

27th September, 1958

Judge:—

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

The Police

versus

George Dunford

**Appeal — Nullity — Language of Judicial Proceedings —  
Judgment.**

*If two traffic cases, of which one is against an English-speaking person and one against a Maltese-speaking person, are ordered by the Court to be heard simultaneously, as is usually and properly done in traffic cases, it is quite in order for the Court of Magistrates to order that the proceedings be conducted in the Maltese language, saving the interpretation of the proceedings to the English-speaking defendant. In such a case, the judgment must be given in the Maltese language, and if it be given in the English language, this would constitute a substantial infringement of the provisions of the law governing the language of the proceedings. And as these provisions fall amongst those touching public order or public policy, that violation entails the nullity of the proceedings; so that, if the judgment is appealed from, the Court of Appeal would quash that judgment and then proceed to hear and determine the case afresh in terms of the law.*

*But if the English-speaking defendant draws his appeal application in the English language, that application is itself null. Although the Appellate Court, when the case came before it for hearing, the appellant being only one, and an English-speaking person, orders the proceedings to be conducted in the English language, that order was of necessity given after the filing of the application containing the appeal; but it was not lawful for the English-speaking defendant to bring on his appeal in English when, procedurally, until then the language of the proceedings was still the Maltese language. And here again, the violation of the language provisions was a vital one, causing the nullity of the appeal itself.*

*In consequence, the unfortunate position is that the judgment of the First Court was null and void owing to a substantial infringement of the language provisions, while the Appellate Court is unable to quash that judgment and hear the case afresh, because, owing to a substantial procedural defect, there is legally no appeal before it, and therefore it is not vested with the cognisance of the appeal.*

This is an appeal from a judgment given by the Criminal Court of Magistrates on the 6th August, 1958, whereby the appellant was found guilty of reckless and dangerous driving, and was sentenced to the payment of a fine (multa) of five pounds, and, moreover, his driving licence was suspended for a period of three months;

This is rather an unfortunate case in consequence of certain procedural defects, on the strength of which the Prosecution now pleads the nullity of the appeal;

In the Court below, the case against the appellant and that against Carmelo Mangion, the other driver involved in the collision, were ordered to be heard simultaneously, as is usually and properly done. In view of the fact that one of the defendants, to wit, the present appellant Dunford, was an English-speaking person, and the other, to wit, Carmelo Mangion, a Maltese-speaking person, the Court below, availing itself of the provisions of section 48 of the Malta Constitution Letters Patent, 1947, reproduced in section 509 of the Criminal Code, chapter 12 Revised Edition, in terms whereof, in any such case, the proceedings may be either in Maltese or in English, according to the Court's discretion, ordered that the proceedings be conducted in the Maltese language (see page 4 of the record), saving the interpretation thereof to the English-speaking defendant;

So far, this was quite in order. It then happened that the First Court, inadvertently, gave its judgment, with regard to the present appellant, in English. It is obvious, of course, that, as the order for the proceedings to be conducted in Maltese still stood, this amounted to a substantial infringement of the provisions of the law go-

verning the language of judicial proceedings. It has been correctly held that these provisions fall amongst those touching "public order" or "public policy" (see Criminal Appeal "The Police vs. Jatroudakis", 8th February, 1936), and that the violation thereof entails the nullity of the proceedings;

Now, on appeal, in terms of section 440(3) Criminal Code, Chapter 12, whenever this Appellate Court finds that there has been a breach of a substantial formality in the proceedings before the First Court, it shall quash the judgment and then proceed to hear and determine the case afresh;

This would have been, undoubtedly, the procedure which this Court would have adopted in this case, had there not been a further defect on appeal;

In fact, it so happened that the application, whereby the appeal was brought forward, was drawn up in English. It is true that this Appellate Court, when the case came up for hearing, and the defendant being now only one (Mangion did not enter an appeal), and he being an English-speaking person, duly ordered that the proceedings be conducted in the English language; but this order was, of necessity, given after the filing of the application containing the appeal, and it was not lawful for the present appellant to bring on his appeal by way of an application in English when, procedurally, the language of the proceedings was still, until then, the Maltese language. The application should have been in Maltese. Here again the violation of the language provisions was a vital one, causing the nullity of the appeal itself;

The unfortunate position is, in consequence, this. The judgment of the First Court was null and void, owing to a substantial infringement of the language provisions. But this Appellate Court is unable to quash the judgment and hear and determine the case itself afresh, because, owing to a substantial procedural defect, there is legally no appeal before it, and therefore this Court is not vested with the cognisance of the appeal;

Wherefor;

This Court declares the appeal null and void.

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