

55/81

SUPREME COURT OF VICTORIA

R v MAGISTRATES' COURT at MELBOURNE: ex parte THE CHIEF COMMISSIONER OF POLICE

Beach J

27 October 1981 — [1982] VicRp 24; [1982] VR 268

MOTOR TRAFFIC – DEFINITION OF "MOTOR CAR" INCLUDES "MOTOR CYCLE" – CHIEF COMMISSIONER SHALL SUSPEND LICENCES WHEN TWELVE OR MORE DEMERIT POINTS INCURRED – APPEAL AGAINST CHIEF COMMISSIONER'S SUSPENSION TO MAGISTRATES' COURT – MAGISTRATE ORDERED CHIEF COMMISSIONER TO REVOKE SUSPENSION – WHETHER MAGISTRATE IN ERROR: MOTOR CAR ACT 1958 (NO. 6325), SS3, 27(B), (G),

Holder of both a licence to drive a motor car and a licence to ride a motor cycle, committed six traffic offences, between 4/6/78 and 6/2/80, while riding a motor cycle, and twelve demerit points were recorded against him by the Chief Commissioner, who then suspended both licences for three months, from 15/5/81. On appeal that "there has been a miscalculation in the assessment of demerit points as no points have been lost in relation to my motor car licence", the Magistrates' Court, on 25/5/81, ordered that the Chief Commissioner revoke his order in respect of the motor car. Upon appeal—

HELD: Both licences must be suspended.

Section 27B(1) of the *Motor Car Act* 1958 refers to demerit points being recorded against the holder of a licence rather than against a licence. Further, the fact that the Chief Commissioner is required to suspend the licence or licences of an individual indicates that the legislature recognises that a person may hold more than one licence.

BEACH J: ... In summary what Mr Thorbecke argued was that as the demerit points recorded against him concerned offences committed by him whilst riding his motor cycle and justified the suspension of his motor cycle licence, it would be unfair to suspend his motor car licence ... Unfortunately, ... his motor car licence must also be suspended in the circumstances of the case, because that is what the law provides, as I shall now demonstrate.

Section 27B(1) of the *Motor Car Act* provides that:

"Whenever from time to time there is recorded in the Demerits Register against the holder of a licence to drive a motor car a total of twelve or more demerit points incurred within the last preceding three years the Chief Commissioner shall by notice in writing in the prescribed form suspend for a period of three months the licence or licences held by that person to drive a motor car but not including any licence to drive a motor tractor: ..."

The definition section of the Act – section 3 – provides that "motor car" includes an articulated motor car a motor cycle and a motor tractor: ...

That the Act contemplates the issue of different licences including one to drive a tractor, one to drive a motor car other than a motorcycle and one to drive a motor cycle is clear from the provisions of section 22(1) and (2) ... I return now to the provisions of section 27B(1). In my opinion, there are three matters of significance to be noted about that section.

In the first place, the section does not refer to demerit points being recorded against a licence but against the holder of a licence. In the second place, it provides that the Chief Commissioner shall suspend the licence or licences held by that person to drive a motor car. (The emphasis is my own). Thirdly, it provides that the Chief Commissioner shall suspend the licence or licences held by that person to drive a motor car but not including any licence to drive a motor tractor. (Again, the emphasis is mine).

The fact that the section requires the demerit points to be recorded against the holder of a

licence and not against a particular licence held by him, is a clear indication that the legislature was concerned with the general driving behaviour of an individual, not his driving behaviour in relation to a particular class or type of vehicle. The fact that the Chief Commissioner is required to suspend the licence or licences of an individual whenever twelve demerit points are recorded against him within the period specified is a clear indication that the legislature recognises that a person may well hold more than one licence issued pursuant to the provisions of the Act at a given time and that all such licences with the exception of any licence to drive a motor tractor were to be suspended.

The fact that a licence to drive a motor tractor was specifically exempted is further evidence of that intention. It follows, therefore, that if twelve demerit points are recorded against the holder of a licence and that individual holds a licence to drive a motor car other than a motor cycle and a licence to ride a motor cycle, both licences must be suspended. ...
