

Further, we do not find that the plaintiffs would be prejudiced if we open the default judgment. With or without the individual defendants, the plaintiff still will be required to prove their case against the two corporate defendants. We do not find any evidence that the defendants are intentionally trying to delay the proceedings or impede the plaintiffs in establishment of their claims; nor do we find any evidence of bad faith in the defendants' conduct.

The cases cited by the plaintiffs where petitions to open were denied because there was no justifiable excuse for not answering can all be distinguished from the case at bar. Either there was no explanation given for the negligence or mistake that occurred, or the court simply failed to believe the excuse given was reasonable. Here, we feel that the defendants have shown a reasonable excuse or justification for their failure to appear and answer.

In conclusion, we find that the defendants have (1) promptly filed their petition to open judgment, and (2) the defendants have reasonably justified their failure to appear and answer. As previously noted, the defendants need not demonstrate a meritorious defense where, as we have found in the case at bar, the equities are otherwise clear. We also conclude that the prejudice to the defendants in not opening the judgment would be out of proportion and greater by far than that caused to the plaintiff if we order the judgment to be opened.

Equitable principles are involved where the opening of a judgment is sought. We find that the equitable considerations applicable to this case demand that the defendants be given their day in court. Thus, we hold that the petition to open the default judgment should be granted.

#### ORDER

NOW, this 18th day of July, 1978, the petition of Jennie E. Javitch, Lee H. Javitch and Phillis M. Lipsett, individual defendants, to open the default judgment entered March 9, 1978, in the above captioned matter is granted.

Exceptions are granted the plaintiffs.

COMMONWEALTH v. ALLOWAY, C.P. Franklin County Branch, Misc. Doc. Vol. W, page 254

*Miscellaneous - suspension of driver's license - Pennsylvania Vehicle Code, 75 P.S. 615 (a)(2) - effect of appeal from conviction.*

1. Upon receipt of a certification of a driver's conviction of a felony involving a motor vehicle, the Secretary of the Department of Transportation of Pennsylvania has the duty to impose an immediate revocation of the driver's operating privileges.

2. The legislative intent of the Pennsylvania Vehicle Code, 75 P.S. 615 (a) (2), is to remove immediately from the highways one who has been convicted of a felony involving a motor vehicle.

3. In the absence of an order staying the suspension of operating privileges, the fact that an appeal from the conviction of a revocation offense is pending does not preclude immediate suspension.

*Harold H. Cramer, Assistant Attorney General, Attorney for the Commonwealth*

*Stewart L. Kurtz, Esq., Attorney for Appellant*

#### OPINION AND ORDER

KELLER, J., October 13, 1975:

On October 5, 1973, appellant herein was tried for the crime of burglary in the Fulton County Branch of the 39th Judicial District of the Court of Common Pleas, and the jury returned a verdict of guilty. On March 17, 1975, sentence was imposed. The conviction was certified by the Clerk of the Courts of Fulton County on March 31, 1975. On April 15, 1975, the appellant filed with the Prothonotary of the Superior Court of Pennsylvania an appeal from the judgment of sentence entered on March 17, 1975. By order dated June 26, 1975, and received by appellant on June 28, 1975, his operating privileges were revoked for a period of one year, effective July 31, 1975. Mr. Alloway petitioned for appeal from the order suspending operating privileges on July 22, 1975, and an order was entered the same date granting a hearing on the petition and directing that the appeal should act as a supersedeas of the revocation order. On August 20, 1975, Harold H. Cramer, Assistant Attorney General for the Commonwealth of Pennsylvania entered his appearance in the matter.

A hearing on the revocation appeal was held on September 18, 1975 at which time Mr. Cramer for the Commonwealth and Mr. Kurtz, counsel for the appellant, stipulated that a vehicle was used in the commission of the alleged offense and that an appeal is pending from the judgment of sentence before the Superior Court of Pennsylvania, and that the appeal does act as a supersedeas to the execution of the sentence. Counsel also stipulated that Commonwealth's Exhibit 1, consisting of the

certification Statement, Report of the Clerk of Court showing the conviction or acquittal of any violation of The Vehicle Code and/or of any other act in the commission of the crime in which a motor vehicle was used, the Withdrawal of Motor Vehicle Privileges and Notification of the Director of Bureau of Traffic Safety. The Commonwealth rested and the appellant introduced no evidence.

