31/10; [2010] VSC 259

# SUPREME COURT OF VICTORIA

# SALT v GODENZI & ANOR

Beach J

# 15, 18 June 2010

PRACTICE AND PROCEDURE - SUMMONS DID NOT DIRECT DEFENDANT TO APPEAR AT THE PROPER VENUE - PROPER VENUE WAS FRANKSTON MAGISTRATES' COURT - "FRANKSTON" OMITTED FROM SUMMONS - PARTIES ATTENDED A NUMBER OF CONTEST MENTIONS AT FRANKSTON - AT HEARING DEFENDANT APPEARED 'UNDER PROTEST' - SUBMITTED THAT FAILURE TO COMPLY WITH LEGISLATIVE PROVISION THE SUMMONS WAS INVALID AND THE CHARGES SHOULD BE DISMISSED - SUBMISSION REJECTED AND DEFENDANT CONVICTED - ON APPEAL SAME RESULT - WHETHER MAGISTRATE AND JUDGE IN ERROR IN FINDING CHARGES PROVED - STARTING POINT WHEN DETERMINING WHETHER A SUMMONS IS INVALID - STATUTORY PROVISION TO BE CONSIDERED WHEN SUCH A SUBMISSION IS MADE: MAGISTRATES' COURT ACT 1989, SS33, 50. Sched 2 cl1(3).

Section 33(1) of the Magistrates' Court Act 1989 ('Act') provides:

"A summons to answer to a charge must direct the defendant to attend at the proper venue on a certain date and at a certain time to answer the charge."

Section 50(1) of the Act relevantly provides:

"On the hearing of a proceeding, the Court must not allow an objection to a charge, summons or warrant on account of any defect or error in it in substance or in form or for any variance between it and the evidence presented in the proceeding, but the Court may amend the charge, summons or warrant to correct the defect or error."

S. was charged with offences under s49 of the *Road Safety Act* 1986. The informant failed to insert the location and address of the proper venue (Frankston) of the Magistrates' Court. After a number of mentions and contest mentions, the charges were heard at the Frankston Magistrates' Court. The defendant appeared 'under protest' and submitted that as the summons failed to direct the defendant to attend at the proper venue of the Court the convictions were bad in law and also that by reason of non-compliance with the statutory provision there had been no valid service of the summons as required. The submission was rejected by the Magistrate (and later by the Judge on Appeal in the County Court) and the charges found proved. Upon appeal—

### HELD: Appeal dismissed.

- 1. Section 33(1) of the Magistrates' Court Act 1989 ('Act') makes it mandatory for a summons to direct a defendant to attend at the proper venue on a certain date and at a certain time. However, that is far from the end of the analysis. The starting point is the approach described in Project Blue Sky & Ors v Australian Broadcasting Authority, [1998] HCA 28; (1998) 194 CLR 355; 153 ALR 490; (1998) 72 ALJR 841; (1998) 8 Leg Rep 41 where McHugh, Gummow, Kirby and Hayne JJ said:
  - "An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of a purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition. . . A court, determining the validity of an act done in breach of a statutory provision, may easily focus on the wrong factors, if it asks itself whether compliance with the provision is mandatory or directory and, if directory, whether there has been substantial compliance with the provision. A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid. . . In determining the question of purpose, regard must be had to 'the language of the relevant provision and the scope and object of the whole statute'."
- 2. In circumstances where S. knew before the first return date of the summons that the venue of the Magistrates' Court he was required to attend was Frankston, had there been an application to amend the summons before the Magistrate or (more importantly, having regard to the fact that the appeal was a rehearing) before her Honour, it is difficult to see how such an amendment could not have been granted. However, in view of the imperative terms in which the opening part of s50 of the Act is couched, it may be doubted whether any application for an amendment was necessary in this case.

3. Section s50 of the Act is the answer to S.'s argument. Section 50 prohibits a court from allowing an objection to a summons on account of any defect or error in it in substance or in form. In this case, S. sought to persuade the Court below to allow an objection to the summons "on account of ... [a] defect or error in it in substance". There were five appearances at the Frankston Magistrates' Court. S. was aware that the Frankston Magistrates' Court was the venue for the proceeding and he attended with counsel on the day the charges were listed for hearing. S. then initiated an appeal from the orders of the Magistrate and again attended with counsel for the hearing of the appeal. The very purpose of s50 is to prevent an argument of the kind put by S. in this case.

