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29th August, 1986

A.G. -v- Justin Gorka

BAILIFF: It cannot be said too often that where an offence is caused by the self administered dose of alcohol that that aggravates the offence and does not make it any the less. There is no doubt that this was a drink related assault and as the Attorney General put it - "in a moment of blind rage, fueled by alcohol". On the other hand, it is an offence contrary to the character of the accused and we read very carefully the references submitted to us by you, Mr. Le Marquand. We cannot of course, accede to the wishes of the parents, that we should place him under probation - this offence is far too serious for that - but we have also looked at the cases which you have produced and the one which we have had particular attention to is the case of The Queen -v- Cole, where the principle is set out we think most succinctly by Lord Lane, the Chief Justice where he says: "We have to determine what the least punishment is, properly to mark the disapproval of society to punish him for what was a wicked act. We would be the first to agree that he must expiate his crime. There is no need to deter this man from future behaviour such as this" - and I will interpolate there to say that this is obviously a one off offence - "so far as deterring other people is concerned, that problem scarcely arises because the nature of the offence is such that the person subject to this emotional pressure is hardly likely to calculate what the risks are going to be".

We think that the Attorney General's assessment of the circumstances is correct and he has taken all the appropriate matters into account but because we think the measure of provocation was considerable and we have some doubt as to whether, in fact, the accused's memory really is in fact as weak as he pretends it is or says it is. Nevertheless, we think that this other man who went there and was welcomed by this woman in that way, meant that there was considerable provocation both by her indeed and by this other man. Under the circumstances, because of the particular facts, the Jurats have decided that the proper sentence is that of 18 months and you are accordingly sentenced to 18 months imprisonment and Mr. Attorney, I think this is a case in which the Court would like you to refer the facts to the Children's Department. Those two children would seem to me to be, at least, be investigated as to whether they are or might be in need of care and protection. Very well, you are sentenced to 18 months.