

A

ATTORNEY-GENERAL

v.

B

GEORGE LANYON

[SUPREME COURT, 1970 (Knox-Mawer P.J.) 2nd April, 1st May]

Appellate Jurisdiction

C *Criminal law—traffic offences—driving unlicensed vehicle etc.—road to which the public has access—meaning of “public”—road on Rabi Island—status of—Traffic Ordinance (Cap. 152) ss. 2, 9 (1), 23 (1), 85—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 153) s. 4 (1) (2)—Penal Code (Cap. 11) s. 4—Banaban Lands Ordinance (Cap. 117) s. 3.*

D *Rabi Island—traffic offences alleged in Nuku Rd.—whether Nuku Rd. a road as defined in Traffic Ordinance—meaning of “public”—Traffic Ordinance (Cap. 152) ss. 2, 9 (1), 23 (1), 85—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 153) s. 4 (1) (2)—Penal Code (Cap. 11) s. 4—Banaban Lands Ordinance (Cap. 117) s. 3.*

E The respondent was charged in the Magistrate's Court with driving a motor vehicle without a licence, driving an unlicensed motor vehicle (contrary to sections 23 (1) and 9 (1) respectively of the Traffic Ordinance) and driving a motor vehicle without a certificate of insurance (Contrary to section 4 (1) (2) of the Motor Vehicles (Third Party Insurance Ordinance.) The particulars of all three charges alleged that the respondent drove the vehicle in question on Nuku Rd., Rabi Island. The trial Magistrate acquitted the respondent on the ground that the prosecution had failed to adduce evidence of an essential element of the charge i.e. that the road in question was one to which the public generally had access. On appeal—

F *Held:* 1. By section 2 of the Traffic Ordinance “road” means any highway and any other road to which the public has access.

2. In that definition “the public” means the public of Fiji as a whole and it was common ground that Nuku Rd., Rabi Island, was not such a road. The relevant sections of the Traffic Ordinance had therefore no application to the road in question.

Cases referred to:

G *R. v. Taranuea Abetai:* Savusavu Cr. Case No. 134/65—M. Ct. (unreported).

Harrison v. Hill [1932] S.C. (J.) 13.

Buchanan v. Motor Insurers' Bureau [1955] 1 All E.R. 607; 119 J.P. 227.

Griffin v. Squires [1958] 3 All E.R. 468; 1 W.L.R. 1106.

Tatem Steam Navigation Co. v. Commissioners of Inland Revenue [1941] 2 K.B. 194; [1941] 2 All E.R. 616.

H

Appeal by the Attorney-General against an acquittal in the Magistrate's Court on a finding of no case to answer. In his judgment dated the 14th November, 1969, the trial Magistrate said (in part):—

" In this case the road in question is situated on Rambi Island which Island is vested in freehold in the Rambi Island Council and held in trust by that Council for the members of the Banaban community. That is laid down by section 3 of the Banaban Lands Ordinance, Chapter 117. I judicially notice that the Banaban community numbers some two thousand Banaban people. I also judicially notice that those people freely use the road in question. A

Undoubtedly, members of the Banaban community are also members of the public of Fiji. However it is not enough, in my view, that some members of the public have access to the road if those members of the public come only from one particular section of the public. If access by some members of the public were enough then the fact that members of my family used a road on my freehold land would be enough to make that road a road within the definition provided by the Ordinance. There could hardly be such a thing as a private road. B

In my view it must be proved that " the public " as distinct from " members of the public " has access to the road. C

In my view, the fact that members of the Banaban community have access to the road does not raise the presumption that the public generally has access. On the contrary, I would presume that the public generally did not have access to a road situated on freehold land which was entirely surrounded, and separated from other land, by the sea." D

EDITORIAL NOTE:—It will be observed that one of the three charges was laid under the Motor Vehicles (Third Party Insurance) Ordinance, but by section 2 (2) of that Ordinance definitions from any Traffic Ordinance for the time being in force are rendered applicable.]

D. I. Jones for the appellant.

K. C. Ramrakha for the respondent. E

The facts are sufficiently ascertainable from the portion of the Magisterial judgment quoted above.