Onus v Seeley [2004] VSC 396; 149 A Crim R 227; MC 32/2004, followed.

- 4. One further reason why the failure of the summons to direct S. to attend at the proper venue did not invalidate the proceeding commenced in the Magistrates' Court was that the proceeding in the Magistrates' Court was required to be conducted in accordance with Schedule 2 of the Act. Clause 1(3) of Schedule 2 provided that "A proceeding is not void because it was returnable or heard and determined at a venue of the Court other than the proper venue."
- 5. The summons in this case was not returnable at the proper venue (or indeed, any venue). The fact that the legislature has provided that the mere failure of a proceeding to be returnable at the proper venue does not invalidate the proceeding lends further support to the discernment of a legislative purpose not to invalidate a summons that fails to direct a defendant to attend at the proper venue. The submission of S. in the Courts below fell to be determined in accordance with s50 of the Act and by reference to what was said by Kaye J in Onus v Sealey. It follows that in rejecting S.'s submissions, the Judge did not err in law. Further, there was no basis for quashing the orders made in the County Court or making the declarations sought.

### **BEACH J:**

#### Introduction

- 1. On 27 March 2008, the plaintiff, Mr Leslie Robert Salt, was charged with offences under s49 of the *Road Safety Act* 1986. The charges related to driving a motor vehicle on 28 November 2007 whilst over .05. The summons to answer these charges directed the plaintiff to attend the Magistrates' Court at 10.00am on 2 July 2008.
- 2. Section 33(1) of the *Magistrates' Court Act* 1989 provided:<sup>[1]</sup>
  "A summons to answer to a charge must direct the defendant to attend at the proper venue on a certain date and at a certain time to answer the charge."
- 3. In this case, the proper venue was the Magistrates' Court at Frankston. However, when completing the summons, the informant (who is the first defendant) failed to insert the location and address of the proper venue. The summons merely provided that the plaintiff was required to attend at "the Magistrates' Court of Victoria at [blank]".
- 4. The charges were heard at the Frankston Magistrates' Court on 11 March 2009. The plaintiff contended that because of the failure to comply with s33(1), the summons was invalid and the charges should be dismissed. The Magistrate (Kiel M) rejected this submission. The plaintiff was convicted, fined \$500 and had his driver's licence cancelled for 10 months.
- 5. The plaintiff appealed to the County Court. On 15 July 2009, the plaintiff's appeal came on for hearing before Judge Pullen. The argument that was put to the Magistrate was again put to her Honour. Her Honour rejected the argument. In the result, her Honour found the charges proved and reimposed the penalty imposed by the Magistrate.
- 6. In this proceeding, the plaintiff seeks to have the conviction and sentence imposed by her Honour on 15 July 2009 quashed. Declarations are also sought that the summons does not comply with s33(1) and that there has been no lawful service of a charge and summons on the plaintiff. The first defendant resists the plaintiff's application. However, the second defendant (the County Court) did not participate in the proceeding being content to abide the decision of the Court, save as to costs. [2] For the reasons given below, the proceeding will be dismissed.

# The history of the proceeding

7. The plaintiff was served with the summons in April 2008. Prior to the return date (2 July 2008), the plaintiff contacted the informant and asked her which Court he needed to attend. It would appear that the informant told him that he needed to attend the Frankston Magistrates' Court. [3]

8. On 1 July 2008, the plaintiff's solicitors wrote to the Frankston Magistrates' Court in the following terms:

"We act on behalf of Mr Salt, who appears under protest in this proceeding. We would be grateful if this matter could be adjourned for a further mention so that we can peruse the police brief and obtain instructions from our client in respect of same."

The nature of the "protest" was not explained in the letter.

- 9. According to the police brief, it would appear that the plaintiff then attended the Frankston Magistrates' Court on 30 July 2008, 13 August 2008, 15 October 2008, 3 December 2008 and 11 March 2009. The first two dates were mentions, the third and fourth dates were contest mentions, and the final date was the date of hearing. On the final date, Mr Hardy appeared for the plaintiff and advanced the submissions to which I have already referred.
- 10. Upon being convicted by the Magistrate, the plaintiff appealed to the County Court pursuant to s83 of the *Magistrates' Court Act*. [4] Section 85 of the *Magistrates' Court Act* (prior to its repeal by s427(1)(d) of the *Criminal Procedure Act*) provided that this appeal was to be conducted as a rehearing. [5] In his notice of appeal, under the heading "General ground of appeal", the plaintiff asserted the ground "that the appellant [plaintiff] is not guilty".
- 11. The appeal came on before Judge Pullen on 15 July 2009. At the commencement of the hearing, Mr Hardy (who again appeared for the plaintiff) stated:

"Your Honour, I am appearing under protest because there is a preliminary point in this case."

