36/69

SUPREME COURT OF VICTORIA

CALDOW v LANE

McInerney J

14 November 1969; 13 February 1970 — [1970] VicRp 85; [1970] VR 658

MOTOR TRAFFIC – DRIVING A NEW VOLVO MOTOR CAR WHEN IT WAS NOT REGISTERED – MOTOR CAR HAD TRADE PLATES AFFIXED – VEHICLE BEING DRIVEN TO A MOTOR CAR DEALERS AND THEN TAKEN TO A MOTOR SHOW FOR SALE – WHETHER BEING DRIVEN TO MANUFACTURERS – MEANING OF "MANUFACTURER" – DRIVER CHARGED WITH OFFENCE – CHARGE FOUND PROVED – WHETHER MAGISTRATE IN ERROR: *MOTOR CAR ACT* 1958, S17.

HELD: Order nisi discharged.
1. "Manufacture" is a word which is capable of a good many meanings, but usually it involves the notion of working up materials into forms suitable for use.

2. It was not open on the evidence for the magistrate to find that the premises of Regent Motors Pty Ltd or of Scandinavian Motors Pty Ltd were premises in which there was a "manufacture" of the Volvo car, or that those premises were, within the meaning of s16(2)(a)(ii) of the *Motor Car Act* 1958 ('Act'), "the place of manufacture" of that car. The phrase "the place of manufacture" in that sub-paragraph means the place of manufacture of the particular car to which the special identification plate was fixed.

3. It was open to the Magistrate on the evidence adduced before him to find that the Volvo car was being *bona fide* used for the trade purpose of testing the car.

4. It was not open to the Magistrate to find that the Volvo car was being driven for the purpose of selling the car or delivering the car for sale.

5. The defendant was using the motor car for one of the purposes specified in s16(2) of the Act, viz. that specified in paragraph (a)(iii), but he was also using it for the purpose of driving the car from the dealer's premises to the place where the car was to be offered for sale, namely, the Red Hill Show, and that was not a purpose specified in s16(2). It followed, therefore, that the defendant could not have satisfied the Court of the defence arising under the second proviso to s17(1)(ii) of the Act and that the magistrate was right in convicting him.

McINERNEY J: This was the return of an order nisi to review granted on 31 July 1969 by Master Jacobs, on the application of the above-named defendant, Brian James Caldow, to review a conviction and order of the Court of Petty Sessions at Box Hill on 8 July 1969 on the hearing of an information laid by the above-named informant, William Lane. The information charged that the defendant on 22 March 1969 at East Burwood was the driver of a motor car used on a highway, to wit, Springvale Road, without such motor car being registered, in breach of s17 of the *Motor Car Act* 1958, as amended. The defendant was convicted and fined $5, in default distress with the additional penalty $40.

The order nisi was granted on the following grounds:–

(1) That the Stipendiary Magistrate was wrong in law in holding that the car being driven by the defendant was not being used at the time by the defendant or by the defendant's employer for the purpose—

(a) of driving the car from the place of manufacture to the place where it would be offered for sale; and/or for the purpose

(b) of testing the car; and/or

(c) of selling the car; and/or

(d) of delivering the car for sale.

(2) That upon the evidence the Stipendiary Magistrate ought to have held that the car being driven by the defendant was being driven—

(a) from its place of manufacture to the place where it was to be offered for sale; and, alternatively,

(b) for the purpose of selling the car or delivering it for sale.

(3) That the Stipendiary Magistrate misdirected himself as to the meaning of s16(2)(a)(ii) of the *Motor Car Act* 1958.

The evidence before the Court of Petty Sessions showed that on Saturday, 22 March 1969, at 9 a.m., the defendant was driving a Volvo Sedan wearing a plate number A/14/314, in Springvale Road, East Burwood. The defendant had two passengers—a baby in the car seat in the front seat and a woman in the rear seat. The informant intercepted the defendant and asked him: "Where have you come from and where are you going to?", to which the defendant replied (according to the informant): "I am going to our car dealers at Mordialloc—I have come from home'.' In cross-examination the informant admitted that the defendant might have said "Mornington" and not "Mordialloc" and the case was conducted, as I was told, on the footing that the defendant's answer had been that he was going to their dealers at Mornington. The informant then asked the defendant: "Who owns the vehicle?", to which the defendant replied: "Regent Motors. I should say Scandinavian Motors. Same thing." When asked by the informant what he was going to do with the car at Mornington, the defendant replied: "It's going to be cleaned up and taken to a show at Red Hill about five miles from there." Asked whether he had brought the car from home that morning, the defendant said: "Yes, I drove it home from work last night." Asked whether he was demonstrating it then and there, the defendant replied: "No." In cross-examination, the informant stated that he had no reason to disbelieve the defendant's explanation. There was further evidence showing that on 2 March 1969 special identification plate No.A/14/134 was on issue to Regent Motors Pty Ltd of 86 Sturt Street South Melbourne for use in connexion with s16 of the *Motor Car Act* 1958.

