

THE HIGH COURT

[2004 No: 1997SS]

BETWEEN

**THE DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF SERGEANT MICHAEL CLARKE)**

PROSECUTOR

**AND
SIMON STAFFORD**

ACCUSED

Judgment of Ms. Justice Finlay Geoghegan delivered on the 14th June 2005.

1. On the 23rd November, 2004 the former President of the District Court, His Hon. Judge Smithwick, stated a case for the opinion of the High Court pursuant to s. 52(1) of the Courts (Supplemental Provisions) Act, 1961 in the following terms:

1. At a sitting of the District Court at Wexford on 30th June, 2003 Simon Stafford was accused of dangerous driving and associated offences at Kilmore, Wexford on 31st August, 2002.
2. The application for the summons was made by the prosecuting Garda Sergeant on 28th February, 2003 and the summons was issued by the appropriate District Court clerk on the same date.
3. The Defence sought a dismissal on the ground that the application was not made within six months of the alleged offence.
4. The Prosecution contend that the application was within six months in that any application on or before 28th February, 2003 would be in time.

2. It is common case that the District Court summons was issued on the 28th February, 2003 by the appropriate District Court clerk pursuant to s. 1 of the Courts (No. 3) Act, 1986 following an application under s. 1(4) of the Act of 1986 also made on the 28th February, 2003 by the prosecuting Garda Sergeant.

3. The time within which an application may be made for the issue of a summons pursuant to s. 1(4) of the Act of 1986 is provided for by s. 1(7)(a) of the Act of 1986 which provides:

"(7)(a) Any provision made by or under any statute passed before the passing of this Act relating to the time for making a complaint in relation to an offence shall apply, with any necessary modifications, in relation to an application under subsection (4) of this section."

4. It is likewise agreed that the relevant earlier statutory provision is s. 10(4) of the Petty Sessions (Ireland) Act, 1851 which in material terms provides:

"In all cases of summary jurisdiction the complaint shall be made . . . within six months from the time when the cause of complaint shall have arisen, but not otherwise."

5. The offence to which the summons relates was committed on the 31st August, 2002. Accordingly the application must have been made "within six months" from the 31st August, 2002. The issue presented by the case stated is how that phrase should be construed for the purposes of determining the relevant six month period under s. 10(4) of the Act of 1851. The contention on behalf of the accused is that the relevant six month period expired on the 27th February 2003. In support of that contention it is submitted, in reliance on s. 11(h) of the Interpretation Act, 1937, that the 31st August, 2002, should be included as the first day of the six month period. It is further submitted that as it was the last day of August, 2002 the six month period must expire on the 2nd last day of the sixth month which in the case of February, 2003 was 27th February.

6. On behalf of the prosecutor the contention is that, regardless of whether the 31st August 2002 is included or excluded the six month period provided for by s. 10(4) of the Act of 1851 included the 28th February, 2003. The submissions made in response to the submissions on behalf of the accused and in support of this contention may be summarised as follows:-

(i) The relevant time within which the application by the Garda Sergeant must be made under s. 1(4) of the Act of 1986 is specified by s. 10(4) of the Act of 1851 and s. 11 (h) of the Interpretation Act, 1937 does not apply.

(ii) A month as used in s. 10(4) of the Act of 1851 is a calendar month.

(iii) It was settled Irish law prior to 1922 that the date of commission of an offence was excluded in the computation of the six month period for the purposes of s. 10(4) of the Act of 1851 and that the relevant rule of computation of the six month period was the same date rule i.e. where an offence was committed on say the 7th January, 1900 the complaint must have been made on or before the 7th July, 1900. Further that, where as in this instance the offence was committed on the 31st August then as in February there is no 31st the six calendar months for the purposes of s. 10(4) of the Act of 1851 expire on the last day of February. Reliance was placed for this and the earlier propositions on the rationale of the rule existing in England and Ireland prior to 1922 as explained by Lord Diplock in *Dodds v. Walker* [1981] 2 All E.R. 609 at 610.

(iv) Even if as contended on behalf of the accused the date of the offence is included, the six month period would expire on the proceeding date in the sixth month or where as in this instance there was no 30th February 2003 the last day of the sixth month.

Conclusions

7. I have concluded that s. 11(h) of the Act of 1937 does not apply to the computation of the relevant six months in relation to the application for the summons the subject matter of this case stated.