Mr Hardy identified the preliminary point as being the failure by the summons to direct the plaintiff to attend at the proper venue "or indeed any venue of the Court". [6]

12. At the conclusion of the preliminary point foreshadowed by Mr Hardy, her Honour ruled against the point. There was then some debate about whether Mr Hardy and the plaintiff would remain. Ultimately, both decided to take no further part in the proceeding. Her Honour then said that in the circumstances, as there was no appearance, the appeal was struck out.<sup>[7]</sup> However, upon further reflection,<sup>[8]</sup> her Honour continued with the appeal; was ultimately satisfied that the charges were proved; and reimposed the orders of the Magistrate.

#### The plaintiff's argument

- 13. The plaintiff's argument is that the summons served on him did not comply with the mandatory provisions of s33(1) of the *Magistrates' Court Act*, in that it did not direct him to attend at any venue of the Magistrates' Court. From this it is contended that any conviction based upon this summons is bad in law. Reliance was placed by the plaintiff on, amongst others, the decision of *Sinclair v Magistrates' Court of Victoria at Ringwood & Anor.* [9]
- 14. Further, the plaintiff contended that by reason of the non-compliance with s33(1), there had been no valid service of the summons as required by s34 of the *Magistrates' Court Act*.

### **Analysis**

15. It can be accepted that s33(1) makes it mandatory for a summons to direct a defendant to attend at the proper venue<sup>[10]</sup> on a certain date and at a certain time.<sup>[11]</sup> However, that is far from the end of the analysis. The starting point is the approach described in *Project Blue Sky & Ors v Australian Broadcasting Authority*,<sup>[12]</sup> where McHugh, Gummow, Kirby and Hayne JJ said:

"An act done in breach of a condition regulating the exercise of a statutory power is not necessarily invalid and of no effect. Whether it is depends upon whether there can be discerned a legislative purpose to invalidate any act that fails to comply with the condition. The existence of a purpose is ascertained by reference to the language of the statute, its subject matter and objects, and the consequences for the parties of holding void every act done in breach of the condition." [13]

- 16. Their Honours went on to say:
  - "... a court, determining the validity of an act done in breach of a statutory provision, may easily

focus on the wrong factors, if it asks itself whether compliance with the provision is mandatory or directory and, if directory, whether there has been substantial compliance with the provision. A better test for determining the issue of validity is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid. This has been the preferred approach of courts in this country in recent years, particularly in New South Wales. In determining the question of purpose, regard must be had to 'the language of the relevant provision and the scope and object of the whole statute'."[14]

- 17. It should immediately be noted that some of the authorities relied upon by the plaintiff either predate *Project Blue Sky*<sup>[15]</sup> or were decided without reference to *Project Blue Sky*. As a result, care needs to be taken in relation to the application and consideration of those authorities in the present case. [16]
- 18. Section 50(1) of the *Magistrates Court Act* relevantly provides:

"On the hearing of a proceeding, the Court must not allow an objection to a charge, summons or warrant on account of any defect or error in it in substance or in form or for any variance between it and the evidence presented in the proceeding, but the Court may amend the charge, summons or warrant to correct the defect or error."

- 19. The existence of s50 was raised by the prosecutor with her Honour. However, no explicit application was made to amend the summons.
- 20. Whilst s33 of the *Magistrates' Court Act* deals with requirements as to the content of a summons, s34 deals with the requirements as to service. Sections 33 and 34 have been the subject of a number of decisions of this Court: see for example *Sinclair v Magistrates' Court of Victoria at Ringwood & Anor*, [17] *Brereton v Sinclair*, [18] *Sammassimo v Franich*, [19] *Gahan v Frahm*[20] and *Guss v The Magistrates' Court of Victoria & Anor*. [21] The effect of these decisions was summarised by Cavanough J in *Murdoch v Smith*. [22] In that case, his Honour said: [23]

