Jason I have not given up on you **yet.** You are learning slavery the hard way.

You have contracted your rights away and that is your choice. Most do it being ignorant of law.
You have that as a right (to contract) but you must learn the difference so you can decide. We teach nothing we can not prove! Ignorance is no excuse in the law.

Below are 42 pages of easy reading of various Supreme Court rulings of Law.

(I can not come to play poker because I am a slave and can not travel after dark.
My master said so and I contracted with him! **How does that make you feel?**)

Conclusion
99. There is no Court in this Land that could lawfully execute an Order that would or could cause, or work to compel, one to become a servant or slave of any city, county or state without a conviction and with full Due Process of Law, and for any city, county, or state to pretend otherwise is an absurdity.

5 US 137 Marbury v. Madison
Any law repugnant to the constitution is null and void of Law

319 U.S. 105 Murdock v. Penn
No state shall convert a liberty into a privilege & issue a license and charge a fee for it.

382 U.S. 87 SHUTTLESWORTH v BIRMINGHAM
If state does convert your right you can ignore the license and fee and they can not punish you for ignoring it.

118 US 425 Norton v Shelby County
An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.

116 US 616 Boyd vs. United States
"It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon."

110 US 516 Hurtado vs. California,
"The state cannot diminish Rights of the people."

TO TRAVEL IS A RIGHT

YOU DO NOT NEED A GOVERNMENT GRANTED "PRIVILEGE"

1. The issue is whether this Sovereign is required to obey the provisions in the state statutes. It is the contention of this Sovereign that because he is a Free and Natural Person who has given up none of his "RIGHTS." That the legislative enactments and statutes do not apply to him. It is also the contention of this Sovereign that travels upon the streets or highways in any state of America by this Sovereign is an unalienable "RIGHT." Being this is not subject to regulation or legislation by any "State" of the united States.

2. Let us first consider the contention of this Sovereign that travels upon the streets or highways in America is a "RIGHT." Various courts have ruled on this issue. The U.S. Supreme Court ruled:

> 2.1 The "RIGHT" to travel is a part of the liberty of which the Citizen cannot be deprived without due process of the law under the 5th Amendment.
> (Emphasis added) See: Kent v. Dulles, 357 U.S. 116, 125

3. The Supreme Court of Wisconsin stated in 1909:

3.1 The term "public highway," in its broad popular sense, includes toll roads -- any road which the public have a "RIGHT" to use even conditionally, though in a strict legal sense it is restricted to roads which are wholly public.
(Emphasis added). See: Weirich v. State, 140 Wis. 98.

4. The Supreme Court of the State of Illinois ruled:

4.1 Even the legislature has no power to deny to a Citizen the "RIGHT" to travel upon the highway and transport his property in the ordinary course of his business or pleasure, through this "RIGHT" might be regulated in accordance with the public interest and convenience.
(Emphasis added) See: Chicago Motor Coach v. Chicago, 169 N.E. 22

5. "Regulated" here means traffic safety enforcement, stop lights, sign, etc., NOT a privilege that requires permission, i.e.; licensing, mandatory insurance, vehicle registration, etc..

6. PRIVILEGE OR RIGHT?

6.1 The use of the highway for the purpose of travel and transportation is NOT a mere PRIVILEGE, but a "COMMON AND FUNDAMENTAL RIGHT" of which the public and individuals cannot rightfully be deprived.
(Emphasis added) See: Chicago Motor Coach v. Chicago, supra; Ligare v. Chicago, 28 N.E. 934; Boone v. Clark, 214 S.W. 607; American Jurisprudence 1st Ed., Highways 163

6.2 Citizen's "RIGHT" to travel upon public highways includes right to use usual conveyances of time, including horse-drawn carriage, or automobile, for ordinary purposes of life and business.
(Emphasis added) See: Thompson v. Smith (Chief of Police), 154 S.E. 579, 580

6.3 The "RIGHT" of the Citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a "COMMON RIGHT" which he has under the "RIGHT" to life, liberty, and the pursuit of happiness.
(Emphasis added) See: Thompson v. Smith, supra.

7. It could not be stated more conclusively that Sovereigns of the states have a "RIGHT" to travel, without approval or restriction, (license), and that this "RIGHT" is protected under the U.S. Constitution. After all, who do the roadways belong to anyway? The People-At-Large. Here are other court decisions that expound the same facts:

7.1 .... [T]he streets and highways belong to the public, for the use of the public in the ordinary and customary manner.
See: Hadfield v. Lundin, 98 Wn. 657; 168 P. 516;

7.2 All those who travel upon, and transport their property upon, the public highways, using the ordinary conveyance of today, and doing so in the usual and ordinary course of life and business.
See: Hadfield, supra; State v. City of Spokane, 109 Wn. 360; 186 P. 864.

7.3 The "RIGHT" of the Citizen to travel upon the highways and to transport his property thereon, in the ordinary course of life and business, differs radically and obviously from that of one who makes the highways his place of business and uses it for private gain ....
(Emphasis added) See: State v. City of Spokane, supra.

7.4 ..... [F]or while a Citizen has the "RIGHT" to travel upon the public highways and to transport his property thereon, that "RIGHT" does not extend to the use of the highways, either in whole or in part, as a place of business for private gain. For the latter purposes no person has a vested right to use the highways of the state, but is a MERE PRIVILEGE or license which the legislature may grant or withhold at its discretion ....

(Emphasis added). See: Hadfield, supra; State v. Johnson, 243 P. 1073; Cummins v. Jones, 155 P. 171; Packard v. Banton, 44 S.Ct. 257, 264 U.S. 140 and other cases too numerous to mention.

8. The Washington State Supreme Court stated:

8.1 I am not particularly interested about the rights of haulers by contract, or otherwise, but I am deeply interested in the "RIGHTS" of the public to use the public highways freely for all lawful purposes. (Emphasis added). See: Robertson v. Department of Public Works, 180 Wash. 133 at 139

9. The Supreme Court of the State of Indiana ruled in 1873:

9.1 It is not the amount of travel, the extent of the use of a highway by the public that distinguishes it from a private way or road. It is the "RIGHT" to so use or travel upon it, not its exercise.
(Emphasis added) See: ? Ind 455, 461

10. 11 American Jurisprudence 1st, has this to say:

10.1 The "RIGHT" of the Citizen to travel upon the public highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile, is NOT a mere PRIVILEGE which may be permitted or prohibited at will, but a "COMMON RIGHT" which he has under his right to life, liberty, and the pursuit of happiness. Under this constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with, not disturbing another's "RIGHTS," he will be protected, not only in his person, but in his safe conduct.
(Emphasis added) See: 11 American Jurisprudence 1st., Constitutional Law, 329, page 1123

11. The Supreme Court of the State of Georgia ruled:

11.1 In this connection it is well to keep in mind that, while the public has an absolute "RIGHT" to the use of the streets for their primary purpose, which is for travel, the use of the streets from the purpose of parking automobiles is a privilege, and not a "RIGHT"; and the privilege must be accepted with such reasonable burdens as the city may place as conditions to the exercise of the privilege.
(Emphasis added). See: Gardner v. City of Brunswick, 28 S.E.2d 135

12. The Supreme Court of the State of Colorado discussed the issue in the following way in 1961.

12.1 The Constitution of the State of Colorado, Article II, §3 provides that:

> All persons have certain natural, essential and unalienable "RIGHTS," among which may be reckoned the "RIGHT" .... of acquiring, possessing and protecting property; ....

12.1.1 A motor vehicle is property and a person cannot be deprived of property without due process of law. The term: "property," within the meaning of the due process clause, includes the "RIGHT" to make full use of the property which one has the unalienable "RIGHT" to acquire.

12.1.2 Every Citizen has an unalienable "RIGHT" to make use of the public highways of the state; every Citizen has full freedom to travel from place to place in the enjoyment of life and liberty.
(Emphasis added). See: People v. Nothaus, 147 Colo. 210

13. The Constitution of the State of Idaho contains the words:

13.1 All men are by nature free and equal, and have certain unalienable "RIGHTS," among which are ....; acquiring, possessing, and protecting property .... (Emphasis added).

14. The words of the Idaho Constitution are to all intents and purposes identical with those of the North Carolina Constitution. The Constitution of the State of North Carolina, Article I, §1, states as follows:

14.1 The equality and rights of persons. We hold it to be self-evident that all persons are created equal; that they are endowed by the Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

14.2 To be that statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land. See: Hoke v. Henderson, 15 N.C. 15, 25 AM.Dec. 677

15. Since courts tend to be consistent in their rulings, it would be expected the Idaho Supreme Court would rule in the same manner as the North Carolina Supreme Court.

16. Other authorities have arrived at similar conclusions:

16.1 The Constitution for the United States of America, Amendment 9:

16.1.1 The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

17. The Constitution of the State of North Carolina, Article I, §36:

17.1 Other rights of the people. The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

18. I demand all of my other rights, including the right to travel upon the public highways and byways in the United States of America.

19. The Constitution of the State of North Carolina, Article I, §2:

19.1 Sovereignty of the people. All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

20. As member of the Sovereignty of the people, I not only am entitled to use the highways and byways in the United States of America, I have an inalienable right to use the highways and byways.

20.1 Highways are public roads which every Citizen has a "RIGHT" to use.
(Emphasis added). See: 3 Angel Highways 3.

20.2 A highway is a passage, road, or street, which every Citizen has a "RIGHT" to use. (Emphasis added). See: Bouvier's Law Dictionary.

21. I have emphasized the word "RIGHT" because it is a common point among the authorities listed. The Idaho Code even joins in this common point:

21.1 49-301 (13) Street or highway. -- The entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of "RIGHT," for purposes of vehicular traffic.
(Emphasis added.) See: Idaho Code.

22. The United States Supreme Court has ruled that:

22.1 Undoubtedly the "RIGHT" of locomotion, the "RIGHT" to remove from one place to another according to inclination, is an attribute of personal liberty, and the "RIGHT," ordinarily, of free transit from or through the territory of any State is a "RIGHT" secured by the Fourteenth Amendment and by other provisions of the Constitution.
(Emphasis added). See: Williams v. Fears, 343 U.S. 270, 274

23. Thus, there can be little doubt that, when this Sovereign travels upon the streets or highways in North Carolina, he does so as a matter of "RIGHT" and not privilege. The authority for such travel is described variously as a "RIGHT," a "COMMON RIGHT," an "ABSOLUTE RIGHT," an "UNALIENABLE RIGHT," and a "RIGHT" protected by the Constitution of the United States. Let us then examine the importance of these terms to this Sovereign by defining their meaning.

23.1 "RIGHT" -- In law,

(a) an enforceable claim or title to any subject matter whatever;

(b) one's claim to something out of possession;

(c) a power, prerogative, or privilege, as when the word is applied to a corporation.
See: Webster Unabridged Dictionary

23.2 "RIGHT" -- As relates to the person, "RIGHTS" are absolute or relative; absolute "RIGHTS," such as every individual born or living in this country (and not an alien enemy) is constantly clothed with, and relate to his own personal security of life, limbs, body, health, and reputation; or to his personal liberty; "RIGHTS" which attach upon every person immediately upon his birth in the kings dominion, and even upon a slave the instant he lands within the same.
(Emphasis added). See: 1 Chitty Pr. 32.

