

46/85

## SUPREME COURT OF VICTORIA

**MADIN v McMAHON**

Tadgell J

23 August 1985 — [1986] VicRp 14; [1986] VR 134

**PROCEDURE – CERTIFICATE FOR SUPREME COURT GRANTED – WHETHER CLERK GRANTING CERTIFICATE PRECLUDED FROM ENTERTAINING APPLICATION FOR AN ORDER TO PAY DEBT BY INSTALMENTS – WHETHER SUCH APPLICATION "FURTHER PROCEEDINGS": MAGISTRATES (SUMMARY PROCEEDINGS) ACT 1975, S143; JUDGMENT DEBT RECOVERY ACT 1984, S6.**

Upon application made, a Clerk of the Magistrates' Court granted a certificate for the Supreme Court and judgment thereon. After a writ of execution had been issued out of the Supreme Court, McM. the judgment debtor, applied to the Clerk of the Magistrates' Court for an order that the amount then owing be paid off by way of instalments. The Clerk took the view that he was precluded from entertaining the application in light of the provision in s143(3) of the *Magistrates (Summary Proceedings) Act* 1975 that "no further proceedings shall be taken in the Magistrates' Court" after the grant of the certificate for the Supreme Court. McM. objected to the refusal by filing a notice of objection with the Senior Master of the Supreme Court who set the objection down for hearing before a Judge in chambers.

**HELD: Objection dismissed.**

**(1) The Magistrates' Court alone had jurisdiction to hear and determine the objection, not a Master nor Judge of the Supreme Court.**

**(2) The word "proceeding" means 'proceeding with a view to advance'.**  
*Wrixon v Deehan* [1865] 2 WW & a'B (L) 16, applied.

**(3) Accordingly, the "further proceedings" to which s143(3) of the *Magistrates (Summary Proceedings) Act* 1975 refers means proceedings designed to forward or enforce a claim in the Magistrates' Court after the certificate for the Supreme Court has been granted.**

**(4) As the judgment debtor's application was not designed to forward or enforce a claim in the Magistrates' Court but rather to retard, resist, inhibit or delay the enforcement of the judgment creditor's claim, it was not "further proceedings" precluding the Clerk's entertaining the application.**

**TADGELL J:** [1] I have for hearing and determination an objection of which notice was duly filed under section 6(5) of the *Judgment Debt Recovery Act* 1984. By the notice Krystal McMahon, a judgment debtor, objected against the Senior Master's refusal to make an order under section 6(1) of that Act that she pay the balance of her judgment debt by instalments. The judgment debt is founded on an order made in favour of one Wayne Madin by the Magistrates' Court at Eltham. Conformably with section 6(5) and Order 41A rule 2(8) of the Rules of Court, the Senior Master set the matter down for hearing before a Judge in chambers, giving due notice of the hearing to the judgment debtor and the judgment creditor. The former appeared by her solicitor, but the latter did not appear. The matter arises in this way. The order of the Magistrates' Court was made against Mrs McMahon on 7th May 1984 for payment of \$1,453.66 and it appears that \$863.66 remains [2] owing under it. That is to be discerned from a certificate dated 22nd March 1985 purporting to have been given by a clerk of a Magistrates' Courts pursuant to section 143(1) of the *Magistrates (Summary Proceedings) Act* 1975 and in accordance with form 99 of the *Magistrates' Courts Rules* 1980. The certificate was filed in this Court on 15th April 1985, presumably pursuant to sub-section (2) of section 143 which provides that, if that is done, then -

"... without any further or other process a writ of execution may be issued out of the Supreme Court in the same manner as upon a final judgment of that Court for the sum mentioned in the certificate to be unpaid ...

