

11/84

## SUPREME COURT OF VICTORIA

**STOKES v LUCARELLI; SANDERSON v SHERRY**

Hampel J

29 February 1984

**PRACTICE AND PROCEDURE – TRAFFIC OFFENCES – PROCEEDINGS BY WAY OF ALTERNATIVE PROCEDURE – PROCLAMATION OF "TRAFFIC COURTS" AND CLASS OF INFORMANT – ERROR IN DESCRIPTION OF CLASS – WHETHER INVALIDATES PROCEEDINGS – STATUTORY INTERPRETATION: MAGISTRATES (SUMMARY PROCEEDINGS) ACT 1975, S88.**

Section 88 of the *Magistrates (Summary Proceedings) Act* 1975 enables the proclamation of Magistrates' Courts to hear matters brought by way of the alternative procedure. When s88 was first enacted, it empowered the Governor-in-Council to set aside certain courts to hear alternative procedure matters brought by "members of the Mobile Traffic Branch of the Victoria Police Force". Proclamations were duly made. Subsequently, s88 was amended to provide for "traffic courts" to hear alternative procedure matters brought by "members of the Police Force"; however, when the subject matters came on for hearing, the original proclamation had not been varied to bring it in the line with s88 as amended. At the hearing it was submitted that the proceedings were invalid because it had not been established that the Informants were members of the "Mobile Traffic Branch". The Magistrate agreed, and struck out the informations for want of jurisdiction. On order nisi to review—

**HELD: Order absolute.**

**(1) It is a cardinal rule of statutory interpretation, that a statute is not to be treated as void, however oracular it may be. The court is to make sense of ambiguous language, and not to treat it as unmeaning. *Curtis v Stovin* [1889] 22 QBD 513, applied.**

**(2) In the present cases, the court should not have given the statute a limited meaning. It should have interpreted the statute to include such members of the Police Force who, during the relevant period, were in fact engaged in traffic duties.**

**HAMPEL J:** [1] I have two matters before me for determination: One is the return of an Order Nisi to Review the decision of the Elsternwick Magistrates' Court of 11 January 1984. In relation to that matter, Mr Nunzio Lucarelli was charged with exceeding the speed limit at Clayton on 1 August 1981. The Information against him was struck out by the Magistrate who held that he had no jurisdiction to hear it.

The second matter is the return of an Order Nisi for a Writ of Mandamus. In that matter Mr Rex Graham Sherry was charged with careless driving and exceeding the speed limit at Clayton on 11 August 1982. Both informations were struck out by the Magistrate on 23 January 1984. [2] The primary issue in both proceedings is essentially the same and by agreement between the parties these matters were heard together. In each case the proceedings were brought under Part VII of the *Magistrates (Summary Proceedings) Act* 1975 which provides for the alternative procedure in relation to certain traffic offences. It is unnecessary for the purposes of my consideration of these matters to set out the whole of the legislative scheme set up by the Act. S88 as originally enacted empowered the Governor in Council by proclamation to set aside courts in the metropolitan area for matters brought under the alternative procedure. The Section was in the following terms:

"Without in any way limiting the use of the alternative procedure or affecting proceedings brought in a Magistrates' Court under the foregoing provisions of this Part the Governor in Council may by proclamation published in the *Government Gazette* set aside as many Magistrates' Courts as he thinks necessary within the "metropolitan area" within the meaning of the *Town and Country Planning Act* 1961 for the hearing or determination of matters brought by the alternative procedure by members of the Mobile Traffic Branch of the Victoria Police Force in respect of offences referred to in Schedule Two."

Sub-s2 is not relevant for this purpose. The Elsternwick Court was proclaimed on 10 December 1980 as a court which could hear matters brought by way of the alternative procedure by

members of the Mobile Traffic [3] Branch of the Victoria Police Force. The Section was subsequently amended by the *Magistrates (Summary Proceedings)(Traffic Courts) Act 1981* which came into operation on 15 December 1981. The new Section is in the following terms:

"In addition to and without in any way limiting the use of the alternative procedure under the foregoing provisions of this Part the Governor in Council may by proclamation published in the *Government Gazette* declare as many Magistrates' Courts as he thinks necessary within the "Metropolitan area" within the meaning of the *Town and Country Planning Act 1961* to be and to be known as "traffic courts" for the hearing or determination of matters brought by the alternative procedure under this Part by members of the Police Force in respect of offences referred to in Schedule Two."