The case for the informant was then closed and the defendant gave evidence. He said he lived at 25 Queen's Avenue, Doncaster, that he had been employed for 12 years by Regent Motors, that he was a country sales supervisor and was responsible in area for half of Victoria east of the Hume Highway. He said that Regent Motors were dealers regularly engaged in the business of selling new motor cars, that on 21 March 1969 he had taken delivery of a brand new Volvo Sedan owned by Regent Motors with instructions to drive it to his home and to proceed on the next morning to the Red Hill Show, to show the vehicle there and offer it for sale, and that in transit he was to test the vehicle. He said he was to meet the dealers of Mornington—Alers Motors—the next morning and then they were all going to proceed in convoy to the Show which was being held at Red Hill that day. He said he now knew that Red Hill was about 15 miles from Mornington and about 60 miles from his house and from Melbourne. He said the Volvo was brand new, was not registered and that he had a trade plate on the back. He said that he took delivery of the Volvo on the evening of 21 March 1969, at the premises of Regent Motors, that he took it home, that he drove it next day to Mornington, drove it to the Red Hill Show, where it was put on display for sale and demonstration. He said he was a qualified mechanic, that before he became country sales supervisor he had been employed by Regent Motors as reception supervisor, service adviser and assistant foreman—positions, the duties of which included mechanical testing of vehicles. He said that it was part of his instructions to make sure that the car was running properly by the time it was put on show and display at Red Hill. He said the vehicle was displayed at that show, but was not sold, and that after the show he returned the vehicle to Regent Motors. He said that the vehicle had been introduced to their stock in November 1968, that it was a vehicle made in Sweden and that Regent Motors Pty Ltd was the Victorian importer and distributor of Volvo, that the car was brand new when he picked it up, that he had never driven it before, that there were only 23 miles on the clock when he picked the car up. It had been in the new car pool at Regent Motors since it was imported in about November 1968, and that the trade plate was put on the vehicle on the Friday night, 21 March 1969, prior to his leaving Regent Motors to take it home. On the Friday it was being prepared for sale by being tuned, washed and polished. That was why he did not take the car home until after work. He said his sole purpose was to take the car to Red Hill to offer it for sale, that in transit, however, he was to check that everything was perfect

mechanically and that there were "no bugs", so that when it went on display, it would be perfect. He said he was testing it in transit. He said that overnight on 21 March 1969 he put the car in his garage and took the trade plate off and put it in the boot but put it on the next morning, that the car was to be cleaned again when they got to Mornington, to get the dust off which had collected on the way down and to get all finger marks off the door mirrors etc. He said every vehicle when going on display for show is checked, recleaned and finger-marks removed so that it is perfect. That there was a stand or area for display of the vehicle at the Red Hill Show and also for some cars being displayed by their dealers, Alers Motors—a Land Rover and a Volkswagen.

The case for the defendant was then closed. The magistrate then said:

> "I accept entirely the explanation and evidence given by the defendant. I must now be satisfied that the facts fit into s16(2). I desire to hear submissions on this."

After hearing submissions from Mr Porter, of counsel, who appeared for the defendant, the magistrate said:

