

22.2/83

SUPREME COURT OF VICTORIA

HALDEN v MITCHELL

Fullagar J

23 March 1983

MOTOR TRAFFIC – DRIVING A MOTOR CYCLE AT AN EXCESSIVE SPEED – DEFENDANT HELD A PROBATIONARY LICENCE TO RIDE A MOTOR CYCLE AND A FULL LICENCE TO DRIVE A MOTOR VEHICLE – MAGISTRATE IN ERROR IN FAILING TO CANCEL THE DEFENDANT'S FULL LICENCE

The defendant held a probationary licence to drive a motor cycle and a full licence to drive a motor car. When the defendant was convicted of riding a motor cycle at an excessive speed, the magistrate cancelled her probationary licence, but refused to make any order in respect of her full licence. Upon order to review—

HELD: Order nisi absolute.

FULLAGAR J: "In my opinion the unavoidable construction of the sub-section is that if a driver loses (one licence or permit) by virtue of an order under another provision of the Act, then he automatically loses by operation of s26(2) without the necessity for any order to that effect, each and every other (licence or permit) that he holds." In making the order nisi absolute, His Honour declared that the defendant's probationary motor cycle licence cancellation operated to cancel her full licence to drive a motor car for the same period.

[NOTE: By virtue of s2 of the *Motor Car (General Amendment) Act* 1982 which came into operation on 9 January 1983, s26(2) of the *Motor Car Act* 1958 operates only in respect of drink/driving offences and the provisions of s320 of the *Crimes Act* 1958. Ed.]
