

05/81

## SUPREME COURT OF VICTORIA

**BROWN v LANSELL**

Anderson J

15 December 1980

**PRACTICE AND PROCEDURE - LAYING OF INFORMATION - INFORMANT DESCRIBED HIMSELF AS A 'FOREST OFFICER' IN INFORMATION - CERTAIN PERSONS AUTHORISED TO LAY INFORMATIONS - INFORMANT A BAILIFF OF CROWN LANDS AND AUTHORISED TO LAY INFORMATION - INFORMATION DISMISSED BY MAGISTRATE ON GROUND THAT INFORMANT NOT AUTHORISED TO LAY INFORMATION - WHETHER MAGISTRATE IN ERROR: LAND CONSERVATION (VEHICLE CONTROL) ACT 1972, S4.**

**Where an information had been laid by a person who was a Bailiff of Crown Lands as a "forest officer", the magistrate was in error in ruling that the informant was not authorised to lay the information and dismissing the information.**

**ANDERSON J:** I have before me an order nisi to review a decision of the Stipendiary Magistrate at Mansfield who, on 30 January 1980 dismissed an information laid by the informant. The charge contained in the information alleged that the defendant, on the 5th of May 1979, at Mount Buller, in reserved forest, to wit the Mount Buller Alpine Reserve, did cause a motorised vehicle to be within an area of public land contrary to Regulation 3 of the *Land Conservation (Vehicle) Control Act 1972*. There was evidence before the magistrate to the effect that the vehicle in question had been driven by the defendant to an area in the Mount Buller Alpine Reserve, and had been bogged in a ski run which answered the description of the land referred to in Reg 3 of the *Land Conservation (Vehicle) Control Regulations*.

The point which is raised by the order nisi relates to the authority of the informant to prosecute. The point being that the magistrate held that the informant was not authorised to lay an information under the Regulations, which Regulations in turn are made under the *Land Conservation (Vehicle Control) Act 1972*. Section 4 of the Act provides -

"Proceedings for any breach of a regulation under this Act may be taken

(a) by a member of the police force,

(b) in the case of a breach of a regulation in relation to public land which is under the management or control of any person, or body, by that person or body, or

(c) by a bailiff of Crown Lands."

Now the land in question is under the control of the Committee of Management of the Mount Buller Alpine Reserve, and the magistrate was of the opinion that because it did not appear that the Committee of Management of the Mount Buller Alpine Reserve had authorised the prosecution, the informant, although he was a member of such Committee of Management, and he was a forest officer, appointed under the *Forests Act*, and thought he was a bailiff of Crown Lands, was nevertheless not authorised to prosecute the defendant.

In the information, the informant had described himself as a 'forests officer', but the magistrate did accept that he was a member of the Committee of Management of the Mount Buller Alpine Reserve; that he was a forests officer and that he was a bailiff of Crown Lands.

I think it is undesirable that I should delve deeply into the question of authority in this case because quite clearly, the evidence before the magistrate was that the informant was a bailiff of Crown lands and as such was authorised under the Act to prosecute for a breach of a Regulation under the Act. As I gather from the material before me, the magistrate sought to read down the authority of a person to prosecute in relation to public land which was under the management or control of a person or body, to that class of person permitted to prosecute under such a regulation in relation to such an offence or a person authorised by that person or body; but my reading of s4 of the *Land Conservation (Vehicle Control) Act* is not to that effect. That section clearly enumerates the persons who may take proceedings for a breach of a regulation namely, a member of the police

force, the person or body who has the management or control of the land or a bailiff of Crown lands. Mr Brown (the informant) answers to the last description and such was accepted by the magistrate. I think it is immaterial that the informant describes himself as a "forest officer" in the information. It is not necessary that he should so describe himself or that he should describe an occupation to make the information a valid one. It is not a misdescription, it is merely a reference as the Magistrate said, to one of the hats which he happens to wear.

Quite independently of the informant being authorised to prosecute in this case under s4(c) namely that he was a bailiff of Crown Lands, I think there may well be ample authority which I need not investigate to justify the view that s4 of the *Land Conservation (Vehicle Control) Act* is no more than an authorising section and is not one which is concerned to impose limits upon the persons who may prosecute under that Act. However it is unnecessary for me to determine that matter because quite simply, in my view, the informant was a person authorised to prosecute he being a bailiff of Crown Lands, and so found by the Magistrate. ... The informant was properly authorised in law to lay the information.

**APPEARANCES:** For the informant Brown: Miss AC King, counsel. Mr D Yeaman, State Crown Solicitor. For the defendant Lansell: Mr JWV Lansell, son of defendant.

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