> "I find as facts, that the defendant was on 22 March 1969 driving this vehicle to the place where it was to be offered for sale, that on 21 March 1969 he drove same from the place of manufacture and that the defendant was employed by such manufacturer and dealer. The provisions of s16(2) of the *Motor Car Act* are clear. From s17, if the defendant satisfies the Court that he was using the car for one of the purposes in s16(2), he is entitled to an acquittal. But I am not satisfied that he falls into the exceptions set out in s16(2). In other words, I am not satisfied that the defendant was driving from the place of manufacture to the place of sale. But I am satisfied that he was driving to Red Hill to offer the car for sale. The Act says he must be driving from the place of manufacture, and instead of this he was driving from his home in Doncaster. I may take a different attitude to a long trip, for example, to Mildura, where the driver could stop overnight provided of course that it was on the way. In other words, to use the language of the common law, the defendant, in my view went, 'on a frolic of his own' by driving the car from the place of manufacture to his house.
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> "It would be unreasonable to interpret this paragraph in any other way and I find the charge proved. In making such decision I take into account the distance from the place of manufacture in Sturt Street, South Melbourne, to the defendant's home in Doncaster 16 miles and the distance from Melbourne to Red Hill approximately 60 miles.
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> "In my view, the defendant cannot claim the protection of s16(2)(c) because the sub-section relates to the actual physical testing of the vehicles, and although the defendant was, on the way to the Red Hill Show, making sure that the car was mechanically perfect, as he was qualified to do, it does not come within the meaning of 'testing the car' as set out in the Act. In my view, it is clear that the defendant cannot come within the meaning of s16(2)(e)—this only relates to when a car has been sold and I will not deal with this further. The defendant is fined $45 including the additional penalty."

The material before me does not disclose any evidence that the car in question was not registered pursuant to the provisions of the *Motor Car Act*, but it is common ground that the proceedings below were conducted on the footing that the car was not registered and it may be that a certificate from the Motor Registration Branch, to which reference is made in the affidavit of the defendant's solicitor in support of the application for an order nisi, but which is not before me, did in fact certify that the car was not registered as required under the *Motor Car Act*. At all events I propose to proceed on the basis, accepted as common ground before me, that the car was not, in fact, registered.

Section 17(1) of the *Motor Car Act* 1958 as amended in 1963 by Act No. 7073, s4(a), provides, so far as material:—

> "If a motor car...is used on a highway—
>
> (a) without being registered as required by this Part; ....
>
> (b) ... (c) ... (d) ... —
> the person driving the motor car...shall...be guilty of an offence against this Act unless—
>
> (i) ... (ii) in the case of a prosecution for using a motor car...without being registered..., he satisfies the court—
> that he was lawfully using the motor car...with a special identification plate issued pursuant to the

last preceding section fixed thereon as prescribed and only for one or more of the purposes specified in subs(2) of the said section..."

Section 16 of the *Motor Car Act* 1958, as amended from time to time, provides as follows:—

"(1) The Chief Commissioner may on payment of an annual fee of $20 assign to any manufacturer of or dealer in motor cars or any owner of more than fifty cars (hereafter in the section called 'a fleet owner') a general identification mark.

"(2) Every such mark shall be displayed by means of a special identification plate fixed on any motor car when it is being bona fide used—

(a) by the manufacturer or dealer, or by any person employed by the manufacturer or dealer, for any of the following trade purposes, namely:—

(i) driving the car in the process of manufacture from place to place;

(ii) driving the car from the place of manufacture to the place where it will be offered for sale;

(iii) testing the car;

(iv) demonstrating the powers and qualities of the car to a purchaser or a prospective purchaser;

(v) selling the car or delivering the car for or after sale; or

(b) ...; or (c) by the manufacturer or dealer, or by any person employed by the manufacturer or dealer, for the purpose of driving a motor car to any premises to be repaired or driving it during the process of repair or returning it to the owner after repair; or ...

"(3) Every such special identification plate shall on payment of a fee of $2 be issued annually by the Chief Commissioner who may also limit the number of such plates to be issued in respect of any general identification mark.

"(4) ... "(5) ...

"(5A) In this section 'manufacturer' includes any person who satisfies the Chief Commissioner that he is regularly engaged in the business of carrying motor cars for a manufacturer and 'dealer' includes any person who satisfies the Chief Commissioner that he is regularly engaged in the business of carrying motor cars for a dealer."

Apart from s16(5A), the Act does not contain any definition of the words "manufacturer" or "dealer". Those words, when used in s16, must, therefore, save to the extent modified by s16(5A), be understood as having and bearing their ordinary significance.

