We have not failed to note the decision of the Court of Claims in *Steedman* v. *United States,* 63 C. Cls. 226, as well as the decision of the Board of Tax Appeals in *Bartlett* v. *Commissioner,* 16 B. T. A. 811, 816, but in so far as they conflict with the foregoing conclusions, they are disapproved.

Judgment affirmed.

DISTRICT OF COLUMBIA *v.* COLTS.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 96. Argued October 23, 1930.—Decided November 24, 1930.

1. Article III, § 2, cl. 3, of the Constitution, which provides that "The trial of all crimes, except in cases of impeachment, shall be by jury," must be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury. P. 72.
2. It is settled that there may be many offenses called "petty offenses" which do not rise to the degree of "crimes" within the meaning of Article III, and in respect of which Congress may dispense with a jury trial. *Id.*
3. Whether a given offense is to be classed as a crime, so as to require a jury trial, or as a petty offense, triable summarily without a jury, depends primarily upon the nature of the offense. P. 73.
4. Driving at a forbidden rate of speed and so recklessly "as to endanger property and individuals," in violation of the District of Columbia Traffic Act, is an offense which is *malum in se* and of a serious character, amounting to a public nuisance indictable at common law, and is a "crime" within the constitutional guarantee of trial by jury. Art. III, § 2, cl. 3. *Id.*

38 F. (2d) 535, affirmed.

CERTIORARI, 281 U. S. 716, to review a judgment of the Court of Appeals of the District of Columbia, reversing a judgment of the Police Court, which had denied to the

respondent a jury trial upon an information against him charging reckless driving.

Mr. Robert E. Lynch, with whom *Messrs. Wm. W. Bride* and *Robert P. Reeder* were on the brief, for petitioner.

The respondent had no right to trial by jury in this case unless the Constitution gave him that right.

Congress may require the trial of petty offenses without a jury. *Callan* v. *Wilson,* 127 U. S. 540; *Schick* v. *United States,* 195 U. S. 65.

In *Callan* v. *Wilson,* the defendant was sentenced to pay a fine of twenty-five dollars or undergo imprisonment for thirty days; but that was not the maximum which might have been imposed. "It is what sentence can be imposed under the law, not what was imposed, that is the material consideration." *United States* v. *Moreland,* 258 U. S. 433. While no statute dealt with conspiracy directly, Rev. Stats., Dist. Col., § 92, provided that laws which were in force in Maryland on February 27, 1801, should continue in force within the District of Columbia, and conspiracy was a common-law misdemeanor in Maryland, *State* v. *Buchanan,* 5 H. & J. 317, (see Bishop, Criminal Law, 9th ed., I, 452; Russell, Crimes, 7th ed., I, p. 10,) and, therefore, in the District of Columbia. One who was convicted of that offense could not have been sentenced to the penitentiary, Rev. Stats., Dist. Col., § 1144, but he could have been sentenced to jail, Rev. Stats., Dist. Col., §§ 1049, 1054; and imprisonment for a common-law misdemeanor was at the discretion of the court and was not limited to one year. See *United States* v. *Marshall,* 17 D. C. 34; *Palmer* v. *Lenovitz,* 35 App. D. C. 303. The offense was being punished as a common-law offense, for which very serious punishment might have been imposed. The case was, therefore, unlike the present one, for here the offense, which was forbidden by statute,

cannot be punished by a larger fine than one hundred dollars or by a longer imprisonment than thirty days. The essential point of similarity, as found by the court below, is simply the fact that reckless driving was also an offense at common law.

It is true that in *Callan* v. *Wilson* the Court referred to the common law as determining whether an offense was of the class or grade which was triable by a jury at common law. It substantially said that the clauses of the Constitution which provide for trial by jury are to be read in the light of the rule of the common law, which requires trial by jury in criminal cases but exempts petty offenses from this requirement. But the Court did not take the position that all offenses must remain for all time as they were at common law. It did not deny that Congress may provide serious punishment for acts which were regarded as innocent a hundred and forty years ago, and punish lightly, or not at all, acts which were regarded as serious crimes by our ancestors. Certainly, if offenses which were once petty are to be punished severely, a trial by jury must be allowed; and it must be equally true that, if Congress decides that an offense shall be given a petty punishment, persons who are accused of such acts may be tried as for petty offenses. As said in *People* v. *Craig,* 195 N. Y. 190; "It is not the mere name of a crime but the punishment therefor that characterizes it." The decision in *Callan* v. *Wilson* does not deny the power of Congress to erect its own standards as to the seriousness of offenses at the present day, to limit the punishment accordingly, and to order the trial of an offense which it treats as petty by summary procedure.

