Neutral Citation Number: [2006] IEHC 155

THE HIGH COURT

[2005 No. 1491 S.S.]

IN THE MATTER OF S. 52(1) OF THE COURTS (SUPPLEMENT PROVISIONS) ACT, 1961

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS
(AT THE SUIT OF GARDA JEFFERY KENNY)

PROSECUTOR

AND
SONIA DOYLE

ACCUSED

Judgment of Ms. Justice Dunne delivered on the 15th day of May, 2006

1. This is a case stated by Gerard Haughton, a Judge of the District Court in which he poses the following question:

> "Where an issue has been ventilated and decided by a Judge of the District Court, am I, a Judge of the District Court, precluded from embarking on a rehearing of that issue?"

2. The facts giving rise to this case stated are set out in the consultative case stated and are as follows:

> The accused appeared at a sitting of the District Court held at Tallaght on 16th November, 2004, before the learned District Judge to answer charges on charge sheets numbered 292861, 292860 and 192859. The charge sheets related to an incident on 8th December, 2003, at McGowans, Braemore Road, Churchtown, Dublin 14 and are respectively as follows: that the accused did use or engage in threatening, a busive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace might have been occasioned contrary to s. 6 of the Criminal Justice Public Order Act, 1994; that the accused did on 8th December, 2003 assault one John Lannigan contrary to s. 2 of the Non Fatal Offences Against the Person Act, 1997, and that the accused did on the same date and at the same location assault Emmet Quinn contrary to s. 2 of the Non Fatal Offences Against the Person Act, 1997.

3. The prosecutor herein, Garda Jeffrey Kenny, gave evidence of going to McGowans Public House in Churchtown on 8th December, 2003. He gave evidence of what he observed when he arrived at the public house. He then gave evidence that he attended at Court 46, Chancery St. on 4th June, 2004, and obtained an arrest warrant authorising the arrest of the accused from Judge Patrick Brady. He obtained the arrest warrant on foot of sworn information and oral evidence. He subsequently spoke with the accused in relation to the execution of the warrant and he arranged to execute the warrant on 15th July, 2004. On that date the prosecutor arrested the accused along with one of her co-accused and handed her a true copy of the charge sheets. Both accused were then brought before Tallaght District Court. The prosecutor was cross-examined on his evidence in relation to the events of 8th December, 2004. He was further cross-examined in relation to the circumstances of the arrest of the accused on 15th July, 2004, and in relation to the application for the arrest warrant on 4th June, 2004. The information on oath which was referred to above recited as follows:

> "Directions have been received back from the office of the Chief Prosecution Solicitors Office to charge Sonia Doyle of 50 Palmer Park, Dublin 14 with assault contrary to s. 2 of the Non Fatal Offences Against the Persons Act, 1997 arising out of an incident at McGowans Public House, Rathfarnham on 8th December, 2003. I am now applying for a warrant to arrest Sonia Doyle so as to bring her before the Courts."

4. The above recital was put to Garda Kenny together with a recital on the arrest warrant as follows:

> "Whereas a complaint has been made on oath and in writing that on 8th December, 2003, Sonia Doyle is alleged to have assaulted one John Lannigan contrary to s. 2 of the Non Fatal Offences Against the Persons Act, 1997 by kicking him…"

5. On this basis it was put to the prosecutor that the District Court did not have power to issue an arrest warrant directing the arrest of persons for summary offences. No issue was taken by the prosecutor on that proposition. He was also asked in cross-examination where the reference to a public order offence was to which he replied there was none. He agreed that the arrest warrant only refers to John Lannigan being assaulted.

6. At that point, the learned District Judge intervened and noted that any question as to the accused being lawfully before the Court was a matter for him, the Judge, to determine. Counsel for the accused indicated that Judge McDonnell in the District Court had on a previous date adjudicated on that very issue in the case. On that basis the learned Judge noted that there was a question over whether the Court had jurisdiction to hear and determine the allegations, the subject matter of the charge sheet dealing with the offence contrary to s. 6 of the Criminal Justice (Public Order) Act, 1994 and the charge sheet alleging an assault in respect of one Emmet Quinn contrary to s. 2 of the Non Fatal Offences Against the Person Act, 1997 and in particular whether complaints had been made within six months of the alleged incident. Judge Haughton indicated that it would be preferable if the issue of jurisdiction was to be decided by way of preliminary hearing. There was no objection to this course of action by either prosecution or defence.