Since the matter before me is obviously one on which the legislature may be asked to take action, it may be convenient here to set out the history of the legislative provisions as to general identification marks. The *Motor Car Act* 1909 (Act No. 2237) introduced the requirement of registration in respect of every motor car. Section 4(4) created the offence of using a motor car on a public highway without its having been registered. The requirement was subject however, to two provisos, of which the second was as follows:

"(b) The Chief Commissioner may on payment of an annual fee of Three pounds assign to any manufacturer of or dealer in motor cars a general identification mark which may be used for any car on trial after completion or on trial by an intending purchaser and a person shall not be liable to a penalty under this section while so using the car if the mark so assigned is fixed upon the car as prescribed."

That proviso was amended by the *Motor Car Act 1909 Amendment Act* 1914 (Act No. 2526) which substituted the following paragraph:

"(b)(i) The Chief Commissioner may, on payment of an annual fee of Five pounds assign to any manufacturer of or dealer in motor cars a general identification mark which may be fixed on any car when it is being used bona fide for any of the following trade purposes, namely, testing a car, demonstrating to a purchaser or probable purchaser the powers and qualities of a car, selling a car, or delivering a car after sale.

(ii) A person shall not be liable to a penalty under this section while so using the car if the mark so assigned is fixed on the car as prescribed."...

That proviso was re-enacted as part of s4(4) of the *Motor Car Act* 1915, and re-enacted without any amendment as part of s4(4) of the *Motor Car Act* 1928.

In 1930, by Act No. 3901 (*Motor Car Act* 1930), the provisions of s4(4)(b) of the *Motor Car Act* 1928 were amended in respects not here material except that the enumeration of the trade purposes formerly contained in sub-paragraph (i) was transferred into sub-paragraph (ii) and the definite article "the" was substituted for the indefinite article "a", therefore used, so as to read "testing *the* car, demonstrating to a purchaser or probable purchaser the powers and qualities of *the* car, selling *the* car or delivering *the* car after sale". (Italics mine.)

In 1949 by s3(3) of the *Motor Car (Amendment) Act* 1949 (Act No. 5450) paragraph (b)(ii) of the proviso to s4(4) of the *Motor Car Act* 1928 was amended by the addition of certain trade purposes so that the provision thereupon read:

"...for any of the following trade purposes, namely: driving the car in the process of manufacture from place to place, driving the car from the place of manufacture to the place where it will be offered for sale, testing the car, demonstrating to the purchaser or prospective purchaser the powers and qualities of the car, selling the car or delivering the car for or after sale:...".

In 1951 the Motor Car Acts were consolidated by Act No. 5616 (*Motor Car Act* 1951) and the provisions as to manufacturers' identification marks appeared as part of s16 as follows:–

"16 (1) The Chief Commissioner may on payment of an annual fee of £5 assign to any manufacturer of or dealer in motor cars a general identification mark.

"(2) Every such mark shall be displayed by means of a special identification plate fixed on any motor car when it is being used *bona fide* by such manufacturer or dealer or by any person employed directly by such manufacturer or dealer for any of the following trade purposes, namely—

(a) driving the car in the process of manufacture from place to place:

(b) driving the car from the place of manufacture to the place where it will be offered for sale:

(c) testing the car:

(d) demonstrating to a purchaser or prospective purchaser the powers and qualities of the car:

(e) selling the car or delivering the car for or after sale—...".

The provisions as to driving an unregistered car were re-enacted in s17 which, so far as relevant, was in the following terms:–

"17. If—
(a) a motor car is used on a highway without being registered as required by this Part;...the person driving the motor car...shall be guilty of an offence against this Act unless—

(i) ... (ii) ...

(iii) he proves he was a manufacturer of or dealer in motor cars or a person employed directly by such a manufacturer or dealer and that he was using the motor car...with a special identification plate issued as provided in the last preceding section fixed thereon as prescribed and only for one or more of the trade purposes specified in subs(2) of the last preceding section... ."

The provisions of s16 and s17 of the *Motor Car Act* 1951 were enacted without modification in the consolidating Act, the *Motor Car Act* 1958, but were amended in 1961 by the *Motor Car (Amendment) Act* 1961 (Act No. 6762), in which s16(2) was re-enacted in the following form:–

"(2). Every such mark shall be displayed by means of a special identification plate fixed on any motor car when it is being bona fide used—

(a) by the manufacturer or dealer, or by any person employed by the manufacturer or dealer, for any

of the following trade purposes, namely:–

(i) driving the car in the process of manufacture from place to place:

(ii) driving the car from the place of manufacture to the place where it will be offered for sale:

(iii) testing the car:

(iv) demonstrating the powers and qualities of the car to a purchaser or prospective purchaser:

(v) selling the car or delivering the car for or after sale; or

(b)...; or

(c) by the manufacturer or dealer, or by any person employed by the manufacturer or dealer, for the purpose of driving the motor car to any premises to be repaired or driving it during the process of repair or returning it to the owner after repair;...".

