[JOSEPHIDES, LOIZOU AND HADJIANASTASSIOU, JJ.]

NTINOS KONTOS,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 2928)

Road Traffic—Motor Vehicles Insurance—Third party risks—Using, causing or permitting another person to use, a motor vehicle on a road without there being in force a policy of insurance against third party risks—Absolute liability—Statutory provisions requiring insurance against third party risks create an absolute liability—Mistake of fact under section 10 *of the Criminal Code, Cap.* 154, *not a defence—Absence of* mens rea *immaterial—Material only as a mitigating circumstance going to the punishment and disqualification—The Motor Vehicles (Third Party Risks Insurance) Law, Cap.* 333, *sections* 2 (1), 3 (1), 4 (1).

Criminal Law—Mens rea—*Absolute liability—Mistake of fact under section* 10 *of the Criminal Code, Cap.* 154, *not a defence—See above.*

Absolute Liability—Absence of mens rea—*Mistake of fact not a defence—See above under Road Traffic.*

Mens rea—*Absence of—See above.*

Insurance—Motor Vehicles insurance against third party risks—Statutory provisions requiring such insurance create an absolute liability—See above under Road Traffic.

Third Party Risks—Insurance of motor vehicles against—Absolute liability—See above under Road Traffic.

Motor Vehicles—Insurance against third party risks—Absolute liability created by the relevant statutory provisions—See above under Road Traffic.

Mistake of fact—Section 10 *of the Criminal Code Cap.* 154—*No defence thereunder in cases of absolute liability created by statutory provisions—See above under Road Traffic.*

In this case the appellant was convicted of permitting another person to drive a motor vehicle on a road for which a certificate of insurance against third party risks was not in force,

contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, and he was fined £15. The trial Court, after hearing the mitigating circumstances, did not impose any disqualification on the appellant. He now appeals against conviction only, on the ground that no *mens rea* has been proved in this case, inasmuch as he had been labouring under an honest mistake of fact that his policy of insurance was a valid one and that, consequently, under the provisions of section 10 of the Criminal Code, Cap. 154, he should have been acquitted. The facts of the case are shortly as follows :

The appellant, who was the owner of a fleet of 69 cars, was insured with the " Anatoli " Insurance Company under two " fleet " policies which were issued on the 27th August, 1965, and were valid for a year until the 27th August, 1966, but, in the meantime, the Council of Ministers published a notice in the Official *Gazette* of the Republic of the 21st October, 1965, declaring that the said " Anatoli " Insurance Company was no longer an approved " insurer " within the provisions of section 2 (1) of the said Law, Cap. 333 (*supra*). On the 21st March, 1966, the appellant bought a mini-bus No. C V 712 and the said Insurance Company issued to him a certificate of insurance on the strength of the aforesaid " fleet " policies. Three days later *viz.* on the 24th March, 1966, a person (the first accused) was found driving on a road this mini-bus and the appellant was prosecuted and convicted as stated earlier.

The Motor Vehicles (Third Party Insurance) Law, Cap. 333, section 3 (1) provides :—

> " 3 (1). Subject to the provisions of this Law, no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of that motor vehicle by such person or such other person, as the case may be, such a policy in respect of third party risks as complies with the provisions of this Law."

Section 4 (1) provides that a policy for the purposes of the Law must be a policy which is issued by an " insurer ". The term " insurer " is defined in section 2 (1) as meaning " an insurance company or an underwriter approved by an Order of the Governor-in-Council ". The body now competent for approving insurers is the Council of Ministers which, as already stated, did cancel the authorization of the " Anatoli " Insurance Company in October, 1965.

In dismissing the appeal and affirming the conviction, the Court :—

Held, (1) reading the relevant statutory provisions (*supra*) and having in mind the object of the Legislature, we are of the view that the liability created under the provisions of section 3 (1), (*supra*), is an absolute liability and that there can be no question of any person's mistaken belief being accepted as a defence.

(2) It seems that, from what is stated in Glanville Williams on Criminal Law (The General Part) 2nd edition, at p. 231, paragraph 80, the provisions of legislation requiring third-party insurance have been held in England to be absolute : *Quelch* v. *Collett* [1948] 1 All E.R. 252 ; *Lyons* v. *May* [1948] 2 All E.R. 1062.

(3) We, therefore, hold that in the present case the belief held by the appellant does not amount to a defence. The maximum that can be said in his favour is that, if he was misled by the insurer, it is a mitigating circumstance to be taken into account by the court in deciding the question of punishment and disqualification.