There is also on this Court's file a writ of *feri facias* dated 24th April 1985 commanding execution against the property of the judgment debtor for \$863.66 in favour of the judgment creditor. The writ apparently precipitated an application under section 6(1)(a) of the *Judgment Debt Recovery Act*, which had come into force since the making of the order in the Magistrates'

Court. I was told from the Bar table that the application had, at first, been made to the clerk of the Magistrates' Court but that he had declined to make an order, taking the view that sub-section (3) of section 143 of the *Magistrates (Summary Proceedings) Act* 1975 prohibited it. Sub-section (3) provides that, after a certificate has been granted under section 143(1) "... no further proceedings shall be taken in the Magistrates' Court or before justices in the matter in which the order was made but any error in a certificate may be amended by the Supreme Court or a judge thereof". The clerk, it seems, thought that an application of the kind he was being asked to entertain and grant constituted "further proceedings" in the Magistrates' Court, and that section [3] 143(3) deprived that Court and him of jurisdiction to entertain it. The judgment debtor thereupon made application to the Senior Master on the footing, I gather, that if the proper officer (for the purposes of the *Judgment Debt Recovery Act*) of the Magistrates' Court did not have jurisdiction to entertain her application, a Master (as the proper officer of this Court under the *Judgment Debt Recovery Act*) presumably did have jurisdiction.

The Senior Master held that he did not have jurisdiction and very helpfully published his reasons for so holding. Judging by his reasons, he evidently had sympathy for the judgment debtor's position, for he recognised that she "had no practical alternative to making this application (apart from seeking a prerogative writ, which in her circumstances could not reasonably be expected)". She was in danger of being caught between two stools. The Senior Master also suggested that it was important to have the point of practice authoritatively resolved. He virtually invited the judgment debtor, if the Magistrates' Court (more specifically the clerk) was not persuaded by his own decision, to file an appropriate objection under section 6(5) of the *Judgment Debt Recovery Act* so that a decision of a Judge of this Court could be obtained. I was told, again from the Bar table, that the clerk adhered to his earlier view, notwithstanding the Senior Master's decision and his expressed reasons. The procedure under section 6(5) was accordingly invoked.

In my opinion the Senior Master was perfectly right to hold that he had no jurisdiction to make an order under section 6(1)(a) of the *Judgment Debt Recovery Act*. The terms of that provision indicate that an application under it is to be made to [4] the proper officer (as defined) of the court that made the order or gave the judgment giving rise to the judgment debt. Neither the filing in the Supreme Court of a certificate granted under section 143(1) of the *Magistrates (Summary Proceedings) Act*, nor the issue in accordance with sub-section (2) of a writ of *fi fa*, creates any judgment of the Supreme Court: *Borough of Queenscliff v England* 3 ALR 17; [1897] 18 ALT 230. Nor, in my opinion, does section 143(3) deprive the proper officer of the Magistrates' Court of jurisdiction to entertain an application under section 6 of the *Judgment Debt Recovery Act* when a certificate has been granted under section 143(1). An application of that kind is not "further proceedings" within the meaning of section 143. Section 143(3) has a long history. A similar provision can be traced back to the Act 21 Vict No. 29 of this State - "An Act for the more easy Recovery of certain Debts and Demand" - commonly known as the *County Court Act* of 1857. In *Wrixon v Deehan* [1865] 2 WW & a'B (L) 16, 17, Stawell CJ, speaking for the Full Court upon the meaning of that provision, said:-

"I think 'proceeding' means 'proceeding with a view to advance', and that an attempt to set aside proceedings is not a proceeding."

*Willoughby v Eastern Plateau Pty Goldmining Co NL* [1891] VicLawRp 47; [1891] 17 VLR 196 is to the same effect. The "further proceedings" to which section 143(3) refers, and which are prohibited by it, are evidently proceedings designed to forward or enforce a claim in the inferior Court after the certificate has been obtained for the purpose of execution in accordance with the procedure of the Supreme Court. The judgment debtor's application under the *Judgment Debt Recovery Act* was not of that character. Rather, [5] her application was designed to retard the judgment creditor's claim or to resist, inhibit or delay the enforcement of it. The application to the clerk, therefore, was not precluded by section 143(3).

I must accordingly determine the objection unfavourably to the judgment debtor. Neither a Master nor a Judge of this Court has jurisdiction to entertain her application. The proper officer of the Magistrates' Court alone has jurisdiction to entertain it in the first instance; and the Magistrates' Court alone has jurisdiction to hear and determine an objection.

Solicitors for the judgment debtor: Consumer Credit Legal Service.