

31/75

SUPREME COURT OF VICTORIA

GILLMAN v SCHAEFFER

Dunn J

14 April, 26 May 1975 — [1975] VicRp 80; [1975] VR 813

MOTOR TRAFFIC – DRIVING WHILST UNLICENSED – AT TIME OF DRIVING DEFENDANT HELD A LEARNER'S PERMIT ISSUED IN NEW SOUTH WALES – SUCH PERMIT WAS DESCRIBED AS "A PERMIT LICENCE" – MAGISTRATE FOUND THE CHARGE PROVED – WHETHER MAGISTRATE IN ERROR: MOTOR CAR ACT 1958, S22C(1); MOTOR TRAFFIC ACT 1909-1968 (NSW), S2.

HELD: Order nisi discharged.

1. It was clear enough that a learner's permit issued in New South Wales authorized the holder to drive a motor vehicle on a highway in New South Wales subject to any restrictions limiting its use. It must, for many purposes, be included in the general word "licence" in the New South Wales Act and Regulations.

2. There remained the question as to whether it was a licence for the purposes of s24 of the *Motor Car Act 1958* (Vic). There was no definition of the word "licence" in the Victorian Act. However, the Act did draw a clear distinction between a licence and a learner's permit. In s23, for example, it referred to the holder of a learner's permit as an "unlicensed person".

3. An examination of the relevant sections from s22 to s29 of the *Motor Car Act 1958* (Vic) led to the conclusion that in s24 the word "licence" did not include a "learner's permit" issued in another State or Territory, by whatever title it may have gone under in that State or Territory. This conclusion was reinforced by the association of an international driving permit in the same category as licence for the purposes of s24.

4. For these reasons the decision of the Magistrate was correct and the order nisi was discharged.

DUNN J: This is the return of an order nisi to review a decision of the Magistrates' Court at Wodonga. The order nisi was obtained by the defendant to review his conviction on a charge for driving a motor cycle on a highway without being a holder of a licence to drive a motor cycle. The offence arises under s22C(1)(b) of the *Motor Car Act 1958*.

That sub-section provides:

"22C(1) Subject to this Act any person— ...

(b) who drives a motor car, being a motor cycle, upon any highway unless he is the holder of a permit or a licence to drive a motor cycle; ...

shall be guilty of an offence against this Part"

and then follow the provisions as to penalties.

The provisions of s24(1)(a) and s24(2)(a) of the *Motor Car Act* are relevant to this matter. Those provisions are:

"24(1) Any person who ordinarily resides outside Victoria and any person taking up permanent residence in Victoria who has resided in Victoria for less than three months may subject to this section drive a motor car in Victoria if he holds—

(a) a licence to drive a motor car; ...

which licence...was issued in the State Territory or country in which he ordinarily resides or resided at the time of the issue thereof.

"(2) Any such person so driving shall not be guilty of an offence under this Part in respect of—

(a) driving a motor car upon a highway without being licensed for the purpose;"

The evidence before the learned Stipendiary Magistrate established the following relevant facts:

- (a) On 14 February 1974 the defendant was the driver of a motor cycle in High Street, Wodonga.
- (b) At that time the defendant was 17 years and 8 months old, having been born on 10 June 1956.
- (c) On 14 February 1974 he had been issued with what is called a "learner's permit" in Albury, New South Wales, that permit having been issued to him prior to the time at which he was driving the motor cycle in High Street, Wodonga.
- (d) The defendant held no licence issued pursuant to the provisions of the *Motor Car Act* 1958.
- (e) When interviewed by the informant on 2 April 1974 the defendant stated he was then living at Barnawartha, but denied he was living there on 14 February 1974.

The evidence as to where the defendant was living on 14 February 1974 was unsatisfactory, to say the least. The permit issued to the defendant bore the typed address of "Barnawartha. Vic.", which was crossed out and the address "588 Hague Street, Lavington" written in. The defendant said that was done by the issuing clerk at his instigation because he, the defendant, was then living at that address. The defendant further said the clerk stamped and initialled the alteration. An examination of the permit shows quite clearly that the stamp was put on before the address was altered. There was another inked alteration to the permit which clearly gave cause for suspicion. But this order nisi does not turn on these matters because the learned Stipendiary Magistrate made no finding on this matter. He decided that the learner's permit was not a licence within the meaning of s24(1)(a) of the *Motor Car Act* 1958. It is to challenge the correctness of that ruling that this order nisi was granted.

This requires an examination of some of the other provisions of the *Motor Car Act* 1958 and some of the provisions of the *Motor Traffic Act* 1909-1968 of New South Wales relevant to a learner's permit. It will be convenient to turn to the latter Act first. In s2 a learner's permit is defined to be "a permit licence issued under the regulations to a person to learn to drive a motor vehicle". A motor vehicle is defined in the same section to include, *inter alia*, a motor cycle. Before reg12 of the regulations made under the *Road Traffic Act* is the heading "Learner's Permits" Then follows reg12. Subreg(1) provides:—

- "A permit licence may be issued for any period not exceeding three months ...
- (b) to a person who is at least 16 years and 9 months in age to learn to drive a motor vehicle..."

Subreg(2) provides that a learner's permit may limit the hours and locality in which such learner may drive a motor vehicle. It is clear enough that a learner's permit authorizes the holder to drive a motor vehicle on a highway in New South Wales subject to any restrictions limiting its use. It must, for many purposes, be included in the general word "licence" in the New South Wales Act and Regulations.

There remains the question as to whether it is a licence for the purposes of s24 of the *Motor Car Act* 1958. There is no definition of the word "licence" in the Victorian Act. However, the Act does draw a clear distinction between a licence and a learner's permit. In s23, for example, it refers to the holder of a learner's permit as an "unlicensed person". An examination of the relevant sections from s22 to s29 has led me to the conclusion that in s24 the word "licence" does not include a "learner's permit" issued in another State or Territory, by whatever title it may go under in that State or Territory. This conclusion is reinforced, I think, by the association of an international driving permit in the same category as licence for the purposes of s24.

For these reasons, in my opinion, the decision of the learned Stipendiary Magistrate was correct. The order nisi will be discharged, with costs to be taxed, limited to \$200. This conclusion makes it unnecessary to consider the other point argued, viz., that on the evidence the defendant was not ordinarily resident outside Victoria for the purposes of s24(1) of the *Motor Car Act* 1958 and I express no opinion on it. Order nisi discharged.

Solicitors for the defendant: Potter, Trivett and Associates.
Solicitor for the informant: John Downey, Crown Solicitor.