7. It was then brought to the attention of the learned Judge that Judge McDonnell had on 11th October, 2004, ruled that the accused was lawfully before the Court and a compliant in relation to all charges before the Court had been made within six months of the date of the alleged offence. Both the prosecutor and the accused agreed that Judge McDonnell had adjudicated on the matter as indicated on that date. The learned Judge therefore found as a fact that the issue as to whether a complaint had been made within six months had been ventilated and adjudicated upon by Judge McDonnell on 11th October, 2004. A copy of the order of the District Court made by Judge McDonnell was appended to the case stated. The learned Trial Judge then indicated that the matter having been adjudicated upon by Judge McDonnell on 11th October, 2004, he was thereby precluded from deciding the issue. He indicated that the proceedings before the District Court on 11th October, 2004, formed part of the trial and if he were to adjudicate on the matter he would be acting as an Appeal Court.

8. In those circumstances counsel for the defendant argued that the Trial Judge before proceeding to convict an accused had to be satisfied that the prosecution had proved all elements of the offence. This requirement was no less so when the defence raised was that the charges were statute barred, a complaint having been made outside the six month time period set out in the relevant legislation. Accordingly it was submitted that the matter of whether the charges were statute barred was something that could be adjudicated upon by the learned trial Judge. The prosecution argued that as the matter had already been adjudicated upon by one Judge of the District Court it was not open to another Judge of the District Court to rehear the issue.

9. Following a further inquiry from the learned Trial Judge as to whether judicial review proceedings had been considered in relation to the decision of Judge McDonnell, he was informed that an application for judicial review was commenced but was refused leave at the ex parte stage on 15th November, 2004. It was in those circumstances that the said Judge of the District Court posed the question referred to above.

10. Helpful written and oral submissions were made by both sides in relation to this case. Ms. Donnelly SC on behalf of the accused pointed out that the matters before the District Court were summary matters thus raising the issue as to whether the accused had been properly brought before the District Court. In other words, should the accused have been brought before the District Court by way of arrest following the application by the Gardaí for an arrest warrant on 4th June, 2004. Ultimately the matter was listed before Judge McDonnell of the District Court and a hearing ensued before him at which two issues were raised, namely was the accused lawfully before the Court and two, had a complaint in respect of all the charges been made within six months of the date of the alleged offences. The certified copy of the order of the District Court made on 11th October, 2004, refers to the fact that on that date at a sitting of the Metropolitan District Court…a complaint was heard that the above named defendant on 8th December, 2003… assaulted Emmet Quinn. The order then went on to recite as follows:

> "It was adjudged that the defendant be remanded on continuing bail to the 14th day of October, 2004, at Tallaght Courthouse. The presiding Judge ruled that the accused is validly before the Court on all charges."

11. Although it does not appear anywhere in the case stated, Ms. Donnelly in her submissions indicated that Judge McDonnell at that point declined to hear and deal further with the case in circumstances where he had dealt with a co-accused. It appears that it was in those circumstances that Judge Haughton, came to take up the matter on 16th October, 2004.

12. Ms. Donnelly referred to s. 10(9) of the Petty Sessions (Ireland) Act, 1851, as amended, which provides that in the case of offences which are triable summarily only, the complaint shall be made within six months from the time when the cause of complaint shall have arisen unless the law otherwise provides. She argued that the computation of the six month time limit begins from the date of the commission of the alleged criminal activity and ceases to run on the date of the making of a complaint to a District Court Judge or the application for the issue of a summons to the appropriate District Court Clerk. In the case of an accused appearing before the Court having been arrested on foot of an arrest warrant granted by a District Court Judge she submitted that the date of the making of the complaint is the date upon which information is sworn before the relevant District Court Judge for the purpose of obtaining the warrant.

13. She then made reference to the decision in the case of *Minister for Agriculture v. Norego Limited* [1980] IR 155 at pp. 157 – 158 where it was held by the High Court (Finlay P.) that non-compliance with a time limit arising under statute for the making of a complaint or an application for the issue of a summons affords a defence to an accused but is not a matter which goes to the jurisdiction of the court to entertain the summons. In the course of his judgment Finlay P. stated as follows:

> "It is clear that this particular complaint was a complaint coming within the provisions of para. 4 of s. 10 of the Act of 1851 and that if the complaint was not made and the summons was not issued within six months of the date of the alleged offence, that fact would afford a good defence to the defendants. However, the issue which arises on the case stated as a matter of law is whether that is a matter of defence to be raised by the defendants and determined by the District Justice upon evidence (as the complaint contends), or whether it goes to the root of the jurisdiction of the District Court to enter upon the hearing of the complaint. I am satisfied that the contention of the complainant is correct and that the time limit arising under s. 10 of the Act of 1851 is a matter of defence for the defendant and does not go to the jurisdiction of the District Court to entertain the summons."

