VILIAME BUNEDAMU *v.* THE POLICE

[Appellate Jurisdiction (Vaughan, C.J.) July 11th, 1950]

S. 58 *of the Traffic Ordinance,* 1946—*dangerous driving—duplicity of charge.*

The appellant was convicted by the 2nd Class Magistrate at Savusavu of the offence of dangerous driving. The statement of offence in the charge referred to " driving a motor vehicle dangerously or recklessly." On appeal against conviction and sentence.

HELD.—Although the statement of offence by itself was bad for duplicity, the fact that the particulars of the offence described the offence of dangerous driving saved the whole charge from being bad for duplicity.

Cases referred to:—

R. v. Jones ex parte Thomas [1921] 1 K.B. 632.
R. v. Wilmot (1933) L.T. 407.

Hari Charan for the appellant.

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

VAUGHAN, C.J.—The first ground of appeal taken is that the charge is bad for duplicity. Section 58* is in the following terms:—

> " If any person drives a motor vehicle recklessly, or at a speed or in a manner which is dangerous to the public having regard to the circumstances of the case including the nature condition and use of the road and the amount of traffic which is actually at the time or which might reasonably be expected to be on the road, he shall be guilty of an offence and shall be liable upon conviction to imprisonment for two years or to a fine or to both such imprisonment and fine."

This section creates three separate offences, namely (1) driving a motor vehicle recklessly, (2) driving a motor vehicle at a speed which is dangerous to the public, etc., and (3) driving a motor vehicle in a manner which is dangerous to the public, etc. The authority for this proposition may be found in the case quoted to me, *The King v. Jones ex parte Thomas* [1921] 1 K.B. 632. That case arose out of section 1 of the *Motor Car Act,* 1933, sub-section (1) of which is in the following terms:—

> " If any person drives a motor car on a public highway recklessly or negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case . . . he shall be guilty of an offence under this Act."

It was held in that case that this section created four separate and distinct offences.

The statement of the offence in the case which is before me is expressed as " Driving a motor vehicle dangerously or recklessly ", this form of words being adapted apparently from the marginal note to the section—a very unsafe guide to the framing of charges as I have before had occasion to observe. Sub-section (2) of section 123 of the Criminal Procedure Code is in the following terms: " Where more than one offence is charged in a charge or information a description of each offence so charged shall be set out in a separate paragraph of the

* *Section 32 of the Traffic Ordinance,* 1954.

charge or information called a count." It follows, therefore, that the statement of offence offends against this last-named provision because it sets out two separate offences in the alternative in one count. When we come to the particulars of the offence, however, it is seen that there is only one offence described and that is corrctly (if ungrammatically) set out: it alleges that at a specified time and place the accused " did drive a motor vehicle No. 1834 on a public road at Raranipolo, in such a manner which was dangerous to the public having regard to the circumstances of the case "; and it was of this offence that the accused was convicted. There is no question here, therefore, of the conviction being in the alternative. In the case to which I have been referred by learned Counsel, the accused was not only charged in the alternative but was also convicted in the alternative, so that he was left in doubt as to the precise offence on which he was being tried and as to the precise offence of which he was being convicted. In *Rex v. Wilmot,* reported at (1933) L.T. 407, two alternative charges were set out in the particulars of the offence and repeated in the conviction. In these important respects the cases quoted to me differ from the case before me. In view of the clear manner in which the one offence was set out in the particulars of the offence on the charge sheet, which was read out to the accused on more than one occasion, and having regard to the course of the trial as a whole, I am satisfied that the accused cannot have been in any way misled or prejudiced in his defence as a result of the irregularity in the statement of offence.

The next ground of appeal is that the evidence was not sufficient to support the Magistrate's finding of dangerous driving. The question as to whether the accused was driving dangerously or not was one of fact for the Magistrate. It appears from the evidence on the record that the accused, in rounding a corner, found it necessary to apply his brakes violently, as a result of which the car he was driving skidded and came into contact with another car which was passing him at the time in the opposite direction. The accused's own explanation as to how this happened is extremely unsatisfactory. On these facts I cannot possibly hold that there was no evidence on which the Magistrate was justified in his finding of dangerous driving.

The next ground of appeal is that the Magistrate was prejudiced because it was brought to his notice before the trial that the accused had been previously convicted of the same offence. I find there is no substance in this ground of appeal. I have no grounds at all for supposing that the Magistrate allowed himself to be biased by this knowledge, which is of a nature which must very often be in the possession of Magistrates trying cases in Magistrates' Courts.

The learned Solicitor-General has very properly drawn my attention to the fact that the Magistrate has not written a judgment as required by section 157 of the Criminal Procedure Code. Without laying down any general principle, I do not consider that in the case before me the absence of a judgment, although a serious irregularity, being a breach of a specific provision of the Code, is sufficient in itself to warrant the upsetting of the conviction in this case.

With regard to the sentence: taking all the circumstances into consideration, I think a sentence of imprisonment without the option of a fine unduly severe. I therefore quash the sentence and substitute a sentence of a fine of £25 or in default of payment 2 months' imprisonment with hard labour.