting the speed at which, and the course in which, the car is driven. Casual behaviour on the roads and momentary lapses of attention, if they result in danger to the public, are not outside the prohibition of sec. 14 merely because they are casual or momentary.

Per Starke J.:—The offence of driving in a manner which is dangerous to the public is established if it be proved that the acts of the driver create a

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danger, real or potential, to the public. Advertence to the danger on the part of the driver is not essential; but whether such danger exists depends upon all the circumstances of the case, e.g., the character and condition of the roadway, the amount and nature of the traffic that might be expected, the speed of the motor vehicle, the observance of traffic signals and the condition of the driver's car.

Special leave to appeal from the decision of the Court of Criminal Appeal of South Australia refused.

APPLICATION for special leave to appeal from the Court of Criminal Appeal of South Australia.

Robert Victor Coventry was convicted in the Criminal Court at Adelaide, on an information under sec. 14 of the *Criminal Law Consolidation Act* 1935 (S.A.), for driving a motor vehicle in a manner dangerous to the public and thereby causing the death of a boy named Ronald Arthur Howlett.

The Court of Criminal Appeal quashed the conviction on the ground that the summing up of the trial judge, *Richards* J., was inadequate, inasmuch as it failed sufficiently to instruct the jury as to the mental element involved in the offence of driving to the danger of the public, though the Court of Criminal Appeal thought that there was sufficient evidence to support the conviction.

From that decision the Crown applied for special leave to appeal to the High Court.

Hannan K.C. (with him *Chamberlain*), for the applicant. The summing up of the trial judge was adequate and sufficient and properly stated the elements involved in the charge. The judgment of the Court of Criminal Appeal defined the offence of " driving to the danger of the public " and declared that it involved *mens rea* in the sense of " a fairly high degree of indifference to the safety of the public." The legislature intended the liability for dangerous driving to be absolute. It was not necessary to show by inference or otherwise what was the state of mind of the driver. The offence is complete on proof of the quality of the driver's conduct. Objectively, the public was put in danger by the defendant's manner of driving. The legislature was concerned with the driver's conduct at the material time, and not with his motives for that conduct or whether he had any motives at all. The accused is guilty if it

is proved that he has done the act prohibited by the statute, that is, that he has driven in a manner dangerous to the public. The elements of the offence of dangerous driving are the following and no others, viz.: (1) that the car which was being driven was dangerous to persons using (or who might be using) the highway; (2) that the danger was due to the manner in which the car was being driven; and (3) that the defendant was the driver and was responsible for its being driven in that manner, that is to say, that it was by his act that the car was being driven as it was. Indifference to the safety of others is an ingredient only in the offences mentioned in sec. 14 which involve *mens rea*. If that is the state of mind of the driver, there is no need to show any particular degree of indifference. In the offence of dangerous driving, on the other hand, it is not necessary to prove any specific state of mind in the driver. His state of mind may be, and in fact usually is, one of inattention and want of concentration, resulting in dangerous driving. The mischief which the legislature is intending to remedy is danger to the public on the highway resulting from unreasonable speed or an unreasonable manner of driving, and when death results it is unreasonable to conclude that the legislature intended to punish the person whose dangerous driving caused it only if his state of mind can be shown to be one of indifference to the public safety, and to excuse the person who was in fact driving dangerously so that he killed a pedestrian, but whose state of mind is merely sustained inattention or continued absent-mindedness. The only reasonable view is that the legislature intended to protect the life and limb of the users of the highway against unreasonable and preventable danger arising from the driving of motor cars, and that a death due to sustained inattention on the part of a driver resulting in dangerous driving by him is as much within the scope of the section as a death due to dangerous driving resulting from a positive state of mind which may be described as indifference to the public safety. [Counsel referred to *Kingman* v. *Seager* (1); *Thompson* v. *Copeland* (2); *Dayman* v. *Lewis* (3); *McCrone* v. *Riding* (4); *Chajutin* v. *Whitehead* (5); *Law Quarterly Review*, vol. 53, p. 380.]

(1) (1938) 1 K.B. 397.
(2) (1936) S.A.S.R. 45.
(3) (1935) S.A.S.R. 474.
(4) (1938) 1 All E.R. 157.
(5) (1938) 1 K.B. 506, at p. 508.

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Alderman, for the respondent, was not called upon.

LATHAM C.J. The application for special leave to appeal is refused. The reasons will be given at a later date.

