1931

Present: **Macdonell C.J.**

ATTYGALLE *v.* SABAPATHY.

435—M. C. Colombo, 1,932.

Motor car—Collision at junction—Accused passing junction at excessive speed—Contributory negligence—Duty of accused to take precaution—Ordinance No. 20 of 1927, s. 44 (13).

Where the accused, the driver of a motor car, while passing a junction at the rate of 15 to 20 miles an hour, collided with a motor lorry which was going on the wrong side,—

Held, that the negligence of the driver of the motor lorry did not exonerate the accused from the duty imposed upon him of reducing his speed at the junction and that the accused was guilty of an offence under section 44 (13) of the Motor Car Ordinance, No. 20 of 1927.

[1] *(1874) E. D. C. 439.* [2] *(1895) A. C. 56.*

APPEAL from a conviction by the Municipal Magistrate of Colombo.

The accused was charged with driving a motor car without taking precaution to avoid an accident whilst crossing Bankshall street from 1st Cross street, in breach of section 44 (13) of Ordinance No. 20 of 1927.

He was convicted and fined Rs. 30.

Tisseverasinghe, for accused, appellant.

July 30, 1931. MACDONELL C.J.—

The accused was charged and convicted under section 44 (13) of Ordinance No. 20 of 1927, which reads as follows:—

> " Notwithstanding anything contained in this section, it shall be the duty of every driver of a motor car to take such action as may be necessary to avoid an accident, and the breach by the driver of a motor car of any provision of this section shall not exonerate the driver of any other motor car from the duty imposed on him by this sub-section. "

The facts were that the collision occurred at a *carrefour*, the accused who was then going north on his correct, left, side of the road coming into contact with a lorry going west which was then on its incorrect, right, side of its road. It was argued that the fact of the lorry being thus in the wrong exonerated the accused and showed that the blame for the collision was due to the lorry alone. I do not think so.

First of all the definition clause, 2, makes it clear that normally motor car includes lorry. " Lorry means a motor car . . . . constructed . . . . for carrying goods ", and there is nothing in section 44 (13) to suggest that in it motor car is not intended to include lorry.

Now the evidence of a witness for the defence whom the learned Magistrate accepted was that accused was going 15 to 20 miles an hour at the time of the collision, and the Magistrate calls this speed " dangerous at such a junction as this ". Then the accused did not take the action " necessary to avoid an accident ", that is, he did not reduce speed as he should have done when approaching such a junction, and as his excessive speed was clearly one of the contributing factors to the accident, then he has contravened the sub-section under which he is charged.

Now it is said, truly enough, that the lorry was also at fault, and that there was " a breach by its driver of a provision of this section ", in that it did not " keep to the left or near side of the road ", but section 44 (13) provides for this very case. This breach of a provision of this section does " not exonerate the driver of any other motor car from the duty imposed on him by this sub-section ". Here the driver of the other motor car was the accused, and by the very words of the sub-section he is liable. Contributory negligence is not available as a plea in criminal law.

I dismiss the appeal.

Affirmed.