1981/58

25th February, 1981

Her Majesty's Solicitor General

-v-

Stephen John Gouédard

We feel that the position is that, had there not been the incorrect information given to the Magistrate about the existence at that bend of the continuous double white line, there would have been sufficient evidence before the Magistrate to have entitled him to convict the appellant under Article 14 for dangerous driving. The Court does not think the description of the bend very important, but it does take very much the point made that there was this incorrect statement about the double white lines before the Magistrate, and the Magistrate obviously placed some emphasis on it, although it is interesting that when one looks at the reasons given by the Magistrate for his decision to convict, the double white lines really play very little part in what he has to say. Nevertheless, during the trial there are references to the double white lines; their existence was firmly before the Magistrate and the Court finds itself in this position that it cannot be sure that the alleged existence of the double white lines may not have played some part in deciding the Magistrate to convict under Article 14, and the Court therefore feels that it would not be right to maintain that conviction. Having said that, the Court believes that nevertheless there is considerable other evidence on which a conviction under Article 15 could be sustained; and therefore, if this Court had had the power, it would have substituted a conviction under Article 15, that is, driving without due care and attention, careless driving, for that under Article 14. Unfortunately, and this is what has caused the Court to take some little time over its

consideration, the position is not quite as easy as that, because this is a case under the Road Traffic Law, and the Magistrate, when he is dealing with a charge under Article 14, cannot say: "I find the defendant not guilty of an offence under Article 14, but I find him guilty instead of an offence under Article 15". That is often the situation when dealing with criminal and quasi-criminal offences, but that is not the position under the Road Traffic Law, which is ---- more complicated. Article 19 says:-

> "Where a person is charged with an offence under Article 14 of this Law and the Court is of the opinion that the offence is not proved, then at any time during the hearing or immediately thereafter the Court may, without prejudice to any other powers possessed by the Court, direct or allow a charge under Article 15 of this law to be preferred forthwith against the defendant and may thereupon proceed with that charge, save however, that the defendant or his advocate shall be informed of the new charge and be given an opportunity, whether by way of cross-examining any witnesses whose evidence has already been given against the defendant or otherwise, of answering the new charge, and the Court shall, if it considers that the defendant is prejudiced in his defence by reason of the new charge being so preferred, adjourn the hearing."

So it is quite clear that this Court cannot substitute a conviction under Article 15 for a conviction under Article 14, because it would be doing something that the Magistrate himself could not do, and the powers of the Royal Court on appeal do not exceed ---- those of the Magistrate.

Therefore, it appears to this Court that whilst the Court feels that it has no option but to quash the conviction under Article 14, if it does that then it is then in the position of the Magistrate who at any time during or after the hearing may direct that a charge under Article 15 be preferred. It seems to us therefore, that having decided that we have no option but to quash the conviction under Article 14, but having also said that we think there is evidence on which the Magistrate could find a charge under Article 15 proved, we ought to remit the matter to the Magistrate with a direction that the appellant be charged under Article 15. I do not believe that it is a situation which has arisen before, although

I am rather surprised that it has not because there must be many cases where there has been a charge under Article 14 and for one reason or another it has appeared to the Court that a charge under Article 15 would have been more appropriate, but we seem to find ourselves in this situation. We do not feel that we can allow the conviction under Article 14 to remain because of the incorrect information given, which may or may not have had any effect on the Magistrate. The Magistrate might, if the information had not been given, have decided this was not quite as serious a case as he had thought and he might have decided there and then to direct that a charge under Article 15 be preferred, and this is what we think ought to be done now.