

51/90

SUPREME COURT OF VICTORIA

FRASER v SPENCER-GARDNER

Southwell J

11 October 1990 — (1990) 12 MVR 215

MOTOR VEHICLES – PARKING INFRINGEMENT – OWNER LIABLE FOR UNLESS CERTAIN INFORMATION PROVIDED WITHIN A CERTAIN TIME: ROAD SAFETY ACT 1986, SS85, 86.

The registered owner of a motor vehicle is liable for parking infringements unless the owner within a certain time, provides information as to the identity (if known) of the person in charge of the vehicle at the relevant time. Where there was evidence that a defendant was the registered owner of the motor vehicle when a parking infringement was incurred but no evidence that the owner had provided the necessary information within the time specified, a magistrate was in error in dismissing the information laid in respect of the parking infringement.

SOUTHWELL J: [1] This is the return of an order nisi to review a decision of the Magistrates' Court at Box Hill made on 24 May, 1990 when the Magistrate dismissed an information relating to a parking infringement. On 24 August, 1989, a Mr Peter Fraser, a by-laws officer employed by the City of Box Hill, saw a Toyota sedan motor car registered number AFA 001 unlawfully parked, in that it was parked in a "No Standing Area". He affixed the car a parking infringement notice which under the relevant legislation constitutes a service of that notice upon the registered owner of the vehicle.

The *Magistrates (Summary Proceedings) Act* 1975 provides for a series of steps set out in ss89A to 89P of that Act which may occur in relation to the enforcement of any penalty which might have been incurred by the registered owner of a vehicle said to have been, amongst other things, unlawfully parked. It is, I think, unnecessary for me to set out each of the steps which was taken in this case. It is sufficient to say that on 8 May, 1990 the matter came before the Magistrates' Court where a hearing took place at which the respondent was present. The information before the court is in fact the certificate issued pursuant to s89N of the *Magistrates (Summary Proceedings) Act* which provides that the certificate be deemed to be an information. The information alleged that the respondent committed a breach of the *Road Safety Act* 1986 in that he was the registered owner of a vehicle left standing in a "No Standing Area".

[2] Mr Fraser gave evidence before the court of having observed the vehicle illegally parked, and of having served the parking infringement notice, of which he produced a copy. He then produced a certificate of the Roads Corporation which certified that on the day of the offence, namely, 21 August, 1989, the respondent was the owner of the car. The Magistrate then informed the respondent of the three options open to him in the presentation of his defence. The defendant elected to make a statement from the floor of the court, in the course of which he stated that he was not the owner of the vehicle, and he produced a photocopy of a contract of sale of the vehicle dated 9 June 1989, that is, a little over two months prior to the commission of the alleged offence.

Although it is not entirely clear from the material before the court, it would appear probable that the respondent was permitted either formally to tender the photocopy of that contract or at least show it to the Magistrate in support of his claim that the car had been sold. Although it is unnecessary now to decide the point, it would seem to me to have been impermissible for the respondent to have been allowed to do that (See *R v Wyatt* [1972] VicRp 105; [1972] VR 902 at pp908-9). However, no point is taken in the order nisi in respect of that matter and I say no more about it. The respondent then informed the Magistrate that he had sent a sworn statement to the City of Box Hill, which was the enforcement authority, stating that he was not the owner of the vehicle but he did not then have a copy of [3] that statement. The Magistrate asked the prosecutor whether he had a copy of it and although the prosecution objected, it was eventually read to the court. In that statutory declaration, the respondent claimed that he had sold the vehicle to a

named person on 9 June, 1989. The Magistrate said that he accepted that the vehicle had been sold; that it was still open to the council to charge the actual driver as a period of 12 months had not yet elapsed and he thereupon dismissed the information.