23.3 "RIGHT" -- A legal "RIGHT," a constitutional "RIGHT" means a "RIGHT" protected by the law, by the constitution, but government does not create the idea of "RIGHT" or original "RIGHTS"; it acknowledges them .....
(Emphasis added). See: Bouver's Law Dictionary, 1914, p. 2916

23.4 Absolute "RIGHT" -- Without any condition or incumbrance as an absolute bond, simplex obligatio, in distinction from a conditional bond; an absolute estate, one that is free from all manner of conditions or incumbrance .. A rule is said to be absolute when, on the hearing, it is confirmed.
(Emphasis added). See: Bouvier's Law Dictionary.

23.5 Unalienable -- A word denoting the condition of those things, the property in which cannot be lawfully transferred from one person to another.
See: Bouvier's Law Dictionary.

24. It shows from these definitions that the State has an obligation to acknowledge the "RIGHTS" of this Sovereign to travel on the streets or highways in North Carolina. Further, the State has the duty to refrain from interfering with this "RIGHT" and to protect this "RIGHT" and to enforce the claim of this Sovereign to it.

25. Now if this Sovereign has the absolute "RIGHT" to move about on the streets or highways, does that "RIGHT" include the "RIGHT" to travel in a vehicle upon the streets or highways? The Supreme Court of the State of Texas has made comments that are an appropriate response to this question.

25.1 Property in a thing consists not merely in its ownership and possession, but in the unrestricted "RIGHT" of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself. The substantial value of property lies in its use. If the "RIGHT" of use be denied, the value of the property is annihilated and ownership is rendered a barren "RIGHT." Therefore, a law which forbids the use of a certain kind of property, strips it of an essential attribute and in actual result proscribes its ownership.
(Emphasis added). See: Spann v. City of Dallas, 235 S.W. 513

26. These words of the Supreme Court of Texas are of particular importance in Idaho because the Idaho Supreme Court quoted the Supreme Court of Texas and used these exact words in rendering its decision in the case of O'Conner v. City of Moscow, 69 Idaho 37. The Supreme Court of Texas went on to say further;

26.1 To secure their property was one of the great ends for which men entered into society. The "RIGHT" to acquire and own property, and to deal with it and use it as the owner chooses, so long as the use harms nobody, is a natural "RIGHT." It does not owe its origin to constitutions. It existed before them. It is a part of the Citizen's natural liberty -- an expression of his freedom, guaranteed as inviolate by every American Bill of "RIGHTS."
(Emphasis added). See: Spann supra.

27. PROPERTY

27.1 Bouvier's Law Dictionary defines;

27.1.1 Property -- The ownership of property implies its use in the prosecution of any legitimate business which is not a nuisance in itself.
See: In re Hong Wah, 82 Fed. 623

28. The United States Supreme Court states:

28.1 The Federal Constitution and laws passed within its authority are by the express terms of that instrument made the supreme law of the land. The Fourteenth Amendment protects life, liberty, and property from invasion by the States without due process of law.

28.2 Property is more than the mere thing which a person owns. It is elementary that it includes the "RIGHT" to acquire, use and dispose of it.
(Emphasis added). See: Buchanan v. Warley, 245 U.S. 60, 74

29. These authorities point out that the "RIGHT" to own property includes the "RIGHT" to use it. The reasonable use of an automobile is to travel upon the streets or highways on which this Sovereign has an absolute "RIGHT" to use for the purposes of travel. The definitions in Title 49 Chapter 3 of the Idaho Code positively declare the "RIGHT" of this Sovereign to travel in a vehicle upon the streets or highways in Idaho.

30. MOTOR VEHICLE OR VEHICLE?

30.1 Motor Vehicle -- Motor vehicle means a vehicle which is self-propelled or which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.
See: Idaho Code 49-301 (6)

30.2 Vehicle -- Vehicle means a device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or horse drawn or used exclusively upon stationary rails or tracks.
See: Idaho Code 49-301 (14)

30.3 Street or Highway -- Street or Highway means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of "RIGHT," for purposes of vehicular traffic.
(Emphasis added). See: Idaho Code 49-301 (13)

30.4 The term "Motor Vehicle" may be so used as to include only those self-propelled vehicles which are used on highways primarily for purposes of "transporting" persons and property from place to place.
(Emphasis added). See: 60 Corpus Juris Secundum §1, Page 148; Ferrante Equipment Co. v. Foley Machine Co., N.J., 231 A.2d 208, 211, 49 N.J. 432

30.5 It seems obvious that the entire Motor Transportation Code and the definition of motor vehicle are not intended to be applicable to all motor vehicles but only to those having a connection with the "transportation" of persons or property.
(Emphasis added). See: Rogers Construction Co. v. Hill, Or., 384 P.2d 219, 222, 235 Or. 352

30.6 "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in "transportation," or a combination determined by the Commission, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger "transportation" similar to street-railway service.
(Emphasis added) See: Transportation, Title 49, U.S.C.A. §10102 (17)

The Constitutions of the United States and the State of North Carolina guarantees this Sovereign the "RIGHT" to own property. The Supreme Courts of North Carolina and Texas have affirmed that the "RIGHT" to own property includes the "RIGHT" to use it while its use harms nobody. If that property is an automobile, it is included in the definitions of vehicle and motor vehicle in the Idaho Code Title 49 Chapter 3. And in the same Idaho Code Chapter, streets or highways are defined as the place where vehicles are used by the public as a matter of "RIGHT." Thus it shows that this Sovereign has the "RIGHT" to use a vehicle on the streets or highways in North Carolina.

31. Now if this Sovereign has the "RIGHT" to use a vehicle on the streets or highways in North Carolina, to what extent can the State of North Carolina regulate or diminish that "RIGHT?" There are some who maintain that specific performance is required of every Sovereign who uses a vehicle upon the streets or highways in North Carolina. Let us examine this contention in detail.

Contract?

32. Specific performance is a term used to designate an action in equity in which a party to a contract asks the court to order the other party to carry out the contract which he has failed or refused to perform. Thus, if specific performance is expected, a contract must exist. The question then becomes: What are the terms of the contract and when was it executed and by whom? Since specific performance seems expected of every user of a vehicle on the streets or highways in North Carolina, the user of a vehicle seems one of the parties to the supposed contract. And since the State seems the party demanding specific performance, the State is the other party to the contract. So the supposed contract exists between the user of a vehicle and the State of North Carolina. When was this contract executed and what are its' terms? Some contend that when a user of a vehicle avails himself of the "privilege" of driving on public thoroughfares that he enters a contract with the State that requires him to abide with all the laws in the North Carolina General Statutes. Others contend that the contract is executed when a driver's license is obtained. We need now to figure out what is a contract.

33. A contract may be defined as an agreement enforceable in court between two or more parties, for a sufficient consideration to do or not to do some specified thing or things. Thus, a contract has four essential features:

33.1 It must be an agreement.

33.2 There must be at least two parties to the contract.

33.3 There must be a consideration.

33.4 There must be an obligation or thing to be done.

34. Several types of contracts exist, but all must contain the essential features listed. Contracts can be classified under three principal categories:

34.1 Express

34.2 Implied

34.3 Quasi

35. Quasi contracts, while being called contracts are not really contracts, will not be considered in this discussion of contracts but will be considered in a separation section later.

Unilateral & Bilateral Contracts

36. There can also be unilateral and bilateral contracts that is presumed can exist under some or all the above headings. Let us examine each above types of contracts to see if the license obtained by this Sovereign falls under any of the categories of contract.

> 36.1 An express contract is one in which the agreement of the parties is fully stated in words, and it may be either written or oral, or partly written and partly oral.
> See: Bergh Business Law 30

> 36.2 A true implied contract is an agreement of the parties arrived at from their acts and conduct viewed in the light of surrounding circumstances, and not from their words either spoken or written. Like an express contract, it grows out of the intention of the parties to the transaction and there must be a meeting of the minds.
> See: McKevitt et al v. Golden Age Breweries, Inc., 126 P.2d 1077 (1942)

> 36.3 License -- Authority to do some act or carry on some trade or business, in its nature lawful but prohibited statute, except with the permission of the civil authority or which would otherwise be unlawful.
> See: Bouvier's Law Dict

37. With these definitions in mind, let us examine a driver's license to see if it is a contract. The driver's license itself is a small plastic card approximately 55 millimeters by 86 millimeters in size. It contains the words "North Carolina Motor Vehicle Driver's license"; the name, address, signature, and physical description of the user; a pair of identifying numbers; a photograph; and the signature of the director of the Department of Law Enforcement. Obviously, this cannot be an express agreement because there are no statements to constitute an agreement. Are there two parties to the "contract?" There are two signatures, but both are copies, thus invalidating the "contract" so there are no parties to the "contract." Is there a consideration? What has the State given this Sovereign in return for this Sovereign's obligation? Some may suggest that the State has given this Sovereign the privilege of driving on the streets or highways in North Carolina. But this Sovereign already has the "RIGHT" to drive on the streets or highways in North Carolina, and the State cannot require this Sovereign to give up a "RIGHT" to obtain a privilege.

38. An Iowa Statute that requires that every foreign corporation named in it shall, as a condition for obtaining a permit to transact business in Iowa, stipulate that it will not remove into the federal court certain suits that it would by the laws of the United States have a "RIGHT" to a permit dependant upon the surrender by the foreign corporation of a privilege secured to it by the Constitution and laws of the United States.
Bouvier's Law Dictionary quoting Barron v. Burnside, 121 U.S. 186:

> 38.1 The full significance of the clause law of the land is said by Ruffin, C.J. to be that statutes that would deprive a Citizen of the "RIGHTS" of person or property without a regular trial according to the course and usage of the common law would not be the law of the land.
> (Emphasis added). See: Bouvier's Law Dictionary quoting Hoke v. Henderson, 15 N.C. 15, 25 AM Dec 677

39. It would be foolish for this Sovereign to exchange a "RIGHT" for a privilege since it would mean giving up valuable property in exchange for something having less value. Is it possible for this Sovereign to do such a thing?

> 39.1 Consent -- In criminal Law. No act shall be deemed a crime if done with the consent of the party injured, unless it be committed in public, and is likely to provoke a breach of the peace, or tends to the injury of a third party; provided no consent can be given which will deprive the consenter of any unalienable "RIGHT."
> (Emphasis added). See: Bouvier's Law Dictionary.

40. Thus, even if this Sovereign wanted to do so, he could not give up his "RIGHT" to travel on the streets or highways in North Carolina or exchange it for the privilege of having a driver's license. Thus, in exchange for the supposed obligation of this Sovereign, the State has given nothing. Thus, there is no consideration.

41. It may be contended that the seal on the driver's license is sufficient consideration by the State. It is true that under the common law, the question of consideration could not be raised concerning a contract under seal. The seal provided conclusive presumption of a consideration. Still, North Carolina has abolished by statute the common law presumption of consideration and this statute is binding upon all officers and employees of the State. So, though a seal may be present, it is not evidence of consideration in North Carolina. Of course, the document in question is a contrived and copied document and lacks validity in any case as a contract.

42. As to an obligation, since the license contains no statement of agreement, since there are no parties to any agreement, and since there is no consideration, there can be no obligation. The driver's license thus is not a contract since it fails to contain any of the four essential features of a contract.

43. Can the driver's license be an implied contract? The same elements must exist in an implied contract as exist in an express contract. The only difference is that an implied contract is not written or spoken and the elements of the contract are shown by the acts and conduct of the parties involved. With respect to this Sovereign, there was certainly no meeting of the minds else this brief would not result. It was never the intention of this Sovereign to give up constitutional "RIGHTS" to accept a privilege from the State. Such an action would be ridiculous. This could only be done in a socialistic state. There has been no implied agreement in a free society. It is possible that there were two parties to the supposed contract, the State and this Sovereign. There was no consideration in the implied contract for the same reasons that there was no consideration in the express contract.

