

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT OF APPEAL NO. 62/89

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A. (Ag.)

REGINA

vs.

DALTON WILSON

Walter Scott for the Appellant

Mrs. Lorna Errar-Gayle for the Crown

November 27 and January 31, 1990

WRIGHT, J.A.:

No person may lawfully perform the duties of an Inspector under the Transport Authority Act, 1987, unless such a person is duly qualified under the terms and conditions of that Act.

Section 12 of the Act reads:-

"12 - (1) The Minister may, for the purpose of inspecting and monitoring the operations of all public passenger vehicles, designate as Inspectors, on such terms and conditions as he thinks fit, public officers or persons employed by the Authority who, in his opinion, are by training and experience qualified to be so designated.

(2) The designation of a person as an Inspector under subsection (1) shall be notified in the Gazette.

It is to be observed that without the notification of the designation in the Gazette the process of constituting an Inspector is incomplete and the action of such a person purporting to act as an Inspector would not be clothed with

legality. That the post is meant to be of importance is underscored by the fact that under Section 13 of the Act the Inspector shares with a Constable, inter alia, the power at any time to -

- "(a) stop and inspect any public passenger vehicle to ensure compliance with the terms of the road licence and any relevant road traffic enactments;
- (b) stop and inspect any vehicle which he reasonably suspects is operating as a public passenger vehicle contrary to relevant road traffic enactments;
- (c) monitor the frequency of public passenger vehicles on any route;
- (d) carry out inspection of conductors and drivers of public passenger vehicles and the licences held by these conductors and drivers;
- (e) seize any vehicle operating or used as a public passenger vehicle without the requisite licence;
- (f) prosecute any person for any contravention of a relevant road traffic enactment."

Further, Section 15 of the Act accords to an Inspector the same protection accorded a Constable with regard to "any action or legal proceedings brought against any Inspector in respect of any act done in pursuance or execution or intended execution of this Act or the regulations made thereunder."

The appellant was convicted in the Resident Magistrate's Court for the parish of St. Andrew before Her Honour Mrs. Marjorie Smith on April 26, 1989 and sentenced as follows:-

1. For Disobeying an Inspector's signal
Fined \$100 or 10 days imprisonment at hard labour
2. Dangerous Driving
Fined \$600 or 30 days imprisonment at hard labour

3. Not Producing Driver's Licence

Fined \$50 or 10 days
imprisonment at hard
labour.

The appeal which came on for hearing on November 27, 1989 is against these convictions and sentences.

The incident giving rise to these charges occurred at Half-Way-Tree in the parish of St. Andrew on October 25, 1988 when one Arthur McFarlane purporting to be a Route Inspector of the Traffic Authority appointed under Section 12 (supra) issued instructions to the appellant, the driver of a public passenger vehicle, which instructions the appellant refused to obey. Those instructions were to park his vehicle in line with the other buses already lined up and when he refused he was required to produce his driver's licence but this instruction was also disobeyed. The appellant stated that he was not complying because he did not "recognize the inspectors." He then drove off the bus while McFarlane was standing before the bus and although he jumped out of the way he was hit on the shoulder by the rear-view mirror on the left side of the bus.

The appellant drove away but McFarlane followed and reported the matter to a policeman on patrol, who stopped the bus and the appellant complied with his demand to be shown the road licence though the Driver's Licence was not produced. The appellant was summoned to answer these charges.

In his defence he admitted being asked for his road licence and driver's licence but did not produce them because when he asked "for what reason?" he received no answer. Because of the position of other vehicles he said it was not possible for him to park as had been

indicated. But he said he told the policeman that he had refused to show the required licences to Mr. McFarlane "because I did not know who he was". On that point Mr. McFarlane said he had shown the appellant his "I.D." but that is now only of academic interest.

Defence Counsel submitted that -

"Prosecution case not proven.
Gazette should be tendered to
say McFarlane is an Inspector."

There was no ruling on this submission. The court found that Mr. McFarlane did show the appellant his I.D. and that his instructions were disobeyed. It was found too that "the defendant drove off the bus when the Inspector was in front of him in a manner which amounted to dangerous driving". It was also found that despite the Inspector's taking avoiding action he was hit by the rear-view mirror.

It is clear that the learned Resident Magistrate did not appreciate the significance of the Defence Attorney's submission - unless the finding that the Inspector did show his I.D. was meant to be the answer.

All the convictions were sought to be impugned on the ground that -

"The verdict of the learned Resident Magistrate is unreasonable and/or cannot be supported having regard to the evidence because no evidence was led to prove Mr. McFarlane was a designated inspector as required by Section 12(1) of the Transport Authority Act or that if he were so designated his designation was published in the Gazette as is required by Section 12(2) of the Transport Authority Act, 1987."

Counsel for the Crown readily admitted the validity of the complaint and conceded the point. The publishing in the Gazette, which is notice to all Jamaica, is

necessary as was stated earlier, to complete his designation as an Inspector. And indeed the point is not novel because it is well known that in similar cases e.g. Breaches of the Spirit Licence Act where it is necessary to prove the relevant premises are licensed this is done by production of the Gazette showing the publication of the licence. Indeed Authorities abound in support of the proposition that the trial judge has a discretion to allow the case for the prosecution to be re-opened to meet objection taken on a point of technicality such as the non-production of the Gazette in the instant case: Hargreaves v. Hilliam (1894) 58 J.P. 655; R. v. Sullivan (1923) 1 K.B. 47; Middleton v. Rowlett (1954) 1 W.L.R. 831; R. v. Kenneth Codner (1955) 6 J.L.R. 339; R. v. McKenna (1956) 40 C.A.R. 65; Price v. Humphries (1958) 2 Q.B. 355 at 358 (per Devlin, J.). But be it noted that this ground could only avail the appellant with regard to the charges under the Transport Authority Act though Mr. Scott for the appellant thought otherwise. However, the fallacy of his contention is readily exposed when it is appreciated that it is no defence to a charge of Dangerous Driving to plead that the victim had no right to be in the road.

It is unfortunate that the learned Resident Magistrate failed to appreciate the significance of the submission and so to do what has often been done in such instances and allow the Gazette to be tendered, if indeed there was such a Gazette. It is all the more unfortunate because the need for discipline in the public transportation system is notorious and the provisions of this Act are meant to meet that need.

In the circumstances we allowed the appeals against convictions for Disobeying an Inspector's Signal and not producing Driver's Licence. Those convictions were quashed and verdicts of acquittal entered and the sentences were set aside. The appeal for Dangerous Driving was dismissed and the conviction and sentence affirmed.