

account of particular circumstances or probabilities material to an estimate of the evidence, or has given credence to testimony, perhaps plausibly put forward, which turns out on more careful analysis to be substantially inconsistent with itself, or with indisputable fact, but except in rare cases of that character, cases which are susceptible of being dealt with wholly by argument, a Court of Appeal will hesitate long before it disturbs the findings of a trial judge based on verbal testimony.” 5

None of the arguments addressed to us satisfy me that this is one of those rare cases contemplated in that judgment and I see no reason to cavil at the conclusion come to upon the evidence by the learned Chief Justice. 10

I therefore give judgment for the respondent with costs.

PURCELL, C.J. and SAWREY-COOKSON, J. concurred. 15

*Appeal dismissed.*

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COMMISSIONER OF POLICE v. MONTUSE

Supreme Court (Purcell, C.J.): March 7th, 1922 20

[1] Road Traffic — licensing of drivers — learner drivers — learner authorised to drive without licence only if licensed driver accompanying him aware that he is unlicensed learner: The provisions of the Motor Traffic Regulations, 1919, reg. 16, which permit an unlicensed learner to drive a motor vehicle when accompanied by a licensed driver, only apply when the licensed driver is aware that he is being driven by an unlicensed learner (page 46, line 22 — page 47, line 15). 25

The respondent was charged in the police magistrate’s court with the offence of driving without a licence contrary to s. 6 of the Motor Traffic Ordinance, 1918. 30

The respondent, an unlicensed learner driver, drove a motor vehicle while accompanied by a licensed driver who believed that the respondent was in fact licensed to drive.

The respondent was charged with driving without a licence. The magistrate dismissed the summons on the ground that the respondent, being accompanied by a licensed driver, was authorised to drive since he thus fell within the terms of the Motor Traffic Regulations, 1919, reg. 16(a). 35

On appeal, the appellant contended that reg. 16 could only apply if the licensed driver who accompanied the learner was aware that he was being driven by an unlicensed learner. 40

The appeal was allowed and respondent was convicted and sentenced.

Legislation construed:

Motor Traffic Regulations, 1919 (No. 6 of 1919), reg. 16:

The relevant terms of this regulation are set out at page 46, lines 26—39.

PURCELL, C.J.

This is an appeal by the Commissioner of Police from the decision of the police magistrate dismissing the following summons against the defendant, *viz.*: that he the said Louis Montuse of Water Street did drive a motor car, identification plate No. F 151 on the highway at Kroo Town Road at 5.30 p.m. on December 17th, 1921 without being licensed so to do, contrary to s. 6 of the Motor Traffic Ordinance, 1918. The learned magistrate, without calling upon the defendant, dismissed the summons and on the matter coming before me I decided under the provisions of s. 20 of the Appeals from Magistrates Ordinance, 1877 to receive further evidence as I considered it expedient, taking the view I did, that the defendant, more especially as he was a foreigner, should have a full opportunity of being heard.

The whole question turns on the construction to be placed on reg. 16 of the Regulations made under the Motor Traffic Ordinance, 1918, being in fact the Motor Traffic Regulations, 1919. Regulation 16 reads as follows:

“The prohibition of driving a motor vehicle (other than motor cycle) without a licence contained in section 6(1) of the Ordinance shall not apply to any person learning to drive a motor vehicle provided that,

(a) there sits on the seat next to the learner a fully qualified driver licensed under this Ordinance, who shall be in such a position that he shall be able at all times and at any moment to direct and control the vehicle for all purposes;

(b) the licensed driver takes full responsibility for the breach of any of the provisions or regulations relating to the driving of the vehicle, and shall be liable to the penalty prescribed for any offence under such provision or regulations.”

The learned magistrate found — (i) that the defendant was a

S.C.

learner; and (ii) that he had sitting by him a person who fulfilled the requirements of the Motor Traffic Regulations, 1919, reg. 16 (a).

With all respect to the learned magistrate this finding of his is to my mind entirely incomprehensible. The evidence is quite clear that the driver David Labor was not aware that the defendant was a learner; quite the contrary in fact. He believed that the defendant had a licence and was under this impression during the whole of their connection on this day. The magistrate seems to have failed to grasp the one essential and necessary factor in this matter which is that the licensed driver sitting on the seat next the learner must be made aware that such person is a learner and unless he possesses that knowledge the most disastrous results are likely to occur. To hold otherwise, would in my opinion render this Ordinance and this regulation entirely nugatory and be a *reductio ad absurdum*. This Ordinance and this regulation were framed for the safety of the public and this cannot be too strongly insisted on. Motor cars are exceedingly dangerous things when driven by inexperienced people and these regulations must be jealously guarded because it is an obvious duty which the executive government owes to the public.

I am quite satisfied that in dismissing the summons the magistrate fell into error and was wrong for the reasons that I have stated. The judgment of the magistrate must be set aside. The defendant must be convicted and must pay a fine of 20s. or serve seven days' imprisonment.

*Order accordingly.*