

WAITE v THE PEOPLE (1965) ZR 6 (CA)

COURT OF APPEAL

BLAGDEN CJ, CHARLES J, CRONIN, Acting J

13th April 1965

Fly note and Headnote

[1] Road Traffic and Roads - Offences - Failure to stop after accident involving injury or failure to render assistance - section 219 (1) of Roads and Road Traffic Ordinance construed:

Section 219 (1), by its plain language, creates two offences: failure to stop the vehicle after an accident involving injury to people and failure to render reasonable assistance in these circumstances.

[2] Road Traffic and Roads - Suspension of driving licences - when possible - failure to stop and render assistance:

Under a statute which permits suspension of a driving licence when the accused fails to stop and render assistance after an accident, it was *ultra vires* to suspend the accused's licence when he was convicted only of failing to render assistance.

Case cited:

Cutler v Wandsworth Stadium Ltd [1949] AC 398.

Statute construed:

Roads and Road Traffic Ordinance (1958, Cap. 173), s. 219 (1), as amended.

Kemp, for the appellant

Pimm, for the respondent

Judgment

Blagden CJ: The appellant, Douglas Dennis Waite, was convicted by the Magistrate, Class II, at Lusaka on his own plea of failing to render reasonable assistance to persons injured in a traffic accident in which he was the person in charge of a motor vehicle involved in the accident. He was sentenced to a £100 fine and his driving licence was suspended for twelve months. On appeal to the High Court that sentence was reduced to a £50 fine and six months' suspension.

The facts of the case were that the appellant ran down two people on a bicycle, at night, just outside Lusaka. One died and the other was severely injured. The appellant had his two - year - old child in his car and two boys. The child became hysterical. The appellant stopped, but lost his head and drove off reporting to a police station twenty minutes later. The appellant submitted three grounds of appeal. First, that the sentence of a £50 fine was excessive having regard to the offence and the actions of the appellant. This ground, in my view, has no merit. By his second ground the appellant contends that it is contrary to the provisions of the Roads and Road Traffic Ordinance,

BLAGDEN CJ

Cap. 173 (section 123 as read with the Second Schedule), to suspend his licence for an offence under section 219 of the Ordinance; or in the alternative - ground three - that the sentence of suspension was wrong and excessive as the court ought to have found that there were special reasons for not ordering it. That alternative ground, in my view, also has no merit.

There is left for decision only the technical ground that the suspension of the appellant's driving licence was, in the circumstances, contrary to the provisions of section 123 and the Second Schedule of the Ordinance and, therefore, *ultra vires*.

[1] Section 219 (1) of the Roads and Road Traffic Ordinance, under which the appellant was convicted, reads, in part, as follows:

¹ If the presence of a motor vehicle in any way causes a person to be injured on a road, and if the person in charge of such motor vehicle fails to stop the vehicle or to render reasonable assistance to the injured person, he shall be guilty of an offence'.

It is to be noted that provision is phrased disjunctively - 'if the person fails to stop the vehicle or to render reasonable assistance'. It was submitted by Mr Pimm, on behalf of the People, that the subsection creates one offence and not two. To adopt that interpretation

of the section would be to read the 'or', the disjunctive 'or', as the conjunctive 'and'. it seems to me that if that had been the intention of the Legislature, the Legislature would have said so; and I can therefore see no reason for adopting the construction contended for. Mr Pimm, in any case, had to concede that if that were the proper construction he would be in difficulties himself in regard to the framing of the charge in this case. But the language is plain, and it seems to me that section 219 by that language creates two offences - one of failing to stop the vehicle where there has been an accident involving injury to people, and the other of failing to render reasonable assistance in the same circumstances.

[2] From section 219 I turn to the Second Schedule to which I am referred by the provisions of section 123 (1). Section 123 (1) read together with the Second Schedule regulates the circumstances under suspension, disqualification and endorsement of driving licences may be imposed as part of the penalty.

The Second Schedule is laid out in a series of columns: the first column refers to the section creating the offence, the second column refers to the offence; and the subsequent columns deal with the various cases in which suspension and so forth are obligatory or permissible. It seems to me that in including the two columns - one for the section and one for the offence - the Legislature had a specific purpose in view. It would have been a simple matter, if the intention had been that each and every offence created under any particular section were to be visited with the sanction of suspension, for the Legislature to have said so by the use of one column and some simple expressions such as, for example, 'Any offence contrary to

CHARLES J

section 219'. But that is not what has been done. Against section 219 in the 'Offence' column are the words 'Failure to stop and render assistance'. That, having regard to the wording of section 219 itself, constitutes two offences: the offence of failing to stop; and the offence of failing to render assistance. Here again, if the Legislature had intended that each of these two offences should attract the sanction of suspension nothing could have been easier than to say so, by using the word 'or' instead of 'and', thus: 'Failure to stop or render assistance'. This disjunctive phraseology has been used specifically in a number of other instances in the Second Schedule, as pointed out to us by Mr Kemp on behalf of the appellant. But in respect of section 219 the word 'and' is used and one must assume, I think, that it was inserted intentionally, and that therefore, for some reason or other, the Legislature intended that the sanction of suspension should only occur where there had been a failure to stop and render assistance. The result may be a peculiar one, but the construction conforms to the meaning of the words used and this being a penal statute I think we are bound to interpret it strictly according to that meaning.

The result is that the obligatory suspension which is enjoined under section 219, where there has been a failure to stop and render assistance, is not applicable here because in this case what the appellant was convicted of was failing to render assistance. There being no power to suspend his driving licence otherwise than obligatorily it follows that the suspension ordered here was *ultra vires*.

I would therefore allow this appeal to the extent that I would set aside the order for suspension of the appellant's driving licence, the sentence of the £50 fine to stand.

Judgment

Charles J: I agree. I only have this to add: that I feel moved by this case to re-echo the words of Lord du Parc in *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, at 410:

'To a person unversed in the science or art of legislation it may well seem strange that Parliament has not by now made it a rule to state explicitly what its intention is in a matter which is often of no little importance, instead of leaving it to the courts to discover, by a careful examination: and analysis of what is expressly said, what that intention may be supposed probably to be. There are, no doubt, reasons which inhibit the legislature from revealing its intention in plain words. I do not know, and must not speculate, what those reasons may be. I trust, however, that it will not be thought impertinent, in any sense of that word, to suggest respectfully that those who are responsible for framing legislation might consider whether the traditional practice, which obscures, if it does not conceal, the intention which Parliament has, or must be presumed to have, might not safely be abandoned.'

Judgment

Cronin Acting J: I agree.