

18th. October, 1948.

Judge :

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.
The Police *versus* Commander John Lyons, R.N.

**Traffic — Evidence as to Excessive Speed —
Suspension of the Driving Licence — Penalty —
Enabling Law — Sec. 45 and 102 of the Motor Traffic
Regulations, and Sec. 16 and 17 of the Motor Traffic
Regulations Ordinance (Ch. 105 Rev. Ed.).**

Under Maltese Law, the question as to whether a driver has been driving at an excessive speed is one of credibility and sufficiency of evidence; and there is no provision of law requiring that there be something more than the opinion of one witness. Anyone who observes a vehicle in motion is entitled to give his estimate of its speed.

It is true that reg. 45 of the Motor Traffic Regulations states that any Court, in the case of a person convicted of an offence under those

Regulations, may suspend his driving licence for any period not exceeding one month, and that the offence of driving at an excessive speed is an offence which falls under those Regulations; but the Motor Traffic Regulations were enacted under section 16 of the Traffic Regulation Ordinance (Ch. 105 of the Revised Edition), section 17 whereof empowers the Court, in the case of an offence against the Regulations enacted under section 16 of the same Ordinance, to suspend the driving licence for a period not less than eight days and not more than three months. And as any regulation enacted under an enabling law cannot go beyond it, and any such regulation is "pro tanto" "ultra vires", and consequently void and of no effect, the Court is quite competent to suspend the driving licence for a period exceeding one month, in the case of an offence for driving at an excessive speed, notwithstanding the said regulation 45 which prescribes a period not exceeding one month for such an offence.

Moreover, the punishment applicable in the case of an offence of excessive speed is that envisaged in section 17 (1) of Chapter 105, which mentions the punishments laid down for contraventions in the Criminal Code, which do not include the fine "multa", but the fine "ammenda"; wherefor, if a pecuniary punishment is decided on by the Court, the latter cannot apply a fine "multa", but only a fine "ammenda".

This is an appeal entered by defendant against a judgment given by the Criminal Court of Magistrates for the Island of Malta on the 10th. August, 1948. Defendant was found guilty of driving a car at an excessive speed, and was sentenced to a fine (multa) of £5. Moreover, his driving licence was suspended for three months;

Defendant in his appeal petition submitted that the charge had not been proved, and also that, in any case, the punishment was excessive;

The Court, after hearing....., considers as follows;

It seems to be common ground between the defence and the prosecution that the defendant was driving a motor car..... The point really at issue is whether the speed at which defendant was driving was in excess of the speed limit or not;

In terms of law (Motor Traffic Regulations — reg. 102) the speed limit for the type of car..... the locality mentioned in the summons is a built-up area..... The question, therefore, is whether defendant was driving at more than 20 miles per hour;

The evidence before the Court is that of Police Sergeant Misud and Police Constables Borg and Williams, as well as that which defendant gave at his own request;

The evidence of Police Sergeant Misud is not relevant..... Police Constable Borg was on duty on the wharf and he saw the car being driven at a speed which he reckons to have been round about fifty miles per hour. In the course of his evidence he referred to the car as having gone past him "like lightning". Pressed by counsel for the appellant as to how, not having any driving experience, he could assess the speed, this witness explained that he estimated that the car was being driven at three times the speed of a horse at a gallop, that is.....; Police Constable Williams was also near-by at the time..... He also stated that, with his driving experience, he calculated the speed at about fifty miles per hour;

It appears from the evidence of both these Constables..... Both, however, were impressed by the high speed of the car when they were still apart, one ashore, the other afloat;

Counsel for the appellant, in the course of his submissions to this Court, mentioned the provision of the English "Road Traffic Act, 1934" (s. 10 subs. 3), which runs as follows:— "A person prosecuted for driving a vehicle on a road at a speed exceeding a speed limit imposed by or under any enactment, shall not be liable to be convicted solely on the evidence of one witness to the effect that, in the opinion of the witness, the prosecuted was driving the vehicle at a speed exceeding that limit";

This provision has been interpreted by the Courts in England as meaning that, to prove a charge of driving at a speed exceeding the statutory speed limit, there must be something more than the evidence of one witness that in his opinion the speed limit was being exceeded. No second wit-

ness is, however, necessary, if a single witness, having given his opinion, produces a stop-watch or speedometer in corroboration; but he must give his opinion, and not rely solely on the evidence of the speedometer (see *Pearce v. Elms* (1939) *Motor Transport*, March 30; see also *Russel v. Busley* 1937, 1 *All England Reports* 527, quoted in *Halsbury's Laws of England*, Hailsham Edit. Vol. 31, page 667);

Now, it is almost unnecessary to say that, as there is no like provision in Maltese Law, under which this case falls solely to be considered, the defence is not in any way entitled to bring in the discussion the provision in question. It is permissible, of course, to quote general principles of other laws by way of argument in analogous cases, or to quote the interpretation given by courts other than Maltese Courts to any particular provision, if a like provision exists in Maltese Law, but it is quite a different matter to submit that the case be decided in terms of an express statutory provision which is not on the Maltese Statute Book. The case falls to be decided by the law of the land;

Under Maltese Law, the question is simply and solely a question of credibility and sufficiency of evidence. There is no law — as there is in England — requiring that there be something more than the opinion of one witness, for instance, a checking by stop-watches, speedometers, or measured distances; even though it would not perhaps be amiss to observe that in the case *Brighty v. Pearson* 1938, 4 *All Eng. Rep.* p. 127, it was held that the opinions of two separate police officers, unchecked by any apparatus for detecting excess of speed, was not corroboration, because, in that particular case, their evidence related to different times and different places on the road — a ruling which appears to justify the inference "a contrario sensu" that there would have been corroboration if their evidence related to the same time and place;

