1955 *Present :* **Gratiaen J.**

**DON CARTHELIS, Appellant, *and* B. D. IBRAHIM (Sub-Inspector of Police), Respondent**

*S. C. 370—M. C. Balapitiya, 10,434*

*Motor Traffic Act, No. 14 of 1951—Section 153 (1)—"Driving when under the influence of alcohol".*

By section 153 (1) of the Motor Traffic Act—

"No person shall drive a motor vehicle on a highway when he is under the influence of alcohol or any drug."

*Held*, that no offence is committed unless the person driving the vehicle has brought himself under the influence of alcohol or drugs to such an extent that he cannot safely be entrusted with its control while in that condition.

APPEAL from a judgment of the Magistrate's Court, Balapitiya.

*E. A. G. de Silva*, for the accused appellant.

*P. Weerasinghe*, Crown-Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 19, 1955. GRATIAEN J.—

The appellant drove a motor ambulance in which a patient was conveyed from the Balapitiya Hospital to the Civil Hospital at Galle on the night of 12th October, 1954. On the return journey the ambulance knocked down a pedestrian called Daimon. The injured man was removed in the same vehicle to Balapitiya where, having first reported the accident to the Police, the appellant took him promptly to the hospital for medical attention. The appellant was in due course charged with having driven the ambulance recklessly and dangerously or alternatively in a negligent manner so as to cause injury to Daimon. On those charges he was acquitted. He was, however, found guilty on another count, wherein he was alleged to have contravened Section 153 (1) of the Motor Traffic Act, No. 14 of 1951, by driving the vehicle on a highway "under the influence of alcohol".

The evidence in support of the conviction under Section 153 (1) was to the effect that the appellant was smelling of liquor when he arrived with the injured pedestrian at the Balapitiya Police Station. This evidence was confirmed by the doctor who pronounced that the appellant was "under the influence of liquor". The doctor did not explain what precisely he meant by that phrase, or on what grounds he drew this inference. On the other hand, it was conceded that the appellant drove the vehicle quite competently after the accident. Nor is there any evidence from which a Court could fairly conclude that he was not in a fit condition to undertake the responsibility of driving a motor vehicle along the public highway. Can it then be said that, in this state of the evidence, a contravention of Section 153 (1) was established by the mere

fact that the appellant was undoubtedly smelling of liquor after the accident and had (on his own admission) partaken of some alcoholic refreshment at Galle shortly before the accident occurred ?

I understand that Section 153 (1) of the new Act has not previously received judicial interpretation. Section 60 (2) of the repealed Motor Car Ordinance (Cap. 156) penalised, as an aggravated offence, the reckless or negligent driving of a vehicle when " under the influence of alcohol or of drugs ". At that time, a driver, though " under the influence of alcohol or of drugs ", did not commit an offence unless he was in addition proved to have driven the vehicle in his charge dangerously, negligently or at an excessive speed.

Section 153 (1), by way of contrast, penalises driving " under the influence of alcohol or drugs " without proof of dangerous or careless driving. This new offence is equated for purposes of punishment to reckless or dangerous driving (prohibited by sub-section 2) and negligent driving (prohibited by sub-section 3). In this context, two alternative meanings of Section 153 (1) may be suggested :

(*a*) that, as it is medically true to say that a person is in some slight degree " influenced " if he has partaken of even a very small dose of alcoholic stimulant, Parliament now insists upon total abstinence from Ceylon motorists ;

or (*b*) that " under the influence of alcohol or of drugs " is a relative term, and no offence is committed unless the person driving the vehicle has brought himself under the influence of alcohol or drugs to such an extent that he cannot safely be entrusted with its control while in that condition.

In my opinion, the latter interpretation is to be preferred. The corresponding legislation in England is quite explicit and Section 15 (1) of the Road Traffic Act, 1930, is to the following effect :

> " Any person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road or other public place is under the influence of liquor or a drug *to such an extent as to be incapable of having proper control of the vehicle* " shall be liable to certain penalties.

This section aims at a motorist who is in control of a vehicle while he is " *in a self-induced state of incapacity*, whether that incapacity was due to drink or drugs ". *Thomson v. Knights* [1]. A conviction based only on a finding that the prisoner was under the influence of drink was quashed because he was not also held to have been incapable of having proper control of the vehicle at the relevant time. *R. v. Hawkes* [2].

It might, of course, be argued that the absence in Section 153 (1) of our local Act of the qualifying words found in Section 15 (1) of the English Act indicates that Parliament intended absolutely to penalise a driver who, though perfectly fit to have control of a vehicle, has partaken of a little alcohol. But an intention to change the law so drastically in Ceylon could, and should, be expressed in much clearer terms.

[1] (*1947*) *1 K. B. 336.* [2] (*1931*) *22 C. A. R. 172.*

In my opinion, a man cannot be convicted under Section 153 (1) of the local Act unless the evidence justifies the inference that the accused person was under the influence of drink or a drug to the same extent as would justify a conviction in England. The operative words are "*driven under the influence of alcohol or drugs*", indicating that some stimulant has had a prejudicial effect on the man's capacity to drive a car with normal efficiency because, for instance, it has impaired his powers of co-ordination and orientation. In such a condition, the motorist is a source of potential danger to himself and others, and is guilty of an offence even if he has not actually been involved in an accident.

In some cases, a man may be so intoxicated that his incapacity to have proper control of a vehicle is demonstrable. But as a general rule, expert evidence ought to be led on this issue, and the medical expert should inform the Court of the tests which he carried out and his reasons for reaching his conclusions—so that the Court may ultimately form its own decision as to whether the accused person's condition rendered it unsafe to allow him to drive a motor vehicle along a public highway. In the present case, there was no evidence on this vital issue. I therefore allow the appeal and acquit the appellant.

*Appeal allowed.*