"Mr Hardy points to four cases, including *Sinclair v Magistrates' Court at Ringwood*, in which this Court has held that the provisions of ss33 and 34 of the Act impose mandatory requirements, noncompliance with which may result in orders prohibiting the continuation of proceedings or quashing convictions. On the other hand, in the two cases cited by Ms Judd, *Sammassimo v Franich* and *Gahan v Frahm*, non-compliance with aspects of those provisions was held not to be fatal to the relevant prosecutions. It is true that in *Brereton v Sinclair*, the Court of Appeal held that the decision in *Sinclair* was not attended with sufficient doubt to warrant the grant of leave to appeal. However, as the Court of Appeal itself noted in that case, this does not mean that the Court of Appeal affirmed the decision, nor that the decision acquired the precedential status of that Court. I note that neither *Sammassimo v Franich* nor *Gahan v Frahm* was cited by the Court of Appeal in *Brereton v Sinclair*. In *Guss v The Magistrates' Court at Victoria*, Osborn J held, obiter, that 'short service would in my view result in no more than an irregularity for the reasons stated by O'Bryan J in the case of *Sammassimo v Franich*'." [24]

- 21. In *Guss v The Magistrates' Court at Victoria*, [25] Osborn J stated that it was apparent that almost 100 years ago, this Court recognised that the underlying question raised by the application of provisions such as s34 of the *Magistrates' Court Act* is "whether an accused person received procedural fairness in accordance with the intention of the legislature". [26] There is no suggestion that the plaintiff did not receive procedural fairness in this case.
- 22. In Sinclair v Magistrates' Court of Victoria at Ringwood, [27] Warren  $J^{[28]}$  had to consider a summons which nominated a return date and time different from that upon which the summons was ultimately returned. In that case, her Honour found the "entire circumstances surrounding the issue and extension of time of [the summons the subject of that case] ... and [a] previous summons ... [to be] far from satisfactory". [29] These circumstances (or any like them) do not exist in the present case.
- 23. In circumstances where the plaintiff knew before the first return date of the summons that the venue of the Magistrates' Court he was required to attend was Frankston, had there been an application to amend the summons before the Magistrate or (more importantly, having regard to the fact that the appeal was a rehearing) before her Honour, [30] it is difficult to see how such an amendment could not have been granted. However, and in any event, as was explained

by Brooking  $JA^{[31]}$  in  $McMahon\ v\ DPP$ ,  $^{[32]}$  in view of the imperative terms in which the opening part of \$50\$ is couched, it may be doubted whether any application for an amendment was necessary in this case.  $^{[33]}$ 

24. In my view, s50 of the *Magistrates' Court Act* is the answer to the plaintiff's argument. Section 50 prohibits a court from allowing an objection to a summons on account of any defect or error in it in substance or in form. In this case, the plaintiff sought to persuade the Court below to allow an objection to the summons "on account of ... [a] defect or error in it in substance". There were five appearances at the Frankston Magistrates' Court. The plaintiff was aware that the Frankston Magistrates' Court was the venue for the proceeding and he attended with counsel on the day the charges were listed for hearing. The plaintiff then initiated an appeal from the orders of the Magistrate and again attended with counsel for the hearing of the appeal. The very purpose of s50 is to prevent an argument of the kind put by the plaintiff in this case. It would, of course, be different if the hearing of the charges had proceeded in the absence of the plaintiff because the summons did not tell him where he was required to attend. In reaching this conclusion, I am fortified by the judgment of Kaye J in *Onus v Sealey*: [34]

"Further, the authorities suggest that statutory provisions such as s34 of the Act, which require the service of a summons more than a prescribed time before its return, do not exclude the operation of the principle that, however a person has been brought before a court, that person is liable to answer any charge or information then and there brought against him: see *R v Hughes*; [35] *Kingstone Tyre Agency Pty Ltd v Blackmore*. [36] Of course the operation of that principle is subject to the right of the accused person to ask for and obtain an adjournment if the accused is taken by surprise ...."

25. The plaintiff contended before me that \$50 of the *Magistrates' Court Act* has no application because \$50 "cannot be relied upon to cure defects in service". It was contended that because the summons failed to comply with \$33(1), it did not meet the definition of a summons capable of being served under \$34. Reliance was placed upon the following passage in *Nitz v Evans*: [37]

"As the respondent submits, s50 of the Act, and for that matter regulation 1203 of the *Magistrates'* Court General Regulations 1990 (Vic), exhibit the legislature's intention that formal defects should not be permitted to stand in the way of proceedings. And it may also be accepted that the appellant's point is one without merit and one that might be described as opportunistic. [38] However, s50 does not deal with objections to the sufficiency of service; it deals with objections to 'a charge, summons or warrant'. Here the objection is not an objection to a summons; it was an objection to the sufficiency of the steps taken to serve it."

