(*New Zealand Law Reports*, 1952, page 271)

SUPREME COURT. AUCKLAND. DECEMBER 13, 1951. FEBRUARY 4, 1952. STANTON, J.

TURNER *v.* BAIGENT

Police Offences—Sunday Trading—Artist, in Full View of Public, completing Mural in Shop on a Sunday—Such Person Working at his Calling—" Trade or calling "—Police Offences Act 1927, s. 18 (1) (3).

The appellant was charged under s. 18 (1) of the Police Offences Act 1927, that on Sunday, June 24, 1951, within view of a public place, Ponsonby Road, he worked at his trade or calling. Defendant was an artist. It was admitted that on the day and date alleged, in full view of the public, he completed the painting of a mural depicting transport through the ages on the wall of a motor-cycle shop in Karangahape Road. He was convicted.

On appeal under s. 303 of the Justices of the Peace Act 1927,

Held, 1. That the word " calling " in the expression " trade or calling " in s. 18 (1) of the Police Offences Act 1927, in its natural meaning includes many occup ations that would not be included under the word " trade."

2. That the appellant was decorating the interior of a shop, and a person who makes his living by carrying out such decorating is working at his " calling "; and, while doing so, he commits an offence under s. 18 (1) of the Police Offences Act 1927 if he does such work in the public view on a Sunday.

3. That the appellant could not claim exemption under the provisions of s. 18 (3), as the work done by him on a Sunday was not a work of necessity.

APPEAL from appellant's conviction of an offence under s. 18 (1) of the Police Offences Act 1927, that on Sunday, June 24, 1951, within view of a public place, to wit, Ponsonby Road he did work at his trade or calling. Defendant was an artist. It was admitted that on the day and date alleged, in full view of the public, he completed the painting of a mural depicting transport through the ages on the wall of a motor-cycle shop in Karangahape Road. He was in full view of the public through the plate glass window of the shop. He was convicted by the learned Magistrate.

On appeal from that conviction,

Haigh, for the appellant.
G. S. R. Meredith, for the respondent.

Cur. adv. vult.

STANTON, J. The section mentioned makes it an offence for any person to work at his trade or calling in view of any public place on a Sunday. Mr. *Haigh*, for the appellant, argued that " trade or calling " meant no more than " trade," and that, unless the appellant could be said to be working at a trade, he could not be convicted. He contended that the appellant was an artist, and that he was not a tradesman, but a person practising a profession, and that the section did not apply to professions. I gathered that Mr. *Meredith* agreed with the latter proposition, but I was not clear as to where he drew the line in excluding " professions " from " callings."

I cannot think the section should be so interpreted as to give no effect to the use of the word " calling." In the first place, it is, if anything, a wider word than " trade," and in its natural meaning it would certainly include many occupations that would not be included under the word " trade." In the second place, it is, I apprehend, a sound rule of construction to give a meaning to every word in a statute if that is reasonably possible, and not to treat any word as surplusage or meaningless. In *Craies on Statute Law*, 4th Ed. 100, it is said to be a known rule of construction of statutes:

that such a sense is to be made upon the whole as that no clause, sentence, or word shall prove superfluous, void, or insignificant, if by any other construction they may all be made useful and pertinent.

I do not profess to be an art critic, but, after inspecting a photograph of the mural in question, I feel no doubt that what the appellant was engaged in doing was painting a picture which would be useful as an advertisement rather than valuable as a work of art. Viewing it in the best light, more cannot be said than that he was decorating the interior of a shop, and, in my view, a person who makes his living by carrying out such decorating is working at his calling, and, while doing so, commits the offence specified in the section if he does the work in the public view on a Sunday.

I agree with the learned Magistrate that the appellant cannot claim exemption from the provisions of the section on the ground that this was a work of necessity.

I think, therefore, that the appellant was rightly convicted, and the appeal must be dismissed with costs £7 7s. to the informant.

Appeal dismissed.

Solicitor for the appellant: *F. H. Haigh* (Auckland).

Solicitor for the respondent: *Crown Solicitor* (Auckland).

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SUPREME COURT. NEW PLYMOUTH. 1952. MAY 20; JUNE 9.
FAIR, J.

JENNINGS *v.* TAYLOR

Criminal Law—Evidence—Crown Witnesses—Prosecutor's Discretion as to Calling Witnesses Known or Examined by It—Prosecution Not Bound to Make Available to Defence Any Statements of Uncalled Witnesses—Defence to be Told of Witnesses Not Being Tendered by Crown in Time for Defence to Call Them.

Transport—Offences—Person in Charge of Motor-vehicle in State of Intoxication—Judgment and Mental Faculties Affected to Appreciate and Material Extent by Drink Taken—" State of Intoxication "—Transport Act 1949, s. 40.

The prosecution has a discretion as to whether it should call all the witnesses known to it, or examined by it. The Court will not interfere with that discretion and require them to be called unless it can be shown that the prosecution's failure to call them has been influenced by some improper reason.

Adel Muhammed El Dabbah v. *Attorney-General for Palestine* ([1944] A.C. 156; [1944] 2 All E.R. 139) followed.

Seneviratne v. *The King* ([1936] 3 All E.R. 36), *R.* v. *Sing* ([1936] 1 D.L.R. 36), and *R.* v. *Hop Lee* ([1941] 2 D.L.R. 229) referred to.

Dictum in *R.* v. *Treacy* ([1944] 2 All E.R. 229, 234, 235) explained.

The Crown performs its duty when it informs the defence of the witnesses whom it had intended to call, and of its intention not to call them, in time to enable the defence to call them. It is not bound to give to the defence the statements which it had obtained from those witnesses.

Bryant v. *The King* ((1946) 31 Cr. App. R. 146) followed.

About twenty minutes after the defendant had been stopped by the police while driving his motor-car, he was examined by a doctor chosen by the police, and was subjected to exhaustive tests. The doctor then said that he was unable to say that the defendant was in a state of intoxication at the time of the examination. The defendant was afterwards charged with being in a state of intoxication while in charge of a motor-car.