

29th November, 1958

Judge:—

The Hon. Mr. Justice Dr. W. Harding, K.M., B.Litt., LL.D.

The Police

versus

Trevor John Pressider et.

Evidence.

*In deciding whether a charge is proved or not, the Court must weigh the evidence, not count the witnesses; so that if the evidence of one witness is in conflict with that of more than one witness, that single evidence should prevail if it better accords with the facts according to the ordinary course of human affairs and the usual habits of life.*

The defendants were brought before the Criminal

Court of Magistrates on the charge of having caused wilful damage in a cab under £3 to the curtains of cab no. M13 to the detriment of John Mallia. By the judgment of the 16th October, 1958, that Court found them guilty, and sentenced each of them to the payment of a fine (amenda) of 10s.;

Defendants entered an appeal against their conviction and sentence;

This Court, after hearing the evidence, including that given by the appellants at their own request, and after hearing the submissions of counsel for the appellants and the Senior Crown Counsel, considers as follows;

This is a case in which no legal issues proper fall to be decided. What this Court has to decide is whether the evidence of the cabman Mallia is to be believed and accepted as against the contrary evidence of the two appellants, or whether is it unworthy of credence;

After mature consideration of the whole of the evidence and of the surrounding circumstances resulting therefrom, this Court, applying the usual tests of credibility, particularly that relating to the demeanour of the witnesses, that is, the way in which they gave evidence (see Powell, *On Evidence*, p. 505), has come to the conclusion that the evidence of the cabman creates such a degree of credibility that it may be acted upon with safety. The fact that the appellants are two in number is, of course, not relevant, as the tribunal must weigh the evidence, not count the witnesses. Moreover, considering the circumstances resulting from the evidence of the other witnesses heard in this case, the evidence of the cabman is that which, on the words of Lord Wensleydale in a Privy Council case (see note (1) p. 511 *ibidem*), "best accords with the facts according to the ordinary course of human affairs and the usual habits of life". To mention one such fact, it is beyond dispute (in fact, several witnesses mention this circumstance) that, at least one of the curtains was ripped off from top to bottom. The curtains may have been old and worn-out, but a rip like the one described by

wholly unbiassed witnesses is not caused by ordinary wear and tear over a long time, such as that which the cabman ascribes to the appellants. It would be almost absurd to imagine, when one considers the whole of the evidence, that the incident was a frame-up by the cabman;

With regard to the extent of the damage, even if it was less than the cabman claims, it does not make any difference to the charge, as it would in any case be less than three pounds, and the law does not envisage any lesser grading of the damage. The small amount of the fine shows clearly enough that the Magistrate took into consideration the extent of the damage, as, of course, under the relevant provision, the punishment could have been up to a fine of five pounds or to imprisonment up to three months;

This Court, therefore, dismisses the appeal and affirms the judgment of the Court below.

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