- 26. In the present case, there is no suggestion that the summons was not served in accordance with s34 of the *Magistrates' Court Act*. In *Nitz v Evans*, the problem with service was that the document served was not "a true copy of the summons". No such difficulty arises in the present case. In substance, the only complaint the plaintiff has in relation to the summons in this case is a failure to comply with s33. In my view, it cannot be said that the failure to comply with s33 renders the document something other than a summons as referred to in the *Magistrates' Court Act* generally or more specifically, as referred to in s34.
- 27. In further support of the argument that \$50 of the *Magistrates' Court Act* had no application in this case, I was referred to six additional authorities: *Woolworths (Victoria) Limited v Marsh*, [39] *Goodey v Clarke*, [40] *Green v Philippines Consulate General*, [41] *John L. Pty Ltd v The Attorney General for the State of New South Wales*, [42] *Flanagan v Remick* [43] and *Ex parte Lovell; re Buckley*. [44] However, none of these cases are of assistance to the plaintiff. All of these cases concern the laying of charges or informations which were found to be defective. [45] There is no suggestion that the charges laid in the present case were in any way defective. The plaintiff's complaint concerns the terms and content of the summons. The proceeding was commenced in the Magistrates' Court by the filing of the charges. [46] It was then necessary for a summons to be issued to answer the charges. [47] The considerations concerning the filing of defective charges do not have the same application as those in relation to a defective summons. Nothing in the authorities relied upon by the plaintiff cuts across the plain reading and application of \$50 of the *Magistrates' Court Act* in this case.
- 28. For the sake of completeness, I should mention one further reason why the failure of the summons to direct the plaintiff to attend at the proper venue does not invalidate the proceeding

commenced in the Magistrates' Court. The proceeding in the Magistrates' Court was required to be conducted in accordance with Schedule 2 of the *Magistrates' Court Act*. [48] Clause 1(3) of Schedule 2 provided:

- "A proceeding is not void because it was returnable or heard and determined at a venue of the Court other than the proper venue."
- 29. The summons in this case was not returnable at the proper venue (or indeed, any venue). The fact that the legislature has provided that the mere failure of a proceeding to be returnable at the proper venue does not invalidate the proceeding lends further support to the discernment of a legislative purpose not to invalidate a summons that fails to direct a defendant to attend at the proper venue. [49] The submission of the plaintiff in the Courts below fell to be determined in accordance with s50 of the *Magistrates' Court Act* and by reference to what was said by Kaye J in *Onus v Sealey*. [50]
- 30. It follows from what I have said that in rejecting the plaintiff's submissions, her Honour did not err in law. Further, there is no basis for quashing the orders made in the County Court or making the declarations sought.