44. An obligation is the thing to be done. It may be to pay money, to do work, or to deliver goods; or it may be to refrain from doing something that the person contracting had a "RIGHT" to do. Some may say that the State was obligated to allow this Sovereign to drive on the streets or highways in North Carolina and that this Sovereign was obligated to obey all the Statutes contained in the North Carolina General Statutes. It would be just as easy to say that the State could not be obligated to allow this Sovereign to travel on the streets or highways in North Carolina because they did not have the "RIGHT" or the power to prevent him from doing so.

45. If the State cannot prevent this Sovereign from his travels on the streets or highways in North Carolina, they do not have any discretion in the matter and do not have the choice of whether to obligate themselves or not. Thus, the obligation of the State cannot be to grant this Sovereign the privilege of travel on the streets or highways in North Carolina. The obligation of the State cannot be to refrain from prohibiting this Sovereign from his travel on the streets or highways in North Carolina since the State did not have the "RIGHT" to do this at first.

46. It is the contention of this Sovereign that the only obligation that this Sovereign incurs when using a vehicle upon the streets or highways in North Carolina is the Common Law obligation to refrain from any act that causes another person to lose life, liberty, or property. In complying with this obligation, this Sovereign does comply with many Statutes in the North Carolina General Statutes since they are, for the most part, only common sense rules by which this Sovereign avoids doing damage to others.

47. Still, this acquiescence to some Statutes of The North Carolina General Statutes should not be construed as evidence of a contractual obligation by this Sovereign. Neither should it be construed as acquiescence to all the Statutes of the North Carolina General Statutes or to any of them always. Instead, it is merely evidence of a want of this Sovereign to travel safely and to do harm to no one.

48. Thus, the actions of this Sovereign do not supply unambiguous evidence of a contract with the State. Instead, the actions can, with equal weight, be said to be evidence of the fact that this Sovereign was complying with Common Law requirement that he does harm to no one. The driver's license is not an implied contract because there is no consideration, there may be possibly be two parties, but there is no consideration, and there is not clear evidence of an obligation. Three of the four elements necessary for a contract are missing.

49. The question now becomes whether the driver's license application is a contract. In completing this document, the applicant makes several statements and signs the paper upon which these statements are written under oath. The

statements concern the identity, physical description, address, ability and experience in operating a vehicle, and one statement on the physical condition of the applicant. None of the statements are as an agreement.

50. The application form contains the signature of the applicant and the signature of the person taking the oath of the applicant. The reverse side of the Application contains the results of a vision test and rudimentary physical examination with the results of a driving test. These results are signed by the examiner and not by the applicant.

51. Thus the application takes the form of an Affidavit instead of a contract. But let us see if the elements of a contract are present in the application.

51.1 There is no agreement.

51.2 There are not two parties.

51.3 There is no consideration.

51.4 There is no obligation.

52. Since none of the necessary elements of a contract are present, the application does not constitute a contract.

53. The only other document involved in obtaining a driver's license is the document, part of which is copied to make the actual driver's license. It contains, besides the information that is used in making the driver's license, the results of a vision test conducted by the driver's license examiner.

54. The applicant places his signature upon this form that is then copied by some photographic process. Other material is added including a photograph, signature of the Director of the Department of Law Enforcement and the driver's license is made of this composite.

55. Thus the license itself cannot be a contract because it is a contrived document. The form from which the driver's license is made cannot be a contract because, again, none of the elements of a contract are present. So if none of the documents executed by the driver when obtaining a license is a contract, then no contract can exist between the driver and the State as a result of obtaining a driver's license.

56. But the idea that the driver's license is a contract with the State is pervasive. It is a belief that is strongly held even by people in high places. So let us examine the driver's license as if it were a contract and see if it can withstand scrutiny. Not every offer made by one party and accepted by the other creates a valid contract. The outward form of a contract, either oral or written may exist, and yet the circumstances may be such that no contract was in reality created. Some circumstances that will cause an apparently valid contract to be void are:

56.1 Mistake either mutual or unilateral.

56.2 Fraud.

56.3 Duress.

56.4 Alteration.

57. This Sovereign obtained a driver's license upon the representation by the State that one's travel upon the streets or highways of the United States of America was a privilege. This Sovereign accepted this representation as true and did obtain a driver's license.

57.1 It has been shown, still, that an individual's travel is a "RIGHT" and not a privilege. Thus, a mutual mistake has been made, and the "contract" is void.
See: Deibel v. Kreiss, 50 N.E.2d 1000 (1943)

58. But the General Assembly of the State who passed the Statutes contained in the North Carolina General Statutes are knowledgeable persons, many of whom are lawyers, and they undoubtedly knew at the time the law was passed that an individual's travel was a "RIGHT" and not a privilege. If this were the case, then the mistake would be unilateral. A unilateral mistake known to the other party is sufficient grounds to void a contract.

59. Fraud

59.1 Fraud may consist in conduct, and may exist where there are no positive representations, Silence where honesty requires speech, may sometimes constitute fraud. The rule that a man may be silent and safe is by no means a universal one. Where one contracting party knows that the other is bargaining for one thing, he has no "RIGHT" by silence to deceive him and suffer him to take an altogether different thing, from that for which he bargains. (Emphasis added). See: Parish v. Thurston, 87 Ind. 437 (1882)

60. If the driver's license is a contract, a case can be made for the contention that it was an agreement obtained by the State by fraud.

60.1 Fraud is a generic term which embraces all the multifarious means which human ingenuity can devise and are resorted to by one individual to get any advantage over another. No definite and invariable rule can be laid down as a general proposition defining fraud, as it includes all surprise, trick, cunning, dissembling, and unfair ways by which another is deceived.
(Emphasis added). See: Wells v. Zenz, 236 P. 485

61. With respect to contracts, the following statements can be made:

61.1 However, in the field of contracts, there are certain standard tests for a claim of fraud which make it possible to define fraud, in connection with a contract as any trick or artifice whereby a person by means of a material misrepresentation creates an erroneous impression of the subject matter of a proposed transaction, and thereby induces another person to suffer damage computable in money. The misrepresentation may result from a false statement, a concealment, or a nondisclosure. The elements of a contractual fraud are the following:

61.1.1 A material misrepresentation, created by a statement, a concealment, or a nondisclosure.

61.1.2 An intention to defraud.

61.1.3 Reliance on the representation by the defrauded party.

61.1.4 Damage caused to the defrauded party as the result of his acting upon the representation. See: Bergh Business Law p. 56.

62. In view of the many decisions by high courts, including the Supreme Court of the United States, that one's travel is a "RIGHT" and not a privilege, it would be hard to defend the proposition that the General Assembly of the State of North Carolina was unaware of these decisions, particularly since many legislators are and were lawyers knowledgeable in such matters. In fact, when one considers the definition of streets or highways in Sections of the North Carolina General Statutes, the Evidence is conclusive that the legislature knew and knows that ones travels is a "RIGHT."

63. Therefore, the statements in the North Carolina General Statutes that a travel is a privilege and that a driver's license is necessary before one can travel constitutes a material misrepresentation of fact to this possessor of a driver's license. And since the legislature is and was aware of the fact that an individual's travels was not a privilege, but a "RIGHT," the statement that one's travels is a privilege, when applied to this Sovereign, constitutes a willful intention to deceive, and therefore, to defraud.

64. This Sovereign did rely upon the representations of the legislature that an individual's travels was a privilege when he obtained his driver's license, else he would not have obtained one.

65. This Sovereign did suffer damage as a result of his acting upon the representation of the legislature at least to the extent of the license fee.

66. In as much as all the necessary elements of fraud are present if the driver's license is considered a contract, the "contract" is void.

DURESS

67. With respect to duress, Bergh, supra., supplies the following definition:

> 67.1 A party must consent to a contract of his own free will; free consent is an essential element of an agreement. Consequently, if he is coerced into signing a contract by fear induced by a threat to cause personal injury to himself or to some close relative, the contract will not be a real agreement and it will be voidable at his option. The threat of personal injury must be a threat to inflict immediate bodily injury or to institute a criminal prosecution against the person threatened or some close relative.

68. Since it was essential to this Sovereign in pursuing his occupation of common "RIGHT" to use a vehicle upon the streets or highways in North Carolina, and since the State of North Carolina threatens to and does prosecute persons in criminal actions for not possessing a driver's license, regardless of their status, this Sovereign did obtain a driver's license under duress. If then the driver's license is a contract, the contract is unenforceable and invalid because of this duress.

69. With respect to alterations, Bergh, supra., has the following comments:

> 69.1 Any material alteration in a written contract by one party without the consent of the other party gives this latter the option of treating the contract as discharged or enforcing it as it stood before the alteration.

70. If the driver's license is a contract, it is a written contract, at least to the extent that the Statutes of the North Carolina General Statutes are written. Each time that the General Assembly amends or modifies or adds to any of the Statutes of the North Carolina General Statutes, the terms of the contract are changed. Since this Sovereign then has the option of considering the contract as discharged, he then chooses to do so as of the first change in the North Carolina General Statutes following his application for a driver's license.

71. If it is contended that the driver's license is an implied contract, the "Statute of Frauds" comes into play. North Carolina has enacted a "Statute of Frauds."

72. In the following cases the agreement is invalid, unless the same or some note or memorandum of it, be in writing and subscribed by the party charged, or by his agent. Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

> 72.1 An agreement that by its terms is not to be performed within a year from the making thereof.
>
> 72.2 .....

73. Since the term of the driver's license contract is so many years and the contract is not written, the "Statute of Frauds" does apply and the contract is unenforceable.

74. The discussion up to this point has been concerned with bilateral contracts in which each party promises something to the other party. Is it possible that the driver's license is a unilateral contract? A unilateral contract is described as:

74.1 A unilateral contract is a one-sided contract in the sense that only one side makes a promise, and the other side performs an act for which the promise was given. See: Bergh, supra..

75. Since the act expected by the State is obedience to the Statutes of the North Carolina General Statutes, what promise has the State offered in exchange for this act? The only promise that the State could make this Sovereign is the promise to allow him to travel on the streets or highways in North Carolina. Since this Sovereign already can do that as a matter of "RIGHT," the State can promise him nothing. Thus there is no consideration and a unilateral contract cannot exist.

76. Having shown that no contract exists between this Sovereign and the State, let us examine the proposition that a quasi-contract exists between this Sovereign and the State.

77. Quasi-Contract

> 77.1 A quasi-contract is an obligation springing from voluntary and lawful acts of parties in the absence of any agreement.
> See: Bouvier's Law Dictionary.

78. In order to establish the existence of a quasi-contractual obligation it must be shown:

> 78.1 That the defendant has received a benefit from the Plaintiff.
>
> 78.2 That the retention of the benefit by the Defendant is inequitable.
> See: Woodward Quasi Contracts 9.

79. Thus, if it is contended that this Sovereign must obey the Statutes in the North Carolina General Statutes because of a quasi-contract, it must be shown that this Sovereign has received a benefit from the State. But one's travels on the streets or highways of the State is not a benefit received from the State. It was a "RIGHT" that attached to this Sovereign at the moment of his birth and cannot be removed by the State. In this respect, no benefit has been received from the State, and thus a quasi-contractual obligation cannot exist with respect to this Sovereign.

