

38/83

SUPREME COURT OF VICTORIA

BYRNE v BULLEN & ORS

Gray J

11 August 1983

CONSTITUTIONAL LAW – SALE OF LIQUOR ON COMMONWEALTH PREMISES – WHETHER MAGISTRATES' COURT HAS JURISDICTION – WHERE MATTER UNDER CONSTITUTION RAISED, ATTORNEYS-GENERAL TO BE NOTIFIED: JUDICIARY ACT (Cwth.), ss78A, 78B.

Where a claim of privilege or immunity from suit is based upon a provision of the Australian Constitution, a Magistrates' Court has a duty not to proceed unless and until it is satisfied that notice of the cause has been given to the Commonwealth and State Attorneys-General.

GRAY J: ... [1] A number of defendants had been charged with offences under s114(1) of the *Liquor Control Act* 1968. These charges arose out of an incident which occurred on 7 November 1981, on the premises of the Australian Rifle Club. It was common ground that the premises in question was Commonwealth land. When the informations were called on for hearing, counsel for the defendants submitted that the Magistrates' Court had no jurisdiction. The submission included a contention that the *Australian Rifle Club Regulations*, in particular Regulations 79 and 80, made provision for the regulation of sale of intoxicating liquor on the premises in question. The submission was that because the *Australian Rifle Club Regulations* applied to the premises, the Commonwealth must be taken to have intended to cover the field by those Regulations.

The learned Magistrate gave effect to that part of counsel's submission and struck out each information. It appears that the learned Magistrate's [2] attention was not drawn to the provisions of ss78A and 78B of the Commonwealth *Judiciary Act*. Section 78A empowers the Attorney-General of the Commonwealth or State to intervene in proceedings which relate to a matter arising under the constitution or involving its interpretation. Section 78B is in these terms:

"Where a cause is pending in a federal Court other than the High Court or in a Court of a State or Territory, involves a matter arising under the Constitution or involving its interpretation, it is the duty of the Court not to proceed in the cause unless and until the Court is satisfied that notice of the cause, specifying the nature of the matter, has been given to the Attorney-General of the Commonwealth."

The section continues and deals with the machinery by which the Attorney-General may intervene. It is quite apparent that the submission made by counsel for the defendants did involve a matter arising under the constitution. That is apparent because the privilege or immunity from suit which the defendants were claiming was based upon the provisions of the Constitution. *James v South Australia* [1927] HCA 32; (1927) 40 CLR p1 at p212; 33 ALR 334. Once that issue was raised before the Magistrates' Court, s78B of the *Judiciary Act* imposed a duty upon the Magistrates' Court not to proceed unless and until the Court was satisfied that notice had been given to the Commonwealth Attorney-General and to the State Attorney-General. It is equally apparent that the learned Magistrate was not so satisfied that the required notice had been given.

Accordingly it is clear that the learned Magistrate's duty was not to proceed further with the [3] hearing of the information until he was satisfied of the matters required by s78B of the *Judiciary Act*. A problem might arise if a Magistrates' Court was satisfied that there was no substance in the points sought to be taken. But in this case, the Magistrate regarded the point as having sufficient substance to justify the striking out of each information. Therefore, it is clear that the Magistrate was in error in dealing with each information in the way that he did. Each information must be referred back to the Magistrates' Court to be dealt with in accordance with law.

APPEARANCES: For the applicant Byrne: Dr P Buchanan, counsel. State Crown Solicitor.