### Conclusion

- 31. For the reasons given above, this proceeding must be dismissed. I will hear the parties on the question of costs.
- [1] Before its repeal by \$427(1)(c) of the Criminal Procedure Act 2009. See now \$15(1) of the Criminal Procedure Act 2009.
- [2] See the letter from the second defendant dated 30 September 2009.
- [3] This was what the Court below was told at T27.30 28.2. However, I was told by counsel for the plaintiff that the question of a conversation between the plaintiff and the informant was disputed it being the plaintiff's position that whilst he telephoned the informant and left a message, the informant advised his solicitor (and not him) of the venue. In the end, nothing turns on whether the plaintiff found out the venue was Frankston either directly from the informant or indirectly from the informant (via the plaintiff's solicitor).
- [4] See now s254 of the Criminal Procedure Act 2009.
- [5] See now s256(1) of the Criminal Procedure Act 2009.
- [6] I say nothing about what might be thought by some to be the curious use of the phrase "appearing under protest" when the appeal was commenced by the party said to be "appearing under protest".
- [7] T45 27 below
- [8] And no doubt with s86 of the *Magistrates' Court Act* in mind, which required, on the hearing of an appeal, that the County Court set aside the order of the Magistrates' Court. See now s256 of the *Criminal Procedure Act* 2009.
- [9] [1998] VSC 170 (Warren J, as her Honour then was). Other decisions relied upon were *Pritchard v Jeva Singh* [1915] VLR 510 and [1915] HCA 55; (1915) 20 CLR 570; *Nitz v Evans* (1993) 19 MVR 55 and *Platz v Barmby* [2002] VSC 531; 135 A Crim R 571.
- [10] As defined in s3 of the Magistrates' Court Act.
- [11] Cf Sinclair v Magistrates' Court of Victoria at Ringwood & Anor [1998] VSC 170.
- [12] [1998] HCA 28; (1998) 194 CLR 355; 153 ALR 490; (1998) 72 ALJR 841; (1998) 8 Leg Rep 41.
- [13] [1998] HCA 28; (1998) 194 CLR 355, 388 389 [91]; 153 ALR 490; (1998) 72 ALJR 841; (1998) 8 Leg Rep 41.
- [14] [1998] HCA 28; (1998) 194 CLR 355, 390 391 [93]; 153 ALR 490; (1998) 72 ALJR 841; (1998) 8 Leg Rep 41. See further *Watkins v State of Victoria & Ors* [2010] VSCA 138, [62] and following.
- [15] *Supra*
- [16] For example, *Nitz v Evans* was decided before *Project Blue Sky* and it does not appear that *Project Blue Sky* was cited to the Court in *Sinclair v Magistrates' Court of Victoria at Ringwood* and *Platz v Barmby*.
- [17] [1998] VSC 170.
- [18] [2000] VSCA 211; (2000) 2 VR 424; (2000) 118 A Crim R 366.
- [19] Unreported, O'Bryan J delivered 11 March 1994.
- [20] [1999] VSC 410.
- [21] [2003] VSC 365.
- [22] [2006] VSC 468; (2006) 15 VR 186; (2006) 175 A Crim R 361.
- [23] At paragraph [66].
- [24] Footnotes omitted.
- [25] [2003] VSC 365.
- [26] Ibid at [22].
- [27] [1998] VSC 170.
- [28] As her Honour then was.
- [29] Ibid at [12].

- [30] See Candolim Pty Ltd v Garrett [2005] VSC 270 (Hargrave J).
- [31] With whom Charles and Callaway JJA agreed.
- [32] Unreported Court of Appeal delivered 20 June 2005.
- [33] Ibid at p4.
- [34] [2004] VSC 396; 149 A Crim R 227.
- [35] (1879) 4 QB 614, 626-7.
- [36] [1970] VicRp 81; [1970] VR 625, 638.
- [37] (1993) 19 MVR 55 at 59.
- [38] Cf the present case.
- [39] Unreported, Ormiston J delivered 12 June 1986.
- [40] [2002] VSC 246; (2002) 37 MVR 121 (Bongiorno J).
- [41] [1971] VicRp 2; [1971] VR 12.
- [42] [1987] HCA 42; (1987) 163 CLR 508; 73 ALR 545; 61 ALJR 508; 27 A Crim R 228.
- [43] [2001] VSC 507; (2001) 35 MVR 289; (2001) 127 A Crim R 534 (Eames J).
- [44] (1938) 38 SR (NSW) 153; 55 WN (NSW) 63.
- [45] For example, in *John L. Pty Ltd v The Attorney-General for the State of New South Wales* [1987] HCA 42; (1987) 163 CLR 508; 73 ALR 545; 61 ALJR 508; 27 A Crim R 228, Mason CJ and Deane and Dawson JJ said at p520:

"If an information is invalid for the reason that it fails sufficiently to identify the ingredients of the actual offence, it will be inadequate to satisfy a statutory requirement, such as that contained in s56(4) of the *Consumer Protection Act*, that proceedings be commenced by information since, as a matter of ordinary construction, such a requirement can only be satisfied by a valid information."

- [46] See s26 of the Magistrates' Court Act.
- [47] See ss28, 30 and 33 of the Magistrates' Court Act.
- [48] See s51 of the Magistrates' Court Act before its repeal by s427(1)(c) of the Criminal Procedure Act.
- [49] See Project Blue Sky & Ors v Australian Broadcasting Authority [1998] HCA 28; (1998) 194 CLR 355 at 388-390 (extracted in paragraphs [15] and [16] above; 153 ALR 490; (1998) 72 ALJR 841; (1998) 8 Leg Rep 41. [50] Referred to in paragraph [24] above.

**APPEARANCES:** For the plaintiff Salt: Mr SP Hardy, counsel. Stephen Peter Byrne, solicitors. For the first defendant Godenzi: Mr SM Cooper, counsel. Office of Public Prosecutions.