

04/79

SUPREME COURT OF VICTORIA

WILSON v RATCLIFFE

Lush J

14 November 1978 — [1979] VR 268; 39 LGRA 327

MOTOR TRAFFIC – DIRECTION BY OFFICER TO DRIVER OF HEAVY VEHICLE TO PROCEED TO WEIGHBRIDGE – OBJECTION BY DRIVER ON GROUNDS THAT THE TRACK WAS WET AND MIGHT NOT CARRY THE WEIGHT AND THAT THE TRUCK MIGHT BE DAMAGED – FINDING BY MAGISTRATE THAT HE WAS JUSTIFIED IN OBJECTING TO THE DIRECTION – "REQUEST" – WHETHER REQUEST SHOULD BE REASONABLE IN THE CIRCUMSTANCES – CHARGE DISMISSED – WHETHER MAGISTRATE IN ERROR: MOTOR CAR ACT 1958, S36.

1. In relation to s36 of the *Motor Car Act 1958* ('Act') there is no ground for attaching to the word 'request' a requirement or gloss stipulating that it should be a request which was reasonable in the circumstances. The express requirement of s36 is that the request can only be made for the purpose of ascertaining whether the provisions of Division 2 of Part IV of the *Motor Car Act* are being contravened.

2. As far as the refusal referred to in sub-s3 is concerned, in the light of other provisions in the Act it is not possible to read into the Act, after the word 'refuses' any such words as 'except upon reasonable grounds'.

3. The reasons for refusal may be relevant to penalty and the Stipendiary Magistrate in this case would have been fully entitled in deciding what penalty if any he should impose, to take into consideration the risks involved in what the officers were directing the respondent to do, if he thought there was any such risk, and the respondent's attitude to that risk. However, he was wrong in his treatment of the evidence of this subject as relevant to the question whether he should convict the respondent.

LUSH J: The evidence was that at 9.45 pm on 20th July 1977 a CRB officer (Wilson) intercepted the respondent on the Glenelg Highway, who was driving an articulated motor vehicle laden with wood chips, which was of very considerable size. Although, as appears it was not weighed on the weighbridge, its total weight was shown by the evidence to be in excess of 36 tons. The officer directed the respondent to take the truck to the railway yard at Glen Thompson to be weighed. When the truck arrived there the respondent raised an objection to driving a vehicle of that size over approximately two hundred metres of a gravel approach linking the highway to the weighbridge itself. The objection was taken on the grounds that the track was wet and might not carry the weight and that damage to the truck might ensue. It is clear that the officers took the view that those objections were not *bona fide* and were raised for the purpose of avoiding being weighed.

It seems clear that the learned magistrate took a different view of the objection raised by the respondent from that taken by the Country Roads Board officers. The respondent, who has not appeared here, filed an affidavit and according to that, the Magistrate said 'that he had listened to both sides carefully and that the respondent had acted as he expected an experienced and conscientious driver to act, and that on this occasion, the respondent was justified in what he did. The driver had two responsibilities, one to comply with the request to be weighed and the other for the safety of his vehicle. The wet weather conditions were not disputed. Due to the wet weather, the responsibility by the driver for the vehicle and the weight, the driver was justified for failing to weigh'. Accordingly, the charge was dismissed.

The informant obtained an order nisi to review on an number of grounds in which are included the following:

"That the Stipendiary Magistrate was in error in holding that any responsibility which the respondent had to the motor car and/or load carried thereon constituted a defence to the offence charged:

That the Stipendiary Magistrate was in error in holding if he in fact so held that:

- (a) the state of the weather;
 - (b) the condition of the road or track leading to weighbridge; and/or
 - (c) any responsibility which the respondent had in respect of the motor car and/or load carried thereon and/or the weight of the motor car and load—
- constituted a defence to the offence charged, or entitled the respondent to refuse or justify the respondent in refusing to take the motor car and load carried thereon to the weighbridge and to allow the motor car with its load to be weighed thereon."

Mr Byrne, who appeared for the applicant to move the order absolute, submitted that the concept of request and concept of refusal were both clear in terms and clear in the section and they should be read as free from any qualification. In dealing with the meaning to be attributed to the word 'request' he directed my attention by way of analogy to s79(1) of the Act which contains the phrase 'reasonable directions', and to the decision of Sholl J in *Coysh v Elliott* (1963) VR 114, (at p118). That decision dealt with a regulation which required users of the highway to obey the signals of a police officer. His Honour held that this was limited to signals which were reasonable.

I have found that in the last century there was a series of cases arising out of the right of a shareholder in a company to inspect the company's books or registers. There is authority of which *The Queen v Directors of London & St Katharine Docks Company* (1874) 44 LJQB 4 is an example in which the court took the view that the request to inspect out of which the refusal arose must be a request made for a reasonable purpose. A little later, however, a different approach, was taken in *Holland v Dickson* (1888) 37 Ch D 669, a case in which an injunction and not mandamus was sought. That was a decision of Chitty J, and His Lordship pointed out that there was no reference to reasonable grounds for the application for inspection in the relevant statutory provision. His words were:

'But there is not a word to be found in the section as to reasonable grounds, and I decline to construe the section by putting in such words. It seems to me that would be an erroneous construction of the section.'

Returning to s36 there is in my opinion no ground for attaching to the word 'request' a requirement or gloss stipulating that it should be a request which was reasonable in the circumstances. The express requirement of s36 is that the request can only be made for the purpose of ascertaining whether the provisions of Division 2 of Part IV of the *Motor Car Act* are being contravened.

As far as the refusal referred to in sub-s3 is concerned, in the light of other provisions in this Act I do not think it is possible to read into the Act, after the word 'refuses' any such words as 'except upon reasonable grounds'. That the reasons for refusal may be relevant to penalty is, I should think, beyond dispute, and the Stipendiary Magistrate in this case would have been fully entitled in deciding what penalty if any he should impose, to take into consideration the risks involved in what the officers were directing the respondent to do, if he thought there was any such risk, and the respondent's attitude to that risk. But I think he was wrong in his treatment of the evidence of this subject as relevant to the question whether he should convict the respondent.

The Order nisi is made absolute. The order of the Magistrates' Court is set aside. The matter is remitted to the Magistrates' Court with a direction that the respondent should have been convicted and for the fixing of such penalty as may seem appropriate to the court.