

8th. March, 1958

Judge:—

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

The Police

versus

Thomas Mc. Leish, R.N.

Use of Other People's Car — Intoxication — Reckless Driving — Penalty — Driving without a Police Licence — Insurance Policy.

It would be wholly improper to treat as a trifling or trivial occurrence the act of any person who, without the owner's consent and without any lawful authority, appropriates another person's car, or boat, or vehicle, to make it serve his own ends, even though for a time, goes off with it, and damages it or exposes it to the probability of being damaged.

This contravention becomes more serious when the person concerned drives that car recklessly, in a state of intoxication, and moreover when he is not provided with a driving licence and without an insurance policy against third party risks.

The punishment for such a crime should be an adequate deterrent to this ever increasing and perverse tendency of considering other people's property as if it were one's own. Such a crime involves irresponsibility of the gravest kind, apart from the obvious inconvenience caused to the person who is temporarily deprived of the use of his own vehicle, and who often gets it back in a damaged condition; it constitutes a serious threat to the lives and limbs of other citizens.

It is no good plea that no one was injured as a consequence of such unlawful act; as it is no mitigation of an offence that an accident does not take place.

The Court:— Upon seeing the note of the Attorney General of the 3rd. December, 1957, whereby the record of the proceedings was transmitted to the Criminal Court of Magistrates for Malta in order that it may decide upon the

charge brought against the defendant, of having at Birżebbuġa, on the 10th November, 1957, at about 10.45 p.m., merely with the intention of making temporary use of car no. 11845, driven away this vehicle without the consent of its owner or other lawful authority; moreover, driven same whilst under the influence of intoxicating liquor, without a driving licence, and without the cover of an insurance policy in respect of third party risks; and finally, through imprudence, carelessness, unskilfulness and non-observance of traffic regulations, collided with car no. 18707 and caused damages both to car no. 11845 to the detriment of Norman K. Briggs, as well as to car no. 18707 to the detriment of Anthony Gauci:

Upon seeing the judgment of that Court of the 11th. January, 1958, whereby the defendant was found guilty on all the charges, and sentenced to one month's imprisonment on the first charge, to a fine multa of £5 on the second charge, and disqualification from obtaining a driving licence for a period of six months, and to a fine multa of £5 on the third charge and disqualification from obtaining a driving licence for a period of twelve months;

Upon seeing the appeal entered by the defendant with respect to the first charge, whereby he asks that the punishment be mitigated, in the sense that either he be given the benefit of conditional discharge as a first offender, or, alternatively, the punishment of a fine in lieu of imprisonment;

Omissis;

Considers;

This Court has already commented on the seriousness of this type of offence in the case "The Police vs. Gunner Trevor Betts et.", 1st February, 1958, stating, "inter alia": "This type of offence is becoming far too prevalent for the Courts to be in any way justified in taking a lenient view of the matter. It would be wholly improper, in the opinion of this Court, to treat as a trifling or trivial occurrence the act of any person who, without the owner's consent and

without any lawful authority, appropriates another person's car, or boat, or vehicle, to make it serve his own ends even though for a time, goes off with it, and damages it or exposes it to the probability of being damaged. ... The punishment should be an adequate deterrent to this ever increasing and perverse tendency of considering other people's property as if it were one's own; a tendency which is making it altogether unsafe to leave any car or other vehicle, or any boat, anywhere unless indoors under lock and key. Soldiers and naval ratings have been the majority of offenders in this respect";

It is also useful to note that much the same anxiety is being felt with regard to this offence in English legal circles. In fact, in a law review, "The Solicitor", January issue, 1958, at page 24, under the sub-title "Taking and Driving Away", it is thus stated:— "This class of offence is increasingly prevalent. It involves irresponsibility of the gravest kind: quite apart from the obvious inconvenience caused to the person who is temporarily deprived of the use of his own vehicle, and who often gets it back in a damaged condition, the threat to the lives and limbs of other citizens, is serious The roads are lethal enough already without the irresponsible addition to their perils which springs from this criminal disregard of others' property and the public safety..... This kind of driving is recklessly anti-social and totally unnecessary.....";

The grounds which have been now urged in mitigation are mainly three:— (1) It is alleged that this is the first case in which this punishment of imprisonment has been awarded; (2) the appellant was the worse for drink at the time; (3) the good conduct and very good service character of the appellant in the Royal Navy;

With regard to the first ground, it is obvious that it does not constitute a reason for mitigation. Indeed, it is really begging the question in as much as, even if the allegation that this is the first case in which a punishment restrictive of personal liberty has been applied were correct, one would still have to show, irrespective of whether this was the first case or not, that the punishment, what-

ever it is, was iniquitously excessive in the circumstances of the case;

With regard to the second ground, far from being a mitigating circumstance, the fact that the appellant was driving whilst in a state of intoxication aggravates the aspect of the case;

With regard to the third ground, that is, the character of the appellant, the Court has heard the evidence of Lieutenant Tate, who stated that, during the appellant's three years and a half of service in the Royal Navy, his character has been assessed as "very good". The appellant, it seems, has also paid the amount of the damages to the owner of the car, and has allotted a monthly payment in favour of the owner of the other car with which he came into collision;

This last ground for mitigation is, however, outweighed by the following other considerations;

1. The punishment for this type of offence is imprisonment for a term not exceeding one year or a fine not exceeding £100, or both such imprisonment and fine. Considering, therefore, that the maximum penalty is one year's imprisonment plus a fine of £100, the punishment awarded to the appellant does not appear at all excessive;

2. Nor must one put aside the concomitant circumstances of the case. The appellant was driving without a licence and without the cover of an insurance policy. On this latter circumstance, Lord Goddard, Chief Justice of England, had this to say to the lay magistrates in England:—"Justices often forget that the gravity of the offence of driving a motor vehicle while uninsured is that, if an accident occurs, an injured person will have no insurance company to look for compensation" (see text book "Special Reasons" by Blake Carn. page 58). In point of fact, the appellant drove recklessly, went through a one-way road against the stream of traffic, and collided with a stationary car parked on the proper side, damaging both

the car he was driving as well as the car which was stationary. Luckily, no one was injured; but, as Lord Goddard went on to say (*ibidem*), "Justice should understand that it is no mitigation of an offence that an accident does not take place";

In these circumstances, this Court is not inclined to disturb the discretion of the Court below with regard to the punishment;

For the foregoing reasons;

Dismisses the appeal and affirms "quoad appellatum" the judgment of the First Court.
