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SUPREME COURT OF VICTORIA

MURDOCH v SIMMONDS

Adam J

3 August 1970 — [1971] VicRp 108; [1971] VR 887

MOTOR TRAFFIC – DRIVING OF A MOTOR CAR – DRIVER TRIED TO OVERTAKE VEHICLE IN FRONT – DRIVER UNABLE TO DO SO – SUBSEQUENTLY BOTH DRIVERS CONFRONTED EACH OTHER AND THE DEFENDANT ASSAULTED THE OTHER BY KICKING – CHARGE FOUND PROVED – "IN CONNEXION WITH THE DRIVING OF A MOTOR CAR" – MEANING OF – MAGISTRATE IMPOSED A FINE AND CANCELLED THE CONVICTED DRIVER'S LICENCE – WHETHER MAGISTRATE IN ERROR IN RELATION TO THE LICENCE CANCELLATION: MOTOR CAR ACT 1958, S26(1).

HELD: Orders nisi absolute in relation to the licence cancellation. Such order quashed.

1. The words "in connexion with" are very wide, general words, and from their context can be given a variety of meanings, some wide meanings, others narrow meanings. And the problem is to construe these words in the present context. In a sense there was some connexion, or relationship between this offence of an assault by kicking in this case and the driving of a motor car, because the magistrate would have been entitled, at least, to infer from the evidence that had it not been for this incident on the road when the defendant was following Kenny's car, and was annoyed about what happened, the ultimate offence for which he was convicted would not have occurred at all.

2. This wide form of expression must take its meaning from the context, and the context here suggested that the words must be read, at least, narrowly enough as to require a substantial relation between the offence committed and the driving of the car and that connexion was absent in this case.

3. The magistrate did not have the jurisdiction to cancel the licence upon convicting the defendant of the offence of assault by kicking. He stated, in connexion with the case, his view that the defendant had in effect shown himself unfitted for a licence. The words used were, apparently, that a man like the defendant should not have a driving licence where he set out and behaved violently to motorists that upset him. Whether the legislation should be provided to cope with such a person seems to be another question, but that did not justify any extension of the reading of s26 beyond what one would consider was natural and ordinary meaning in this context.

ADAM J: This is the return of an order nisi to review a conviction by the Magistrates' Court at Lilydale on 16 January 1970.

The defendant, John Leo Simmonds, was then convicted under the *Summary Offences Act* 1966 of an assault by kicking one Kenny. He was fined \$50 for that assault, in default 12 days' imprisonment and his licence to drive a motor car was cancelled.

The question raised by the order nisi was whether the magistrate had any jurisdiction in connexion with this conviction to have cancelled the defendant's licence. He purported to act under s26(1) of the *Motor Car Act* 1958 which provides that any Magistrates' Court, before which a person is convicted of an offence under this Act, or of any offence in connexion with the driving of a motor car, may, if the person convicted holds any licence to drive a motor car under this Act, cancel the licence.

The conviction, as I mentioned was for an assault by kicking under the *Summary Offences Act*, and at first sight it appears to have nothing to do with either an offence under the *Motor Car Act*, or any offence in connexion with the driving of a motor car; but it appears from the evidence that the offence of assault by kicking had some association with the driving of a motor car. There was an incident on the road when the defendant was following another motor vehicle, driven by one Kenny along Lincoln Road near to the intersection with Hull Road in the general district of Mooroolbark. It appears that approaching that intersection the defendant was minded to pass Kenny's motor vehicle in front of him, and he commenced to make a passing movement, having

put his left indicator out to indicate his purpose, but Kenny accelerated with the result that the defendant had to draw in behind Kenny, and on they went. This, it appears clearly enough from the evidence, incensed the defendant who rightly or wrongly thought that the car in front driven by Kenny was obstructing his freedom of action of the road. It may well be that Kenny had ample reason for accelerating instead of allowing the defendant to pass him at that stage, but the important point is that the defendant was incensed or very annoyed at what had happened.

