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THE HIGH COURT
IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT, 1857 AS EXTENDED BY S. 51 OF THE COURTS (SUPPLEMENTAL PROVISIONS) ACT, 1951

2006 No. 274 SS

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF SERGEANT EMMETT TREACY)
PROSECUTOR/APPELLANT

AND
GERARD THOMAS

ACCUSED/RESPONDENT

Judgment of the Honourable Mr. Justice Quirke delivered the 2nd day of October 2006.
This is a case stated pursuant to s. 2 of the Summary Jurisdiction Act, 1857, (as extended by s. 51 of the Courts (Supplemental Provisions) Act 1961), by Judge Mary Collins, a Judge of the District Court. It has been made on the application of the Director of Public Prosecutions, (hereafter "*the DPP*") who is dissatisfied with the determination of the learned District Judge as being erroneous in point of law.

The case stated seeks the opinion of the High Court as to whether the learned District Judge was correct in law in striking out certain summonses which alleged the commission by the accused/respondent on 28th August, 2002, of certain offences contrary to the provisions of the Road Traffic Act, 1961 as amended.

The summonses were issued on foot of an application made on behalf of the DPP in November, 2003. They were struck out by the learned District Judge on the grounds that the application for the summonses was made after the expiry of the time limited in that behalf by statute.

Facts
The facts as found by the learned District Judge are set out in the case stated and are as follows:

1. The respondent came before the learned District Judge on the 14th May, 2004, to answer four summonses which had been applied for on the 4th November, 2003, and which had been issued on the 23rd January, 2004. The summons recited the following charges:

> (1) That the respondent failed to produce a driving licence on 28th August, 2002, contrary to s. 40(1)(1a) of the Road Traffic Act 1961 (hereafter "*RTA 1691*") and s. 201 of the RTA 1961 (as amended by s. 2 of the Road Traffic Amendment Act 1984):
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> (2) That the respondent gave a false name on the 28th August, 2002, contrary to s. 107 of the RTA 1961 (as amended by s.3 of the Road Traffic Amendment Act 1984);
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> (3) That the respondent failed to produce an insurance certificate on the 28th August, 2002, contrary to s. 69(1) of the RTA 1961 (as amended by s. 2 of the Road Traffic Amendment Act 1984);
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> (4) That the accused was driving without a licence on the 28th August, 2002, contrary to s. 38(1) of the RTA 1961 and s. 102 of the RTA 1961(as amended by s. 2 of the Road Traffic Amendment Act 1984);
>
> (5) That respondent was driving without insurance on the 28th August, 2002, contrary to ss. 56(1) and (3) of the RTA 1961 (as amended by s. 3 of the Road Traffic Amendment Act 1984).

2. When the summonses came before the District Court on the 14th May, 2004, an application was made on behalf of the respondent to strike out the summonses on grounds that on the 4th November, 2003, when the application was made for the issue of the summonses 14 months had elapsed since the commission of the alleged offences. It was argued that the summonses had been issued outside the time permitted by statute. The Court (Hamill J.) rejected that application.

3. When that application was renewed before the District Court (Collins J.) on the 3rd February, 2005, Sergeant Treacy on behalf of the D.P.P. explained that on the 28th August, 2002, he had stopped a van and demanded the production of documents from the driver who gave his name as William Scurry with an address at 2 Cloonlara Crescent, Finglas, Dublin 11.

When the documents were not produced in the manner required by law Sergeant Treacy had on the 28th August, 2002, applied successfully for the issue of summonses charging the respondent with the offences which are the subject of this Case Stated. Those summonses were issued on the 10th January, 2003.

4. When he subsequently discovered that the respondent had given him a false name and address Sergeant Treacy satisfied himself that the respondent's correct name was Gerard Thomas and applied on the 28th August, 2002, to re-issue the summonses. He was informed that, by reason of computer difficulties, the summonses could not be re-issued in a name other than that identified on the original summons.

5. On the 24th April, 2003, (the return date for the original summonses), the District Court, on the application of Sergeant Treacy struck out the original summonses.

6. In November, 2003, Sgt Treacy applied successfully for the issue of four fresh summonses in the respondent's correct name. These summonses came before the District Court (Collins J.) on the 14th May, 2004.

Rejecting an application made on behalf of the respondent to strike out the summonses on the grounds of the D.P.P's delay in prosecuting, the learned District Judge nonetheless struck out the summonses on the ground that they had been issued outside the time limited in that behalf by the provisions of s. 10(4) of the Petty Sessions (Ireland) Act 1851 (hereafter the "*Act of 1851*") and s. 1(7), (a) of the Courts (No. 3) Act 1986 (hereafter "*The Act of 1986*").

7. On the application of the D.P.P. the learned District Judge sought the opinion of this Court on the following question:

> "*Was I correct in striking out the summonses which were applied for in November, 2003, in the above circumstances*

when a complaint was made on the 28th June, 2002, within the six months of the date of the offence in respect of the accused in the false name and address given by him to Gardaí and in relation to which the relevant summonses were withdrawn by the prosecution on the 4th April, 2003?"

