

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 98/78

BEFORE: The Hon. Mr. Justice Henry, J.A.  
The Hon. Mr. Justice Kerr, J.A.  
The Hon. Mr. Justice Carberry, J.A.

R. v. BRETT THWAITES

Mr. W.K. Chin-See for the Appellant

Mr. W. James for the Crown.

October 9, 10, and December 8, 1978

HENRY J.A.

On October 10, 1978 we allowed the appeal in this matter, set aside the conviction and sentence and promised to put our reasons in writing. We now do so.

The appellant was convicted in the Traffic Court for driving "a motor vehicle to wit motor mini bus registered FP 8811.... without being the holder of a licence to drive a vehicle of that class". He was the holder of a private driver's licence the terms of which on his evidence entitled him to drive motor cars only. The appeal against conviction was argued on two alternative grounds. Firstly it was argued that the holder of a private driver's licence is, by virtue of S. 16<sub>1</sub>(4) (a) of the Road Traffic Act, entitled to drive trucks, motor cars and invalid carriages and there is no power under the Act to restrict the holder of such a licence to driving one or more of those three classes of motor vehicles except as provided by section 20 of the Act. In the alternative it was argued that there was no evidence to prove that the vehicle in question

was a truck and not a motor car. Counsel for the Crown conceded the second point so that the appeal was bound to succeed in any event. We have however been invited to consider and express our views on the first point and on the related question of whether there is authority under the Act to restrict the holder of a private driver's licence to driving motor vehicles of a particular construction or design such as motor vehicles equipped with automatic transmissions.

It was the submission of counsel for the appellant that whereas the description of "a general driver's licence" in S. 16 (4) (b) clearly contemplates the imposition of restrictions on the driving of motor vehicles of particular classes and relates those restrictions to the competence of the applicant, the description of "a private driver's licence" in S. 16 (4) (a) is in different terms which do not seem to contemplate such restrictions. The descriptions are as follows:-

"S. 16 (4)

- (4) Driver's licences shall be of three classes, that is to say:
- (a) "A private driver's licence," which shall entitle the holder thereof to drive, not for reward, "trucks," "motor cars," (not being public passenger vehicles or commercial motor cars) and "invalid carriages."
  - (b) "A general driver's licence," which shall entitle the holder thereof to drive, whether for reward or otherwise, such class or classes of motor vehicles as may be specified in the licence and which his examination test or tests prove him competent to drive.

It was the further submission of counsel for the appellant that in so far as private driver's licences are concerned the

restrictions referred to in S. 16 (5) are those imposed under

S. 20. Those provisions are respectively as follows:

"Section 16

- (5) Drivers' licences shall be in the prescribed form and where under the provisions of this Part the applicant is subject to any restriction with respect to the driving of any class of motor vehicle the extent of the restriction shall be specified in the prescribed manner on the licence.

"Section 20

- (1) Where a Licensing Authority refuses to grant a driver's licence of any class on the ground that the applicant is suffering from any such disease or disability as is mentioned in paragraphs (vi) and (vii) of subsection (1) of section 18 -
- (a) The Licensing Authority may grant to the applicant a licence limited to drive an invalid carriage if the Traffic Area Authority in whose Traffic Area is situate the Licensing Area certifies to the Licensing Authority that the applicant is fit to drive such a carriage;
- (b) The Applicant may, except in the case of such diseases and disabilities as may be prescribed, on payment of the prescribed fee, claim to be subjected to a test as to his fitness or ability to drive a motor vehicle of any such class or description as he would be authorised by the licence to drive and if the Traffic Area Authority in whose Traffic Area the Licensing Area is situate certifies to the Licensing Authority that the applicant has passed the prescribed test and is not otherwise disqualified, the grant of the licence shall not be refused by reason only of the provisions of paragraphs (vi) and (vii) of subsection (1) of section 18, so, however, that if the Traffic Area Authority certifies to the Licencing

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Authority that the test of the applicant proves his fitness to drive vehicles of a particular construction or design only the licence shall be limited to the driving of such vehicles."

This is on the face of it an attractive argument. Counsel for the Crown has however submitted that the word "and" in the description of a private driver's licence should be read as "or" or perhaps as "and/or" so that the holder of such a licence would be entitled to drive such one or more of those three classes of motor vehicles as might be specified in the licence on the basis of the competence shown in the applicant's driver's test. This is a view which certainly would accord with what must be one of the purposes of the legislation - to ensure the safety of users of roads. At the same time it is difficult to see why Parliament should have spelt out so clearly its intention in the description of "a general driver's licence" while leaving the description of "a private driver's licence" in such ambiguous terms in the very same subsection. The acceptance of the submissions of Counsel for the appellant does not however merely mean that a person with no experience in the driving of heavy vehicles classified as trucks would nevertheless as the holder of a private driver's licence be entitled to drive them at possible peril to himself and other road users. It would also mean that he would be entitled to drive all invalid carriages. This appears to be completely contradictory to the concept and description in the Act of invalid carriages as § vehicles "specially designed and constructed for the use of persons suffering from some physical defect or disability and

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solely used by such persons.

On balance it would appear that the interpretation suggested by the Counsel for the Crown is the one to be preferred.

We turned now to the related question of whether there is power to restrict the holder of a private driver's licence to driving motor vehicles of a particular construction. This is a question which in a different form engaged the attention of the Courts as regards general driver's licences in DILLON v. JAMAICA CO-OPERATIVE FIRE & GEN. INS. CO LTD., (1970) 16 W.I.R. 79 in that case Graham Perkins J. expressed the view:

"There is, however, unlike the several classes mentioned in s. 8, no definition in the Law or the regulations of the term "description". Who then has the right to define this term by reference to the particular factor of laden weight, or, indeed any other particular factor? Certainly no certifying officer is given that right. Does the minister have that right? Section 51 of Chp. 346 enables the Minister to "make regulations.....for prescribing anything which may be prescribed under Part 11 of the Law. It may be that this section enables the Minister to prescribe or define the "description" of a motor vehicle. He has not done so. It is clear, it seems to me, that such a right does not exist in anyone for the simple and very good reason that the word "description" in the particular context of the phrase "class of description" adds precisely nothing in the word "class"."

We agree with that opinion. As regards private driver's licences although S. 16 in conjunction with S. 59 of the Act allows regulations to be made prescribing the form of Driver's licences there is no general power to go further and impose restrictions directed to the classification or design of a motor vehicle. That

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power exists only as regards drivers to whom licences have been granted pursuant to the special procedure provided by S. 20 (1)(b) of the Act. That section clearly provides that "if the Traffic Area Authority certifies to the Licensing Authority that the test of the Applicant proves his fitness to drive vehicles of a particular construction or design only, the licence shall be limited to the driving of such vehicles."

Before parting with this appeal we would like to record our view that many of the provisions of the Act appear to be outmoded or obscure and to require revision if the real purpose of the legislation - safety on the roads - is to<sup>be</sup> achieved. We venture to hope that this revision will not be too long delayed.