

66/87

SUPREME COURT OF NORTHERN TERRITORY

BURRIDGE v MANISON

Muirhead AJ

25 August, 3 September 1987

[1987] NTSC 58; (1987) 48 NTR 66; (1987) 88 FLR 59; (1987) 5 MVR 416

MOTOR TRAFFIC – DRIVING UNREGISTERED MOTOR VEHICLE – REGISTRATION EFFECTED LATER ON SAME DAY – WHETHER SUCH REGISTRATION RETROSPECTIVE TO EXPIRATION OF PREVIOUS DAY – WHETHER COURT CONSIDERS FRACTIONS OF A DAY.

B. was intercepted at 12.15 a.m. on 29 October driving an unregistered motor vehicle. As soon as practicable later that morning (8am), B. attended the Registration Branch and registered the motor vehicle. When the matter came on for hearing, B. pleaded 'not guilty' and submitted that the registration he effected was valid for the whole of 29 October (i.e. back to midnight) and accordingly, his motor vehicle was deemed to be registered at the time he was intercepted. The magistrate disagreed with this submission and imposed a conviction. Upon appeal—

HELD: Appeal dismissed.

Generally speaking, the law does not consider fractions of a day and the present case was no exception. Once the offence was committed there was no retrospective immunity back to the preceding midnight and the offender gained no immunity by promptly effecting registration on the same day.

MUIRHEAD AJ: *[After setting out the facts and the evidence before the magistrate, His Honour continued]* ... [68] The appellant, relying on the principle that the law does not pay regard to fractions of the day, argues that the registration he effected on 29 October at 8am was thus valid for the whole of that day, ie back to midnight, and the motor cycle must in law be deemed to have been registered at 12.15am when he was stopped by the police. He relies also on the wording of s103(3) which uses the words "on the date" without reference to time or fraction of days. The words "from and including" are frequently used by draftsmen when there is a need to fix with some measure of precision the commencement and conclusion of a period (see DC Pearce: *Statutory Interpretation in Australia* [2nd ed.] p112). Otherwise the provisions of s28 of the *Interpretation Act* operate so that "time shall be reckoned exclusive of such day or of the day of such act or event". But those words "from and including" in this context are not to be interpreted so as to relate back to the act of registration to seconds after the preceding midnight. Unless the legislation compels, an act not done at a particular time of day is not by such words and operation of law deemed to have been done at the commencement of the day.

The learned Stipendiary Magistrate commented:

"Firstly, the defendant contends that the registration certificate operated from the 29/10/86, it operates from the first moment of that day – and therefore in reality although effected at 8am or thereabouts, has retrospective effect back to a time prior to his apprehension. If the defendant is correct then that would mean that an offender, after being apprehended, could escape liability [69] merely by effecting registration and paying the prescribed insurance contribution at any time before closing time on the same day at the Motor Registration Offices – indeed a strange situation."

It was suggested that in an endeavour to ensure a commonsense interpretation, as it applied to the situation here, and operating on the "floodgates" principle, his Worship had erred in his interpretation of s103. I do not agree. There is authority which supports his Worship's approach. In *Beare v Ward* (1928) SASR 1, Angas Parsons J considered the situation where the defendant owned an unlicensed wireless set which was detected by an inspector. Later that day the defendant obtained a licence showing he was duly licensed on that day. The Magistrate dismissed the charge, being of opinion the licence came into effect seconds after midnight of the day in question, holding that the law does not regard fractions of the day. Referring to this principle his Honour stated:

"That, however, is not the rule of universal application; and there are exceptions to it which were explained by Lord Mansfield in *Combe v Pitt* [1763] EngR 88; 3 Burr 1423; 97 ER 907, where he says:

"Though the law does not, in general, allow of the fraction of a day, yet it admits it in cases where it is necessary to distinguish. And I do not see why the very hour may not be so too, where it is necessary and can be done: for it is not like a mathematical point, which cannot be divided."

And in *Chick v Smith* (1840) 8 Dowl 337, Patterson J said, at 340:

"The good sense of the matter is that where it is necessary to show which was the first of two acts, the court is at liberty to consider fractions of a day. The rule of law should otherwise be absurd."

The case under appeal gives a very good illustration of what would be the absurdity if the rule were universal because all that would be necessary for a man who was informed of the visit of an inspector under the *Wireless Telegraphy Act* would be to rush off and obtain a licence and then contend that the licence operated from the first moment of that day, and that, therefore, at the time of the inspection by the examining officer he must, by the law, be taken to be a licensed person."

See also *Campbell v Strangeways* (1877) 3 CPD 105, per Grove J at 107; *Wharton v Taylor* (1965) Crim L Rev 432 and *Haslock v Blyth* (1968) Tas SR 1. These authorities refer to licensing legislation in differing forms (fishing and dog licences) but the principle is, I think, clear. A person who is not in possession of a required licence or registration, contrary to statute, gains no immunity promptly by obtaining the necessary licence or registration on the same day. The offence has been committed – there is no principle of retrospective immunity back to the preceding midnight. Section 107(1) provides "a person shall not drive an unregistered motor vehicle upon a public street". At the time he was stopped the appellant clearly was driving such a vehicle and the appeal against conviction on the first count must fail...

[His Honour dealt with another matter not relevant to this report.]