80. It may be claimed that the Statutes of the North Carolina General Statutes are made pursuant to the police powers of the State and that every person in the State is obligated to obey them.

81. The police power is a grant of authority from the people to their governmental agents for the protection of the health, the safety, the comfort and the welfare of the public. In its nature, it is broad and comprehensive. It is a necessary and salutary power, since without it, society would be at the mercy of individual interest and there would exist neither public order or security. While this is true, it is only a power. It is not a "RIGHT?"

82. The powers of government, under our system, are nowhere absolute. They are but grants of authority from the people, and are limited to their true purposes. The fundamental "RIGHTS" of the people are inherent and have not yielded to governmental control. They are not the subjects of governmental authority. They are subjects of individual authority. Constitutional powers can never transcend constitutional "RIGHTS." The police power is subject to the limitations imposed by the Constitution upon every power of government; and it will not be suffered to invade or impair the fundamental liberties of the Sovereign, those natural "RIGHTS" that are the chief concern of the Constitution and for whose protection it was ordained by the people.

> 82.1 To secure their property was one of the great ends for which men entered into society. The "RIGHT" to acquire and own property, and to deal with it and use it as the owner chooses, so long as the use harms nobody, is a natural "RIGHT." It does not owe its origin to constitutions. It existed before them. It is a part of the Citizen's natural liberty -- an expression of his freedom, guaranteed as inviolate by every American Bill of "RIGHTS."
>
> 82.2 It is not a "RIGHT," therefore, over which the police power is paramount. Like every other fundamental liberty, it is a "RIGHT" to which the police power is subordinate.
>
> 82.3 It is a "RIGHT" which takes into account the equal "RIGHTS" of others, for it is qualified by the obligation that the use of the property shall not be to the prejudice of others. But if subject alone to that

> qualification, the Citizen is not free to use his lands and his goods as he chooses, it is difficult to perceive wherein his "RIGHT" of property has any existence.
> (Emphasis added). See: Spann, supra..

83. Where inherent, unalienable, absolute "RIGHTS" are concerned, the police powers can have no effect. The "RIGHT" to travel on the streets or highways and the "RIGHT" to own and use property have been described as inherent, unalienable, and absolute. Thus the police power cannot regulate this Sovereign's "RIGHT" to use a vehicle on the streets or highways in North Carolina.

84. If the police power of the State is permitted to regulate the travels of this Sovereign on the streets or highways in North Carolina, and if, through the action of these regulations or Statutes, this Sovereign is denied access to the streets or highways in North Carolina; a fundamental "RIGHT" of this Sovereign has been abrogated.

> 84.1 Where "RIGHTS" secured by the Constitution are involved, there can be no rule making or legislation that would abrogate them.
> (Emphasis added). See: Miranda v. Arizona, 384 U.S. 436, 491 (1966)

85. The abrogation of unalienable "RIGHTS" by legislation or rule making is unconstitutional.

86. If further proof is needed to show that this Sovereign need not be licensed to travel on the streets or highways in North Carolina, it is provided in the following decisions:

86.1 A license fee is a tax.
See: Parish of Morehouse v. Brigham, 6 So. 257

86.2 A state may not impose a charge for the enjoyment of a "RIGHT" granted by the Federal Constitution.
(Emphasis added). See: Murdock v. Pennsylvania, 319 U.S. 105

87. Since a fee is charged for a driver's license and since one's travels on the streets or highways in North Carolina is a "RIGHT" guaranteed by the Federal Constitution, and by the LAW OF NATURE, it is not constitutional for the State to require this Sovereign to be licensed to travel.

88. Even the application for North Carolina Driver's License Form recognizes the "RIGHT" of some persons to travel without a license. North Carolina General Statutes recognizes categories of persons who are not required to be licensed in this State. Why is it then that the first demand made by the law enforcement personnel when making a traffic stop is:

> "Let's see your driver's license, registration, and proof of insurance,"
>
> and not always politely, when the first question should be;
>
> "What is your status and are you required to have a driver's license?"

89. Can it be that there is a conspiracy afoot within the State to reduce all Sovereigns to a status of contract? Why else would a law enforcement person take a Sovereign to jail without even trying to discover if that Sovereign is exempt from the requirement of having a driver's license?

90. The question now becomes whether this Sovereign is required to obey any of the Statutes in the North Carolina General Statutes? It has been shown that this Sovereign has a "RIGHT" to travel on the streets or highways in North Carolina. So, any Statute that describes driving on the streets or highways as a privilege cannot apply to this Sovereign. Since the "RIGHT" of this Sovereign to travel cannot be abrogated, any Statute the operation of which would have the effect of denying access to the streets or highways to this Sovereign cannot be applied to this Sovereign.

91. Since violation of any Statue in the North Carolina General Statutes is classified as a "misdemeanor" that is punishable by a fine and six months in jail, and since putting this Sovereign in jail because of his use of the streets or

highways that harms nobody would be an abrogation of his "RIGHT" to travel, none of the Statutes of the North Carolina General Statutes apply to this Sovereign. These contentions are supported by the Supreme Court of United States.

> 91.1 An Iowa statute that requires that every foreign corporation named in it shall as a condition for obtaining a permit to transact business in Iowa, stipulate that it will not remove into the federal court certain suits that it would by the laws of the United States have a "RIGHT" to remove, is void because it makes the "RIGHT" to a permit dependent upon the surrender by the foreign corporation of a privilege secured to it by the Constitution and laws of the United States. (Emphasis added). See: Bouvier's Law Dictionary quoting Barron v. Burnside, 121 U.S. 186

92. This decision is consistent with that in Miranda, supra, in which it was stated that where "RIGHTS" are concerned, there can be no rule making or legislation that would abrogate them. It is also consistent with the discussion in the following case. This case is a tax case, but the discussion on "RIGHTS" that it contains is appropriate.

93. Individual and a Corporation

> 93.1 There is a clear distinction in this particular between an individual and a corporation, and that the latter has no "RIGHT" to refuse to submit its books and papers for an examination at the suit of the State. The individual may stand upon his constitutional "RIGHTS" as a Citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom, beyond the protection of his life and property. His "RIGHTS" are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his "RIGHTS" are a refusal to incriminate himself, and the immunity of himself and his property from arrest or seizure except under a warrant of the law. He owes nothing to the public so long as he does not trespass upon their "RIGHTS."
> (Emphasis added.) See: Hale v. Henkel, 201 U.S. 43

94. The Emphasized statement is also consistent with North Carolina Statute. In the Statute reads:

> 94.1 Common law in force. The common law of England, as far as it is not repugnant to or inconsistent with the Constitution or laws of the United States in all cases not provided for in these compiled laws, is the rule of decision in all courts in this state.

95. Since the Statutes of the North Carolina General Statutes cannot apply to this Sovereign, he becomes subject to the Common Law that maintains that he owes nothing to the public while he does not trespass upon their "RIGHTS."

96. Is it the contention of this Sovereign that because the Statutes contained in the North Carolina General Statutes do not apply to him that the Statutes are unconstitutional? Absolutely not. There is a class of persons in North Carolina to whom these Statutes apply without reservation. Members of this class include corporations and those who do the corporation business on the streets or highways in North Carolina. A corporation is the creation of the State.

96.1 A corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises and holds them, subject to the laws of the State and the limitations of its charter. Its "RIGHTS" to act as a corporation are only preserved to it while it obeys the laws of its creation. (Emphasis added). See: Bouvier's Law Dictionary, 1914 p. 684

97. It is a person in the eyes of the law but it lacks character, no morals, no conscience. It's every activity must be directed and supervised by the State. Under the definition of "Due Process of Law", Bouvier's Law Dictionary states in part:

97.1 The liberty guaranteed is that of a natural person and not of artificial persons; Western Turf Assn. v. Greenberg, 204 U.S. 359 where it was said "a corporation cannot be deemed a Citizen within the meaning of the clause of the Constitution of the United States which protects the privileges and immunities of Citizens of the United States against being abridged or impaired by the law of a state." (See also 203 U.S. 243)

98. The Statutes in the North Carolina General Statutes are designed to direct the activities of the class of persons of which a corporation is a member. Corporations are absolutely bound by these Statutes. It is imperative that a conscienceless entity not be allowed to roam the streets or highways in North Carolina and jeopardize the Sovereigns. It is for this purpose that the Statutes of the North Carolina General Statutes were enacted and not for the control of a Free and Natural Sovereign.

Conclusion

99. There is no Court in this Land that could lawfully execute an Order that would or could cause, or work to compel, One to become a servant or slave of any city, county or state without a conviction and with full Due Process of Law, and for any city, county, or state to pretend otherwise is an absurdity.

Complete cases below!
Who needs a drivers license?

Answer no one since the court already decided this issue in the following cases:

Here is how the Appellate Criminal Courts of Texas have answered this request: "The court has held that there is no such license known to Texas Law as a “driver's license." (Frank John Callas v. State, 167 Tex. Crim. 375; 320 S.W. 2d 360.)

And…We have held that there is no such license as a driver's license known to our law." (Claude D. Campbell v. State, 160 Tex. Crim. 627; 274 S.W. 2d 401.)

And… "An information charging the driving of a motor vehicle upon a public highway without a driver's license charges no offense, as there is no such license as a driver's license known to the law." (Keith Brooks v. State, 158 Tex. Crim. 546; 258 S.W. 2d 317)

And…"There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a highway without such a license, charges no offense." (W. Lee Hassell v. The State, 149 Tex. Crim. 333; 194 S.W. 2d 400)

Frank John CALLAS, Appellant,

v.

STATE of Texas, Appellee.

No. 30094.

Court of Criminal Appeals of Texas.

Jan. 7, 1959.

Prosecution for driving motor vehicle on public road after operator's license had been suspended. The County Court at Law, Potter County, Mary Lou Robinson, J., entered judgment of conviction and defendant appealed. The Court of Criminal Appeals, Woodley, J., held that where testimony showed that only two persons were in or around truck at time defendant was apprehended and patrolman testified that the other person was not the driver of truck, and largely upon this testimony jury found defendant guilty, and after jury retired police officer filed complaint charging other person with driving motor vehicle with violation of restrictions imposed on his operator's license and such other person was convicted upon his plea of guilty, defendant's motion for new trial setting forth conviction of such other person should have been granted in order that defendant might have the benefit of evidence regarding conviction of other party in another trial.

Reversed and remanded.

Criminal Law ⇐938(1)

In prosecution for driving after operator's license had been suspended where testimony showed that there were only two persons including defendant in or around truck at time patrolman reached it and patrolman testified that other person was not driving panel truck, and after jury retired patrolman filed complaint charging other party with driving motor vehicle and he was convicted upon his plea of guilty, defendant's motion for new trial should have been granted in order that he might, in another trial, have the benefit of evidence regarding conviction of other party. Vernon's Ann.Civ.St. art. 6687b, § 1(n).

McCarthy, Rose & Haynes, Amarillo, for appellant.

Lon Moser, County Atty., E. S. Carter, Jr., Asst. County Atty., Amarillo, State's Atty., Austin, for the State.

WOODLEY, Judge.

The complaint and information allege that appellant drove a motor vehicle upon a public road "after the Texas Operator's License of the said Frank John Callas had * * * been suspended" and further alleged that appellant had received an extended period of suspension "of said Texas Operator's License * * *" and that said suspension had not expired.

We have searched the record carefully and find no evidence that the license which had been suspended was a Texas Operator's License, as alleged in the information.