Cur. adv. vult.

June 6.

The following written judgments were delivered :—

LATHAM C.J., RICH, DIXON AND MCTIERNAN JJ. We refused the application for special leave in this case because we were of opinion that the reasons which actually governed the decision of the Supreme Court quashing the conviction did not involve any matter of general importance but depended upon the view taken by the court of the particular facts and circumstances of the case and of the effect which might have been produced upon the jury by parts of the judge's charge.

When they are carefully considered the reasons which led the court to quash the conviction and discharge the prisoner are seen to amount to nothing of more general significance than a dissatisfaction with the verdict because, assuming a view of the facts which the jury might be taken to have adopted, the conviction may have resulted from what the learned judges considered too great an emphasis on particular considerations or aspects telling against a verdict of acquittal. But their Honours incorporated in the reasons for judgment, which were given by *Napier* J., an examination of the provision under which the prisoner was charged, which goes beyond the substantial ground of their decision.

The reason for the present application on the part of the Crown for special leave to appeal is an apprehension that difficulties will arise in the practical application of this provision in consequence of some of the general views which were expressed in the course of the examination of its meaning made by the Full Court and also in consequence of some of the examples given by way of illustration.

We think that in some respects the judgment from which special leave to appeal is sought has been misunderstood. But in the circumstances we think that we ought to say that we do not desire it to be inferred from our refusal of special leave that we agree in all the views expressed in the judgment.

The charge against the prisoner was laid under sec. 14 of the *Criminal Law Consolidation Act* 1935 (S.A.). The section is a long one, comprising four sub-sections, all of which should be considered to obtain a full appreciation of its effect, but the words actually creating the offence or offences are relatively few. They are as follows : " Any person who—(*a*) drives a motor vehicle in a culpably negligent manner, or recklessly, or at a speed, or in a manner, which is dangerous to the public ; and (*b*) by such negligence, recklessness, or other conduct, causes the death of any person, shall be guilty of a misdemeanour." Upon a similar, but not quite identical, set of words *Cussen* J., in *Kane* v. *Dureau* (1), made three observations which we think are true of the South Australian provision. He said that there are several offences specified—driving recklessly ; driving with (culpable) negligence ; driving at a speed which is dangerous to the public ; and driving in a manner which is dangerous to the public. Secondly, he said that he was by no means satisfied that the words were intended to be used in such a manner as to prevent any overlapping of the various offences therein set out. Thirdly, he said that, without giving any exhaustive definition of the word " recklessly," it included an element which distinguished it from the other offences specified, an element which he called indifference to consequences. The chief fear of the Crown is that the judgment from which special leave to appeal is sought imports this element into the other offences mentioned in the clause. The correctness of such a reading of the judgment may be doubted, but it seems better to say that, in our opinion, indifference to consequences is not an essential element either of driving in a culpably negligent manner, or of driving at a speed which is dangerous to the public, or in a manner which is dangerous to the public. The driver may have honestly believed that he was driving very carefully, and yet may be guilty of driving in a manner which is dangerous to the public. The jury is to determine, not whether the accused was in fact, as a matter of psychology, indifferent or not to the public safety, but whether he has driven in a manner which was dangerous to the public. The standard is an objective standard, " impersonal and universal, fixed in relation to the safety of other users of the highway " (per *Hewart*

(1) (1911) V.L.R. 293, at p. 296 ; 33 A.L.T. 15, at p. 16.

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L.C.J. in *McCrone* v. *Riding* (1); and see *Kingman* v. *Seager* (2)). The standard is impersonal in the sense that it does not vary with individuals, and it is universal in the sense that it is applicable in the case of all persons who drive motor vehicles.

No doubt the language of the section does not exclude a defence of mistake of fact on reasonable grounds or of involuntariness (for example, interference by another person with the driving of the car), and perhaps there may be other exceptional excuses, based on special facts, to which a state of mind may not be immaterial. But, speaking generally, the expression "driving at a speed, or in a manner, which is dangerous to the public" describes the actual behaviour of the driver and does not require any given state of mind as an essential element of the offence. It is not desirable to attempt to make an exhaustive catalogue of possible defences, and what we have said is sufficient to deal with the present case.