14. On that basis Ms. Donnelly submitted that the date upon which a complaint is made is a matter of fact. Therefore, Ms. Donnelly submitted that in raising the issue of whether or not a complaint had been made within the statutory time limit, the accused was doing no more than raising a defence available to her to be decided by the Trial Judge ultimately dealing with the trial namely, in this case, Judge Haughton. She contended that as this issue is a matter of defence, a ruling by another Judge in the same case cannot be binding.

15. In support of her argument, Ms. Donnelly referred in her written submissions to a number of authorities which consider the question as to whether one Judge can bind another Judge of equal jurisdiction. She referred in particular to a decision of Park J. in an unreported Judgment of 12th March, 1976 in the case of *Irish Trust Bank Limited v. Central Bank of Ireland*. That particular decision does not appear to me to be of any great assistance in that it is clear from the passage cited that the judgment in that case was referring to circumstances in which a Court could depart from a decision of a Court of equal jurisdiction where the decisions involved are in different cases. As such that particular decision is not of much assistance in relation to the present case. Reference was also made to the decision in the case of *Smith v. Judge Thomas O'Donnell & D.P.P.*, Unreported, High Court, 27th April, 2004, a judgment of O'Neill J. That case concerned a ruling by the President of the District Court, Judge Smithwick who made on order on 28th August, 2003, extending time for service of a book of evidence of the accused in that case. The order was expressed to be peremptory. On 10th September, 2003, the matter appeared before a different Judge of the District Court who ruled that the order of the President of the District Court was not a final and absolute order which had the effect of prohibiting any further extension of time after the expiry of two weeks permitted from 28th August and accordingly a further two week extension of time for service of the book of evidence was granted. An application to quash that order was then made. O'Neill J. rejected the arguments of the applicant and was of the view that if an order could be made precluding another Judge of the District Court from extending time or fettering that Judge in the exercise of discretion under s. 4B(3) of the Criminal Procedure Act, 1967, that would have the effect of rendering nugatory the judicial discretion necessarily employed in the exercise of the jurisdiction provided for in the section. As O'Neill J. stated at p. 5 of his judgment:

> "In my opinion it was not within the jurisdiction of Judge Smithwick to make an order which would fetter the exercise of another Judge of the District Court dealing with an application to extend time from the expiry of the extension of time granted by the former Judge. If it could be said that Judge Smithwick could lawfully have made such an order, precluding another Judge of the District Court from extending time or fettering that Judge in the exercise of his discretion under the section, that would have the effect of rendering nugatory the judicial discretion necessarily employed in the exercise of the jurisdiction provided for in s. 4B(3) and would offend the fundamental principle that a Judge cannot bind another Judge of equal jurisdiction to make a particular order in a matter in which the latter Judge has full jurisdiction and seisin of the matter in question."

16. He went on to hold that the use of the adjective "peremptory" in the context of that case did not have a defined legal effect and did not oust the jurisdiction of the second named respondent to hear and determine the application for an extension of time and for that purpose to exercise his judicial discretion to consider whether or not there was good reason for extending time and whether it

would be in the interest of justice to do so.

17. Ms. Donnelly then referred to a decision a case of Corporation of Dublin v. Flynn [1980] IR 357 and she placed particular reliance on the judgment of the Supreme Court in that matter (Henchy J.). She referred in particular to a passage from his judgment at p. 365 as follows:

> "In my judgment the prosecution, in this or in any other criminal charge, is not relieved of the onus of proof in regard to necessary issues by showing that those issues were expressly or impliedly decided against the accused in earlier proceedings. It is of the essence of a criminal trial that it be unitary and self contained, to the extent that proof of the ingredients of the offence may not be established as a result of a dispersal of the issues between the Court of trial and another tribunal. Evidence of a previous conviction, whether given as an ingredient of or an element in the charge or given pursuant to a special statutory permission, does no more than provide conclusive proof of that conviction. As to the issues that were decided against the accused in the earlier trial, the conviction does not operate to foreclose those issues in the subsequent trial."