The subsequent history of the events leading up to the assault can be very briefly stated. Apparently the defendant did later pass Kenny, and he pulled up his car and Kenny pulled up behind him, and there were some words then and Kenny proceeded on to a shopping centre and the defendant followed him there and the event which gave rise to the offence occurred. Much of the evidence below concerned the commission of that offence, the defendant claiming that anything that he had done was in the way of self defence; but whether that be so or not it appears clear that there was some kicking at some stage by the defendant of Kenny. The magistrate took an unfavourable view of the defendant, and rejected any justification that he urged for what he had done, and this led to a conviction for assault by kicking.

Now, it is in that general setting that the question arises whether the magistrate in addition to imposing the fine, which he was entitled to do under the *Summary Offences Act* for assault by kicking, was justified in cancelling the defendant's licence? The statutory authority to cancel a licence falls under one or other of the limbs of s26(1), either that the person is convicted of an offence under this Act, or of any offence in connexion with the driving of a motor car. There is no question of the offence of assault by kicking being an offence under the *Motor Car Act*. That does provide for a variety of offences, some of them directly concerned with the driving of motor cars, and certain other offences as well; but the question then is whether this offence of which he was convicted was within the meaning of this section "in connexion with the driving of a motor car".

The words "in connexion with" are very wide, general words, and from their context can be given a variety of meanings, some wide meanings, others narrow meanings. And the problem is, of course, to construe these words in the present context. In a sense, of course, there is some connexion, or relationship between this offence of an assault by kicking in this case and the driving of a motor car, because the magistrate would have been entitled, at least, to infer from the evidence that had it not been for this incident on the road when the defendant was following Kenny's car, and was annoyed about what happened, the ultimate offence for which he was convicted would not have occurred at all.

But is it sufficient that in the history of the commission of the offence of assault by kicking there was an incident connected with the driving of a motor car, both by Kenny, the victim of the assault, and by the defendant? Certainly, one might say a motive, at least, for the assault was connected with the driving of a motor car and this regardless of whether the driving of the motor car by the defendant, which gave rise to his ill feeling, was in any way an infringement of any Act or not. I may say it does not appear from the evidence that the defendant was guilty of any offence, that he was not perfectly within his rights in passing Kenny when he proposed to do it when he was prevented by the action taken by Kenny. There is no suggestion from beginning to end that either party to the offence, victim or offender, was driving a motor car otherwise than properly, and within the law, but it did give rise, the incident of the driving of these cars, to the feelings of the frustration and bitterness engendered in the defendant and the answer to the present question does not, it seems to me, in any way depend on whether there was any justification or not for the defendant's feeling of anger at the driving incident. The question is, whether the fact that in the history of the commission of the offence the driving of motor cars played some part is sufficient to attract the power conferred by s26 to cancel the licence because the offence, in this case, of assault by kicking was in some way associated with an incident of driving a motor car.

The context is important in all these cases where the words "in connexion with" are used in legislation. One would naturally be disposed to treat the words "in connexion with the driving of a motor car" in their context as meaning that in connexion with the manner of driving the car there were grounds for disqualifying the driver from holding a licence. One would naturally treat such an occasion as the present, where there is some link between earlier driving of a motor car and a subsequent assault which had in itself nothing to do with the driving of a motor car as outside the bounds of an offence in connexion with the driving of a motor car. That conclusion would be

reinforced by reason of the fact that it is a highly penal provision; this additional punishment, goes beyond that provided under the *Summary Offences Act*. The cancelling of a licence in some cases is, of course, far more serious as a penalty than any fine that can be inflicted. It is of a penal nature and in accordance with the well-settled rules of construction where the language is vague or general the onus does lie on the informant seeking to obtain the penalty to show that the defendant was clearly intended to come within the scope of the legislation. So one is the more predisposed to giving to the words "offence in connexion with the driving of a motor car" a meaning which indicates that in a very real sense the offence in question is related to the driving of a motor car. As it is put in one case in another connexion by, I think, Kitto J, "a substantial connexion" is required to answer the expression.

The problem is not, I think, devoid of some helpful authority to which Mr Shatin referred me, and I would rely, in particular, on the two earlier English decisions in which a similar legislation had to be construed. The question being in each of these cases whether where a driver of a motor car left his motor car as an obstruction on a highway then the offence of obstructing a highway was one in connexion with the driving of a motor car. Of course, in a sense there was a connexion because were it not for the place to which the car was driven the car would not have been there as an obstruction. So one could not say there was no association or connexion between the driving of a motor car and the commission of the offence.

