

6th August, 1984

Her Majesty's Attorney General

-v-

Peter John Le Mottee

DEPUTY BAILIFF: This appeal raises, I think for the first time, the interesting point as to what constitutes driving in our own Road Traffic Law. Because the definition of driving in our law is similar to that in the English Act, the Court is satisfied that it can have regard to the English authorities in arriving at its decision in this appeal. The facts are not in dispute. The friend of the appellant was driving her car with him as a passenger and at a particular part of their journey she started to overtake a motor-bicycle. The appellant, who, had he been in her place, would have undoubtedly, without any discussion as to whether he was driving or not, been driving whilst impaired within the meaning of Article 16 of the Road Traffic (Jersey) Law, 1956, fearing that her driving was not sufficient or adequate, reached over with one hand and took hold of the steering wheel in such a way as the direction of the car was changed. Thereafter, before the driver, that is to say the lady, could regain control there was an accident. Basically those are the facts. The question is, was the Magistrate entitled to find on those agreed facts that the appellant was driving?

Mr. Bailhache quite fairly said that, if he was driving, then the appellant does not take issue with the finding that he was unfit to drive. There were two tests which, Mr. Bailhache said, the Magistrate ought to have considered. The first was whether the appellant was substantially in control of the vehicle, and, secondly, whether what he was doing could, in the ordinary sense of the word, as understood by, not necessarily by a Court of Law, but by an ordinary person, be said to be driving.

So far as the second test is concerned, Miss Nicolle suggested that the distinction is rather between where somebody is in a car or outside a car, possibly where he has released the car itself and it is running down a hill under its own power, or merely under the force of gravity, without anybody actually touching it. We think that is the right approach and in answering the second point first, that is to say the second test, we have no doubt that what he did, for the purposes of the Law, would be and could be said to be driving.

Now in turning to the first test, clearly the controls which a driver has in order to enable him to drive the car are at least four major ones: he has the wheel, he has two brakes, a hand brake and a

foot brake, he has the accelerator and, as a last resort, he has the ignition ; (there are minor things such as the indicators and lights but they don't really help the propulsion of the direction of the car). In this case the appellant had on his side of the car and within his reach, the handbrake and the wheel and his friend had on her side of the car, the wheel as well as the foot brake, the accelerator and the ignition. Looking at the authorities and considering them, we reach the conclusion that the Magistrate was entitled to come to the conclusion that what the appellant did was driving in the sense, if only for a short time, but that is sufficient in our view as he had control to such an extent that the direction of the vehicle was changed. We do not accept, Mr. Bailhache, that the Magistrate gave other than a very careful exposé of the facts and the law, nor can we find that he misdirected himself and, therefore, the appeal is dismissed.

Because this is a matter which has not been argued before there will be no order for costs.