IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 65 of 1958

Between

BALJIT SINGH — Appellant

AND

REGINA — Respondent

Traffic Ordinance (Cap. 235) s. 20—permitting person without driving licence to drive vehicle—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 236) s. 4—disqualification regarding driving licence—appellant present at hearing which was adjourned—absent from court when convicted and disqualified at adjourned hearing.

Held.—(1) Section 20(1) of the Traffic Ordinance does not create an offence of permitting a person to drive a motor vehicle without that person having a valid driving licence.

(2) A Magistrate is empowered to convict a person, and to disqualify him for holding a driving licence as provided by law, in the absence of a person who attends on the first day of hearing but fails to attend on the date, of which he was informed, for the adjourned hearing.

(3) Disqualification for twelve months under section 4(2) of the Motor Vehicles (Third Party Insurance) is by operation of law unless reasons special to the case (and not to the accused) exist, in which event the trial Magistrate orders disqualification in his discretion.

(4) Penal sections need not be shown in a charge.

Appeal allowed.

R. A. Kearsley for the appellant.

Justin Lewis, Solicitor-General, for the respondent.

LOWE, C.J. [15th November, 1958]—

The appellant was charged on two counts, firstly with permitting another person to drive a motor vehicle without that person having a valid driving licence, contrary to section 20(1) and 65 of the Traffic Ordinance, Cap. 235, and secondly with permitting another person to drive a motor vehicle in contravention of section 4 of the Motor Vehicles (Third Party Insurance) Ordinance, Cap. 236, contrary to section 4 (1) and (2) of the Motor Vehicles (Third Party Insurance) Ordinance, Cap. 236. Section 65 of the Traffic Ordinance is merely a penal section and there was no need to include any references to it in the first count.

Section 20 in so far as it affects this case is as follows:

> "Subject to the provisions of section 21, it shall be an offence for any person to drive a motor vehicle of any class upon a road unless he is the holder of a driving licence valid in respect of such class under the provisions of this Part of this Ordinance or to employ any other person so to drive a motor vehicle of any class unless such other person is the holder of such a driving licence."

The rest of the section is irrelevant and section 21 has no application. It will be seen that there is nothing in the relevant portion of that section which makes it an offence to permit any person other than the owner of a motor vehicle to drive the motor vehicle whilst that other person is not in possession of a valid driving licence. The appellant was not charged with employing any other person so to drive a motor vehicle.

It is true that subsection 5 of section 29 of the Ordinance makes it an offence for any person to permit any other person to drive a motor vehicle in contravention of section 29. However, section 29 relates to learner drivers under 17 years of age, persons under 21 years of age driving a public service or goods vehicle of a restricted weight, and a person driving a motor vehicle of a class other than that which he is entitled to drive by virtue of the terms of the licence issued to him. Subsection 5, therefore, relates only to the relevant provisions of section 29 and has no reference to section 20 so has no application to the instant case. The learned Solicitor-General was unable to support the conviction on the first count mainly on the ground that there was no such offence in law as that outlined in the first count. I am in agreement with him. He was unable to support the conviction also for the reason that the evidence fell far short of what was required in such a case.

A Police Constable stated that he stopped the driver of the vehicle and found that he had a driving licence which had expired. The Constable gave evidence as to the ownership of the vehicle but it is doubtful whether or not he knew that except by hearsay. Later in his evidence he said " The defendant told me that the owner was Baljit Singh." That of course is also hearsay. There is nothing in the evidence of this witness to carry the case any distance at all and it is clear for the reasons I have given that the conviction could not be sustained.

Provision is made, however, in section 4 of the Motor Vehicles (Third Party Insurance) Ordinance whereby it becomes an offence to permit any other person to use a motor vehicle unless there is in force, in relation to the use of the vehicle by such person, a third party insurance policy. The evidence of the Constable did not sufficiently prove that there was, in fact, no such policy in force in respect of the vehicle. However, there are other aspects of this case which were raised by the learned Counsel for the appellant and which are of importance, but the second count cannot stand because of insufficient proof, not only as to the existence of a valid third party insurance policy but also because there is a complete lack of evidence as to whether or not the owner did in fact permit the appellant to drive the vehicle. For those general reasons I allowed the appeal, quashed both convictions and set aside the sentences.

I will now deal with the aspect raised by Mr. Kearsley.