But, in each of these cases, on language similar to s26, the court held that there was no power to deal with the licence. One case was *R v Lyndon* (1908) 72 JP 227. The other was *King v Justices of Yorkshire* [1910] 1 KB 439. In the latter case emphasis was placed on the context in which the words "in connexion" were used, and the conclusion was reached that the offence had to be in some way connected with the manner in which the motor car was driven. It had to be, in a real sense, an offence connected with the driving of the car and it was insufficient where the driving had been concluded before any offence was committed. Emphasis in the latter case was laid on the fact that other statutes made the offence for which the penalty was imposed an offence, and to that extent made it unnecessary that you should read the equivalent to s26 as making provision for a further penalty. The notion there was also expressed that the offence should have something to do with the actual locomotion of the car to come within the words "offence in connexion with the driving of a motor car".

Other cases were referred to by Mr Shatin in which the opposite conclusion was reached – the case of *White v Jackson* (1915) 84 LJKB 1900, and *Simmonds v Pond* (1918) 88 LJRK 857. Whether I would have arrived at the same conclusion as the judges did in these cases, is beside the point. The first of the cases was an offence in connexion with the driving of a motor car where the offence was carrying headlights of excessive brightness under the regulations, there being no other offence in the manner of driving a car so provided: in *Simmons v Pond* the offence was in no way connected with mishandling of a car or careless driving or any driving which would be open to question, but the offence was driving a car with petrol which the driver was prohibited from carrying in the car. But in each of these cases the actual offence was in a real sense in connexion with the driving of the car at the time of the offence, and I think no more need be said about these so as to indicate they are quite distinguishable from the present case where there was no driving element at all at the time the offence of assault by kicking was committed.

Some other cases on the words "in connexion with" were cited to me, and I am indebted to counsel for bringing them to my attention. I have concluded that they do not really assist for the reason that this wide form of expression must take its meaning from the context, and the context here suggests to me that the words must be read, at least, narrowly enough as to require a substantial relation between the offence committed and the driving of the car and that connexion is absent. The conclusion I reach then is that the magistrate did not have the jurisdiction to cancel the licence upon convicting the defendant of the offence of assault by kicking. He did state, according to the answering affidavit, in connexion with the case, his view that the defendant had in effect shown himself unfitted for a licence. The words used were, apparently, that a man like the defendant should not have a driving licence where he set out and behaved violently to motorists that upset him. Whether the legislation should be provided to cope with such a person seems to be another question, but I am satisfied that that does not justify any extension of the reading of s26 beyond what I would consider is natural and ordinary meaning in this context.

The grounds taken by the order nisi were, first, that the order was wrong in law and should not have been made in that the offence of assaulting another person by kicking, being an offence specified in s24(2) of the *Summary Offences Act*, is not an offence under the *Motor Car Act*, as amended, or an offence in connexion with the driving of a motor car within the meaning of s26(1) of the said Act. I uphold that ground. Secondly, that the offence of assaulting by kicking was not an offence under the Act or an offence in connexion with the driving of a motor car; that seems to be the same ground in substance and I uphold that. Thirdly, that the defendant was not convicted of an offence under the said Act or an offence in connexion with the driving of a motor car within the meaning of s26(1) of the said Act; well, I agree with that too, although why they are expressed in these varied forms which come to the same thing, rather escapes me. The second question, that the order was against the evidence or weight of the evidence and should not have been made and that there was no evidence or no sufficient evidence of the defendant having committed an offence under the said Act or in connexion with the driving of a motor car within the meaning of s26(1) of the said Act, again and for the same reasons, I would uphold that as necessarily following. The consequence then is that the order nisi must be made absolute, and the conviction and sentence quashed in so far as it provides for the cancellation of the defendant's licence. Otherwise the order below remains.

Solicitor for the informant: John Downey, Crown Solicitor.

Solicitors for the defendant: James K Ryan and Associates.