

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 175/75

B E F O R E: The Hon. Mr. Justice Hercules, ^{Pre-}siding
 The Hon. Mr. Justice Robinson
 The Hon. Mr. Justice Zacca

R. E D W A R D B R O W N

Mr. J. Leo Rhynie for the Appellant

Mr. Chester Orr, Q.C. for the Crown.

6TH FEBRUARY, 1976

HERCULES, J.A.,

Section 7(1) and (4) OF THE Road Traffic Law, Cap. 346,
provides as follows:

- (1) " A motor vehicle shall not be used on a road unless there has been issued in respect of the vehicle, and prior to the licensing of the vehicle, by a Traffic Area Authority, a certificate (in this law, referred to as a 'certificate of fitness') that the prescribed conditions as to fitness are fulfilled in respect of the vehicle, and such certificate is in force in respect of the vehicle:

Provided that the prescribed fee shall be payable for a certificate of fitness.

- (4) Any person driving or using a motor vehicle in contravention of the provisions of this section shall be guilty of an offence."

Then Section 4(1) and (2) of the Motor Vehicles Insurance (Third Party Risks) Act provide as follows:-

- (1) " Subject to the provisions of this Act it shall not be lawful for any person to use, or to cause or permit any other person to use a motor vehicle on a road, unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act.

(2) If...

- (2) If any person acts in contravention of this section he shall be guilty of an offence and shall, on summary conviction thereof before a Resident Magistrate, be liable to a penalty not exceeding one hundred dollars or to imprisonment with or without hard labour, for a term not exceeding three months, or to both such penalty and imprisonment, and a person convicted of an offence under this section shall (unless the Court for special reasons thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification) be disqualified for holding or obtaining a licence under the law for the time being in force relating to motor vehicles, for a period of 12 months from the date of the conviction."

The appellant was convicted in the Falmouth Resident Magistrate's Court under Section 4(1) of the Motor Vehicles Insurance (Third Party Risks) Act and fined \$60.00 or 2 months hard labour. In finding that appellant happened to be in breach of Section 7(1) of the Road Traffic Law, Cap. 346, aforesaid, the learned Resident Magistrate decided that appellant was ipso facto guilty of an offence under Section 4(1) of the Motor Vehicles Insurance (Third Party Risks) Acts. This, notwithstanding the provisions of the policy attaching to the user of the vehicle. In point of fact the appellant called evidence to indicate that on an interpretation of the policy the appellant was duly covered. But the learned Resident Magistrate described that evidence as "irrelevant as to liability since the Company could not bind its successors in office as to policy or as to interpretation of the terms of their Insurance Contract."

It is my view that both the policy and the evidence relating thereto were relevant to any consideration of liability. To hold otherwise would be to make the policy not worth the paper on which it is printed. I cannot agree to render the policy nugatory. (See Edwards v. Griffiths (1953) 2 All E.R., p. 874 and Mumford v. Hardy And

Another (1956) 1 All E.R. p.337.

In Clause 2 of Section 11 of the policy (Exhibit 4), under rubric "Liability to Third Parties", provision is made for indemnification of any authorised driver. In the schedule to the policy "Authorised driver" is described as, "(Any of the following):

- (a) Any person who is driving on the insured's order or with permission.

Provided that the person driving is permitted in accordance with the licensing or other laws or regulations to drive the motor vehicle or has been so permitted and is not disqualified by order of a Court of Law or by reason of any enactment or regulation in that behalf from driving the Motor Vehicle."

The learned Resident Magistrate reasoned in the following way:-

" Section 7(1) in issue mandates that a motor car shall not be used on a road unless a certificate of fitness issued in respect of it, is in force at the material time.

It follows that a motor vehicle which has no such certificate in force with respect to it, is not permitted to be driven on a road, and consequently no person (including the defendant) is permitted to drive such a vehicle on a road in those circumstances.

This Court held therefore, that the defendant was in breach of the proviso, since he being the person driving though permitted in accordance with the licensing law, was not so permitted in accordance with the "other laws" of Jamaica, namely: Section 7(1) of the Road Traffic Law...."

The gravamen of Mr. Leo Rhynie's submission was that in these findings the learned Resident Magistrate completely overlooked the words "or has been so permitted" in the proviso to the definition of Authorised driver in the Schedule to the policy set out above. What the learned Resident Magistrate did in effect was to take into

consideration...

consideration only the user of the vehicle involved with no regard whatever for the driver as provided for. It is important to distinguish that the Road Traffic Law deals with the user of the vehicle, whereas the policy includes the question of personality under the Motor Vehicle Insurance (Third Party Risks) Act.

If, as I think, the policy is relevant, then clearly the learned Resident Magistrate went wrong by his failure to construe the policy. The evidence of the Insurance Inspector was to the effect that the Insurance Co. of Jamaica regarded the appellant as covered. It is unnecessary to discuss the canons of construction, as Mr. Leo Rhyne asked this Court to do, as any construction of the policy would seem to indicate the correctness of the view of the Insurance Company.

I do not therefore share the view of Mr. Orr, in support of the decision of the learned Resident Magistrate, that the mere failure to renew a certificate of fitness in breach of Section 7(1) of the Road Traffic Law constituted a breach of the Motor Vehicles Insurance (Third Party Risks) Act. This would be tantamount to invoking one penal statute to create an offence under another penal statute.

I would allow the appeal, quash the conviction and set aside the sentence of the learned Resident Magistrate.

ROBINSON, J.A.,

I agree.

ZACCA, J.A.,

I agree.

HERCULES, J.A.,

The appeal is allowed. The conviction is quashed and sentence set aside.