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18th July, 1963.

*Resident*  
IN THE COURT OF APPEAL, JAMAICA

R.M. COURT CRIMINAL. APPEAL NO. 108/63

Before: The Hon. Mr. Justice Lewis (Presiding)  
The hon. Mr. Justice Duffus  
The Hon. Mr. Justice Henriques.

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R E G I N A v. MINGETA RUDDOCK

Mr. R.N.A. Henriques for the Appellant.

Mr. R.O.C. White for the Crown.

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MR. JUSTICE LEWIS: In this case the appellant appeals against his conviction and sentence on an information charging him with driving a motor vehicle without there being in force in respect of the said vehicle a policy of third party insurance, contrary to Section 3 Sub-section 2 of Chapter 257. On a plea of guilty he was fined Thirty Pounds or 3 months hard labour and disqualified from holding or obtaining a driver's licence for a period of two years from the date of conviction. In the event of the fine not being paid, the sentence is to be consecutive to another sentence imposed upon him on the same day in respect of a conviction for driving without a driver's licence.

Mr. Henriques, who appears for the appellant, has before us abandoned the appeal against conviction, but he has submitted that the sentence is manifestly excessive in that it calls for a consecutive sentence, and that in any event this was not a proper case in which the learned Resident Magistrate should have imposed a separate punishment.

The appellant, who is the owner of a motor vehicle, had a learner's licence, and had in force a policy of insurance in respect of that vehicle. Having been found guilty of driving

without a licence, because on the occasion he was driving the vehicle without having sitting by him a licensed driver, he thereupon pleaded guilty to driving without the motor insurance policy. The question as to whether in such a case a person can properly be convicted under that section is not before the Court, and in view of what Mr. Henriques has said about it, this Court exercises no opinion on the point. The plea of guilty was entered by the appellant and accepted by the Court below on the view that the legal result of driving without a licence - an effective licence - was that the insurance policy did not apply to the appellant on the occasion.

In circumstances such as this, where one act is committed and that act constitutes an offence, and the legal result of that offence is that another offence is committed, this Court considers that separate punishments ought not to be imposed. This question has been considered in this Court as long ago as 1936 in the case of R. v. Charlie Phang, 3 J.L.R., page 22. There the appellant was convicted on two separate informations: (1) for keeping a common gaming house, contrary to section 5A of the Gambling Law, No. 25 of 1898, and (2) for being in possession of Drop Pan Lottery tickets, contrary to Section 4, sub-section 2 of the Gambling Amendment Law, No. 28 of 1926. On the first charge he was fined £50 and on the second charge he was fined £5. The first charge, i.e. for keeping a common gaming house, was constituted mainly by a statutory presumption raised by the finding of Drop Pan lottery tickets in the appellant's house. The second charge was supported substantially by the same evidence and was substantially merged in the first charge. It was held that a separate substantial fine should not have been imposed. Mr. Justice Brown in delivering the judgment of the court stated -

"It is not legally incorrect, but the piling of fine upon fine in such cases is not in accordance with a sound administration of the criminal law. We believe that the Court has in several appeals pointed out that in these gambling cases more than one information should be laid because what was happening was that only one information was laid and before it was heard and finally determined the statutory period of six months might elapse and if the conviction on the first charge were quashed on appeal a further information could not be laid

and thus justice was defeated. The Court never meant to suggest that the several informations thus laid should all be tried together and separate substantial fines imposed on conviction."

Now in this case I suppose it would not be technically correct to say that one offence merged in the other. Certainly, one was the legal result of the other, and the Court thinks that the same principle must apply. The usual practice in the past in dealing with these cases has been that after the cases have been tried the more serious charge is dealt with and an appropriate punishment inflicted in respect of that charge, and the Court thinks that this is a good practice.

In this case the Court considers that only a nominal punishment should have been inflicted. The sentence will, therefore, be set aside and in lieu the Court imposes a fine of One Pound, and in default of payment seven days imprisonment at hard labour, the sentences to be concurrent. The court will make no order with respect to the disqualification of the appellant.