Other amendments to s16 it is not here necessary to note. By s2(4) of Act No. 6762 s17(1)(iii) was amended by substituting therefor the following sub-paragraph (so far as relevant): "(iii) he proves that he was lawfully using the motor car...with a special identification plate issued pursuant to the last preceding section fixed thereon as prescribed and only for one or more of the purposes specified in subs(2) of the said section...". Section 16 of the *Motor Car Act* 1958 was further amended, in 1964, by s27 of Act No. 7191, which inserted in s16 the present subs(5A), to which reference has already been made.

Although I have, for the reasons previously indicated, set out the history of the legislation, I have not, in the result, derived any assistance therefrom in construing the provisions of the present s16(2). A distinction is drawn in both paragraph (a) and paragraph (c) of subs(2) and in subs(4) and subs(5) of s16 between a "manufacturer" and a "dealer". Apart from s16(5A), which has no application in the facts of this case, the Act contains no definition of either of those words, and, accordingly, they must be given their natural and ordinary meaning. There is very little evidence as to the nature of the activities carried on by Regent Motors Pty Ltd or by Scandinavian Motors Pty Ltd, but it seems to me that on that evidence the magistrate was entitled to come to the conclusion, as to each of those companies, that it was, at all relevant times, a dealer in Volvo cars. Equally, it seems to me that it was not open to the magistrate to find that either company was a manufacturer of motor cars. A manufacturer is one who manufactures or who controls a workshop or factory in which the process of manufacturing is carried on.

"Manufacture" is a word which is capable of a good many meanings, but usually it involves the notion of working up materials into forms suitable for use (see *Federal Commissioner of Taxation v Jack Zinader Pty Ltd* (1949) [1949] HCA 42; (1949) 78 CLR 336, at p50; [1949] ALR 912, at p918; (1949) 9 ATD 46, per Williams J); or for sale (see *MP Metals Pty Ltd v Federal Commissioner of Taxation* [1968] HCA 89; (1967-1968) 117 CLR 631, at pp637-9; (1968) 14 ATD 407; (1968) 40 ALJR 538, per Windeyer J and the cases there cited).

In the field of patent law an even wider meaning has been given to the words "any manner of new manufacture": see *National Research Development Corporation v Commissioner of Patents* [1959] HCA 67; (1959) 102 CLR 252, at pp268-79; [1960] ALR 114, at pp120-8; (1959) 1A IPR 63. Undoubtedly in the case of motor cars, wholly constructed in Victoria from raw material, the maker of those motor cars produces goods for sale: cf *MP Metals Pty Ltd v Federal Commissioner of Taxation*, *supra*, and is a "manufacturer" within the meaning of s16. Nor would that maker be any the less a manufacturer if in the process of the making of the motor car there were incorporated into that motor car certain pre-fabricated units, such as a carburettor, a fuel pump, starter motor—which had already been made or assembled in some other place or by some other manufacturer. If a partly assembled motor car with chassis, engine, gears, and transmission system, wheels, is imported, the necessary coach and body work would fall within the concept of "manufacture". There may even be a process of manufacture involved in converting a left-wheel drive to a right-wheel drive, and there may be many other cases in which work done to an imported car or to a car made wholly in Australia may involve, at all events as to that work, the process of manufacture, so that the person in whose workshop or factory or under whose direction that work is done becomes a "manufacturer" within the meaning of s16.

But I do not understand anything of that nature to be involved in the present case—and I do not think it was, on the evidence, open to the magistrate to find that the premises of Regent Motors Pty Ltd or of Scandinavian Motors Pty Ltd were premises in which there was a "manufacture" of the Volvo car, or that those premises were, within the meaning of s16(2)(a)(ii), "the place of manufacture" of that car. (It may be desirable to state expressly that I take the phrase "the place of manufacture" in that sub-paragraph to mean the place of manufacture of the particular car to which the special identification plate is fixed.)