If appellant was driving a motor vehicle, it was a panel truck used as a commercial vehicle in appellant's business, the appropriate license for its operation being a Commercial Operator's License, and not an Operator's License. See Art. 6687b, Sec. 1(n), Vernon's Ann.Civ.St.

This Court has held that there is no such license known to Texas law as a "driver's license". See Hassell v. State, 149 Tex. Cr.R. 333, 194 S.W.2d 400; Brooks v. State, 158 Tex.Cr.R. 546, 258 S.W.2d 317.

There were but two persons in or around the panel truck. One was Walter Schaff, who was seated in the driver's seat when the patrolmen reached it. Patrolman Kirkwood testified that Schaff was not driving the panel truck, and largely upon his testimony the jury found that appellant was the driver.

After the jury retired, Officer Kirkwood filed complaint charging Schaff with driv-

ing a motor vehicle in violation of restrictions imposed in his operator's license. Information was presented by the County Attorney and Schaff was convicted upon his plea of guilty.

Appellant's motion for new trial setting forth the conviction of Schaff after the close of the evidence on appellant's trial should have been granted in order that upon another trial appellant might have the benefit of the evidence regarding the conviction of Schaff.

Appellant's motion for rehearing is granted; our former opinion herein affirming the judgment is withdrawn, and the judgment is now reversed and the cause remanded.

Claude Dee CAMPBELL, Appellant,

v.

STATE of Texas, Appellee.

No. 30392.

Court of Criminal Appeals of Texas.

Feb. 4, 1959.

Defendant was convicted in the County Court, Gregg County, Earl Sharp, J., for driving while intoxicated, and he appealed. The Court of Criminal Appeals, Morrison, P. J., held that it was not error to admit, for purpose of impeaching witness who had testified that defendant had not been drinking on day in question, evidence that such witness had offered a woman $10 to testify that defendant was not intoxicated.

Affirmed.

1. Criminal Law ⇐686(1)

On appeal from conviction for driving while intoxicated, no error was presented by bill complaining that trial court had allowed State to reopen its case and prove venue.

2. Witnesses ⇐374(1)

In prosecution for driving while intoxicated, wherein a witness testified that defendant had not been drinking on day in question, it was not error to admit, for purpose of impeaching such witness, evidence that such witness had offered a woman $10 to testify that defendant was not intoxicated.

No attorney for appellant of record on appeal.

Leon B. Douglas, State's Atty., Austin, for the State.

MORRISON, Presiding Judge.

The offense is driving while intoxicated; the punishment, 3 days in jail and a fine of $100.

Highway Patrolman Rutherford testified that on the day in question he observed an automobile make a U-turn in a no passing area narrowly avoid a collision, and that he turned around and gave chase; that the appellant, who was the driver, smelled of intoxicants, spoke in a slurred manner, walked unsteadily, and expressed the opinion that he was intoxicated.

Appellant, testifying in his own behalf, stated that he had nothing intoxicating to drink on the day of his arrest. He also called one Armstrong, who was with him on the day in question and who also testified that the appellant had not been drinking.

The State, in rebuttal, called Ruth Earls, who testified that she served the appellant three beers at noon of the day on which he was arrested. She testified further that the witness Armstrong had offered her $10 to testify that the appellant was not intoxicated.

Frank John CALLAS, Appellant,
v.
STATE of Texas, Appellee.
No. 30094.
Court of Criminal Appeals of Texas.
Jan. 7.1959.

Prosecution for driving motor vehicle on public road after operator's license had been suspended. The County Court at Law, Potter County, Mary Lou Robinson, J., entered judgment of conviction and defendant appealed. The Court of Criminal Appeals, Woodley, J., held that where testimony showed that only two persons were in or around truck at time defendant was apprehended and patrolman testified that the other person was not the driver of truck, and largely upon this testimony jury found defendant guilty, and after jury retired police officer filed complaint charging other person with driving motor vehicle with violation of restrictions imposed on his operator's license and such other person was convicted upon his plea of guilty, defendant's motion for new trial setting forth conviction of such other person should have been granted in order that defendant might have the benefit of evidence regarding conviction of other party in another trial.

Reversed and remanded.

Criminal Law Key 938(1)

In prosecution for driving after operator's license had been suspended where testimony showed that there were only two persons including defendant in or around truck at time patrolman reached it and patrolman testified that other person was not driving panel truck, and after jury retired patrolman filed complaint charging other party with driving motor vehicle and he was convicted upon his plea of guilty, defendant's motion for new trial should have been granted in order that he might, in another trial, have the benefit of evidence regarding conviction of other party. Vernon's Ann.Civ.St. art. 6687b, § 1(n).

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McCarthy, Rose & Haynes, Amarillo, for appellant.

Lon Moser, County Atty., E. S. Carter, Jr., Asst.County Atty., Amarillo, State’s Atty., Austin, for the State.

WOODLEY, Judge.

The complaint and information allege that appellant drove a motor vehicle upon a public road "after the Texas Operator's License of the said Frank John Callas had * * * been suspended" and further alleged that appellant had received an extended period, of suspension "of said Texas Operator's License * * * " and that said suspension had not expired.

We have searched the record carefully and find no evidence that the license which had been suspended was a Texas Operator's License, as alleged in the information.

If appellant was driving a motor vehicle, it was a panel truck used as a commercial vehicle in appellant's business, the appropriate license for its operation being a Commercial Operator's License, and not an Operator's License. See Art. 6687b. Sec. I (n), Vernon's Ann.Civ.St.

This Court has held that there is no such license known to Texas law as a "driver's license". See Hassell v. State, 149 Tex. Cr.R. 333, 194S.W.2d400; Brooks v. State, 158 Tex.Cr.R. 546, 258 S.W.2d 317.

There were but two persons in or around the panel truck. One was Walter Schaff, who was seated in the driver's seat when the patrolmen reached it. Patrolman Kirkwood testified that Schaff was not driving the panel truck, and largely upon his testimony the jury found that appellant was the driver.

After the jury retired, Officer Kirkwood filed complaint charging Schaff with driving [Page - Tex 361] a motor vehicle in violation of restrictions imposed in his operator's license. Information was presented by the County Attorney and Schaff was convicted upon his plea of guilty.

Appellant's motion for new trial setting forth the conviction of Schaff after the close of the evidence on appellant's trial should have been granted in order that upon another trial appellant might have the benefit of the evidence regarding the conviction of Schaff.

Appellant’s motion for rehearing is granted; our former opinion herein affirming the judgment is withdrawn, and the judgment is now reversed and the cause remanded

The punishment was assessed at a fine of $75 and six months in jail.

At the outset, we are confronted with the contention that the misdemeanor offense of drunken driving may not be utilized and relied upon as the unlawful act constituting negligent homicide of the second degree.

By Art. 802c, Vernon's P.C., it is a felony for an intoxicated driver of an automobile to kill another person by accident or mistake. Being a felony, such crime could not be prosecuted as the misdemeanor offense of negligent homicide of the second degree. McCarthy v. State, Tex.Cr.App., 218 S.W.2d 190; Flowers v. State, 150 Tex. Cr.R. 467, 202 S.W.2d 462, 203 S.W.2d 539.

The judgment is reversed and the prosecution ordered dismissed.

Claude D. CAMPBELL, Appellant,

v.

The STATE of Texas, Appellee.

No. 27245.

Court of Criminal Appeals of Texas.

Jan. 12, 1955.

Defendant was convicted of unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended. The County Court, Panola County, Clifford S. Roe, J., rendered judgment, and an appeal was taken. The Court of Criminal Appeals, Belcher, C., held that proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

Judgment reversed and cause remanded.

1. Automobiles ⇐353

Upon a charge of operating a motor vehicle upon a public highway while operator's license is suspended, the state has burden of showing that defendant had been issued an operator's license to drive a motor vehicle upon a public highway, that such license has been suspended, and that, while such license was suspended, defendant drove a motor vehicle upon a public highway.

2. Automobiles ⇐352

Proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

3. Automobiles ⇐136

There is in Texas no such license as a "driver's license."

No attorney on appeal for appellant.

Wesley Dice, State's Atty., Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted, in the County Court of Panola County, for unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of $25.

[1] Under such a charge, the state was under the burden of showing that there had been issued an operator's license to appellant to drive a motor vehicle upon a public highway; that such license had been suspended; and that, while such license was suspended, appellant drove a motor vehicle upon a public highway.

To meet this requirement, the state here relies upon testimony that appellant drove his pick-up truck upon a public highway in Panola County, on the date alleged, and that he drove said motor vehicle while his driver's license was suspended.

[2, 3] This proof is insufficient to sustain the allegations of the offense charged in the information because a driver's license is not an operator's license. We have held that there is no such license as a driver's license known to our law. Hassell v. State, 149 Tex.Cr.R. 333, 194 S.W.2d 400; Holloway v. State, 155 Tex.Cr.R. 484, 237 S.W. 2d 303; and Brooks v. State, Tex.Cr.App., 258 S.W.2d 317.

Proof of the driving of an automobile while the driver's license was suspended does not sustain the allegations of the information. The evidence being insufficient to support the conviction, the judgment is reversed and the cause remanded.

Opinion approved by the Court.

Ernest CARTER, Appellant,

v.

The STATE of Texas, Appellee.

No. 27437.

Court of Criminal Appeals of Texas.

Jan. 19, 1955.

Appeal from Criminal District Court No. 1, Dallas County; Harold B. Wright, Judge.

No attorney on appeal for appellant.

Leon Douglas, State's Atty., Austin, for the State.

PER CURIAM.

The offense is felony theft; the punishment, 2 years.

Accompanying the record is an affidavit in proper form executed by the appellant requesting the dismissal of the appeal.

The request is granted, and the appeal is dismissed.

Denzil Vern BENJAMIN, Appellant,

v.

The STATE of Texas, Appellee.

No. 27199.

Court of Criminal Appeals of Texas.

Dec. 8, 1954.

Rehearing Denied Jan. 12, 1955.

Defendant was convicted of indecent fondling of a minor. The Criminal District Court, Harris County, Langston G. King, J., entered judgment of conviction and defendant appealed. The Court of Criminal Appeals, Graves, P. J., held that written statement of defendant, in which he confessed to acts charged, was sufficient corroboration of testimony of accomplice to warrant conviction. On petition for rehearing, the same court, per Davidson, C., adhered to its original determinations.

Affirmed.

1. Criminal Law ⇐511(7)

In prosecution for indecent fondling of a minor, written statement of defendant, in which he confessed to acts charged, was sufficient corroboration of testimony of accomplice to warrant conviction.

2. Criminal Law ⇐535(1)

Confession of accused person can be utilized in establishment of corpus delicti of offense.

3. Criminal Law ⇐195(2)

In prosecution for indecent fondling of a minor, fact that defendant had been convicted for like offense on another boy at same time and at same place, did not give rise to plea of double jeopardy, as each act was separate and distinct offense.

4. Criminal Law ⇐519(3)

Where defendant in criminal prosecution for indecent fondling of minor had signed written confession admitting acts charged and had himself corrected confession, placing his own initials above corrections and it did not appear that there had

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Claude D. CAMPBELL, Appellant,
v.
The STATE of Texas, Appellee.
No. 27245.
Court of Criminal Appeals of Texas.
Jan. 12,1955.

Defendant was convicted of unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended. The County Court, Panola County, Clifford S. Roe, J., rendered judgment, and an appeal was taken. The Court of Criminal Appeals, Belcher, C., held that proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

Judgment reversed and cause remanded.