Decision

Section 1(7) (a) Act of 1986, provides as follows:-

> *"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 subs. (4) of this section".*

Subs (4) of section 1 of the Act of 1986 provides as follows:

> *"(4) An application for the issue of a summons in relation to an offence may be made to the appropriate office of the District Court by or on behalf of the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or any person authorised by or under statute to prosecute the offence."*

The relevant earlier statutory provision is s. 10(4) of the Act of 1851, which provides *inter alia* that:-

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

The general rule is that, where summary offences are alleged, an application for a summons pursuant to the Act of 1986 must be made within six months from the date of the commission of the offence alleged. In *DPP v. Roche and Kelly* [1990] 2 I.R. 526, the Supreme Court at p. 527 (confirmed that):-

> *"The effect of s. 1 subs. 7(a) of the Act of 1986 was to apply the six month time limit from the date of the alleged offences as provided by s. 10(4) of the Act of 1851 to the date of application for the summons."*

When a valid application has been made within the six month period commencing on the date of the alleged offences a new summons may be issued outside that period. That is precisely what occurred in *DPP v. McKillen* [1991] 2 I.R. 508, where it was held that a summons which was properly issued under the 1986 Act within the appropriate six month period (but never served) could be re-issued outside the six month period.

The High Court (Lavan J.) noted at p. 511:-

> *"Proceedings instituted pursuant to s. 10 of the Act of 1851 always permitted of the re-issue of a second summons when the first summons had not been served. The second or re-issued summons was always deemed to have been grounded upon the first complaint having been made – see Ex parte Fielding [1861] 25 J.P. 759."*

He continued:-

> *"It seems to me, applying that time limit, and no other time limit, that Garda Rouse in this case made an application pursuant to the Act of 1986 within the six month period as provided and that having regard to the right under the procedure as laid down by the Act of 1851 to re-issue a summons grounded on the original complaint, it seems to me clear that such a right is not only consistent but must be read as being one of the 'any necessary modifications' referred to in s. 1, subs. 7(1) of the Act of 1986."*

In this case the original application was made by Sgt. Treacy within the six month period required by statute. It has been contended on behalf of the respondent that, since the name and address shown on the face of the summonses did not accurately identify the respondent, no valid application was made within the permitted six month statutory time limit. I reject that contention.

Sergeant Treacy had direct personal contact with the respondent on 28th August, 2002. He required him to produce certain documents. The respondent failed to do so. On the same date Sgt. Treacy made an application for the issue of the appropriate summonses.

The summonses which were issued on 10th January, 2003, were issued pursuant to an application made on the date of the alleged offences, (28th August, 2002). The application for the issue of the summonses was, accordingly, made well within the time limit prescribed by the Act of 1986.

Because the respondent had given a false name and address the summonses could not be served. At the earliest possible moment, it was made known to the respondent that he was to be prosecuted in respect of the relevant offences.

Because of his own dishonest and unsatisfactory conduct the name shown on the face of the summonses was not a name by which the respondent was usually known. The address shown on the face of the summonses was not an address where the respondent ordinarily resided.

Although they were issued in the name of William Scurry the relevant summonses clearly and unambiguously related to the physical person of the respondent who, on the date of the alleged offences chose to identify himself as William Scurry.

On the evidence, therefore, there is no doubt whatever that a valid application was made by Sgt. Treacy on the 28th August, 2002, for the issue of summonses charging the respondent with the commission of the offences which are the subject of these proceedings. Accordingly the application was made pursuant to the provisions of the Act of 1986 and within the time limited by the provisions of that Act.

In *DPP v. Gill* [1980] I.R.263 new summonses were issued to replace earlier summonses which had not been entered in the Judges Minute Book.

Rejecting the contention that the proceedings should be dismissed because the new summonses had been issued outside the six month limitation period permitted by the Act of 1851 the Supreme Court (Henchy J.), observed that at p. 267:-

"Where the summons lapses in this way and a fresh summons based on the same complaint is duly issued and served, the proper procedure is for the District Justice, having struck out the first summons to proceed to deal with the fresh summons on its return date in the manner laid down by rule 64 of the Rules of 1948.

I interpret the Case Stated as impliedly holding that the new summonses that were issued after the first summons had lapsed were based on the original complaints. This necessarily follows from the District Justice's express finding that the new summons were in order because the complaints mentioned in them were made within the statutory period. This is tantamount to holding that, in respect of each of the two offences charged, there was only a single complaint and that it was made within the statutory period. I do not think that this conclusion is affected by the fact that the complainant named in the new summons is not quite the same as the complainant named in the original summonses, or by the fact that the new summonses were issued by a peace commissioner or by the fact that the statement of the offence in one of the new summonses is given with somewhat greater precision."

In the instant case the learned District Judge took the view that the application made by Sgt. Treacy in November, 2003 "…*for four fresh summonses in the correct name of the accused*", (see para 9 of the Case Stated), comprised an "application" for the purposes of the Act of 1986. She found that it had not been made within the six month time limit permitted by that Act and concluded that she did not have the jurisdiction to deal with it.

I am satisfied that she did have such jurisdiction. To find otherwise would be to defeat the objectives of the legislation which regulates the prosecution of summary offences.

The issue on the 10th January, 2003, and the subsequent service of the earlier summonses on the respondent was frustrated by the deliberate wrongdoing of the respondent.

As soon as was reasonably possible, after the wrongdoing of the respondent had been uncovered, Sgt Treacy applied for the re-issue of the summonses. When that was frustrated by reason of technological shortcomings he applied in November, 2003, for the issue of new or "*fresh*" summonses. I am quite satisfied that these new or "*fresh*" summonses arose directly out of his earlier application made on the 28th August, 2002.

They were, accordingly, summonses lawfully issued pursuant to the provisions of the Act of 1986 and the learned District Judge had jurisdiction to deal with them.

It follows that the answer to the question asked by the learned District Judge is "*No*".