There is no question here of the defendant having driven the car "in the process of manufacture" (paragraph (a)(i) or "from the place of manufacture" to the place (i.e. Red Hill) where it was to be offered for sale (paragraph (a) (ii)). Nor was it suggested that at the time when he was intercepted, the defendant was "demonstrating the powers and qualities of the car to a purchaser or prospective purchaser" (paragraph (a)(iv)).

It was, indeed, suggested in argument that one of the duties of the defendant, in relation to the journey on which he was engaged at the time of his interception, was to demonstrate the powers and qualities of the car. But the evidence makes it clear that he was not demonstrating them to a purchaser or prospective purchaser.

It was strongly argued that at the time of his interception the Volvo car was being used by the defendant, as an employee of the dealer (Regent Motors Pty Ltd), "for the trade purpose of testing the car" (s16(2)(a)(iii)). The power and performance of a car's engine can, no doubt, be tested, to some extent, on a work bench. Other tests may be capable of being carried out only on a special testing course, such as the General Motors course at Lang Lang. But sub-paragraph (iii) is obviously not concerned with those types of testing. It is concerned with the use of a car on a highway (see s17(1)(d)) for the purpose of testing the car. The testing of a car on a highway would often be directed to ascertaining its performance in conditions of ordinary traffic, e.g. testing its roadholding capability on suburban and country roads not specifically designed or "tailored" for car-testing or testing its performance from a standing start at traffic lights, and so forth.

The magistrate took the view that "testing" relates to "the actual physical testing" of the car, and that "making sure the car was mechanically perfect was" not within the meaning of "testing the car". I am not sure that I have correctly apprehended what the magistrate meant by the phrase "the actual physical testing", but I take him to have meant testing the limits of physical performance of the car, e.g. as to speed, braking power, gear changing and the like and that driving the car with an eye and an ear for faults or possible flaws in the vehicle's constitution or performance was not "testing the car". If that was his view, the magistrate, in my opinion, placed too limited a construction on the phrase "testing the car".

In my view, it was open to the magistrate on the evidence adduced before him to find that the Volvo car was being *bona fide* used for the trade purpose of testing the car.

It was argued that the car was also being used for the trade purpose of "selling the car or delivering the car for...sale" (s16(2)(a)(v)). This sub-paragraph is to be read in the light of the fact that driving the car for the purpose of "demonstrating the powers and qualities of the car to a purchaser or prospective purchaser" is covered by sub-paragraph (iv). If the provisions of sub-paragraph (ii) were wider than they are—if, in other words, that sub-paragraph extended to driving the car from the premises of the dealer to the place where it was to be offered for sale—there would be little scope for the words "selling the car or delivering the car before or after sale" in sub-paragraph (v).

At the time when Cussen J decided *Taylor v Kellett* [1922] VicLawRp 88; [1922] VLR 804; 28 ALR 403, the permitted purposes read: "Testing a car, demonstrating to a purchaser or probable purchaser the powers and qualities of a car, selling a car or delivering a car after sale" (cf. s16(2)(a)(iii), s16(2)(a)(iv) and s16(2)(a)(v) but there was no reference to driving a car "to the place where it will be offered for sale" (cf. s16(2)(a)(ii)). Dealing with the argument that a very wide meaning was to be assigned to the words "selling a car", Cussen J said at (ALR) p404:

> "It was suggested that they cover any case of any manufacturer or dealer or agent who had some hope that he might, on a journey, find a buyer for a car. It was suggested, further, that the car being

> driven on a public highway, need not necessarily be the car which it was hoped might be sold. If such a wide meaning were given to the words 'selling a car', the provisions with regard to demonstrating to a purchaser the powers and qualities of a car would be unnecessary and useless. I am inclined to think that the car referred to in the words 'selling a car' must be the car which is being driven on the public highway with a general identification mark on it."

(See also [1922] VicLawRp 88; [1922] VLR 804, at p807.) (Note: the amendment effected in 1930 by Act No. 3901 would appear to represent a legislative adoption of this view.) Cussen J added (VLR at p807; ALR at pp404, 405):

> "I am not prepared to say that the words 'selling a car' are confined to the case of actual sale. It may be that where a proposed sale is being effected, and may with confidence be expected, if it goes off without any fault of the dealer, it would come within the provision."
> (See also [1922] VicLawRp 88; [1922] VLR 804 at p807.)