Appeal dismissed. Conviction affirmed.

Cases referred to :

Quelch v. *Collett* [1948] 1 All E.R. 252 ;

Lyons v. *May* [1948] 2 All E.R. 1062.

Appeal against conviction.

Appeal against conviction by appellant who was convicted on the 18th May, 1967, at the District Court of Larnaca (Criminal Case No. 174/67) on one count of the offence of driving a motor vehicle on a road for which a certificate of insurance against third party risks was not in force, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333 and was sentenced by Demetriou, D.J., to pay a fine of £15.

K. Michaelides, for the appellant.

A. Frangos, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

JOSEPHIDES, J.: In this case the appellant was convicted of permitting another person to drive a motor vehicle on

a road for which a certificate of insurance against third party risks was not in force, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, and he was fined £15. The trial Court, after hearing the mitigating circumstances, did not impose any disqualification on the appellant. He now appeals against conviction only.

The appellant, who was the owner of a fleet of 69 cars, was insured with the Anatoli Insurance Company under two " fleet " policies which were issued on the 27th August, 1965, and were valid for a year until the 27th August, 1966, but, in the meantime, the Government published a notice in the official *Gazette* on the 21st October, 1965, declaring that the Anatoli Insurance Company was no longer an approved " insurer " within the provisions of section 2, sub-section (1) of the Law (Cap. 333). On the 21st March, 1966, the appellant bought mini-bus No. CV. 712 and the said insurance company issued to him a certificate of insurance on the strength of the " fleet " policies. Three days later, *viz.* on the 24th March, 1966, a person (the first accused) was found driving this mini-bus on a road and the appellant was prosecuted and convicted as stated in the opening paragraph of this judgment.

The brief point before us for determination is whether, despite the revocation of the authorization of the insurance company, the appellant could be convicted of the offence, assuming that he honestly but wrongly thought that the policy was a valid one under the Law.

Mr. Michaelides, on behalf of the appellant, submitted, that no *mens rea* has been proved in this case, that the appellant had been labouring under a mistake of fact that his policy was a valid one and that, consequently, under the provisions of section 10 of the Criminal Code, he should be acquitted.

The question turns on the construction of section 3 (1) of the Motor Vehicles (Third Party Insurance) Law, Cap. 333, which reads as follows :—

> " 3. (1) Subject to the provisions of this Law, no person shall use, or cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of that motor vehicle by such person or such other person, as the case may be, such a policy in respect of third party risks as complies with the provisions of this Law."

Section 4 (1) provides that a policy for the purposes of the Law must be a policy which is issued by an " insurer ". The term " insurer " is defined in section 2, sub-section (1), as meaning " an insurance company or an under-writer approved by an Order of the Governor-in-Council ". As this Law was enacted prior to Independence, the body now responsible for approving insurers is the Council of Ministers. In fact, as already stated, the Council of Ministers cancelled the authorization of the Anatoli Insurance Company in October, 1965.

Reading these statutory provisions and having in mind the object of the legislature, we are of the view that the liability created under the provisions of section 3, sub-section (1), is an absolute liability and that there is no question of any person's mistaken belief being accepted as a defence.

No cases have been cited to us by either counsel in the present case but it seems that, from what is stated in Glanville Williams on Criminal Law (The General Part), 2nd edition, at p. 231, paragraph 80, the provisions of legislation requiring third-party insurance have been held in England to be absolute: *Quelch* v. *Collett*, [1948] 1 All E.R. 252; and *Lyons* v. *May* [1948] 2 All E.R. 1062. With regard to the *Quelch* case, it was admitted that it was no defence to the charge that the respondent honestly but wrongly thought that he was covered by the policy, and it was held that that fact did not constitute a special reason why he should not be disqualified.

We, therefore, hold that in the present case the belief held by the appellant does not amount to a defence. The maximum that can be said in his favour is that, if he was misled by the insurer, it is a mitigating circumstance which may be taken into account by the Court in deciding the question of punishment and disqualification. But this cannot be taken into account in determining whether the appellant was guilty of the offence or not. In fact, the trial Judge in the present case did take into account this mitigating circumstance and that is the reason why no disqualification was imposed on the appellant.

For these reasons the appeal is dismissed and the conviction affirmed.

Appeal dismissed. Conviction affirmed.