

10/82

SUPREME COURT OF VICTORIA

MICHELL v FERNANDEZ

Jenkinson J

14 October 1981

MOTOR TRAFFIC – INSECURE LOAD – TRUCK LOST A LOAD OF DRUMS – DRIVER DID NOT KNOW HOW LOAD BECAME LOOSE – DRIVER SAID THAT HE THOUGHT THAT ONE OF THE LOCKING PINS HAD BROKEN – STATEMENT BY MAGISTRATE THAT THERE WAS NO EVIDENCE LOAD SECURE IN FIRST PLACE – CHARGE DISMISSED – WHETHER MAGISTRATE IN ERROR: MOTOR CAR REGULATIONS 1966, R149.

Proof that a load has in fact become dislodged from a vehicle will constitute proof sufficient to sustain a charge of a contravention of Regulation 149 unless the evidence discloses some cause other than the failure of the mode of securing the load adopted to prevent dislodgement. As there was no evidence to suggest any cause other than a failure of the means which had been adopted to secure the load achieving that purpose, there was evidence to support a conviction and accordingly, the magistrate was in error in dismissing the charge.

[Note: This decision relates to Regulation 149 as then in force as at date of alleged offence – 7th May 1980. Reg 149 has since been amended.]

JENKINSON J: Return of an order nisi to review an order of the Magistrates' Court at Port Melbourne dismissing an information that the respondent on the 7th May 1980, being the driver of a motor car on Pickles Street with a load carried thereon did fail to secure such load in such a manner as to prevent such load or any part thereof becoming dislodged or hanging or projecting from such motor car in a manner likely to cause danger or unreasonable annoyance to any person and as to prevent such load or any part thereof falling from such motor car.

The information follows closely the wording of Regulation 149 of the *Motor Car Regulations* as in force at the time when the information alleges the offence to have been committed, that is to say, on the 7th May 1980. The Regulation has been subsequently amended.

The evidence before the Magistrates' Court was that of the applicant, who was the informant. The informant gave evidence before the Magistrates' Court that he came upon a truck which had lost a load of drums containing non-ferrous metal in Pickles Street near the intersection of Ingles Street; that he was told by the respondent at the scene, in response to his questions, that the respondent had a short time before the informant arrived been driving the truck on the road and that the truck had lost its load and that the respondent did not know how it came loose. The respondent, according to the evidence of the informant, said that he thought that one of the locking pins was broken.

At the conclusion of the informant's case, the learned Magistrate constituting the court said, according to the evidence before me in support of the order nisi:

"You have not proved that the load was secure in the first place, therefore there is no case to answer and I dismiss that charge."

Fullagar J in *Stillman v Falla* [1977] VicRp 25; (1977) VR 212 has expounded the proper construction of Regulation 149 as it read before its amendment: proof that a load has in fact become dislodged will constitute proof sufficient to sustain a charge of a contravention of Regulation 149 unless the evidence discloses some cause other than the failure of the mode of securing the load adopted to prevent dislodgement.

There was here in this case proof that the load had become dislodged and had fallen from the truck. The evidence did not suggest any cause other than a failure of the means which

had been adopted to secure the load achieving that purpose. Accordingly there was evidence at the conclusion of the case for the informant to support a conviction. The reasons as reported in material before me for the learned Magistrate's dismissal of the charge are not intelligible by me. It may be that the informant did not hear correctly or did not hear all that the learned Magistrate said. The order nisi will be made absolute on both grounds.
