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18th September, 1986.

Her Majesty's Attorney General

-v-

Martin Francis Le Moignan

DEPUTY BAILIFF: There is very little law involved in this appeal and the law was correctly stated by Mr. Cushen. Essentially this was a question of fact for the learned Magistrate and now for the learned Jurats and this Court does not lightly upset a finding of fact by the Magistrate who has had the benefit of seeing and hearing the witnesses, studying their demeanour and so forth. The Court is unanimous in finding that there was more than sufficient evidence upon which the Magistrate could make a finding of guilt. It is a matter for the Magistrate to decide whether he prefers the evidence of the prosecution or that of the defence and clearly he preferred that of the prosecution. We consider that the Magistrate was fully entitled to find as he did at page 44 of the transcript of the appellant, that, and here I quote: "He just jumped the gun - it is as simple as that". We are quite satisfied that the appellant in leaving the car park when he did, trying to get across the road, when he must have seen the Fiesta approaching, or if he did not, was negligent in not doing so, and I would make the point that in the report book he categorically stated to the police at the scene that he had seen the Fiesta, but on oath in the Police Court denied having seen the Fiesta. So, we say that he must have seen the Fiesta approaching or if he did not was negligent in not doing so and thus he did fail to exercise the care that should have been exercised by a reasonable, prudent, competent and experienced driver. Accordingly, the appeal is dismissed. Is this a legal aid case Mr. Cushen? Very well, no orders as to costs.