On the first day of the trial the appellant appeared in person and pleaded not guilty. The case was adjourned until the 24th of September when the appellant did not appear. The evidence of the Police Constable was taken and the learned Magistrate wrote his judgment and convicted the appellant on each count. On the first count the appellant was fined £5, or in default, one month's imprisonment. On the second count he was fined £10 or two months' imprisonment in default and was disqualified for holding or obtaining a driving licence for 12 months. The disqualification for holding or obtaining a driving licence is automatic, by operation of law, and should merely be noted on the record by the Magistrate after a conviction and any fine or imprisonment he imposes. It is not a disqualification to be imposed by the court. If, however, the Magistrate, for reasons special to the case and not special to the accused, thinks fit to order no disqualification or to order more or less than twelve months' disqualification then it is his duty to make an order embodying the different period of disqualification or that there is to be no disqualification. Mr. Kearsley contended that the appellant could not be sentenced to the disqualification in connexion with his driving licence

in his absence. He pointed out that provision is made in the Criminal Procedure Code whereby a Magistrate may hear a case in the absence of an accused person and may convict that person where the punishment for the offence is limited by law to specific penalties, but that under the Traffic Ordinance, in view of the fact that the court has additional power to disqualify the accused person in connexion with his driving licence there is no authority in law for the Magistrate to hear and determine the case in the absence of the accused.

After the initial date for the hearing of this case it was adjourned, as I have already stated. Section 194 of the Criminal Procedure Code then came into effect. It is as follows:

> " Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time and place to be then appointed and stated in the presence and hearing of the party or parties or their respective advocates then present, and in the meantime the court may suffer the accused to go at large or may commit him to prison, or may release him upon his entering into a cognizance with or without sureties at the discretion of the court, conditioned for his appearance at a time and place to which such hearing or further hearing is adjourned: provided that no such adjournment shall be for more than 30 clear days, or if the accused person has been committed to prison, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day."

In this case the learned Magistrate permitted the appellant to go at large following the adjournment and the appellant heard and knew of the adjourned date.

Section 184 of the Criminal Procedure Code states:

> " Except as otherwise expressly provided, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused, or, when his personal attendance has been dispensed with, in the presence of his advocate (if any)."

The summons which was issued to the appellant required his attendance on the original hearing date and he appeared. In that summons there is no statement to the effect that the presence of the appellant was dispensed with if he pleaded guilty.

Section 89(1) of the same Code is as follows:

> " Whenever a magistrate issues a summons in respect of any offence other than a felony, he may if he sees reason to do so, and shall when the offence with which the accused is charged is punishable only by fine or only by a fine and/or imprisonment not exceeding three months, dispense with the personal attendance of the accused, provided that he pleads guilty in writing or appears by an advocate."

On the first count the appellant was liable to a fine not exceeding £20 but on the second count his liability was to a fine not exceeding £200 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment. The latter is provided in section 4(2) of the Motor Vehicles (Third Party Insurance) Ordinance, which subsection goes on to say:

> " and a person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified for holding or obtaining a driving licence for a period of 12 months from the date of conviction."

It will be seen therefore that the Magistrate, if he saw reason to do so, had power under section 89(1) to dispense with the personal attendance of the appellant as to the second count as well as the first count, if he pleaded guilty in writing or appeared by an advocate. Had the first count stood alone the Magistrate would have been bound to tell the accused that his appearance would be dispensed with subject to him pleading guilty in writing or appearing by an advocate. When the appellant put in no appearance at the resumed hearing the learned Magistrate, even had he so desired, could not have issued a warrant to compel the attendance of the appellant under the provisions of section 131 of the Criminal Procedure Code as the complaint had not been made on oath. There was no need for him to do so in this case, in any event, as he had power to proceed with the case in the absence of the appellant.

Section 195(1) of the Criminal Procedure Code provides that:

> " If at the time or place at which the hearing or further hearing is adjourned, the accused person does not appear before the court which has made the order of adjournment, such court may, unless the accused person is charged with felony, proceed with the hearing or further hearing as if the accused were present, and if the complainant does not appear the court may dismiss the charge with or without costs as the court shall think fit."

The complainant in this case was present at the resumed hearing and the appellant was not charged with a felony.

The position, therefore, is that the learned Magistrate had not dispensed with the attendance of the accused at the hearing or on the date to which it was adjourned; the apepellant knew of the adjournment but put in no appearance at the resumed hearing so the learned Magistrate was fully justified in acting under the authority of section 195(1) and proceeding with the hearing. If an accused person does not appear in the circumstances shown to have existed in the instant case he renders himself liable to the penalties provided in law and cannot thereafter be heard to complain of his conviction and sentence on the grounds that he was not present to state his case or to state special reasons against disqualification. The disqualification in the instant case became inoperative upon the quashing of the con viction on the second count.