18. Ms. Donnelly also referred to the decision of the High Court in a case entitled *Michael Ryan v. D.P.P.* [1989] IR 232 in which judicial review proceedings were taken in respect of a question as to whether the admission of evidence in a second trial which had been excluded in a prior trial would be an abuse of the process of the court and therefore should be restrained. Barron J. stated as follows:

> "The present application seeks to treat the various aspects of a trial as being severable. In my view this is something which cannot be done. A trial whether by Judge alone, or before Judge or jury, is under the control of that Judge. It is not for some other judicial authority to tell him how to conduct his court and the proceedings before him."

19. Accordingly Ms. Donnelly submits that Judge McDonnell in deciding a preliminary issue as to whether the complaint was made outside the six month period was in reality commencing the criminal trial of the accused. He did not ultimately conclude the criminal trial and accordingly it is submitted that the learned trial Judge, Judge Haughton commenced the trial de novo and is consequently not bound by any previous ruling of Judge McDonnell.

20. Ms. Donnelly then dealt with the question of issue estoppel. In this regard she referred again to the decision in the case of *Corporation of Dublin v. Flynn*. In that case it had been argued on behalf of the complainant in the Supreme Court that because it was necessarily found in an earlier prosecution of Mr. Flynn that the enforcement notice in respect of planning matters had been duly served on him and was valid, those issues should stand determined conclusively as a matter of *res judicata*. Henchy J. rejected the argument as an insupportable proposition. He noted that:

> "In criminal law the conclusive determination in an earlier prosecution of issues arises if at all for the benefit of an accused."

21. He went on to say that he was "satisfied that it would be contrary to principle to prove certain issues by giving evidence that they were determined against the accused in an earlier prosecution".

22. In support of her argument on this point she also referred to the decision of the Court of Criminal Appeal in the case of *the People D.P.P. v. O'Callaghan* [2001] 1 IR 584 in which Hardiman J. at p. 592 comments on the judgment in the case of *Corporation of Dublin v. Flynn* as follows:

> "It did not go further than holding that issue estoppel was not available to the prosecution, leaving open the question whether it was available to the defence in suitable cases…issue estoppel was arises in a criminal case 'if at all' only for the benefit of the defence".

23. Therefore she submitted that so far as issue estoppel applies, it does not apply in this case as it is not available to the prosecution. Finally she argued that her client would be denied a fair trial in this case if the accused is not permitted to put one aspect of her defence before the Judge determining her guilt or innocence on the basis that that issue is *res judicata* or that the accused is in some way estopped from raising that issue by virtue of the operation of issue estoppel in criminal law.

24. Mr. Paul Anthony McDermott appeared on behalf of the prosecutor herein. The first point that he made is that the doctrines of *res judicata* and abuse of process are normally applied so as to present a litigant from trying to re-litigate an issue in fresh proceedings. That contrasts with the circumstances of the present case in that the accused seeks to assert a right to re-litigate an issue within the same set of proceedings. He pointed out that the issue that arose initially before Judge McDonnell was one raised by the defence. Having raised the issue, the issue was dealt with and determined by Judge McDonnell and Mr. McDermott argued that it was unfair to allow the accused to raise the same issue in the same set of proceedings before another Judge. He argued that this was in effect to give the accused a tactical advantage. He pointed out that various issues which led to the finding were matters which were not in dispute. He stated that the decision made was a final ruling on a discrete issue after argument by both sides. That decision he argued was not open to alterations because of changed circumstances. The decision could not be altered by the introduction of fresh evidence or facts or changes in the law since the original ruling by Judge McDonnell. He also pointed out that the order made by Judge McDonnell was clearly regarded by the accused as being a final order given that the accused sought to judicially review the decision.

25. Mr. McDermott also made the point that there was an inherent lack of logic in the argument of the accused. He pointed out that if the case had come back before Judge McDonnell on a subsequent occasion the accused, if correct in her argument, would have been entitled to reargue the point as to whether or not she was properly before the District Court. Mr. McDermott then submitted that in essence the application of the accused herein was challenging the right of the parties to determine an issue before a trial begins. Having decided to deal with the matter of jurisdiction and time as a preliminary matter the accused cannot be allowed in the same proceedings to set up the same issue for a further ruling. Otherwise the exercise carried out by Judge McDonnell was a pointless exercise.