8. Section 11(h) provides:

11.— The following provisions shall apply and have effect in relation to the construction of every Act of the Oireachtas and of every instrument made wholly or partly under any such Act, that is to say:—

(h) *Periods of time.* Where a period of time is expressed to begin on or be reckoned from a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period, and, where a period of time is expressed to end on or be reckoned to a particular day, that day shall, unless the contrary intention appears, be deemed to be included in such period.

9. Section 11(h) only applies to an “Act of the Oireachtas and every instrument made wholly or partly under any such Act”. Notwithstanding that the application for the summons was made pursuant to s. 1(4) of the Act of 1986, which is an Act of the Oireachtas, the relevant time provision for such application under s. 1(7)(a) of the Act of 1986 is to be determined by applying a provision of a statute passed before that Act. The relevant statute is the Petty Sessions (Ireland) Act, 1851 and in particular s. 10(4) thereof. The Act of 1851 is not an Act of the Oireachtas. Hence s. 11(h) of the Act of 1937 does not apply to its construction.

10. I am satisfied that the statement of the law in Part 1 of the second edition of O'Connor, *The Irish Justice of the Peace*, (Dublin, 1915) in relation to the computation of the six month period specified in s. 10(4) of the Act of 1851 is an accurate statement of the settled Irish law as of that date. At p. 111 it is stated:

“The six months means six calendar months; for the word “month” in all Acts of Parliament passed since 1850, means a calendar month unless the contrary intention appears (Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 3).

In calculating the period of six months, the day on which the offence has been committed or the matter of the complaint or information has arisen is excluded (*Young v. Higgon*, (1840) 6 M. & W. 49, 52; *Williams v. Burgess*, (1840) 12 A. & E. 635; *Hardy v. Ryle*, (1829) 9 B. & C. 603; *Radcliffe v. Bartholomew*, (1892) 1 Q.B. 161; *Frew v. Morris*, (1897) 34 Sc.L.R. 527). Therefore, if an offence is committed, say, on the 1st January, the information or complaint will be in time if made on the 1st July”.

11. It was not suggested in submission by either party that between 1915 and the passing of the Constitution in 1937 that there had been any change in the law as stated above. Nor was it suggested that a method of calculation which excluded the date upon which the offence was committed was inconsistent with any provision of the Constitution. Hence, in accordance with Article 50 of the Constitution, s. 10(4) of the Act of 1851 continued to have effect in accordance with its then existing meaning and application. Section 10(4) of the Act of 1851 was partially repealed by s. 9 of the Statute of Limitations, 1957 but this cannot affect the construction of the remaining part of the provision.

12. Counsel for the accused sought to rely upon the recognition given by the High Court in *McGuinness v. Armstrong Patents Ltd.* [1980] I.R. 289 and *McCann v. An Bord Pleanála* [1997] 1 I.R. 264 to the divergence between Irish law and English law on the question of the inclusion or the exclusion of the date upon which an event occurs where the time period is expressed to begin or to be reckoned from the day upon which such an event occurs. It is correct to say that both those decisions acknowledge the divergence between Irish law and English law in the construction of time periods expressed to commence upon a particular date in an Act of the Oireachtas. However those decisions relate to the construction of time periods in Acts of the Oireachtas to which s. 11(h) of the Act of 1937 applies and causes the divergence. Those decisions do not consider the computation of time under a statutory provision under an earlier statute which is not an Act of the Oireachtas.

13. Reliance was also sought to be placed by counsel for the accused on the statement at p. 643 of Dermot Walsh, *Criminal Procedure*, (Dublin, 2002) in relation to the six month period provided for in s. 10(4) of the Act of 1851. There it is stated:-

“In computing this period of six months the day the offence was committed counts as a full day and the day the complaint was made counts as a full day.”

14. Professor Walsh does not cite any authority for this statement. However, a little earlier on the same page Professor Walsh appears to have relied upon Woods, *District Court Practice and Procedure in Criminal Cases*, (Limerick, 1994) at p. 77. In the same section of Woods commencing on p. 76, dealing with the computation of the six month time limit *inter alia* under s. 10 of the Act of 1851, Mr. Woods relies expressly on s. 11(h) of the Act of 1937 and then states:

“thus, if a summary offence to which the general time limit applies [the six months under s. 10(4) of the Act of 1851] is alleged to have been committed on 10 January, the complaint or application for summons should be made on or before the 9 July following.”