In the light of those observations I do not think I can accede to the argument that the evidence in the present case showed that the car was being used for the trade purpose of "selling the car or delivering the car for sale". The words "delivering the car before or after sale" in sub-paragraph (v) apply, I think, to a case where the very car which is being driven on the highway with special identification plates is being so driven either for the purpose of being delivered in order to effect a sale of that same car (e.g. pursuant to a prior request by or promise to a prospective purchaser to permit him to inspect or test the car's powers and qualities or with a view to subsequently demonstrating to that person the powers and qualities of the car). The words, would, I think, also apply to the case of a car being delivered to a person who has antecedently agreed to buy such a car by description: *Goods Act* 1958, s6(3). In many such cases the property in the car will have passed to that person prior to actual delivery thereof to that person: cf. *Goods Act* 1958, s23, r5. (It may be desirable to say here that, in my opinion, the word "sale" in paragraph (a) is to be understood as covering transactions of hire purchase and that the word "purchaser" must be given a correspondingly extended meaning.)

"Selling the car" is, I consider, to be understood as meaning "effecting a sale of the car"—of the very car which is being driven on the highway at the time in question. Having regard to the terms of s16(2)(a)(ii) I do not think that the phrase "selling the car" in s16(2)(a)(v) is to be considered as synonymous with offering the car to the world at large for sale. But if a car is driven on the highway in the course of a journey to a place where it is to be submitted to one or more prospective purchasers for his or their inspection with a view to inducing one of those prospective purchasers to agree to purchase that very car—or it may be, an equivalent model or a modified version thereof—such a car while being so driven on a highway is, I consider, being used "for the trade purpose of selling the car".

The evidence in the present case falls short of the facts just postulated, and, in my view, it was not open to the magistrate to find that the Volvo car was being driven for the purpose of selling the car or delivering the car for sale. The scheme of sub-paragraphs (i) to (v) of paragraph (a) is one which takes up the various processes in a chronological sequence starting with the process of manufacture and ending with the process of delivery after sale. It is probable that the alterations effected in 1949 by Act No. 5450 were intended to achieve a more comprehensive coverage or protection of legitimate trade purposes than that effected under the legislation as theretofore existing.

The fact that sub-paragraph (i) was restricted to cases of driving "in the process of manufacture" and sub-paragraph (ii) to cases of driving "from the place of manufacture" may, perhaps, indicate an intention on the part of the legislature to ensure that the benefits of the special identification plate system would be available to then newly established manufacturing enterprises, which might not have been protected under the legislation in its original form. But the amendments effected in 1949 gave no protection to the movement of cars for the purpose of being displayed or offered for sale generally, or from importers to distributors, or between major distributors and their local agents, or between various distribution points of the same importer or distributor. To take one example, the driving of a car from a distributor's central depot to the showroom of a sub-distributor in an outer suburb does not seem to be covered by any of the presently existing sub-paragraph of paragraph (a). It may also be observed that the provisions of paragraph (c) as to driving a motor car to any premises to be repaired or during the process of

repair or returning it to the owner after repair would appear not to cover the case of driving such a car for the purpose of cleaning, or repainting or for engine tuning, etc.

Whether driving a car for purposes such as those should be included within the special identification plate system is a matter of policy upon which, no doubt, the views of representatives of the motor trade may perhaps differ from those of the Treasury or the police. It is, perhaps, sufficient for me to say that, on the legislation as it at present stands, driving a car from the premises of a dealer to a place where it will be offered for sale to the public at large is not a trade purpose in respect of which a special identification plate may be used.

The problem then arises as to the effect of the words in the second proviso to s17(1)(ii), namely, the words, "only for one or more of the purposes specified in subs(2)" of the said section (i.e. s16). In the present case, the defendant was using the motor car for one of the purposes specified in s16(2), viz. that specified in paragraph (a)(iii), but he was also using it for the purpose of driving the car from the dealer's premises to the place where the car was to be offered for sale, namely, the Red Hill Show, and that is not a purpose specified in s16(2). It follows, therefore, that the defendant could not have satisfied the Court of the defence arising under the second proviso to s17(1)(ii) of the Act and that the magistrate was right in convicting him.

The order nisi will, therefore, be discharged and I will order that the informant's costs of the order nisi be taxed and that when so taxed the amount at which they have been taxed or the amount of $120, whichever is the less, be paid by the defendant to the informant.

Solicitor for the informant: TF Mornane, Crown Solicitor.
Solicitor for the defendant: KA Hercules.