In *Schick* v. *United States,* 195 U. S. 65, the only punishment provided for the offense was a fine of fifty dollars. The Court said that the offense was a petty one for which Congress might have required trial by the judge alone.

Its statements that the Constitution does not require jury trial of petty offenses, and that the nature of the offense and the amount of the punishment determine whether the offense is serious or petty, mark the extent of the holding, for it cannot be supposed that the Court intended to class all misdemeanors as petty offenses.

The Court has thus conceded that the Constitution does not require trial by jury in the case of petty offenses, but it has not shown precisely what offenses are to be classed as "petty."

Before the Constitution was adopted there were many offenses, both in England and America, in the trial for which no jury was allowed. These included, not only offenses which might be punished by fines, but many others in which corporal punishment or imprisonment might be imposed. Blackstone, Commentaries, IV, 280; Paley, Summary Convictions, Introduction; Webb, English Local Government: Parish and County, 419; Jenks, Short History of English Law, Eng. ed., 153, 154; Frankfurter and Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv. L. Rev. 925, 929.

In the American Colonies and States there were many instances of laws for the trial of criminal offenses which did not provide for the participation of juries except, if at all, on appeal.

Article III and the Sixth Amendment established the right to trial by jury in criminal prosecutions; but there is nothing in the terms used, or in the circumstances or discussions attending their adoption, which shows a requirement of trial by jury more comprehensive than was observed throughout the States at the time.

Decisions of many state courts support the position that an offense such as is here involved, for which the maximum punishment is a fine of one hundred dollars or imprisonment of thirty days, may be tried by summary

procedure. *State* v. *Parker,* 87 Fla. 181; *Bray* v. *State,* 140 Ala. 172; *State* v. *Broms,* 139 Minn. 402; *State* v. *Anderson,* 165 Minn. 150; *Byers* v. *Commonwealth,* 42 Pa. St. 89; *People* v. *Harding,* 189 N. Y. Supp. 657; *Duffy* v. *The People,* 6 Hill's Rep. 75; *Bell* v. *Nebraska,* 104 Neb. 203; *Latimer* v. *Wilson,* 103 N. J. L. 159; *McGear* v. *Woodruff,* 22 N. J. L. 213; *State* v. *Glenn,* 54 Md. 572.

The offense of reckless driving in the District of Columbia, as defined in the Traffic Act, is a municipal offense, notwithstanding the fact that the law was enacted by the Congress of the United States. It was not created in a criminal statute but by the Traffic Act of 1925, which deals simply with local traffic conditions. The offense is a common one. In a city of scarcely more than five hundred thousand inhabitants there are almost seventeen hundred charges of reckless driving tried before the one court in a single year. (Report of the Commissioners of the District of Columbia for the year ended June 30, 1929, p. 14.) And, as shown by the state cases herein cited, the maximum punishment for a violation of this portion of the Act is relatively light. In view of these circumstances, a charge of reckless driving may properly be tried without a jury.

The Traffic Act deals exclusively with the District of Columbia and is a statute in the nature of a municipal regulation. Congress was dealing solely with local conditions. It said that the operation of an automobile in a certain manner constituted reckless driving. There is nothing in the reports or debates prior to the enactment of the statute to indicate that Congress was attempting to revamp the common law offense of "fast" driving in a "crowded or populous street." Because the offense of reckless driving today may have one, or even more, elements similar to a common law offense, that fact does not make it a common law offense.

Assuming, without conceding, that, at the time of the adoption of the Constitution, the charge of reckless driving was triable only by jury, it is submitted that, in recent times, the offense has been merely a petty one. The determination of what punishments shall be considered infamous is affected by changes in public opinion from one age to another. *Ex parte Wilson,* 114 U. S. 417; *Mackin* v. *United States,* 117 U. S. 348; *United States* v. *Moreland,* 258 U. S. 433. It is clear from the foregoing decisions of this Court that a breach of the peace consisting of fast driving so as to endanger the lives and safety of the citizens was not an indictable offense at common law. Distinguishing *United States* v. *Hart,* 1 Pet. C. C. 390.

At the present day, all men and women travel much more rapidly than was possible in 1787. Doubtless there has been an accompanying change in the attitude of the public towards reckless driving and in the effect of conviction upon an offender's standing in the community. This change in public opinion may be an important consideration in determining whether the offense should now be regarded as a petty one. The fact that there are seventeen hundred arrests for reckless driving in the District of Columbia in a single year, shows not only the need for as expeditious a trial as is compatible with law and with justice, but that the offense is not being regarded as a major one at the present time.