The sole issue for determination in this appeal is whether or not the Secretary of the Department of Transportation has the authority to impose a mandatory revocation upon receipt of a certification of conviction from the Clerk of Courts, although that conviction has been appealed to the Superior Court.

Section 616 (a)(2) of the Pennsylvania Vehicle Code, 75 P.S. 615 (a)(2) provides:

“(a) Upon receiving a certified record, from the clerk of the court, of proceedings in which a person pleaded guilty, entered a plea of nolo contendere, or was found guilty by a judge or jury, of any of the crimes enumerated in this section, the secretary shall forthwith revoke, for a period of one (1) year from the date of revocation, the operating privilege of any such person: Provided, however, that if such person is serving or has served a period of suspension for the same offense under the provisions of clause (1) of section (b) of section 618 of this act, he shall be credited with the suspension time served against the one (1) year revocation, and where such person was convicted, or entered a plea of guilty or nolo contendere, of any one of the crimes enumerated in this section, such operating privilege shall not be restored, unless and until the fine and costs, imposed in such cases, have been fully paid. The clerk of the court shall, when such fine and costs have been so paid in any such case, certify such fact to the Department of Revenue. Bases requiring such certification follow:

“(2) Any crime punishable as a felony under the motor vehicle or tractor laws of this Commonwealth, or any other felony in the commission of which a motor vehicle or tractor is used.”

The Commonwealth argues that the Secretary is under a duty to revoke “forthwith” the operating privileges of anyone convicted of a revocation offense, and that the legislature intended to remove such persons from the highways at the earliest possible moment. It does not appear that this question has been specifically passed upon by our appellate courts, but we find that the Courts of Common Pleas of Cumberland

County and Adams County in *Commonwealth vs Freeman*, 25 Cumberland Legal Journal 137 (Pamphlet No. 26, published June 27, 1975), and *Commonwealth vs. Raymond E. Hamilton*, 202 May Term 1975 (unreported) have concluded that an appeal of the revocation does not automatically act as a supersedeas preventing the Secretary from revoking operating privileges on a certification to the Department. In the somewhat analogous case of *Commonwealth vs Koons*, 91 Dauphin 92 (1969), operating privileges were suspended for convictions under the Vehicle Code and the operator appealed the conviction to the Superior Court. The Court of Common Pleas of Dauphin County upheld the action of the Secretary in assessing points and suspending the petitioner based on the conviction still under appeal.

The Commonwealth quotes with approval from *Parker vs State Highway Department*, 78 S.E. 2d 382 (S.C. 1953):

“We think the word ‘convicted’ as used in the statute under consideration contemplates only a verdict of guilty and sentence thereon, and was not intended to preclude the suspension of the license of the person convicted until the determination of his appeal and an end to the prosecution.” See also *State vs Berres*, 70 N.W. 2d 197 (1955); *Goulter vs Huse*, 84 P. 2d 126 (1938).

We agree with the conclusions of our sister Courts of Common Pleas and with the contention of the Commonwealth that in the absence of an order staying the legislatively mandated action of the Secretary, it is imperative that the Secretary revoke operating privileges even though an appeal is pending in a higher Court to avoid thwarting the clearly stated legislative intent.

#### ORDER

NOW, this 13th day of October, 1975, the appeal of Gary Alloway is dismissed.

Costs to be paid by the appellant.

Exceptions are granted the appellant.

Editor's Note: This case was affirmed on appeal to the Commonwealth Court. See 365 A.2d 710 27 Pa. Commonwealth Ct. 132 (1976). Note, also, a similar statutory provision for revocation appears in the new Vehicle Code. See Act of 1976, P.L. 162, No. 81, sect. 1, eff. July 1, 1977 (75 Pa. C. S. A. sect. 1532).