1. Automobiles Key 353
Upon a charge of operating- a motor vehicle upon a public highway while operator's license is suspended, the state has burden of showing that defendant had been issued an operator's license to drive a motor vehicle upon a public highway, that such license has been suspended, and that, while such license was suspended, defendant drove a motor vehicle upon a public highway.

2. Automobiles Key 352
Proof that defendant had driven an automobile while his driver's license was suspended did not sustain allegations of charge that he had driven while his operator's license was suspended.

3. Automobiles Key 136
There is in Texas no such license as a "driver's license."

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No attorney on appeal for appellant.

Wesley Dice, State's Atty., Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted, in the County Court of Panola County, for unlawfully operating- a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of $25.

[1] Under such a charge, the state was under the burden of showing that there had been issued an operator's license to appellant to drive a motor vehicle upon a public highway; that such license had been suspended; and that, while such license was at suspended, appellant drove a motor vehicle upon a public highway.

To meet this requirement, the state here relies upon testimony that appellant drove his pick-up truck upon a public highway in Panola County, on the date alleged, and that he drove said motor vehicle while his license was suspended

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[2, 3] "This proof is insufficient to 'sustain the allegations of the offense charged in the information because a driver's license is not an operator's license. We have held that there is no such license as a driver's license known to our law. Hassell v. State, 149 Tex.Cr.R. 333, 194 S.W.2d 400; Holloway v. State, 155 Tex.Cr.R. 484, 237 S.W. 2d 303; and Brooks v. State, Tex.Cr.App., 258 S.W.2d 317.

Proof of the driving of an automobile while the driver's license was suspended does not sustain the allegations of the information. The evidence being insufficient to support the conviction, the judgment is reversed and the cause remanded.

Opinion approved by the Court.

We must determine whether the paper cups, one of which smelled of beer, the broken, empty beer bottles and the fact that such were found in a place of business constitute direct or circumstantial evidence of guilt of the charge against the appellant.

We have concluded that such facts were circumstances rather than direct proof of the fact that appellant had the beer for sale and that, therefore, the learned trial court fell into error in not giving the requested charge. Miller v. State, 135 Tex.Cr.R. 309, 119 S.W.2d 1052, and Hinton v. State, 135 Tex.Cr.R. 400, 120 S.W.2d 1053.

The judgment is reversed and the cause remanded.

YANCY v. STATE.

No. 26463.

Court of Criminal Appeals of Texas.

May 27, 1953.

Defendant was convicted of possessing intoxicating liquor for the purpose of sale. The County Court, Childress County, Richard D. Bird, J., rendered judgment on the verdict, and defendant appealed. The Court of Criminal Appeals, Belcher, C., held that nothing is presented for review, in the absence of a statement of facts or bills of exception, where the complaint, information, and all matters of procedure appear regular.

Judgment affirmed.

Criminal Law ⇐1090(1)

Where complaint, information and all matters of procedure appear regular and record on appeal from conviction contains no statement of facts or bills of exception, nothing is presented for review.

No attorney on appeal for appellant.

Wesley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted for the offense of possessing intoxicating liquor for the purpose of sale, and his punishment was assessed by the jury at a fine of $250.

The complaint and information, as well as all matters of procedure, appear regular. The record is before us without a statement of facts or bills of exception, in the absence of which nothing is presented for review.

The judgment of the trial court is affirmed.

Opinion approved by the Court.

BROOKS v. STATE.

No. 26458.

Court of Criminal Appeals of Texas.

May 27, 1953.

From a judgment rendered by the County Court, Culberson County, defendant appealed. The Court of Criminal Appeals, Belcher, C., held that information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense.

Reversed with directions.

Automobiles ⇐351

Information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense. Vernon's Ann. Civ.St. art. 6687b, § 27.

George W. Walker, Van Horn, for appellant.

Wesley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of $50.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully drive and operate a motor vehicle upon a public

highway, to-wit: U. S. Highway Number 80, situated within said county and state, while his, the said Keith Brook's, drivers license was suspended."

In Hassell v. State, 149 Tex.Cr.R. 333, 194 S.W.2d 400, 401, we said:

> "There being no such license as a 'driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense." See also Holloway v. State, Tex.Cr.App., 237 S.W.2d 303.

Because the information fails to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

BOROQUEZ v. STATE.

No. 26447.

Court of Criminal Appeals of Texas.

June 3, 1953.

Defendant was convicted of the wilful burning of the house of his mother. The District Court, El Paso County, Roy D. Jackson, J., entered judgment, and defendant appealed. The Court of Criminal Appeals, Davidson, C., held that the evidence sustained conviction.

Judgment affirmed.

Arson ⇐37(1)

Evidence sustained conviction of the willful burning of the house of defendant's mother.

Richard C. White and Richard Burges Perrenot, El Paso, for appellant.

William E. Clayton, Dist. Atty., Owen H. Ellington, Asst. Dist. Atty., C. Rutledge Isaacks, Asst. Dist. Atty., El Paso, Wesley Dice, State's Atty., of Austin, for the State.

DAVIDSON, Commissioner.

Appellant, who a few months prior had been honorably discharged from the army, occupied, with his mother, Josefa Alpuente, one room of a five-room house. The remainder of the house was occupied by two other parties and their families.

Appellant stands here convicted of the wilful burning of the house of Josefa Alpuente, with punishment assessed at three years in the penitentiary.

The sufficiency of the evidence to support the conviction is challenged.

Shortly after midnight, appellant came home drunk. He awakened his mother and began teasing her and, as she testified, acting "like Dracula." The mother became frightened, left the room, and went to the room of another occupant of the house. She later went to the house of a neighbor. About the time she left the house, appellant was seen carrying some personal effects and a small table out of the room, from which smoke was issuing.

Alvarez, a special officer, testified that when he arrived at the scene of the fire appellant was standing in front of the house watching the fire. Upon his asking if there was any one in the house, appellant replied, "I don't give a damn if the whole place burns down with everybody in it." The witness further testified that appellant made no effort to help in getting people out of the burning house.

The fire was confined to the one room of house and was soon put out.

A strong odor of kerosene permeated appellant's clothing when he was apprehended at the fire. There was also a strong odor of kerosene in the room as well as on the mattress and bedclothes, and kerosene was found at different places on the floor.

The mother testified that she kept a brown gallon-bottle of kerosene on a shelf in the room, which she used in a lantern and also to burn trash in the back yard.

It is upon these facts that this conviction rests.

The jury disregarded the appellant's defense that the burning of the room was accidental and not the result of any wilful

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BROOKS v. STATE.
No. 26458.
Court of Criminal Appeals of Texas.
May 27, 1953.

From a judgment rendered by the County Court, Culberson County, defendant appealed. The Court of Criminal Appeals, Belcher, C. held that information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense.

Reversed with directions.

Automobiles Key 351

Information, charging defendant with driving a motor vehicle upon a public highway while his "driver's license" was suspended, charged no offense. Vernon's Ann. Civ. St. art. 6687b, § 27.

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George W. Walker, Van Horn, for appellant.

Wesley Dice, State's Atty., of Austin, for the State.

BELCHER, Commissioner.
Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of $50.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully drive and operate a motor vehicle upon a public [Page - Tex. 318] highway, to-wit: U. S. Highway Number 80, situated within said county and state, while his, the said Keith Brook's, drivers license was suspended."

In Hassell v. State, 149 Tex.Cr.R. 333, 194 S.W.2d 400, 401, we said:
"There being no such license as a 'driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense." See also Holloway v. State, Tex.Cr.App., 237
S.W.2d 303.

Because the information fails to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

the opinion that such prior conviction was admitted as an extraneous offense because it was thought same showed system. We think such previous conviction failed to show system, and did not come within the exceptions allowing such proof.

[5] Bill of exceptions No. 3 complains because the State was allowed to ask appellant while he was on the witness stand the following question: "Haven't you been convicted of drunk driving in other counties adjoining Wise County?" It is true the witness answered "I don't remember," but in line with our holding as to bill No. 2 this question should not have been propounded to appellant.

On account of the error shown in bill No. 2, this judgment is reversed and the cause remanded.

HASSELL v. STATE.

No. 23353.

Court of Criminal Appeals of Texas.

May 15, 1946.

1. Automobiles ⇐137

Under Drivers' License Act it is unlawful for any person to drive or operate a motor vehicle over a highway of Texas without having a license, either as an operator, a commercial operator or a chauffeur, but one holding a license as a commercial operator or chauffeur is not required to have an operator's license. Vernon's Ann.Civ. St. art. 6687b, §§ 2, 3, 44.

2. Automobiles ⇐351

Information alleging that defendant operated a motor vehicle upon public highway without a "driver's license" charged no offense under Drivers' License Act, since a driver's license is not known to the law because the act only authorizes issuance of operators' commercial operators' and chauffeurs' license and use of term "driver" interchangeably with term "operator" would not be authorized in view of definition in the act of term driver as meaning every person who drives or is in actual physical possession of a vehicle. Vernon's Ann.Civ. St. art. 6687b, §§ 2, 3, 44.

Commissioners' Decision.

Appeal from Hunt County Court; Wm. C. Parker, Judge.

W. Lee Hassell was convicted of operating a motor vehicle upon a highway without a license, and he appeals.

Reversed and prosecution ordered dismissed.

G. C. Harris, of Greenville, for appellant.

Ernest S. Goens, State's Atty., of Austin, for the State.

DAVIDSON, Judge.

The conviction is for operating a motor vehicle upon a highway without a license; the punishment, a fine of $50.

By what is commonly referred to as the Drivers' License Act, and appearing as Art. 6687b of Vernon's Annotated Civil Statutes, the Legislature of this State provided for the licensing of operators of motor vehicles over the public highways of this State. Sec. 2 of Article II of the Act reads as follows:

"Drivers must have license.

"(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

"(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

"(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed."

Sec. 44 of Art. VI of the Act provides the penalty for the violation.

[1] It is by these statutes made unlawful for any person to drive or operate a motor vehicle over a highway of this State without having a license, either as an "operator," a "commercial operator," or a "chauffeur." One holding a license as a "commercial operator" or "chauffeur" is not required to have an "operator's" license.

Certain exemptions and exceptions from the operation of the Act are provided in Sec. 3 of Art. II thereof.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully operate a motor vehicle upon a public highway, towit, State Highway No. 24, without a Driver's License."

It is insisted that the information charges no offense, because a "driver's license" is neither recognized nor authorized to be issued under the Act and, by reason thereof, it constitutes no offense to drive a motor vehicle without such a license.

[2] Only three types of licenses are authorized or required under the Act. These are "operators," "commercial operators," and "chauffeurs," and they are specially defined in the Act. The term "driver"—as used in the Act—is defined to be: "Every person who drives or is in actual physical control of a vehicle." In view of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.

Because of the defect in the information, the judgment is reversed and prosecution ordered dismissed.

PER CURIAM.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

Ex parte HUDDLESTON.

No. 23378.

Court of Criminal Appeals of Texas.

May 1, 1946.

Rehearing Denied May 22, 1946.

1. Habeas corpus ⇐4

An accused may not resort to habeas corpus as a substitute for an appeal.

2. Infants ⇐68

Any burden upon state to show in the first instance that accused was more than 17 years old, and thus not subject to the Juvenile Delinquency Act, was discharged when, upon hearing under his plea of guilty, accused testified that he was 17 years old and made the same statement in confession introduced in evidence. Vernon's Ann.Civ.St. art. 2338—1 §§ 12, 13.