26. Mr. McDermott argued that the question of issue estoppel in the context of these proceedings was a red herring. Issue estoppel may arise in circumstances where in one set of proceedings a conclusion is reached and subsequently in a separate set of proceedings one or other party tries to rely on the decision in the first set of proceedings to raise an estoppel in respect of the same issue. He distinguished the facts of this case from those applicable in the case of *Corporation of Dublin v. Flynn*. In that case it had been sought to avoid the need to prove the service of enforcement orders in subsequent proceedings by virtue of the fact that the accused in the proceedings had previously been convicted in similar circumstances in which proof of the service of the enforcement

notices had been established.

27. Mr. McDermott also sought to distinguish the facts of the case of *Smith v. Judge O'Donnell and D.P.P.* (referred to above).

28. Mr. McDermott pointed out that there was no suggestion of any flaw in the earlier ruling of Judge McDonnell. In essence he reiterated that what was sought by the accused herein is a tactical advantage. In effect the doctrine of *res judicata* is to ensure that a party should not be allowed to re-litigate a matter that he or she has already had an opportunity to litigate. He pointed out that the District Court is a Court of record by virtue of the provisions of s. 13 of the Courts Act, 1971. Thus he argued its rulings have the same effect as rulings of higher courts. On that basis he argued that the issue of whether the accused was properly brought before the District Court and within the appropriate time limit was one which had been concluded and could not be raised again.

29. He referred also to the concept of abuse of process and argued on that basis that to permit an accused to re-litigate an issue that has already been determined against them would amount to an abuse of process and would undermine the integrity of the jurisdiction as that phrase was used by Hardiman J. in the context of missing evidence cases in *Scully v. D.P.P.* [2005] 1 IR 242 at p. 252. He pointed out that if the District Judge had ruled in favour of the accused on the particular point the accused would not now seek to ventilate that issue again. Thus he submitted that the accused is attempting to challenge the correctness of the first decision by persuading another Judge to reach a different decision. He argued that there was no right to keep litigating an issue until one finds a Judge who agrees with your point of view. He was also of the view that in circumstances where the High Court had declined to grant leave to challenge the decision of Judge McDonnell by way of judicial review the Applicant was in effect trying to circumvent the ruling of the High Court.

30. In her reply Ms. McDonnell reiterated that there had been a full hearing before Judge McDonnell in which evidence was given. She distinguished the proceedings before Judge McDonnell from the type of application that would be made for a dismissal of proceedings under s. 4(E) of Criminal Procedure Act 1967 as amended by s. 8 of the Criminal Justice Act, 1999.

Decision

31. In the consultative case stated herein the learned Trial Judge, Judge Haughton set out the facts found or agreed. Having heard certain evidence in relation to the power of the District Court to issue an arrest warrant directing the arrest of persons for summary offences and the issue as to whether the accused was lawfully before the Court by reference to whether complaints had been made within six months of the alleged incident, District Judge Haughton indicated that it would be preferable if the question of jurisdiction was decided in a preliminary hearing. There was no objection to this course of action. It was then and then only that it was brought to the attention of the learned Trial Judge that Judge McDonnell had on 11th October, 2004, ruled that the accused was lawfully before the Court and that a complaint in relation to all charges before the Court had been made within six months of the date of the alleged offence. The learned Trial Judge went on to indicate that proceedings on 11th October, 2004, formed part of the trial. He concluded that he was precluded from deciding the issue given that the matter had been argued at length and decided by Judge McDonnell. It is not expressly stated in the consultative case stated that when the matter was before Judge McDonnell that he dealt with the same issue as a preliminary issue. However, in the hearing before me, it was clear from the submissions of counsel on both sides that that in fact was what occurred. Equally it is clear that, and so stated by the learned Trial Judge herein, the matter was argued at length and decided by Judge McDonnell. In the course of her submissions, Ms. Donnelly referred to the question of the time limit in relation to the making of a complaint and referred in particular to the decision of *Minister for Agriculture v. Norego Limited* (referred to above). On the basis of that decision she submitted that the question of compliance with the time limit is a matter of defence and does not go to the jurisdiction of the Court to entertain proceedings. That may well be so but how does that impinge on the facts of the present case? In civil cases it is open to a defendant to raise by way of defence the issue of the Statute of Limitations, 1957. Whether an action is time barred or not is a matter that must be raised by the defendant if they wish to rely on that defence. The fact that an action is commenced after the statutory time limit does not oust the jurisdiction of the court to deal with that particular matter. Similarly in criminal proceedings, as was stated by Finlay P. in the case referred to and quoted from above the question of whether or not proceedings have been instituted within the appropriate time is a matter of defence. It is a matter which will therefore be raised by the defence if they rely on that particular point. That does not mean that the issue of the time limit cannot be dealt with as a preliminary issue. Indeed in many cases on the civil side, it would not be unusual for an application to be made at the outset of a hearing to have a ruling made on such a defence. It is clear from the facts set out in the consultative case stated herein that when this issue arose before Judge Haughton, he was of the view that the issue should be determined as a preliminary issue before him and both prosecution and the defence agreed with that course. It was only then that it was made apparent to him that such preliminary issue had previously been heard and determined by his colleague previously.