An order nisi to review that decision was granted by Master Evans on 8 June, 1990 on the ground, *inter alia*:

"That the learned Magistrate erred in law in—

(1) taking into account the defendant's evidence as to the ownership of the vehicle involved when the offence was committed when there was no evidence as to

(a) the receipt by the Roads Corporation of notice of transfer of registration under the regulations or as to there being in the records of that corporation of a person (sic) other than the respondent being entitled to possession of that vehicle at the time of the offence;

(b) the supplying by the respondent to the informant of a sworn statement in writing containing the name and address of the person in charge of the vehicle at the time of the offence within 14 days after service on the owner of a courtesy letter under Part VIIA of the *Magistrates (Summary Proceedings) Act 1975*".

On this application, in which there was no appearance for the respondent, Mr Macaulay submitted that the Magistrate had fallen into error in that he failed to have regard to the meaning and operation of ss85 and 86 of the *Road Safety Act 1986*. Section 85 of the latter Act provides that:

"'Owner' means:

[4] (a) the owner in whose name the motor vehicle is registered at the time of the offence under this Act or a corresponding Act of the commonwealth or of another State or Territory of the Commonwealth or, if the authority has received notice of transfer of registration under the regulations, the person whose name is disclosed in the records kept by the Authority as being entitled to possession of the motor vehicle at the time of the offence; or (c) ... (d) ..."

Section 86 of the *Road Safety Act* provides:

(1) the owner of a vehicle in relation to which a parking infringement occurs is guilty of an offence against the Act, rules, regulations or bylaw contravened, in all respects as if that person had been the actual offender who was guilty of the infringement, unless the court is satisfied that the vehicle was a stolen vehicle;

(2) ...

(3) Despite sub-section (1) and (2), the owner of the vehicle is not by virtue of this section guilty of an offence if—

(a) before or within 14 days after the service on the owner of—

(i) a summons;

(ii) an information under Part VII of the *Magistrates (Summary Proceedings) Act 1975*; or

(iii) a courtesy letter under Part VIIA of that Act—

(whichever is first served) in respect of the parking infringement concerned the owner supplies in a sworn statement in writing to the informant the name and address of the person who was in charge of the vehicle at the relevant time; or

(b) the owner satisfies the court that the owner did not know and could not with reasonable diligence have ascertained that name and address."

Mr Macaulay submitted that there was here uncontested evidence that the respondent was the owner **[5]** within the meaning of s85(a); that is to say, he was the person in whose name the motor vehicle was registered on 24 August, 1989 which was the date of the offence. It was further submitted that the only manner in which the respondent could have avoided conviction – assuming there was no issue as to the basic fact that the vehicle had been parked contrary to law – was to show to the court either that he had within 14 days after the service of the courtesy letter, supplied a sworn statement in writing giving the name and address of the person who was in charge of the vehicle, or to have satisfied the court that he did not know of that name and could not with reasonable diligence have ascertained it.

In my opinion, that submission must succeed. The legislation here under consideration is

designed to ensure that the registered owner of the vehicle shall be liable for parking infringements in most circumstances. It in effect casts upon the owner of a vehicle an obligation to ensure that if it is sold, then the fact of that sale is registered with the Roads Corporation.

If the owner is served with a courtesy letter – and in this case there was evidence that that was done prior to the end of November 1989 – then in the circumstances of this case when the owner knew of the name and address of the person who he claimed was in possession of the vehicle at the relevant time, he is obliged to provide that information in a sworn statement within 14 days after the receipt of the courtesy letter.

That means that by 14 December, at the latest, the respondent was obliged to provide that sworn statement. If [6] he did not do so, then he was guilty of the offence charged. It follows that the Magistrate was in error in dismissing the information.

The order nisi is made absolute. The order below is set aside. In lieu thereof there be an order that the respondent be convicted and the matter be referred to the Magistrates' Court to be further dealt with according to law. The respondent to pay the costs of this application.

APPEARANCES: For the applicant Fraser: Mr C Macaulay, counsel. Moores, solicitors. No appearance for the respondent Spencer-Gardner.