It is to be noted that the amendment changed the Section from "Members of the Mobile Traffic Branch of the Victoria Police Force", as those competent to bring proceedings under this Section, to "Members of the Police Force". There was no further proclamation following the amendment until 17 January 1984 when the original proclamation was varied so as to bring it in line with the amended s88. In his affidavit, the respondent Lucarelli deposed that the informant was asked in cross-examination whether he was a member of the Traffic Operations Group [4] at the time when the alleged offence was detected and at the time when the Information was laid. He replied affirmatively to both questions. In paragraph 7 of Senior Sergeant Hannah's affidavit in the matter of Sherry, it appears that there has never been a Branch of the Police Force known as the Mobile Traffic Branch. There was a Mobile Traffic Section and later the Traffic Operations Group was common ground between the parties that in fact there has never been a section known as the Mobile Traffic Branch.

Mr Hammond of counsel who appeared for the parties in these proceedings, both before the Magistrates and before me, successfully submitted to the Magistrates that the Informations in each case and the proceedings founded upon them were invalid because in each case it had not been established that the informant could lay the Information in question as he had not been shown to be a member of the Mobile Traffic Branch as envisaged by s88 and the proclamations at the relevant times.

The Solicitor-General who, with Mr Nash appeared for the applicants in each case before me, submitted in effect that the expression "Mobile Traffic Branch" in the original Section and the proclamation should not be interpreted as referring to a designated group of police officers but rather to a general section of the Police Force, the members of which were in fact engaged in traffic duties from time to time. As there had never been a Mobile Traffic Branch, it was argued that if the legislation is to be interpreted in the way in which the Magistrates interpreted it, the whole scheme set up by the Act was inoperative from its inception. It was submitted that Parliament could not have [5] intended that to be so and in accordance with the accepted rules of statutory interpretation, s88 should be given a sensible meaning in the context of the Act and the scheme set up by it.

I was referred to the principles and cases on statutory interpretation cited in the 7th edition of *Craies on Statute Law* at pp94 to 96. I accept and proceed on the basis of the principle that it is the business of the court to make sense of ambiguous language and not to treat it as unmeaning, it being a cardinal rule of construction that a Statute is not to be treated as void, however oracular. In *Curtis v Stovin* [1889] 22 QB Div 513 the court dealt with the interpretation of s65 of the *County Court Act, 1888* which empowered the parties to apply in chambers for an order for an action not exceeding £100 to be tried in any court in which the action might have been commenced. [6] By s56 the limit of the County Court jurisdiction was £50. If those words had been taken literally the section would have been ineffectual for *ex hypothesi* the action in question could not be commenced in the County Court. Dealing with the question of interpretation. Esher LJ said,

"... that these words mean 'in any county court in which if it had been a county court action, the action might have been commenced.'"

His Lordship went on to say that:

"I think it is plain that the legislature have misdescribed the court to which the transfer is to be made, but at the same time they have misdescribed it in such a way as to show that there is a misdescription of the court."

Bowen LJ said,

"The Rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule, viz. that, if it is possible the words of a statute must be construed so as to give a sensible meaning to them."

Fry LJ said,

"The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt that construction, we should be construing the Act in order to defeat its object rather than with a view to carry its objects into effect."

[7] I accept the learned Solicitor-General's argument as to the interpretation of s88 as originally enacted. In my view the expression "Members of the Mobile Traffic Branch of the Victoria Police Force" must be interpreted as including such members of the Police Force who for the time being are in fact engaged in duties concerning traffic control and operations whether such police officers are for the time being referred to as members of a Mobile Traffic Branch or Section or Traffic Operations Group or Branch. There is, in my view, no logical or practical reason why any of those expressions should for this purpose be interpreted as terms of art and given the limited meaning Mr Hammond contended for. The amended s88 refers to "Members of the Police Force" and I think that amendment demonstrates the intention of Parliament that any member may proceed by way of the alternative procedure method, although in practice this would normally be done by a particular group of police officers however called, who are given traffic duties for the time being.

Any other interpretation would be quite nonsensical and quite contrary to the scheme of the legislation. In my view in both Mr Lucarelli's case and Mr Sherry's case, the police officers who were the informants were capable of proceeding by way of the informations led and thus invoking the operation of s88 and the machinery provided for the alternative procedure. [8] In view of this conclusion it becomes unnecessary to consider the other submissions made by the parties. It follows that the Elsternwick Court, in each case, was the appropriate court and the proceedings, in my view, were properly instituted. The applicant in each case must therefore succeed.

**APPEARANCES:** Mr H Berkeley QC, Solicitor-General, and Mr Nash, counsel for informants/applicant. Mr J Hammond, counsel for defendants/respondents.

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