

R. v. KUNTAWALA.

CRIMINAL REVIEW CASE No. 15 OF 1940.

Township Regulations—failure to keep to left of road—grammatical meaning not always to be applied.

The grammatical meaning of Regulation 13 of the Township Regulations does not apply in all cases, but only where there is an actual or potential danger to other users of the road. The wording of the Regulation must be construed with regard to the true sense and context having regard to the circumstances of each case.

Law, C.J.: The accused was charged with and convicted of failing to keep to the left-hand side of a street, when riding a cycle, *contra* regulation 13 Township Regulations. This regulation purports to have been made under the authority of section 27 Cap. 26,¹ presumably under paragraph (a) (8) thereof, which is the authority for making regulations for the regulation of traffic, wheeled or otherwise. There was no evidence in the case that any vehicle or animal was on the road, other than the accused and his cycle, at the time of the alleged offence. The question for consideration in such circumstances is whether an offence can be said to have been committed.

2. As remarked above, regulation 13 was made presumably under the authority of section 27 (a) (8) Cap. 26, from which context it would seem that the relevant part of the regulation which concerned the charge was designed for the safety of traffic and to be applied in circumstances of potential danger in cases where there were also other users or possible users of a road at any given time besides the particular vehicle or animal concerned in a charge thereunder. If the regulation be intended to mean that all vehicles and animals must at all times and in all circumstances, except when overtaking any other vehicle or animal, keep to the left-hand side of a road, I have grave doubts whether it could be regarded as *intra vires* section 27 (a) (8). To be *intra vires* it must be good for all purposes, whether with or without reference to any special circumstances. Any other construction might, I consider, lead to unfortunate consequences and create an injustice. I incline to the view that the regulation should only be applied when the driving of any particular vehicle or animal has to be considered with reference to other users or possible users of a road at the same time. If this were not so, it would be an offence, for instance, for a vehicle or animal to be driven on the right-hand side of a road in order to avoid a trench or any other obstacle involving danger which might be encountered by such vehicle or animal being driven to the left-hand side of the road. To apply the regulation to the driver of a single vehicle or animal to the right-hand side of an otherwise empty street would, in my opinion, be contrary to the intention of the legislature.

¹ Now Cap. 120.—*Editor*.

3. I am fully aware of the rule which requires that an enactment should be read according to its ordinary grammatical sense as applied to the subject matter, and with that rule in view it must be endeavoured to ascertain what is the true meaning of the words in regulation 13 which concern the present charge. The words "shall keep to the left-hand side of the street" are expressed in wide terms and appear not to admit of any exception other than when one vehicle or animal is overtaking another vehicle or animal. LORD ESHER, M.R. said in *In re Brockelbank, ex parte Dunn and Raeburn*, 1889, 23 Q.B.D. p. 461, at pp. 462-3:

"In this proviso the legislature have used language of the widest kind—'in all cases' so wide that, if its full grammatical meaning be given to it, the proviso will produce injustice so enormous that the mind of any reasonable man must revolt from it. When the language of the legislature construed literally involves such consequences, the Court has over and over again acted upon the view that the legislature could not have intended to produce a result which would be palpably unjust, and would revolt the mind of any reasonable man, unless they have manifested that intention by express words. The Court will not infer such an intention from the use of merely general words. Some limit must, therefore, be put upon the words of the proviso, and they must be limited with reference to the subject-matter."

4. To accept literally the words of regulation 13 in another connection illustrates how a palpable injustice might result. The words to which I refer now are "at any junction of two or more streets the driver (of a vehicle) shall give way to any vehicle or animal approaching from his right-hand side." It is not difficult to visualise a case of, say, a herd of cattle approaching a junction of two streets and visible therefrom to a distance of a furlong or even more. Such a situation could arise in Livingstone, and, no doubt, in other townships. A literal observance of the regulation in such circumstances would cause great hardship and injustice to any driver, and might even apply to a cyclist (see the definition of a driver, p. 137, Vol. 3, *Laws of Northern Rhodesia*, 1934).¹ The herd in question conceivably might take several minutes to reach the junction of the two streets, by which time another herd might have come into view. With what result? An unreasonable delay and a possible hold-up of other traffic behind the waiting driver; a palpable injustice to all concerned.

5. For the foregoing reasons I am not prepared to agree that the words in regulation 13 which relate to the present charge mean what they appear to mean on reading the words themselves, but that they must be construed, in justice, with regard to their true sense and context.

6. In this particular case, however, I do not propose to make any order. The accused pleaded guilty and I will assume that he did so in circumstances which actually disclosed an offence.

¹ In Regulation 11 of the Townships Regulations, Cap. 120.—*Editor*.