KNOX-MAWER P.J.: [1st May, 1970]—

The respondent was charged before the Magistrates' Court of the First Class, Savusavu, with the following offences: F

" FIRST COUNT
STATEMENT OF OFFENCE G

Driving Motor Vehicle without Driving Licence:

Contrary to Sections 23 (1) and 85 of Traffic Ordinance, Chapter 152.

PARTICULARS OF OFFENCE G

GEORGE LANYON on the 19th day of January, 1969, at Nuku, Rabi Island, in the Northern Division, drove motor vehicle, No. P. 865 on Nuku Road, when he was not the holder of a driving licence in respect of that motor vehicle.

SECOND COUNT
STATEMENT OF OFFENCE H

Driving Unlicensed Motor Vehicle:

Contrary to Sections 9 (1) and 85 of the Traffic Ordinance, Chapter 152.

PARTICULARS OF OFFENCE

A GEORGE LANYON on the 19th day of January, 1969, at Nuku, Rabi Island, in the Northern Division, drove motor vehicle No. P. 865 on Nuku Road, when the said motor vehicle was not duly licensed.

THIRD COUNT
STATEMENT OF OFFENCE

B *Driving Motor Vehicle without Certificate of Insurance:* "Contrary to Section 4 (1) (2) of the Motor Vehicles (Third Party Insurance) Ordinance, Chapter 153.

PARTICULARS OF OFFENCE

C GEORGE LANYON on the 19th day of January, 1969, at Nuku, Rabi Island in the Northern Division, drove a motor vehicle No. P. 865 on Nuku Road, when there was not in force, in relation to the use of the said vehicle by the said George Lanyon, a policy of Insurance in respect of third party risks complies with the provisions of the Motor Vehicle (Third Party Insurance) Ordinance, Chapter 153."

D At the close of the prosecution case the learned Magistrate, after referring to his earlier decision in *Regina v. Taranuea Abetai*, Savusavu Criminal Case 134/65, ruled that there was no case to answer. The respondent was therefore acquitted in respect of the three counts.

The Attorney-General has appealed against this decision upon the following grounds:—

- E "(i) That the Trial Magistrate erred in law and in fact in ruling that there was no case to answer.
- (ii) That the Trial Magistrate erred in law and in fact in ruling that the Prosecution had failed to prove that the road at Nuku, Rabi Island, was a road to which the public had access.
- (iii) That the Trial Magistrate erred in law in ruling that the public of Rabi were not "the public" for the purposes of the Traffic Ordinance, Chapter 152.
- F (iv) That the Trial Magistrate, in finding that the road was used by the public of Rabi, erred in law in acquitting the said Defendant."

By section 2 of the Traffic Ordinance, Laws of Fiji 1967, Cap. 152, "road" means any highway and any other road to which the public has access, and includes bridges over which a road passes.

G I have studied all the cases to which reference has been made, including *Harrison v. Hill*, [1932] S.C. (J) 13, *Buchanan v. Motor Insurers' Bureau*, [1955] 1 All E.R. 607, *Griffin v. Squires* [1958] 3 All E.R. 468, and *Tatem Steam Navigation Co. v. Commissioners of Inland Revenue* [1941] 2 K.B. 194 at p. 203.

H Upon reflection I have concluded that the answer to this appeal is simple. Where section 2 of Chapter 152 of the Laws of Fiji refers to "the public", it must mean the public of Fiji as a whole. It is common ground that the road in question is not a road to which the public of Fiji as a whole has access. Accordingly the relevant provisions of the Traffic Ordinance under which the respondent was charged have no application to the road in question. This appeal is therefore dismissed.

I wish to add that my attention was drawn by learned Crown Counsel (during the course of a most lucid and comprehensive argument) to the definition of "public" in section 4 of the Penal Code. With respect, this would rather confirm the view I have expressed above, than otherwise. It may well have been appreciated that since, in the absence of a more extended definition, "the public" under the Laws of Fiji, means what I have said it means, it was desirable so to define "public" for the purposes of the Penal Code. This has not been done in the case of the Traffic Ordinance and for the special definition of "public" in one Ordinance to be extended to "the public" in another, would in my opinion require express legislative sanction: precise legislation is particularly essential in that contraventions of the latter enactment also involve penalties. A
B

Appeal dismissed.