We do not think that we should traverse the judgment in detail. Indeed the present application is enough to warn us against embarking upon any abstract discussion of the effect and application of such expressions as those contained in the section. But we desire to add that we do not agree in the view expressed in the following statement in the judgment of the Full Court:—"We think that a 'manner of driving' involves more than a casual or transitory act or omission. It involves a course of conduct although not necessarily for any considerable period. The failure to give a signal, or to sound a warning, could hardly be described as a manner of driving." It is, in our opinion, wrong to exclude an act or omission from "manner of driving" because it is casual or transitory in some senses in which these somewhat flexible words may be understood. Such an exclusion may even suggest that carelessness or inattention may constitute a defence to a charge under the relevant provision of the section. Sudden, even though mistaken, action in a critical situation may not, in all the circumstances of a case, constitute driving to the danger of the public. But casual behaviour on the roads and momentary lapses of attention, if they result in danger to the public, are not outside the prohibition of that provision merely because they are casual or momentary. Further, "manner

(1) (1938) 1 All E.R. 157. (2) (1938) 1 K.B. 397.

of driving " includes, in our opinion, all matters connected with the management and control of a car by a driver when it is being driven. It includes starting and stopping, signalling or failing to signal, and sounding a warning or failing to sound a warning, as well as other matters affecting the speed at which and the course in which the car is driven.

The application for special leave to appeal is refused for the reasons stated at the beginning of this judgment.

STARKE J. The *Criminal Law Consolidation Act* 1935 (S.A.), sec. 14 provides as follows : " Any person who—(*a*) drives a motor vehicle in a culpably negligent manner, or recklessly, or at a speed, or in a manner, which is dangerous to the public ; and (*b*) by such negligence, recklessness, or other conduct, causes the death of any person, shall be guilty of a misdemeanour." Coventry was charged under this section with driving a motor car in a manner which was dangerous to the public, thereby causing the death of one Howlett. He was convicted, but on appeal the conviction was quashed. The Crown moved this court for special leave to appeal, but the motion was denied.

The offence is established if it be proved that the acts of the driver create a danger, real or potential, to the public. Advertence to the danger on the part of the driver is not essential ; all that is essential is proof that the acts of the driver constitute danger, real or potential, to the public. But whether such danger exists depends upon all the circumstances of the case, e.g., the character and condition of the roadway, the amount and nature of the traffic that might be expected, the speed of the motor vehicle, the observance of traffic signals, the condition of the driver's car, especially if he knew, for instance, that his brakes were out of order and so forth. Substantially, the judgment on appeal accords with this view. " Upon a charge of driving at a speed or in a manner which is dangerous to the public the prosecution is not so much concerned with the state of the defendant's mind as with his conduct. The essence of this charge is the objective fact—the risk of injury to others." And, citing *McCrone* v. *Riding* (1) : " That standard is an objective standard, impersonal and universal, fixed in relation to the safety of other users of the highway " (See

(1) (1938) 1 All E.R., at p. 158.

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Andrews v. *Director of Public Prosecutions* (1); *Kingman* v. *Seager* (2)). The learned counsel for the Crown criticized this language but he did not seriously challenge its accuracy. It was said, however, that the judgment added that the conduct of the driver must involve a fairly high degree of indifference to the safety of others. I do not so read the judgment. The passage objected to merely points out that driving dangerously to the public will usually, if not in all cases, involve a high degree of indifference to the safety of others, but it does not suggest that such indifference is an essential ingredient of the offence. Some criticism was also directed to a passage of the judgment dealing with the "manner of driving." The passage is a little obscure. "A manner of driving involves" it is said "more than a casual or transitory act or omission. It involves a course of conduct although not necessarily for any considerable period." If this means that a person is not driving in a manner dangerous to the public if some emergency arises which could not have been anticipated or foreseen, then the observation may be well founded. Again, it is said that a failure to give a signal or to sound a warning could hardly be described as a manner of driving. But I should have thought that the happening of some emergency that could not have been anticipated or foreseen or the non-observance of the ordinary signals and warnings of the road might be one of the circumstances that could be considered in determining whether a motor vehicle was being driven in a manner dangerous to the public. But these matters are not particularly relevant to the case now before us and may require further consideration when the necessary facts appear.

The present case, however, is not one in which this court should interfere with the administration of criminal justice in South Australia, and special leave to appeal was not granted.

Application refused.

Solicitor for the applicant, *R. R. St.C. Chamberlain*, Crown Solicitor for South Australia.

Solicitors for the respondent, *Newman, Gillman & Sparrow.*

H. D. W.

(1) (1937) A.C. 576.

(2) (1938) 1 K.B. 397.