3. Habeas corpus ⇐22(1)

Where accused stated in confession that he was 17 years old and testified to the same effect upon trial, no appeal was taken from conviction of felony theft on his plea of guilty, and judgment was regular on its face, accused was not entitled to release on habeas corpus on the ground that conviction was void because accused was only 15 years of age when convicted and could not be convicted of crime under the Juvenile Delinquency Act. Vernon's Ann.C.C.P. arts. 10a, 11; Vernon's Ann. Civ.St. art. 2338—1 §§ 12, 13.

On Motion for Rehearing.

4. Criminal law ⇐641(3)

The statutory requirement that, before a defendant who has no attorney can agree to waive a jury, the court must appoint an attorney to represent him, is mandatory. Vernon's Ann.C.C.P. art. 10a.

5. Criminal law ⇐982

The statutory requirement that when defendant has no counsel, the court must inform defendant of his right to make application for suspended sentence, and shall appoint counsel to prepare and present the same, if requested by defendant, is mandatory. Vernon's Ann.C.C.P. art. 776a.

HASSELL v. STATE.
No. 23353.
Court of Criminal Appeals of Texas.
May 15, 1946.
1. Automobiles Key l37
Under Drivers' License Act it is unlawful for any person to drive or operate a motor vehicle over a highway of Texas without having a license, either as an operator, a commercial operator or a chauffeur, but one holding a license as a commercial operator or chauffeur is not required to have an operator's license. Vernon's Ann.Civ. St. art. 6687b, §§2,3,44.

2. Automobiles Key 351
Information alleging that defendant operated a motor vehicle upon public highway without a "driver's license" charged no offense under Drivers' License Act, since a driver's license is not known to the law because the act only authorizes issuance of operators' commercial operators' and chauffeurs' license and use of term "driver" interchangeably with term "operator" would not be authorized in view of definition in the act of term driver as meaning every person who drives or is in actual physical possession of a vehicle. Vernon's Ann.Civ. St. art. 6687b, §§ 2, 3, 44.

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Commissioners' Decision.
Appeal from Hunt County Court; Wm. C. Parker, Judge.

W. Lee Hassell was convicted of operating a motor vehicle upon a highway without a license, and he appeals.

Reversed and prosecution ordered dismissed.

G. C. Harris, of Greenville, for appellant.

Ernest S. Goens, State's Atty., of Austin, for the State.

DAVIDSON, Judge.

The conviction is for operating a motor vehicle upon a highway without a license; the punishment, a fine of $50.

By what is commonly referred to as the Drivers' License Act, and appearing as Art. 6687b of Vernon's Annotated Civil Statutes, the Legislature of this State provided for the licensing of operators of motor vehicles over the public highways of this State. Sec. 2 of Article II of the Act reads as follows:

"Drivers must have license.
"(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.
"(b) Any person holding a valid chauffeur’s or commercial operator’s license hereunder need not procure an operator's license.
"(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed."

Sec. 44 of Art. VI of the Act provides the penalty .for the violation.

[1] It is by these statutes made unlawful for any person to drive or operate a motor vehicle over a highway of this State without having a license, either as an "operator," a "commercial operator," or a "chauffeur." One holding a license as a "commercial operator" or "chauffeur" is not required to have an "operator's" license.

Certain exemptions and exceptions from the operation of the Act are provided in Sec. 3 of Art. II thereof.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully operate a motor vehicle upon a public highway, to wit. State Highway No. 24, without a Driver's License."

It is insisted that the information charges no offense, because a "driver's license" is neither recognized nor authorized to be issued under the Act and, by reason thereof, it constitutes no offense to drive a motor vehicle without such a license.

[2] Only three types of licenses are authorized or required under the Act. These are "operators," "commercial operators," and "chauffeurs," and they are specially defined in the Act. The term "driver"—-as used in the Act—is defined to be: "Every person who drives or is in actual physical control of a vehicle." In view of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.

Because of the defect in the information, the judgment is reversed and prosecution ordered dismissed.

PER CURIAM.
The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

Updated information from one of our classmates!
Thanks to John - Houston, Texas

The following shows the correct stuff, and I've put notes and cites in brackets. Your CD has the right cites, even showing some, but someone had done text-copying that made typos. I didn't know if you might want to make corrections.
I looked at your file "Who needs a drivers license - With Cases and Text."

I found you had Callas (1959) and Brooks (1953) okay.
You show Campbell as (1955) 1985;
and Hassell (1946) with wacky typos.

Note the cases for suspended licenses were 1953, '55 & '59; while the one for driving without a license was 1946.
They're OLD, and I bet judges aren't ruling like that anymore. It would be good to take these as public info into court, though. Would they even hear such cases anymore?
I've seen internet places where these cites were shown with mistakes.
-=-~~~~~~~~ ~~~~~~~~~~~~-=-
Frank John CALLAS, Appellant,
v.
STATE of Texas , Appellee.
No. 30094.
Court of Criminal Appeals of Texas .
Jan. 7, 1959.
[cite as 167 Tex. Crim. 375, 320 S.W. 2d 360]

Claude D. CAMPBELL, Appellant,
v.
The STATE of Texas , Appellee.
No. 27245.
Court of Criminal Appeals of Texas .
Jan. 12, 1955.
[cite as 160 Tex. Crim. 627, 274 S.W. 2d 401 (see also 26)]
[Note NOT year 1985.]
[And, FYI, NOT Claude Dee Campbell Appeal 30392, Feb. 4, 1959]

BROOKS v. STATE.
No. 26458.
Court of Criminal Appeals of Texas .
May 27, 1953.
[cite as 158 Tex. Crim. 546, 258 S.W. 2d 317]

HASSELL v. STATE.
No. 23353.
Court of Criminal Appeals of Texas .
May 15, 1946.
[cite as 149 Tex. Crim. 333, 194 S.W. 2d 400]

Added comments:
Recently I was in JUSTICE OF THE PEACE COURT w/ a friend who cited the above cases & said, "the Driver's License in NOT known to law."

The STATE PROSECUTOR said, "That is incorrect. It is cited in Texas Trans. Code § 521.001."

I nearly shouted that's right!

Unfortunately my friend did not take the opportunity to say & what does the statute say? IF he had, he would not have been found guilty.

Pursuant to Chapter 521. Driver's Licenses & Certificates
Texas Trans. Code § 521.001. Definitions.
(a) In this chapter:
(3) "Driver's license" means an authorization issued by the department for the operation of a motor vehicle. The term includes:
(A) a temporary license or instruction permit; & (B) occupational license.

Further pursuant to State Law in Texas Affecting Local Codes & Ordinances prepared by Municipal Code Corporation Businesses – Generally
(2) Occupation taxes. Municipalities & counties, per V.T.C.A., Tax Code §101.008 are not allowed to levy occupation taxes on business subject to license under V.T.C.A., Tax Code title 2, unless specifically authorized by state law.

If the MUNICIPALITIES & COUNTIES cannot levy an occupation tax on a business - what's gives them authority to levy a tax on my friends?

I walk the walk, talk the talk, right wrong & read backwards in my quest for truth & righteousness!
I do all it is to be a man! This makes sense to me!

CALLAS v. STATE, *167 Tex.Crim. 375* (Tex.Cr.App. 1959)
320 S.W.2d 360
Frank John CALLAS, Appellant, v. STATE of Texas, Appellee.
No. 30094.
Court of Criminal Appeals of Texas.
January 7, 1959.

Appeal from the County Court at Law, Potter County, Mary Lou Robinson, J.

McCarthy, Rose & Haynes, Amarillo, for appellant.

Lon Moser, County Atty., E. S. Carter, Jr., Asst. County Atty., Amarillo, State's Atty., Austin, for the State.

WOODLEY, Judge.

The complaint and information allege that appellant drove a motor vehicle upon a public road `after the Texas Operator's License of the said Frank John Callas had * * * been suspended' and further alleged that appellant had received an extended period of suspension `of said Texas Operator's License * * *' and that said suspension had not expired.

We have searched the record carefully and find no evidence that the license which had been suspended was a Texas Operator's License, as alleged in the information.

If appellant was driving a motor vehicle, it was a panel truck used as a commercial vehicle in appellant's business, the appropriate license for its operation being a Commercial Operator's License, and not an Operator's License. See Art. 6687b, Sec. 1(n), Vernon's Ann.Civ.St.

This Court has held that there is no such license known to Texas law as a `driver's license'. See Hassell v. State, 149 Tex.Crim. 333, 194 S.W.2d 400; Brooks v. State, 158 Tex.Crim. 546, 258 S.W.2d 317.

There were but two persons in or around the panel truck. One was Walter Schaff, who was seated in the driver's seat when the patrolmen reached it. Patrolman Kirkwood testified that Schaff was not driving the panel truck, and largely upon his testimony the jury found that appellant was the driver.

After the jury retired, Officer Kirkwood filed complaint charging Schaff with driving
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a motor vehicle in violation of restrictions imposed in his operator's license. Information was presented by the County Attorney and Schaff was convicted upon his plea of guilty.

Appellant's motion for new trial setting forth the conviction of Schaff after the close of the evidence on appellant's trial should have been granted in order that upon another trial appellant might have the benefit of the evidence regarding the conviction of Schaff.

Appellant's motion for rehearing is granted; our former opinion herein affirming the judgment is withdrawn, and the judgment is now reversed and the cause remanded.

CAMPBELL v. STATE, *160 Tex.Crim. 627* (Tex.Cr.App. 1955)
274 S.W.2d 401
Claude D. CAMPBELL, Appellant, v. The STATE of Texas, Appellee.
No. 27245.
Court of Criminal Appeals of Texas.
January 12, 1955.

Appeal from the County Court, Panola County, Clifford S. Roe, J.

No attorney on appeal for appellant.

Wesley Dice, State's Atty., Austin, for the State.

BELCHER, Commissioner.

Appellant was convicted, in the County Court of Panola County, for unlawfully operating a motor vehicle upon a public highway while his operator's license was suspended, and his punishment was assessed at a fine of $25.

Under such a charge, the state was under the burden of showing that there had been issued an operator's license to appellant to drive a motor vehicle upon a public highway; that such license had been suspended; and that, while such license was suspended, appellant drove a motor vehicle upon a public highway.

To meet this requirement, the state here relies upon testimony that appellant drove his pick-up truck upon a public highway in Panola County, on the date alleged, and that he drove said motor vehicle while his driver's license was suspended.
Page 402
This proof is insufficient to sustain the allegations of the offense charged in the information because a driver's license is not an operator's license. We have held that there is no such license as a driver's license known to our law. Hassell v. State, 149 Tex.Crim. R., 194 S.W.2d 400; Holloway way v. State, 155 Tex.Crim. R., 237 S.W.2d 303; and Brooks v. State, Tex.Cr.App., 258 S.W.2d 317.

Proof of the driving of an automobile while the driver's license was suspended does not sustain the allegations of the information. The evidence being insufficient to support the conviction, the judgment is reversed and the cause remanded.

Opinion approved by the Court.

BROOKS v. STATE, *158 Tex.Crim. 546* (Tex.Cr.App. 1953)
258 S.W.2d 317

BROOKS v. STATE.
No. 26458.
Court of Criminal Appeals of Texas.
May 27, 1953.

George W. Walker, Van Horn, for appellant.
Wesley Dice, State's Atty., of Austin, for the State.
BELCHER, Commissioner.