Under Maltese Law, as has been stated, the question is merely one of credibility and sufficiency of evidence. By way of general principles, it is obvious that anyone who observes a vehicle in motion is entitled to give his estimate of its speed. He may describe the speed, as in the case of *Po-*

lice Constable Borg, who stated that the car passed him "like lightning", although it would add weight to the witness's evidence if he states the speed in terms of number of miles per hour;

In the present case two police officers have stated that which was seen by them at the same place and time, that is, that the car was being driven at an excessive speed which they reckoned to be about fifty miles per hour. The Court fails to find any ground for discounting their evidence, nor was any argument pressed upon it which might induce the Court to discard such evidence;

However, in the present case, even if, merely "ex hypothesi", any further proof was required, this is furnished by defendant's own statement on oath..... The implied admission of the possibility of having exceeded the speed limit operates as a strong corroboration — if this were necessary — of the police officers' evidence, at least to the extent that the legal speed limit was exceeded;

Counsel for the appellant also urged that the period of suspension of the driving licence could not exceed one month. Now, it is true that reg. 45 of the Motor Traffic Regulations, published by Government Notice 24 of the 13th. January, 1948, states that any Court, before whom any person is convicted of an offence under those Regulations, may suspend his driving licence for any period not exceeding one month. The offence of driving at an excessive speed is an offence under the Regulations, that is, under reg. 102. These Motor Traffic Regulations, however, were enacted by the Commissioner of the Police under Sec. 16 of the Traffic Regulation Ordinance (Ch. 105 Rev. Edit.), as amended by Ordinance XV of 1946. Section 17 of the enabling law empowers the Court, in the case of any offence against any regulation made in virtue of section 16 thereof, to suspend the driving licence ("any licence held by the offender") for a period of not less than eight days and not more than three months. Now, it is obvious that any regulations made under an enabling law cannot go against its provisions, but must be maintained within the limits thereof; if they go beyond the enabling law, such regulations are "pro tanto" "ultra vires", and conse-

quently void and of no effect. In the present instance, it is clear that, once the enabling law empowered the Court to suspend the driving licence for any offence under the regulations up to three months, it was not competent for the authority enacting the regulations to curtail such period by way of regulation enacted under the enabling law. The Court, therefore, was properly empowered to suspend the licence up to three months;

-- It has also been submitted that the Court below could not inflict a fine "multa", but a fine "ammenda";

The punishment applicable to a case of excessive speed is that envisaged in section 17 (1) Ch. 105, which mentions the punishments laid down for contraventions in the Criminal Code. These punishments do not include the fine "multa", but the fine "ammenda". The Court below could not consequently apply the punishment of a fine "multa", but — if a pecuniary punishment was decided on — with a fine "ammenda";

With regard to the punishment "in toto", this Court considers;

The Court below applied the maximum of the period of suspension of the driving licence. Now, although the sitting Judge takes a very serious view of the offence of driving at an excessive speed, because, in his opinion, a very substantial percentage of road accidents are due to speeding, or could have been avoided were it not for excessive speed, still, as a Court of review, this Court has to see whether there was anything in the Magistrate's mind at the time of his wording the punishment which may have misled him in fixing such punishment. In this case, it falls to be noted that the Court below excluded the charge of dangerous driving, and only upheld that of driving at an excessive speed. This notwithstanding, through an oversight, the Magistrate in his judgment quoted sec. 14 of Ch. 105, which contemplates "inter alia" driving in a reckless, negligent or dangerous manner — an offence which is met with a heavier punishment than the offence of driving at an excessive speed, which is an offence under section 17 (1), in so far as this section contemplates offences against the regulations made

under section 16; amongst which that fixing the speed limit — reg. 102: It follows, therefore, that it is to be logically presumed that the Magistrate, in suspending defendant's licence for the period of three months, even though this was within the permissible discretionary limit under the first part of subsection 2 of section 17 Ch. 105, had in mind an offence which, in law, is met with a heavier punishment than the offence for which the defendant was, in point of fact, convicted. It seems reasonable to presume that, if the Magistrate had not been under this erroneous impression, he may have applied a period of suspension beneath the maximum discretionary period. In fact, when the Magistrate came to apply the pecuniary punishment, which erroneously he considered to be a fine "multa" under sec. 14, he does not appear to have deemed the case a serious one, calling for the application of the maximum period of suspension, as otherwise he would not have applied the minimum of the fine "multa". This Court, therefore, has before it two facts: first, that the Magistrate's mind was exercised by a provision of the law, quoted in the judgment, which was not that applicable to the case, and which put the offence on a more serious footing; and secondly, the circumstances of the case of itself could not have appeared to the Magistrate so serious as to justify the infliction of the maximum period of suspension, as otherwise he would not have applied the minimum of the fine "multa". Conversely, it falls to be presumed that, had the Magistrate had in mind the proper provision of the law, putting the offence for which the defendant was convicted on a less serious footing, then he would have applied a lesser period of suspension, once, judging by the extent of the pecuniary punishment inflicted (the minimum), it appeared that he was not considering the circumstances of the case as warranting particular severity. In these circumstances, it seems only fair and equitable to vary the punishment of the Court below;

For these reasons;

This Court adjudges as follows;

With regard to the merits of the case, dismisses the appeal and affirms the judgment of the First Court;

With regard to the punishment, allows the appeal to the extent of varying the punishment in the sense that the fine should be a fine "ammenda" of £3, payable within ten days from to-day, and that the period of suspension of the driving licence be reduced to twenty days to run from to-day.
