[BOURKE C.J. AND ZEKIA J.]

HASSAN MUHARREM, *Appellant*,

v.

THE POLICE, *Respondents*.

(*Criminal Appeal No.* 2114).

Motor Traffic—Motor Vehicle—Insurance against third party risks—Causing motor vehicle to be used on a road without a policy of insurance being in force—Disqualification for holding licence —"Special reasons" for refraining from disqualification—Tests to be applied—Motor Vehicles (Third Party Insurance) Law, 1954, *section* 3.

The appellant pleaded guilty to a charge of using a motor vehicle on a road without a policy of insurance against third party risks being in force, contrary to the Motor Vehicles (Third Party Insurance) Law, 1954, section 3 (1), and was fined £5 and disqualified for holding a driving licence for 12 months, under section 3 (2) and (3). Before the sentence was pronounced the appellant's advocate stated to the Court that the appellant had completed the necessary forms seeking insurance, but the appellant did not give evidence on this point. On appeal it was submitted on his behalf that, although no cover note or policy had been issued, it was honestly believed by the appellant that his vehicle was insured at the material time and that his belief constituted a "special reason" within section 3 (3) of the Law for not imposing disqualification.

Held: (1) that, where an accused person sought to rely on "special reasons" for the non-imposition of disqualification under section 3 (3) of the Motor Vehicles (Third Party Insurance) Law, 1954, the Court ought to hear evidence on the point and not merely to accept statements by the accused's advocate. The onus was on the accused to show "special reasons" why he should not be disqualified.

Jones v. *English* (1951) 2 All E.R. 853 followed.

(2) That a mistaken belief with regard to any fact, however honest, could not be regarded as a "special reason" unless it was based on reasonable grounds.

Rennison v. *Knowler* (1947) 1 All E.R. 302 followed.

(3) That whether it was open to a Court, on facts found by the Court, to hold that "special reasons" existed for not imposing disqualification for holding a driving licence under section 3 (3) of the Law was a question of law.

(4) That a "special reason" within the exception was one which was special to the facts which constituted the offence, and not one which was special to the offender as distinguished from the offence.

Whittal v. *Kirby* (1946) 2 All E.R. 552; and *R.* v. *Crossan* (1939) 1 N.I. 106, followed.

Appeal dismissed.

Cases referred to:

(1) *Jones* v. *English* (1951) 2 All E.R. 853.
(2) *Rennison* v. *Knowler* (1947) 1 All E.R. 302.
(3) *Whittal* v. *Kirby* (1946) 2 All E.R. 552.
(4) *R.* v. *Crossan* (1939) 1 N.I. 106.

Appeal against sentence.

The appellant was convicted by the Special Court in Paphos (Case No. 64/57) on the 26th July, 1957, of the offence of using a motor vehicle on a road without a policy of insurance against third party risks being in force, contrary to section 3 (1) of the Motor Vehicles (Third Party Insurance) Law, 1954, and was sentenced by Morgan, Special Justice, to a fine of £5 and disqualified for holding or obtaining a driving licence for 12 months. The facts of the case are fully set out in the judgment of the Court.

A. Dana for the appellant.
H. Gosling for the Crown.

August 13. BOURKE, C.J. announced that the appeal would be dismissed, and that their Lordships would give their reasons later.

September 9. Their Lordships' reasons for dismissing the appeal were delivered by:

BOURKE C.J.: The appellant was convicted of the offence of using a motor vehicle on a road without having a policy in force in respect of third party risks, contrary to section 3 of the Motor Vehicles (Third Party Insurance) Law, 1954. The appellant pleaded guilty and was fined £5 with the alternative of seven days imprisonment and he was disqualified in accordance with law from holding or obtaining a driving licence for a period of twelve months.

The appeal was against this penalty of disqualification and it was submitted that there were "special reasons" within the meaning of section 3 (3). In the result the appeal was dismissed and we undertook to give our reasons later.

The ground of appeal alleges a number of facts said to constitute "special reasons", which were not established before the Court of trial. Before the sentence was pronounced Counsel for the defence was heard in mitigation and the notes upon record of what was said are as follows:— "Accused pleaded guilty for not having at the time cover. Accused visited office and asked for permit to cover. Agent completed the necessary forms. A special circumstance it is submitted exists which warrants no disqualification". It is evident that the learned Justice considered that there was no ground shown why the disqualification should not operate as provided under the section. We were satisfied

that on what was put before him he could not reasonably have come to any other conclusion. There is nothing to indicate that the prosecution were accepting the statements made by the advocate for the defence even if such statements were enough to show special reasons, which they clearly were not. In this context we adopt what was said in *Jones* v. *English* (1951) 2 All E.R. 853 :—

> " But where, on a plea of guilty or after evidence has been heard, a defendant has been convicted of an offence for which the penalty of disqualification is laid down by Act of Parliament and he seeks to rely on special reasons for the non-imposition of disqualification, he ought to give evidence, and the justices ought to hear evidence on the point and not merely to accept statements. This is highly desirable because the onus is on the defendant to show special reasons why he should not be disqualified."

Before this Court it was stated that the appellant had completed necessary forms seeking insurance; no cover note or policy had been issued but it was honestly believed by the appellant that his vehicle was insured at the material time. Even if such facts were established before the lower Court, they would not suffice to benefit the appellant for " Belief, however honest, cannot, in our opinion, be regarded as a special reason unless it is based on reasonable grounds", *Rennison* v. *Knowler* (1947) 1 All E.R. 302, 304.

It is apparent from the cases which have lately come before us on appeal that there exists a certain amount of confusion as to what precisely constitutes " special reasons " under this fairly recent legislation in Cyprus requiring insurance against third party risks, and we take the opportunity of commending for study in particular the cases of *Rennison* v. *Knowler* (supra) and *Whittall* v. *Kirby* (1946) 2 All E.R. 552. The question whether, on facts found by the Court, it is open to the Court to hold that special reasons exist is one of law. To quote the well-known passage from *R.* v. *Crossan* (1939) 1 N.I. 106 at pp. 112, 113, adopted in *Whittall* v. *Kirby* :—

> " A ' special reason ' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a ' special reason' within the exception."

For the reasons now given by this Court this appeal was dismissed.

Appeal dismissed.