Appellant was convicted for the violation of Art. 6687b, § 27, V.A.R.C.S.; and his punishment was assessed at a fine of $50.

The information upon which this conviction was predicated alleged that appellant 'did then and there unlawfully drive and operate a motor vehicle upon a public
Page 318
highway, to-wit: U.S. Highway Number 80, situated within said county and state, while his, the said Keith Brook's, drivers license was suspended.'

In Hassell v. State, 149 Tex.Crim. R., 194 S.W.2d 400, 401, we said:

"There being no such license as a `driver's' license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.' See also Holloway v. State, Tex.Cr.App., 237 S.W.2d 303.

Because the information fails to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

HASSELL v. STATE, *149 Tex. Crim. 333* (1946)

194 S.W.2d 400

W. LEE HASSELL v. THE STATE.

No. 23353.

Court of Criminal Appeals of Texas.

Delivered May 15, 1946.

1. — Drivers' License Act — Statute Construed.
Under Drivers' License Act it is unlawful for any person to drive or operate a motor vehicle over a highway of Texas without having a license, either as an operator, a commercial operator or a chauffeur, but one holding a license as a commercial operator or a chauffeur is not required to have an operator's license.
2. — Drivers' License Act — Information.
Information alleging that defendant operated a motor vehicle upon public highway without a "driver's license" charged no offense under Drivers' License Act, since a driver's license is not known to the law because the act only authorizes issuance of operators', commercial operators', and chauffeurs' license and use of term "driver" interchangeably with term "operator" would not be authorized in view of definition in the act of term driver as meaning every person who drives or is in actual physical possession of a vehicle.
Appeal from County Court of Hunt County. Hon. Wm. C. Parker, Judge.

Appeal from conviction for operating a motor vehicle upon a highway without a license; penalty, fine of $50.00.
Reversed and prosecution ordered dismissed.

The opinion states the case.
G. C. Harris, of Greenville, for appellant.
Ernest S. Goens, State's Attorney, of Austin, for the State.
DAVIDSON, Judge.
The conviction is for operating a motor vehicle upon a highway without a license; the punishment, a fine of $50.00.

By what is commonly referred to as the Drivers' License Act, and appearing as Art. 6687b of Vernon's Annotated Civil Statutes, the Legislature of this State provided for the licensing of operators of motor vehicles over the public highways of this State, Sec. 2 of Article II, of the Act reads as follows:
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"Drivers must have license.
"(a) No person, except those hereinafter expressly exempted, shall drive any motor vehicle upon a highway in this State, unless such person has a valid license as an operator, a commercial operator, or a chauffeur under the provisions of this Act.

"(b) Any person holding a valid chauffeur's or commercial operator's license hereunder need not procure an operator's license.

"(c) No person holding an operator's, commercial operator's, or chauffeur's license duly issued under the provisions of this Act shall be required to obtain any license for the operation of a motor vehicle from any other State authority or department. Subsection (c) of Section 4 of Article 911A and Subsection (b) of Section 4 of Article 911B, Revised Civil Statutes, is hereby repealed."

Sec. 44 of Art. VI of the Act provides the penalty for the violation.

It is by these statutes made unlawful for any person to drive or operate a motor vehicle over a highway of this State without having a license, either as an "operator," a "commercial operator," or a "chauffeur." One holding a license as a "commercial operator" or "chauffeur" is not required to have an "operator's" license.

Certain exemptions and exceptions from the operation of the Act are provided in Sec. 3 of Art. II. Thereof.

The information upon which this conviction was predicated alleged that appellant "did then and there unlawfully operate a motor vehicle upon a public highway, to-wit, State Highway No. 24, without a Driver's License."

It is insisted that the information charges no offense, because a "driver's license" is neither recognized nor authorized to be issued under the Act and, by reason thereof, it constitutes no offense to drive a motor vehicle without such a license.

Only three types of licenses are authorized or required under the Act. These are operators', commercial operators', and chauffeurs', and they are specially defined in the Act. The term "driver" — as used in the Act — is defined to be: "Every person who drives or is in actual physical control of a vehicle." In view
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of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

In view of this particular definition of the term "driver," it cannot be said that such term may be used interchangeably with or given the same meaning as the term "operator."

There being no such license as a "driver's" license known to the law, it follows that the information, in charging the driving of a motor vehicle upon a public highway without such a license, charges no offense.

Because of the defect in the information, the judgment is reversed and prosecution ordered dismissed.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

HOLLOWAY v. STATE, *155 Tex.Crim. 484* (Tex.Cr.App. 1951)
237 S.W.2d 303
HOLLOWAY v. STATE.
No. 25192.
Court of Criminal Appeals of Texas.
March 7, 1951.

Appeal from the County Court, Jones County, Roger Garrett, J.

W. E. Martin, Abilene, for appellant.

George P. Blackburn, State's Atty., of Austin, for the State.

WOODLEY, Commissioner.

Appellant was convicted and assessed a fine of $100 under an information and complaint charging that appellant "did then and there unlawfully drive and operate a motor vehicle upon the public roadways of the state while his drivers license was suspended."

Appellant attacks the sufficiency of the information to charge an offense.

The prosecution appears to have been brought under the provisions of art. 6687b, Vernon's Ann. Civil Statutes, commonly referred to as the Texas Drivers License Law, Sec. 27 thereof in part providing that no person whose operator's, commercial operator's or chauffeur's license or privilege to operate a motor vehicle in this state has been suspended shall operate a motor vehicle during such suspension. Sec. 44 of such Act provides a punishment for such offense by fine not to exceed $200.

The information against appellant fails to allege that appellant had been issued either an operator's, commercial operator's or chauffeur's license, or that he drove a motor vehicle while such a license was suspended.

In Hassell v. State, 149 Tex.Crim. R., 194 S.W.2d 400, an information alleging that the defendant operated a motor vehicle
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upon a public highway without a "drivers license" was held insufficient to charge an offense since a drivers license is not known to the law.

In Barber v. State, 149 Tex.Crim. R., 191 S.W.2d 879, a complaint charging the operation of an automobile and failure to display operator's license on demand of a peace officer was held insufficient to charge an offense in the absence of an allegation that accused was, on the date of the alleged offense, a licensee.

The information being insufficient to charge an offense, the judgment is reversed and the prosecution ordered dismissed.

Opinion approved by the Court.

BARBER v. STATE, *149 Tex. Crim. 18* (1945)
191 S.W.2d 879
C. R. BARBER v. THE STATE.
No. 23252.
Court of Criminal Appeals of Texas.
Delivered December 19, 1945.

Automobile Operator's License — Complaint.

A complaint charging operation of automobile and failure to display operator's license on demand by peace officer was insufficient to charge an offense under statute requiring a license to be carried and exhibited on demand, in absence of allegation that accused was, on date of alleged offense, a licensee.

Appeal from County Court of Lubbock County. Hon. Walter Davies, Judge.

Appeal from conviction for failing to exhibit an automobile operator's license on demand of a peace officer; penalty, fine of $200.00.

Reversed and prosecution ordered dismissed.

The opinion states the case.

Eugene F. Mathis, of Lubbock, for appellant.

Ernest S. Goens, State's Attorney, of Austin, for the State.

DAVIDSON, Judge.

The brief filed by the State's Attorney before this Court reflects the views of the Court and is adopted as its opinion,
viz.:

"This is an appeal from the County Court of Lubbock County, Texas, from a conviction for failure to exhibit an operator's license on demand, the punishment, a fine of $200.00.

"The prosecution, however, originated in the Justice Court of Precinct No. 1, Place No. 2, in Lubbock County, wherein the defendant was charged by complaint, (eliminating the formal part thereof), 'C. R. Barber did then and there unlawfully, while operating an automobile upon a street, within the City of Lubbock, Lubbock County, Texas, fail to display an operator's license upon demand to do so by a peace officer, against the peace and dignity of the State.' This complaint was apparently brought under the provisions of Article 6687b-13 of the Civil Statutes of Texas, which reads as follows:

" 'Sec. 13 — License to be carried and exhibited on demand — Every licensee shall have his operator's, commercial operator's,
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or chauffeur's license in his immediate possession at all times when operating a motor vehicle and shall display the same, upon demand of a magistrate or any officer of a court of competent jurisdiction or any peace officer. It shall be a defense to any charge under this Section that the person so charged produce in court an operator's commercial operator's, or chauffeur's
license theretofore issued to such person and valid at the time of his arrest.'

"It will be noted that the statute provides that every licensee shall have his operator's, commercial operator's or chauffeur's license in his immediate possession at all times when operating a motor vehicle. It therefore occurs to us that it is absolutely necessary for the State to allege and prove that the accused was, on the date of the alleged offense, a licensee, for, as we construe the statute above quoted, it applies specifically to a licensee and unless the person accused was a licensee, we fail to understand how he could be guilty of violating the provisions of this portion of the statute in failing to display same upon demand."

In holding the complaint insufficient to charge an offense under the statute mentioned, we are not to be understood as passing upon the validity of the statute. That question is not before us and is not decided. What we hold is that the instant complaint does not charge an offense under the statute.

Accordingly, the judgment of the trial court is reversed and the prosecution ordered dismissed.

The foregoing opinion of the Commission of Appeals has been examined by the Judges of the Court of Criminal Appeals and approved by the Court.

Subject: Right to Travel
Here you go! Throw away those license plates and driver licenses -- cancel those insurance policies! The question is what is unreasonable and where and to whom do the statutes apply and at what time do they apply?

Were you born or naturalized in the United States ***and*** subject to the jurisdiction thereof? Did you self-naturalize as an U.S. citizen and now a resident alien (in relation to your own State) residing in an administrative division of the United States or insular area under the I:8:17 exclusive legislative jurisdiction of Congress? Are you presumed to be?

What is the difference between Texas and TX, Montana and MT, California and CA, etc.? Is TX and Texas the *same* place? Can Texas and TX occupy the same space at the same place at the same time? Can they occupy the same plane of jurisdiction at the same time? What exactly is time? Do you know how deep the rabbit hole goes? See FRCP rule 9

Shapiro v. Thompson, 394 U.S.618, (1969) @ 629, 630

This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that **all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.** That [394 U.S. 630] proposition was early stated by Chief Justice Taney in the Passenger Cases, 7 How. 283, 492 (1849):

For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision. It suffices that, as MR. JUSTICE STEWART said for the Court in United States v. Guest, 383 U.S. 745, 757_758 (166):

The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

. . . [T]he right finds no explicit mention in the Constitution. The reason, it has been suggested, is [394 U.S. 631] that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.

The Right to Travel

As the Supreme Court notes in Saenz v Roe, 98-97 (1999), the Constitution does not contain the word "travel" in any context, let alone an explicit right to travel (except for members of Congress, who are guaranteed the right to travel to and from Congress).

The presumed right to travel, however, is firmly established in U.S. law and precedent.

In U.S. v Guest, 383 U.S. 745 (1966), the Court noted, "It is a right that has been firmly established and repeatedly recognized." In fact, in Shapiro v Thompson, 394 U.S. 618 (1969), Justice Stewart noted in a concurring opinion that "it is a right broadly assertable against private interference as well as governmental action. Like the right of association, ... it is a virtually unconditional personal right, guaranteed by the Constitution to us all."

It is interesting to note that the Articles of Confederation had an explicit right to travel; it is now thought that the right is so fundamental that the Framers may have thought it unnecessary to include it in the Constitution or the Bill of Rights.