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other legal difficulties involved there, and I think that, on the facts of the case and on his own finding, the conviction would be improper under that section too. But I am satisfied that he did not intend to convict under section 361.

Under these circumstances I agree with my learned brother that the appeal should be allowed and the conviction set aside.

Appeal allowed.

R. R.

CRIMINAL REFERENCE.

Before Mr. Justice Shah and Mr. Justice Marten.

EMPEROR *v.* ABAS MIRZA.*

1918. *January* 11.

Penal Code (Act XLV of 1860), section 336—Doing a rash or negligent act endangering human life or personal safety of others—Licensed taxi-cab driver asked to wear spectacles at the time of driving—Driver using no spectacles at the time of driving—Liability.

The accused was, at the time he took out a license to drive taxi-cabs, asked to use spectacles at the time of driving owing to his defective eyesight. Still, he was one night driving his taxi-cab without wearing spectacles, when his car collided with another car; but it appeared that he was not liable for the accident. He was tried for an offence punishable under section 336 of the Indian Penal Code, for doing an act so rashly or negligently as to endanger human life or the personal safety of others. The medical evidence adduced at the trial showed that the defect in the eyesight of the accused was not very much, and that it would not appreciably interfere with his efficiency as a driver. The Magistrate having convicted him of the offence charged, the accused applied to the High Court:

Held, setting aside the conviction and sentence, that it was not made out that the accused if he drove his car without wearing spectacles would be acting so rashly or negligently as to endanger human life or the personal safety of others.

* Criminal Application for Revision No. 389 of 1917.

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THIS was an application under the revisional jurisdiction from conviction and sentence passed by Chunilal H. Setalvad, Acting Chief Presidency Magistrate of Bombay.

The accused was a licensed taxi-cab driver in Bombay. Owing to his defective eyesight, he was asked, when he took out his license, to use spectacles at the time of driving. Notwithstanding this, he was found one night driving his taxi-car without wearing spectacles. His car collided with another car. It appeared that he was not to blame for the accident.

The accused was at first tried for an offence punishable under section 279 of the Indian Penal Code; but the Magistrate finding that the charge was unsustainable, altered it to one under section 336 of the Code. At the trial, the accused called an oculist as his witness. The witness described the defect in accused's eyesight as not very much and one which would not appreciably interfere with his efficiency as a driver even though he drove without spectacles; but the witness admitted that it would make some slight difference if he drove without spectacles. The Magistrate convicted the accused of the offence charged.

The accused applied to the High Court.

P. N. Godinho, for the applicant.

S. S. Patkar, Government Pleader, for the Crown.

SHAH, J.:—In this case the accused was originally charged under section 279 of the Indian Penal Code, with driving a motor car on a public way in a manner so rash or negligent as to endanger human life; but the learned Magistrate finds that the evidence shows that the accused was not to blame for the collision which in fact occurred and that the charge under section 279 cannot be sustained. He, however, proceeded against the accused with the charge of doing an

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act so rashly or negligently as to endanger human life or the personal safety of others under section 336, Indian Penal Code.

The act complained of here is that the accused drove his car without wearing his spectacles which he was required to wear by the license under which he drove the car. The learned Magistrate has come to the conclusion that under the circumstances his omission to wear the spectacles at the time of driving the car was sufficient to endanger human life. From the finding recorded by the trial Magistrate and from the course which the proceedings took before him, it seems to me that to a certain extent he has been unconsciously influenced in his conclusion by the fact that there was a serious accident. But for the purposes of this case, the fact of there having been an accident, for which on the evidence the accused is found not to be responsible, must be left out of consideration. It would clearly be a rash or negligent act for a person to drive a motor-car without wearing spectacles if his eyesight was really defective. But an omission to wear the spectacles at the time of driving the car in every case, where a driver may properly use spectacles, would not necessarily render the driver liable under section 336. It must depend upon the nature of the defect in the eyesight, and the necessity for using spectacles in each case.

In the present case there is the evidence of an oculist which has not been disbelieved by the trial Magistrate. That evidence shows that the defect in the eyesight of the accused is not very much and that it would not appreciably interfere with his efficiency as a driver, even though he drove without spectacles. It is true that the accused was required by his license to use eye-glasses at the time of driving the car. But the circumstance must be considered along with, and in the

light of, the medical evidence. Having regard to the evidence, it seems to me that on the facts of this case it is not made out that the present accused, if he drove his car without wearing spectacles, would be acting so rashly or negligently as to endanger human life or the personal safety of others.

On these grounds I am of opinion that the accused is not guilty under section 336 of the Indian Penal Code. In the present case we are not concerned with the effect of the omission on the part of the driver to comply with the condition of his license and I express no opinion as to what effect such omission might or ought to have on the license.

I would set aside the conviction and sentence and direct the fine, if paid, to be refunded.

MARTEN, J. :—As we are differing from the learned Acting Chief Presidency Magistrate, I should like to add this. The want of spectacles had nothing whatever to do with the accident. The Magistrate finds that the accused was not responsible for the accident. Secondly, no question about the license arises here. Whether that should be or should not be renewed is a matter for other people to decide. Nor must it be thought that our decision amounts to this that short-sighted people can drive their cars in Bombay without their spectacles. Speaking for myself, my opinion is indeed entirely the other way.

Now in the present case we have got to see what is the evidence as to this man's eye-sight. The finding of the learned Judge is that an oculist (who was called as a witness by the accused), says that the defect is not very much and that it would not appreciably interfere with his efficiency as driver, even though he drove without spectacles, but the oculist admits that it would make some slight difference if he drove without spectacles. That evidence, in my opinion, is not

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sufficient to make the conduct of the accused amount to a criminal offence under section 336 of the Indian Penal Code.

Under these circumstances I agree in thinking that the conviction should be set aside and the fine, if paid, refunded.

Rule made absolute.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Marten.

In re HUBERT CRAWFORD.*

1918. January 15.

Criminal Procedure Code (Act V of 1898), section 514—Forfeiture of bond—Bond for appearance taken under the City of Bombay Police Act (Bombay Act IV of 1902), sections 106, 107†—Jurisdiction of Chief Presidency Magistrate to order forfeiture.

*Criminal Application for Revision No. 406 of 1917.

†The sections run as under :—

106. When any person, other than a person accused of a non-bailable offence, is arrested or detained without warrant by an officer in charge of a section and is prepared at any time while in custody of such officer to give bail, such person shall be released on bail :

Provided that such officer, if he thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

107. (1) When any person accused of any non-bailable offence is arrested or detained without a warrant, by an officer in charge of a section, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

(2) If it appears to such officer at any stage of the investigation that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer, on the execution by him of a bond without sureties for his appearance as hereinafter provided.