03/71

SUPREME COURT OF VICTORIA

GRIMER v BRUNT

Smith J

25 February 1971

STATUTORY INTERPRETATION – "COUNTRY AREA OF VICTORIA" – PROHIBITED CONDUCT OCCURRING IN THE "COUNTRY AREA OF VICTORIA" – CONDUCT OCCURRING IN THE SHIRE OF COLAC – DEFINITION OF "COUNTRY AREA OF VICTORIA" – WHETHER SHIRE OF COLAC LIES OUTSIDE THE METROPOLITAN FIRE DISTRICT – JUDICIAL NOTICE – WHETHER CAN BE TAKEN THAT AREA FELL OUTSIDE ALL FORESTS AND CROWN LAND RESERVED FOR THE PURPOSES OF NATIONAL PARKS – CHARGES FOUND PROVED – WHETHER MAGISTRATE IN ERROR: *COUNTRY FIRE AUTHORITY ACT* 1958, S3.

HELD: Order nisi absolute. Convictions set aside.
1. The Magistrate had before him a certificate from a regional officer certifying that a property described as Allotment 43B(2) in a certain parish and county within the municipal district of the Shire of Colac was within the "country area of Victoria", as defined in the Act, but no evidence was given to show that that Allotment was the place where the acts charged were done.

2. Whatever may be the situation as to the right of a Magistrate sitting in Colac to take judicial notice that some place in that general locality lay outside the metropolitan fire district, it was not open to the Magistrate to take judicial notice that such a place fell outside all forests as defined in the Act, and outside the limits of all Crown land reserved from sale for the purposes of National Parks.

3. Accordingly, the complaint made in respect of the Magistrate's finding was well-founded. There was, in fact, no evidence before him upon which he could properly find that the acts charged in the informations took place within "the country area of Victoria" so as to bring them within the regulations relied on to support the charges.

SMITH J: This is the return of an order nisi to review convictions recorded on two informations at the Magistrates' Court at Colac. The informations were laid under the *Country Fire Authority (Disposal of Industrial Waste) Regulations* made on 11 August 1953. Those regulations are difficult to construe, but it is common ground between the parties that the particular provisions under which these informations were laid should be construed as prohibiting conduct only when it takes place within what is called in the *Country Fire Authority Act* 1958, the "country area of Victoria".

The primary ground taken in the order nisi is that there was no evidence before the Magistrate which warranted him in holding that the acts charged did in fact take place within the "country area of Victoria". This point was taken before the Magistrate but he rejected it, and the material before the Court does not indicate that he gave any reasons for that rejection. He had before him a certificate from a regional officer certifying that a property described as Allotment 43B(2) in a certain parish and county within the municipal district of the Shire of Colac was within the "country area of Victoria", as defined in the Act, but no evidence was given to show that that Allotment was the place where the acts charged were done.

It was urged in support of the Magistrate's decision that an inference arose from the language of a proclamation of 19 December 1969, which was in evidence, that the whole of the Shire of Colac was within "the country area of Victoria"; and it was submitted that the Magistrate could take judicial notice that a named locality, where the acts charged were said in evidence to have been done, was within the Shire of Colac. That argument, however, appears to me to break down upon the construction of the proclamation. I do not read the proclamation as taking the informant's case any further than to say that there are some parts of the "country area of Victoria" situated within the Shire of Colac.

It was further urged that it was open to the Magistrate, who had, as already mentioned,

been told in evidence the name of the locality where the acts charged, were done, to take judicial notice of the fact that this locality fell within "the country area of Victoria" as defined in s3 of the *Country Fire Authority Act* 1958. That definition, however, says that:

> "'Country area of Victoria' means that part of Victoria which lies outside the metropolitan fire district but does not include any forest as hereinafter defined or any Crown land reserved from sale for the purposes of a National Park pursuant to the *Land Act* 1958."

And whatever may be the situation as to the right of a Magistrate sitting in Colac to take judicial notice that some place in that general locality lies outside the metropolitan fire district, I do not think that it is open to such a Magistrate to take judicial notice that such a place falls outside all forests as defined in the Act, and outside the limits of all Crown land reserved from sale for the purposes of National Parks.

In the result, therefore, I think that the complaint made in respect of the Magistrate's finding is well-founded. It appears to me that there was, in fact, no evidence before him upon which he could properly find that the acts charged in the informations took place within "the country area of Victoria" so as to bring them within the regulations relied on to support the charges.

The order nisi is therefore made absolute, in respect of both informations, and with taxed costs.

APPEARANCES: For the informant/respondent Grimer: Mr A Chernov, counsel. John Downey, State Crown Solicitor. For the defendant/applicant Knight: Mr H Nathan, counsel. Cunningham & Larkins, solicitors.
