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## SUPREME COURT OF VICTORIA

**JACK JEFFREY PTY LTD v LOCK**

Murphy J

29 April 1974

**COMPANIES – COMPANY CHARGED WITH FAILING TO PAY ADDITIONAL FEE ON TRANSFER OF VEHICLE UNDER S21B, SS2B MOTOR CAR ACT 1958 – MEANING OF THE WORDS "AND SHALL BE LIABLE TO BE DEALT WITH AS HEREINAFTER PROVIDED": MOTOR CAR ACT 1958, S21B(2B) .**

Argued that the words "Shall be guilty of an offence and shall be liable to be dealt with as hereinafter provided" in ss2B and the words "may without instituting proceedings" in ss2C should be read as "shall before instituting proceedings" meaning that the procedure prescribed in ss2C (for the Chief Commissioner to make a demand in writing) must be followed rather than direct prosecution as normally under s90.

**HELD: Order nisi discharged.**

1. As a matter of construction the words in sub-section 2B 'and shall be liable to be dealt with as hereinafter provided', attach both to sub-section 2B paragraph (a) and sub-section 2B paragraph (b).

2. Sub-section 2D relates to persons convicted of 'an offence under sub-section 2B of this section', and is clearly not restricted only to paragraph (b) of sub-section 2B. It follows as a matter of necessary construction that the words 'and shall be liable to be dealt with as hereinafter provided', appearing in s21B sub-section 2B cannot be restricted to the procedure laid down in sub-section 2C, but must also include the ordinary procedure, namely proceeding by way of prosecution, and the provisions of sub-section 2D.

3. In respect of offences against paragraph (a) of sub-section 2B, s21B sub-section 2D must operate independently of sub-section 2C, which does not apply to an offence of failure to give notice of acquisition.

4. The Chief Commissioner may choose to adopt the procedure laid down in sub-section 2C as an alternative to issuing proceedings against a person guilty of an offence against paragraph (b) of sub-section 2B.

**MURPHY J:** ... I am of the opinion that this submission cannot be sustained. As a matter of construction the words in sub-section 2B 'and shall be liable to be dealt with as hereinafter provided', attach both to sub-section 2B paragraph (a) and sub-section 2B paragraph (b). Yet sub-section 2C provides a procedure which clearly relates only to a person guilty of an offence against paragraph (b) of sub-section 2B. Its opening words read, 'Where any person is guilty of an offence against paragraph (b) of the last preceding sub-section', etc.

Sub-section 2D relates to persons convicted of 'an offence under sub-section 2B of this section', and is clearly not restricted only to paragraph (b) of sub-section 2B. It follows as a matter of necessary construction that the words 'and shall be liable to be dealt with as hereinafter provided', appearing in s21B sub-section 2B cannot be restricted to the procedure laid down in sub-section 2C, but must also include the ordinary procedure, namely proceeding by way of prosecution, and the provisions of sub-section 2D.

In respect of offences against paragraph (a) of sub-section 2B, s21B sub-section 2D must operate independently of sub-section 2C, which does not apply to an offence of failure to give notice of acquisition.

Mr Porter also submitted that the words 'may without instituting proceedings against that person' where they appear in sub-section 2C, should be read as 'shall before instituting proceedings against that person'. He referred in his interesting argument in support of this submission to the

cases of *Finance Facilities Pty Ltd v FCT* [1971] HCA 12; (1971) 127 CLR 106; 45 ALJR 241; 2 ATR 194; *Ward v Williams* [1955] HCA 4; (1954-5) 92 CLR 496; *London and North Eastern Railway v Berryman* [1946] AC 278; (1946) 1 All ER 255; *Norton v Long* [1968] VicRp 23; [1968] VR 221; and *Julius v Lord Bishop of Oxford* (1880) 5 AC 214; [1874-80] All ER 43; 49 LJQB 577; 42 LT 546.

I am of the opinion that Mr Sundberg is correct when he submitted that none of these cases really lead to the conclusion that the words in the sub-section 2C should be read in their context to mean anything more or less that appears *prima facie* to be their ordinary meaning. The Chief Commissioner may choose to adopt the procedure laid down in sub-section 2C as an alternative to issuing proceedings against a person guilty of an offence against paragraph (b) of sub-section 2B.

On the other hand, if he does not choose to adopt that procedure for the collection of revenue, which would not, of course, involve court process, proceedings may nonetheless in the ordinary course be taken, and if the defendant is convicted sub-section 2D applies, and it contains details of the mandatory and discretionary penalties applicable.

The history of the section as outlined in his submission by Mr Sundberg also, in my opinion, supports this interpretation of the meaning of the sub-section in question. Accordingly, the order nisi will be discharged, and the defendant will be ordered to pay the informant's costs which I fix at \$200.

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