

23rd April, 1960

Judge:—

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

The Police

versus

Andrew G. Elvin

**“Third Party Risks” — Suspension of Driving Licence —
Disqualification — Art. 23 of the Criminal Laws.**

A person who, having been charged with having permitted another person to drive a car without a police licence, and consequently without an insurance policy in respect of third party risks, is found guilty of the charge, but is released conditionally in terms of article 23 of the Criminal Laws, should be released also of the demand for his disqualification from obtaining or holding any driving licence for the period prescribed by law. If the defendant is released from the charge as a first offender, he should also be released from the disqualification, which should not be applied against him.

This is an appeal from a judgment of the Criminal Court of Magistrates for the Island of Malta, delivered on the 8th February, 1960, whereby the afore-mentioned Andrew F. Elvin was found guilty of the charge of having permitted Pamela Elvin to drive car no. 27436 without her having a police driving licence, and consequently without an insurance policy in respect of third party risks, and was released as a first offender, but was disqualified for holding or obtaining a driving licence for a period of twelve months;

Counsel for the appellant has submitted that, once the appellant was released under the provisions relating to first offenders, the penalty of disqualification could not be applied;

This contention is correct;

Sec. 3 of Chapter 165 says:— “..... and a person convicted of an offence under this section shall be disqualified for holding or obtaining a driver’s licence for a period...”;

The operative word is “convicted.....”;

Now, section 23(7) of the Criminal Code, as amended by Act V of 1956, says:— “..... the conviction of an offender who is discharged either conditionally or absolutely as aforesaid shall in any event be disregarded for the purposes of any provision of this Code or of any other law which imposes..... any disqualification..... upon convicted persons”;

This clearly and unequivocally means that the conviction of the appellant, who was discharged under sec. 23 Chap. 12, should have been disregarded for the purpose of the disqualification which sec. 3 of Chap. 165 imposes on a person convicted; which, in its turn, means that the disqualification should not have been applied;

The conclusion to which this Court is inevitably led by the explicit terms of the law would also, of course, suggest that, in considering the feasibility of applying the provisions relating to first offenders in similar cases, the Court should also bear in mind that the person concerned will, if sec. 23 is applied, be also released from the penalty of disqualification; which may not be desirable from more points than one;

In view of the foregoing reasons, this Court allows the appeal of the defendant, in the sense that the penalty of disqualification be not applied, and, to that extent, varies the judgment of the First Court.
