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15th January, 1986.

POLICE COURT APPEALS.

A.G. -v- Har Paul Singh Ahluwalia.

BAILIFF: "This is an unusual case in as much as the appellant being a doctor who clearly knows the effect that drugs and drink can have on the human body. The case arose because the appellant was followed part of his way home the afternoon in question and some time afterwards he was visited by the police. As a result of what they found and we hasten to say that they found no drink in the house, but they found the doctor looking dishevelled, walking at a shuffle and with a difficult speech. They formed the conclusion that he should be taken in and examined. Now at police headquarters again, their decision was supported by a woman police constable who said that she formed the opinion of the doctor's condition by his general appearance. One of the matters which all the police noted was a dilation of his pupils. There was evidence before the learned relief Magistrate that dilation can be caused by the affliction known as conjunctivitis and in addition it can be increased from that condition by the administering to the eyes of drops containing the substance of Hermatropin in a 1% dilution. Furthermore, evidence was given before the learned relief Magistrate that the doctor normally spoke in perhaps, not a very easy way to understand, that he was stooped and that in fact, his normal gait is shuffling. Furthermore on the day in question, he was crossing the gravel of his garden and had not put his shoes on properly or had his slippers on with one of the heels down. So therefore there was very little relevant references to be drawn from his mere appearance and then we come therefore, to the question of a medical examination. Let me say at once that the Court regrets that there was not another doctor sent for, it was accepted by the learned relief Magistrate that the doctor was justified in refusing to be examined by any of his previous partners. The Court also came to the conclusion that he was justified in not providing a blood sample - because that would require a doctor - but he was not justified in refusing a urine sample so therefore so far as Article 16(a) of the Road Traffic (Jersey) Law, 1956 is concerned, there was as counsel said "Half a loaf" to go on for an inference to be drawn if the Magistrate so wished in accordance with that Article. It was a pity, the Court finds that in fact the police did not produce another

doctor and that might well have disposed of the matter. The learned relief Magistrate accepted and we accept his right to do so, that in fact the appellant had had one drink that afternoon after lunch - one vodka and orange although he originally said that it had been a glass of wine - and in fact when he first saw the police he said he did not drink at all because he did not drink when he was on duty because he might have to make a call at short notice. However, the real point of the appeal is that the Magistrate accepted the evidence of Dr. Begg that to drive having been treated with Hermatropin in the eyes in the way in which the appellant was would be dangerous but he was not asked whether it would be dangerous if the application had been a 1% dilution. Furthermore, driving on its own with Hermatropin should not, in fact, have produced that effect. The learned relief Magistrate seems to have put together in our view, the fact that there had been one drink with the accepted fact that the appellant had taken, externally, in the eyes, some drops about an hour before. We think it would be unwise to allow the conviction to stand for the reasons I have given but I think the learned relief Magistrate erred in spite of what you have said Miss Nicolle. We think he did put the two together - perhaps he did not choose his words very clearly but as far as we can tell, he did link the two together in the manner suggested by counsel and in that we think there was a error. The appeal is therefore allowed with costs.