

## WILLIAM MORRIS SUTHERLAND *v.* THE POLICE

[Appellate Jurisdiction (Hyne, C.J.) November 15th, 1955]

*Sentence—driving a car when the driver's efficiency was impaired by drink.*

The appellant drove his small, privately owned car in an erratic manner and a minor accident occurred. His efficiency as a driver was found to be impaired by drink.

He was sentenced by the 1st Class Magistrate's Court at Suva to four months' imprisonment with hard labour.

On appeal against sentence.

**HELD.**—That in these circumstances the sentence was manifestly excessive. (Observations made as to sentence in this class of case.)

Cases referred to:—

*Hallett v. Newton* (1951), 95 S.J. 712.

*Police v. Emosi Matavucu*\*.

*H. M. Scott*, for the appellant.

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

**HYNE, C. J.**—The appellant was sentenced to four months' I.H.L. for driving a car while his efficiency was impaired by drink.

I realize that this is a serious offence, and it is punishable by a maximum sentence of two years' imprisonment, or a fine or to both imprisonment and fine.

In the case of the *Police v. Emosi Matavucu* the learned Chief Justice (*Vaughan, C.J.*) on review quashed a sentence of a fine imposed by the Magistrate and substituted a sentence of six months' imprisonment. In that case, however, the vehicle was a passenger vehicle containing passengers, and the driver was quite incapable of controlling the vehicle and drove it into a ditch.

In the present case the vehicle was a small privately owned vehicle.

I do not fail to appreciate the gravity of driving a vehicle when the driver is under the influence of drink. I do feel, however, that in the present case the sentence of four months' imprisonment is excessive.

The appellant has an unblemished record and is, according to his Counsel, a respectable member of the community. He is 55 years of age.

The question of the punishment to be awarded is one of extreme difficulty.

In *Hallett v. Newton* on October 12th, 1951, the Divisional Court, consisting of *Lord Goddard, C.J., Hilbery and Pilcher, J.J.*, called attention to the gravity of the offence of driving a motor vehicle when under the influence of drink. The Court said for such an offence a fine of £5 could not be regarded as an adequate penalty. The Court said further that the question for the Justices in such cases was whether there was any reason why the defendant should not be sent to prison.

\* Not reported.

After most anxious consideration I have come to the conclusion, in view of the circumstances in which he took the car out, and in view of the fact that offences of this nature are fortunately not prevalent, that the sentence of imprisonment should in this case be quashed.

I am only to some extent influenced by the good character of the appellant and the fact that he has no previous convictions.

While I naturally treat with the greatest respect the dictum of the Divisional Court as to what the question for Justices should be, our Ordinance does provide for a fine only as one mode of punishment.

I do not wish it to be understood that I do not regard the offence charged as of a serious nature, nor must it be assumed that, because the Court sees fit to substitute a fine in this case, that a fine is always the appropriate punishment.

I propose in this case, as I have said, to impose a fine and I intend to increase the period of disqualification.

The sentence of the learned Magistrate is quashed, and the following is substituted therefor—

Accused is fined £25, and in default of payment will serve a sentence of 3 months I.H.L.

He is disqualified from holding a driving licence for three years.

Sentence reduced accordingly.