32. I have considered the authorities opened to me by Ms. Donnelly. It seems to me that some are of little assistance in deciding the question posed in the case stated. The decision in the case of *Smith v. Judge O'Donnell & D.P.P.* for example is a case which dealt with what was in effect the fettering of the discretion of one Judge of the same jurisdiction by another Judge of the same jurisdiction in circumstances where there was in effect discretion conferred by a statutory provision. It seems to me that there is a significant difference between the facts of that case and the facts of the present case. The exercise of judicial discretion is an entirely different function from the fact finding function necessarily involved in determining whether proceedings were or were not statute barred. Clearly the evidence and facts deduced therefrom would remain the same. However, the circumstances giving rise to the exercise of judicial discretion could change at a subsequent hearing. Indeed the nature of judicial discretion is such that one Judge may properly decide to exercise its jurisdiction in a different manner than another Judge for good and compelling reasons.

33. Ms. Donnelly also placed heavy reliance on the decision of Henchy J. in the case of Corporation of *Dublin v. Flynn*. Henchy J. had expressly referred to the essence of a criminal trial "that it be unitary and self contained". However, it does seem to me again that the facts of that case are quite different from the facts of this case. As indicated above, in that case the prosecution had sought to circumvent the furnishing of the necessary proofs for a conviction by referring to a previous conviction in which necessary proofs had been given in evidence. That seems to me to be at a far remove from the facts of the present case.

34. The concept of issue estoppel in criminal proceedings was also referred to and is a somewhat difficult issue. As is clear from the decision of Hardiman J. in the case of *D.P.P. v. O'Callaghan* referred to above, the matter has not been fully ventilated and decided in this jurisdiction. Insofar as issue estoppel is a concept that may operate in criminal proceedings, it is clear from the judgment of Hardiman J. in *O'Callaghan* that:

> "It seems quite clear that the availability of estoppel on the other side of the Atlantic and particularly in the United States, is indeed on the basis that it is an aspect of double jeopardy, and by no means a mere reflection of its civil counterpart. It is not, in the graphic phrase of an American authority 'simply *res judicata* dressed up in prison grey'."

35. Clearly to that limited extent, issue estoppel may arise in criminal proceedings. This case is not one of the circumstances in which

it could so arise. Clearly the concept, if it arises, is of very limited application and it does not seem to me that it can be regarded as something that operates in the context of the present proceedings.

36. It is the case that a discrete issue was raised before Judge McDonnell namely whether the accused was lawfully before the Court and whether the complaint in respect of the matters before the Court was made within the six months time limit. It is clear that that issue was determined as a preliminary issue before Judge McDonnell. It was determined after the hearing of evidence and full argument before Judge McDonnell in the same set of proceedings. When that issue arose again, it appeared that both sides were willing to have that question determined as a preliminary matter before Judge Haughton. It was only at that point that it transpired that a previous decision and ruling had been made. It is unfortunate that the same issue has had to be revisited in the same set of proceedings. However, from time to time, it happens that a trial before one judge collapses for one reason or another. If that happens, the trial starts again ab initio. As Henchy J. pointed out in the case referred to above, a trial is a unitary process. I find it hard to contemplate how an accused is precluded from relying upon a defence because of a ruling in the earlier trial which collapsed or terminated prematurely in the absence of clear authority that issue estoppel arises against an accused in respect of a defence which may be open to them. In the circumstances it seems to me that the question posed for the opinion of the High Court should be answered No.