

Wednesday the 19th March 1980.

1980/8

BEFORE Sir Herbert Frank Cobbold EREAUT, Kt.,
BAILIFF of Jersey, assisted by Jurats Lester Vivian
Bailhache and George Norman Simon.

Attorney General

- v -

John Rooney

On the charge of breach of the peace, that appeal is dismissed. We are quite satisfied that the appellant was one of those seen in New Street doing the things which were seen by P.C. Strasheim, we reject entirely the appellant's account and we think the Magistrate was fully entitled to convict him. However, as regards the appeal against conviction for malicious damage, we allow that appeal and we must give the reasons why. It is quite clear that there was insufficient evidence to show precisely which of the persons seen in New Street pushed the motor cycle over. Obviously one of them did, but it is clear from the evidence that the Police Constable could not say which one of them did. It seems, therefore, that the Magistrate could not reasonably have decided on the evidence that it was the appellant rather than one of the other two, or three, who did so. However, the Magistrate apparently felt that he had to make a decision as to which particular individual pushed the motor cycle over and he decided that it was the appellant on the ground, it seems, that he had told lies. That, in our view, is not sufficient ground. In addition, the Magistrate used the words 'I suspect that you are the one'. Well, I don't suppose for one moment that the Magistrate meant "I have a suspicion, therefore I find you guilty", but it is an unfortunate word to use. What the Magistrate could have done was to have taken the view, as has been held in this Court today, that the pushing over of the motor cycle was part of a common enterprise in which all those present were concerned, and having found that the appellant, Rooney, was one of them he could have found that, because it was a common enterprise, whether or not Rooney physically pushed the motor cycle over, he was guilty of the pushing of it over. That was what the Magistrate could have done but he didn't look at it in that way at all. In fact he put that aside altogether because he said "they are not charged with conspiracy". So he put it out of his mind altogether. Because of that we feel that it would not be right for us to come to a decision as to whether we felt that the pushing over of the motor cycle was within a common enterprise. Therefore we have no option but to allow the appeal and quash the conviction of the Assistant Magistrate.