The Court of Appeals seized the phrase " indictable offense at common law " as used in *United States* v. *Hart,* 1 Pet. C. C. 390, and concluded the offense of reckless driving defined in the Traffic Act was an " indictable offense " and therefore a " crime " as that term is understood in Article III, § 2, cl. 3, of the Constitution. But the offense of fast driving over a crowded and populous street at such a rate or in such manner as to endanger the safety of the inhabitants, is quite different from the of-

fense prohibited by the Traffic Act and known as reckless driving. The first can only be committed where the vehicle attains a speed which is designated fast and over a crowded or populous street. The offense of reckless driving may be committed although the operator of the vehicle is not proceeding fast, and it may be committed upon a street that is not crowded or populous, and irrespective of whether the operation of the vehicle amounts to a breach of the peace or not.

Mr. William B. O'Connell, with whom *Messrs. Harry T. Whelan* and *Louis L. Whitestone* were on the brief, for respondent.

If the offense is a criminal offense, there can be no question but that the defendant is entitled to a trial by jury. The language of the Constitution and of the Sixth Amendment is not susceptible of any other interpretation.

The offense is not so petty that it should be tried by a summary proceeding. The driving of an automobile in the manner set out in the information would have amounted to a common nuisance at common law, and would therefore have been an indictable offense, and one entitling a defendant to a trial by jury. Blackstone's Commentaries, Book IV, p. 166. See also *United States* v. *Hart,* 1 Pet. C. C. 390.

Has Congress the power to fix arbitrary limits of punishment as the test for determining the right of a defendant to a trial by jury in a criminal case? If Congress can draw a line at which jury trials begin and end, there are innumerable federal statutes punishing a great many misdemeanors, especially the National Prohibition Act, that Congress could very summarily enforce.

The nature of the offense is not the only criterion of the right to a trial by jury; there is also the punishment which may be prescribed. If this is a "petty offense," it would seem that the framers of the Constitution placed

a greater value on $20.00 than they did upon ninety days of personal liberty.

That the offense may be tried by a summary proceeding in some States is not denied; and that this was true in most of the colonies before the adoption of the Constitution, is not denied. But the limitations upon States are not those upon the federal government. It is the very purpose of the Constitution to prevent the federal government from taking undue liberties with the citizens of the States. Decisions of state courts have no bearing whatever on this case. *Barron* v. *Baltimore,* 7 Pet. 243.

If Blackstone's definition is the true test, (Blackstone's Commentaries, Book IV, p. 5), the offense charged here is certainly a crime, and it comes, therefore, within the scope of offenses referred to in the Constitution. That there are many or few of these offenses, is of no importance. No one would seriously urge that a defendant be denied a jury trial solely for the purpose of making prosecution convenient to the Government.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

An information filed in the Police Court of the District of Columbia charged the respondent, Colts, with having operated upon various streets, contrary to the statute set forth below, "a certain motor vehicle at a greater rate of speed than twenty-two miles an hour over said public highway[s] recklessly, that is to say at a greater rate of speed than was reasonable and proper, having regard to the width of said public highway[s], the use thereof, and the traffic thereon, in such manner and condition so as to endanger property and individuals." Respondent was arraigned, pleaded not guilty, and demanded a trial by jury. The demand was denied, and he was put upon trial before the judge without a jury and found guilty. Upon writ

of error the Court of Appeals of the District of Columbia reversed the judgment, holding that respondent, under the federal Constitution, was entitled to a jury trial. With that conclusion we agree.

The acts of Congress passed for the government of the District provide that prosecutions in the police court shall be on information; that where the accused would be entitled to a jury trial under the Constitution, trial shall be by jury unless waived; and that in cases where the accused would not by force of the Constitution be entitled to a trial by jury, trial shall be by the court without a jury, unless, in cases where the fine or penalty may be more than $300 or imprisonment more than ninety days, the accused shall demand a trial by jury, in which case the trial shall be by jury. D. C. Code (1930), Title 18, c. 4, § 165.

Section 9 of the District of Columbia Traffic Act, 1925, as amended, D. C. Code (1930), Title 6, c. 9, § 246, provides:

"(a) No vehicle shall be operated upon any public highway in the District at a speed greater than twenty-two miles per hour except in such outlying districts and upon such highways as the director may designate. . . .

"(b) No individual shall operate a motor vehicle over any public highway in the District (1) recklessly; or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon; or (3) so as to endanger any property or individual; or (4) so as unnecessarily or unreasonably to damage the public highway.

"(c) Any individual violating any provision of this section where the offense constitutes reckless driving shall, upon conviction for the first offense, be fined not less than $25 nor more than $100 or imprisoned not less than 10 days nor more than 30 days; and upon conviction for

the second or any subsequent offense such individual shall be fined not less than $100 nor more than $1,000, and shall be imprisoned not less than 30 days nor more than one year, and the clerk of the court shall certify forthwith such conviction to the director, who shall thereupon revoke the operator's permit of such individual.

