RICHARD MALCOLM WARNER *v.* THE POLICE

[Appellate Jurisdiction (Hyne, C.J.) December 9th, 1955]

Dangerous driving—S. 58 of Traffic Ordinance, 1946—defective brakes—speed of vehicle.

The appellant was convicted of the offence of dangerous driving contrary to section 58* of the Traffic Ordinance, 1946, by the 1st Class Magistrate's Court sitting at Suva.

The appellant was also charged under Regulations 2 and 9 of the Traffic Regulations, 1947, with driving a motor vehicle when the handbrake and footbrake were defective. The Court held this was an alterntive charge and ignored it.

The facts proved were that the appellant drove his car 48 miles at a speed of 16 miles an hour knowing that the footbrake of the car was completely useless and the handbrake was defective.

On appeal against conviction and sentence.

HELD.—(1) A charge which relates to driving in a manner which is dangerous does not preclude the Court from including evidence as to the speed at which the vehicle was travelling.

(2) It is not necessary to establish actual danger to prove the offence of dangerous driving.

Cases referred to:—
Hargreaves v. Baldwin, 93 L.T.R. 311.
Kingman v. Singer [1938] 1 K.B. 397.

Ann Bernard for the appellant.

W. G. Bryce, Solicitor-General, for the respondent.

HYNE, C.J.—Section 58 of the Traffic Ordinance, No. 2 of 1946, reads as follows:—

> " If any person drives a motor vehicle recklessly, or at a speed or in a manner which is dangerous to the public having regard to to the circumstances of the case including the nature condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, he shall be guilty of an offence and shall be liable upon conviction to imprisonment for two years or to a fine or to both such imprisonment and fine."

It has, I think, been abundantly established by the evidence that both footbrake and handbrake were defective and that appellant knew they were defective. The learned Magistrate found that the footbrake was completely useless and that the handbrake was defective. On the evidence he was, I think, fully justified in so finding.

He also found—or he believed it to be true, that the appellant took 3 hours to travel a distance of 48 miles. That is he travelled at 16 miles per hour. The evidence justified this conclusion also.

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* *Section 32 of the Traffic Ordinance, 1954.*

Mrs. Bernard, for the appellant, made two principal submissions; first, that there was no evidence of dangerous driving, that is driving in a manner dangerous to the public, and, secondly, that the learned Magistrate arrived at his finding on evidence peculiar to the second count which he said he ignored.

The learned Solicitor-General has submitted that where there are two charges the Court can take into consideration evidence which is common to both. With this I agree and, as will appear later in this judgment, the condition of the brakes was evidence material to the first charge also.

Mrs. Bernard has submitted that the mere facts that the brakes were defective cannot support a charge under section 58 of dangerous driving. With this I agree, but the matter goes further.

The appellant was aware that the brakes were defective and he drove with such brakes at 16 miles an hour. The Magistrate held this was in the circumstances, excessive for safety.

The handbrake would not hold on a test slope one in six. According to the Chief Certifying Officer a handbrake of that nature should hold on a one in three slope.

Corporal Raman too thought he was taking a risk in driving at 5 to 10 miles per hour, and he is a driver of many years' experience. He also said that when driving at 10 to 12 miles per hour it took 5 to 6 yards to stop, depressing the clutch and applying the handbrake.

The evidence also shows, as I have said, that the footbrake was completely useless. The charge against the appellant refers to driving in a manner which is dangerous, it does not say at a speed which is dangerous.

This does not, however, preclude the Court in dealing with the charge, from considering evidence as to the speed at which the vehicle was was travelling.

This point was dealt with in the case of *Hargreaves v. Baldwin*, 93 L.T.R. p. 311. This case related to a charge under section 1 of the Motor Car Act, 1903. This section is almost identical with section 58 of the Traffic Ordinance, 1946.

The appellant in that case was charged with having driven a motor car on a public highway " in a manner which was dangerous to the public ". It was held that the speed at which the car was driven was admissible and may be taken into consideration, although the section makes it a separate and distinct offence to drive a car " at a speed which is dangerous to the public ".

Lord Alverstone, C.J., in the course of his judgment said:—

> " I am clearly of the opinion that one cannot consider, or might not be able to consider, the question of driving in a manner which is dangerous to the public in such cases as these without considering the speed at which the person was driving and I therefore think that speed is an element which can be taken into consideration when the charge is one of driving to the danger of the public."

The learned Magistrate was justified, therefore, in having regard to the speed at which the vehicle was travelling, and to the defective brakes as being part of the circumstances of the case. He considered that the speed was, with the brakes in the condition they were, excessive, and to drive with such brakes and at such speed was driving in a manner dangerous to the public. I think he was right.

It has been suggested that no actual danger was proved. In *Kingman v. Singer*, however, [1938] 1 K.B. at p. 397, it was said:—

> " The offence of dangerous driving under the Road Traffic Act 1934, S. 11 (1) is complete if potential danger to traffic which might reasonably be expected to be on the road is proved it being unnecessary to establish actual danger to any member of the public."

At p. 400, *Humphreys, J.*, said:—

> " The danger to which the section refers is to be found in the speed itself . . . Where the speed at which a vehicle is driven is in itself a dangerous speed, no other circumstances need be taken into consideration."

Having considered the evidence, the arguments of Counsel, and the authorities cited, I am satisfied that the appellant was properly convicted of dangerous driving.

He was driving at a speed of 16 miles per hour, the brakes were defective, and he knew they were defective. In these circumstances he must be held to have driven the vehicle in a manner dangerous to the public.

Appeal dismissed.