15. For the reasons already set out in this judgment, I have concluded that s. 11(h) of the Act of 1937 does not apply to the construction of the time period in s. 10(4) of the Act of 1851 and must respectfully decline to adopt either of the above passages as a correct statement of the law.

16. Whilst the conclusions I have reached on the above issue are sufficient to answer the case stated, it appears to me that, having regard to the distinct submissions made on behalf of the prosecutor as to the appropriate computation of the expiry of the six months in the month of February, even upon an assumption that the 31st August 2002 was included in the six month period, I should also state the conclusions which I have reached on this issue.

17. It is common case between the parties that a month for the purposes of s. 10 of the Act of 1851 is a calendar month. Counsel for the accused submitted that if the relevant period commenced on the 31st August, 2002, that as such date was the last day of the month of August it followed that six calendar months from that date must end one day prior to the last day of the sixth calendar month i.e. on the 27th February 2003 as February had 28 days in 2003. He made that submission without authority.

18. Independently of authority I cannot accept that submission. Statutory time periods must be capable of certain computation. The submission on behalf of the accused when fully analysed leads to considerable uncertainty. If it were to be accepted how does one for example determine the date of expiry of a six month period which commences on 28th August 2002. Upon the contention made on behalf of the accused as the 28th August is the fourth last day of the month of August it would have to be the 24th February being the fifth last day of the month of February. Following this pattern to its logical conclusion the obvious question is what is six months from a period which commences on the 2nd August? On the accused contention it would not be a date in February 2003 as it should be thirty days from the end of February. As the period is six calendar months that cannot be correct. If one stops applying this rule

at some date during a month when should it be?

19. I have concluded that contrary to this submission the way in which a period of six calendar months from the date of commission of an offence should be calculated is the following. If the date of offence is to be included in the six month period then the six months expires on the day before the equivalent date to that date in the sixth month. Where the date of offence is at the end of a month such that in the six month there is no day which is equivalent to one day less than the date of offence then it must expire on the last day of the six month. This undoubtedly means for example that six calendar months from an offence committed on the 29th, 30th and 31st August, 2002, expires on the 28th February, 2003. However, this variation in the number of days which comprise six months follows from the months being calendar months. It also provides certainty of computation.

20. I am supported in this conclusion by the explanations given by Lord Diplock in *Dodds v. Walker* [1981] 2 All E.R. 609 of the corresponding date rule in English law albeit in the context of the giving of a one month notice. His explanation relates to a period in which the first day is excluded. However what he states in relation to the expiry of the period is relevant to the view I have formed as to the expiry date. At p. 610 he stated:

"My Lords, reference to a "month" in a statute is to be understood as a calendar month. The Interpretation Act, 1978 says so. It is also clear that under a rule that has been consistently applied by the courts since *Lester -v- Garland* [1808] 15 Ves 248 that, in calculating the period that has elapsed after the occurrence of a specified event such as the giving of a notice, the day on which the event occurs is excluded from the reckoning. It is equally well established, and is not disputed by counsel for the tenant, that when the relevant period is a month or a specified number of months after the giving of a notice the general rule is that the period ends on the corresponding date in the appropriate subsequent month, i. e. the day of that month that bears the same number as the day of the earlier month on which the notice was given.

The corresponding date rule is simple. It is easy of application. Except in a small minority of cases, of which the instant case is not an example, all that the calculator has to do is to mark in his diary the corresponding date in the appropriate subsequent month. Because the number of days in five months of the year is less than in seven others the inevitable consequence of the corresponding date rule is that one month's notice given in a 30-day month is one day shorter than one month's notice given in a 31-day month and is three days shorter if it is given in February. Corresponding variations in the length of notice reckoned in days occurs when the required notice is a plurality of months.

The simple general rule which Cockburn CJ in *Freeman -v- Read* [1863] 4 B & S 174 at 184 described as being "in accordance with common usage... and with the sense of mankind", works perfectly well without need for any modification so long as there is in the month in which the notice expires a day which bears the same number as the day of the month on which notice was given. Such was the instant case and such will be every other case except for notices given on the 31st of a 31-day month and expiring in a 30-day month or in February or a notice expiring in February and given on the 30th or 29th (except in leap years) of any other month of the year. In these exceptional cases, the modification of the corresponding date rule that is called for is also well established: the period given by the notice ends on the last day of the month in which the notice expires. "

Answer to case stated

21. The answer to the case stated is that the summons was applied for within six months of the date of commission of the alleged offence.