"(d) Any individual violating any provision of this section except where the offense constitutes reckless driving, shall, upon conviction for the first offense, be fined not less than $5 nor more than $25; upon conviction for the second offense, such individual shall be fined not less than $25 nor more than $100; upon conviction for the third offense or any subsequent offense such individual shall be fined not less than $100 nor more than $500, and shall be imprisoned not less than 30 days nor more than one year, and the clerk of the court shall certify forthwith such conviction to the director, who shall thereupon revoke the operator's permit of such individual."

It will be seen that the respondent is not charged merely with the comparatively slight offense of exceeding the twenty-two mile limit of speed, subdivision (a), or merely with driving recklessly, subdivision (b) (1); but with the grave offense of having driven at the forbidden rate of speed and recklessly, "so as to endanger property and individuals."

By § 165 of the D. C. Code, outlined above, the Constitution is made the test—as, of course, it must be—to determine whether the accused be entitled to a jury trial. Article III, § 2, cl. 3, of the Constitution provides that "The trial of all crimes, except in cases of impeachment, shall be by jury." This provision is to be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury. See *Callan* v. *Wilson,* 127 U. S. 540, 557. That there may be many offenses called "petty offenses" which do not rise to the

degree of *crimes* within the meaning of Article III, and in respect of which Congress may dispense with a jury trial, is settled. *Schick* v. *United States,* 195 U. S. 65. And see *Natal* v. *Louisiana,* 139 U. S. 621, 624; *Lawton* v. *Steele,* 152 U. S. 133, 141; *State* v. *Rodgers,* 91 N. J. L. 212, 214.

Whether a given offense is to be classed as a crime, so as to require a jury trial, or as a petty offense, triable summarily without a jury, depends primarily upon the nature of the offense. The offense here charged is not merely *malum prohibitum,* but in its very nature is *malum in se.* It was an indictable offense at common law, *United States* v. *John Hart,* 1 Pet. C. C. 390, 392, when horses, instead of gasoline, constituted the motive power. The New Jersey Court of Errors and Appeals, in *State* v. *Rodgers, supra,* has discussed the distinction between traffic offenses of a petty character, subject to summary proceedings without indictment and trial by jury, and those of a serious character, amounting to public nuisance indictable at common law; and its examination of the subject makes clear that the offense now under review is of the latter character.

An automobile is, potentially, a dangerous instrumentality, as the appalling number of fatalities brought about every day by its operation bear distressing witness. To drive such an instrumentality through the public streets of a city so recklessly "as to endanger property and individuals" is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense. If the act of the respondent described in the information had culminated in the death of a human being, respondent would have been subject to indictment for some degree of felonious homicide. *Nash* v. *United States,* 229 U. S. 373, 377; 1 Whar. Cr. Law, §§ 343 *et seq.,* 353–356; 1 Bish. New Cr. Law, § 313 *et seq.; Story* v. *United States,* 16 F. (2d) 342, 344; *State* v.

Campbell, 82 Conn. 671, 677; *Mercer* v. *Corbin,* 117 Ind. 450; *Belk et al.* v. *People,* 125 Ill. 584, 589–590; *Kennedy* v. *Way,* Bright. (Pa.) 186, 188. Such an act properly cannot be described otherwise than as a grave offense—a crime within the meaning of the third Article of the Constitution—and as such within the constitutional guarantee of trial by jury.

Judgment affirmed.

BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY ET AL. *v.* UNITED STATES ET AL.

UNITED STATES ET AL. *v.* BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Nos. 44 and 45. Argued October 20, 1930.—Decided November 24, 1930.

1. In fixing divisions of joint rates under § 15 (6) of the Interstate Commerce Act, the facts specified in that section, and others necessarily or properly to be taken into account, are to be considered having regard to the duty of the Commission under § 15 a (2) to establish and adjust rates so that the carriers as a whole, in each rate group or territory that the Commission may designate, will, under management and expenditures such as are there specified, earn as nearly as may be a fair return upon the aggregate value of their operating property. P. 82.
2. Section 15 (6) requires the Commission to consider the condition of each carrier and to determine whether the division of each joint rate is unreasonable, or otherwise repugnant to the specified standards, and what division will for the future be just, reasonable and equitable; the Commission may not change an existing division unless it finds that division unjust or unreasonable. *Id.*
3. But the Commission need not under all circumstances take specific evidence as to each rate of every carrier. When considering divisions of numerous joint rates applicable to traffic passing through gateways between different territories, the Commission