

07/05; [2005] VSC 71

SUPREME COURT OF VICTORIA

SMART v CITY OF GREATER GEELONG

Byrne J

16, 21 March 2005

MOTOR TRAFFIC – PARKING INFRINGEMENT – NOTICE NOT COMPLIED WITH – CHARGE AND SUMMONS ISSUED – LEGAL MATTERS RAISED AT HEARING – STANDING – JURISDICTION OF COURT – WHETHER ROAD RULES VICTORIA ARE PROPER LAW – WHETHER THE CONSTITUTION ACT 1975 (VIC) IS INVALID – CHARGE FOUND PROVED – WHETHER MAGISTRATE IN ERROR.

A traffic officer of the City of Geelong issued a parking infringement notice in respect of a motor vehicle owned by S. As the notice was not complied with, a charge and summons was filed and the matter listed for hearing some time later. At the hearing, S. raised some legal matters in his defence. He was unsuccessful and the charge was found proved. Upon appeal—

HELD: Appeal refused.

1. In relation to S's submission that the Greater Geelong City Council had no standing to bring the action, the municipality by whatever name was not the informant. The informant was the traffic officer. Accordingly, S's submission on that point had no validity.

2. In relation to the argument that the *Road Rules Victoria* are not a law of the Victorian Parliament, the *Road Rules* were published in the *Government Gazette*. Accordingly, there is a rebuttable presumption of regularity which has the effect that public acts of this nature are taken to be properly performed in the absence of contrary evidence.

3. In relation to the argument that as the *Constitution Act 1975 (Vic)* is invalid so that any Act of Parliament performed thereafter including the passing of the *Road Safety Act 1986* and the regulations made thereunder are likewise invalid, it is clear enough that the *Constitution Act 1975* was properly assented to. Accordingly, there was no arguable case on this point.

BYRNE J:

1. On 10 February 2004, the motorcar of the appellant, Anthony-Ivan-Smart^[1] was parked for over two hours in a two hour parking zone in Myers Street, Geelong. Kathy Reynolds, a traffic officer of the respondent, City of Greater Geelong, accordingly served a parking infringement notice. The notice was not complied with and a charge and summons was filed by Ms Reynolds as informant on 17 June 2004 returnable at the Magistrates' Court of Victoria at Geelong on 2 September 2004.

2. On 14 October 2004, the charge came on for hearing as an opposed matter before the Magistrate. Mr Smart represented himself and pleaded not guilty. The factual basis of the charge, it seems, was not put in issue; Mr Smart preferred to raise a number of legal matters. In the event, the Magistrate found the charge proved, convicted him and imposed a fine of \$50 with \$125 costs with a stay to 11 November 2004. On 13 November 2004, Mr Smart filed a notice of appeal. It is irregular in at least one significant respect: the document describes as respondent the City of Greater Geelong, and not Ms Reynolds.

3. In his notice of appeal Mr Smart raises five questions of law:

1. Does the Greater Geelong City Council have legal standing to bring this action?

2. What jurisdiction was the venue of the Magistrates' Court at Geelong constituted in?

3. Is the document entitled "Road Rules-Victoria" a law of the Parliament of Victoria?

4. Has Her Majesty Queen Elizabeth II., as lawful Sovereign of the United Kingdom and of this State of Victoria, given Her personal signification and pleasure to the Constitution Act 1975, No 8750/1975, of the Parliament of Victoria?

5. Who is the “Crown in right” of the State of Victoria?

4. On 25 February 2005, Master Evans refused the application for appeal pursuant to Rule 58.09. Mr Smart appeals against the Master’s order by notice of appeal filed on 2 March 2005.

5. I shall address in turn each of the questions of law which were advanced by Mr Smart:

1. Does the Greater Geelong City Council have legal standing to bring this action?

6. The point taken here was that the municipality was incorporated by statute under the name Greater Geelong City Council^[2] there is no legal entity known as “City of Greater Geelong”.

7. There is no substance in this point. The short answer is that the municipality, by whatever name, was not the informant; it was Ms Reynolds. This appears from the charge and summons and from the certified order of the Magistrates’ Court. I am not persuaded that there is here an arguable case.

2. What jurisdiction was the venue of the Magistrates’ Court at Geelong constituted in?

8. This point was not pressed.

3. Is the document entitled “Road Rules-Victoria” a law of the Parliament of Victoria?

9. In 1999 the Parliament of the State of Victoria adopted a set of Road Rules as part of a nationwide standardisation of traffic law developed by the National Road Transport Commission and endorsed by the relevant ministers in the Australian Transport Council. This was achieved by the regulation-making power conferred by s95 of the *Road Safety Act* 1986. On 9 November 1999, the *Road Safety (Road Rules) Regulations* 1999 (SR No. 120/1999) were made by the Governor in Council. By Regulation 201(1) it is provided that the Road Rules published in the Government Gazette on 28 October 1999 are to be read as if they formed part of the regulations. The consequence of this is that the Road Rules are part of the law of Victoria^[3].

10. The point taken by Mr Smart is that s32 of the *Interpretation of Legislation Act* 1984 (Vic) requires that, where a subordinate instrument incorporates a document such as the Road Rules, then the Minister must lodge a copy of the document and of the notice of the document with the Clerk of the Parliaments and publish it in the Government Gazette. He contended that the Regulations or the Road Rules, or perhaps both, were invalid for non-compliance with this provision.

11. It is known that the Road Rules were published in the Government Gazette on 28 October 1999. I would, in any event, be prepared to find, in the absence of contrary evidence, that all of these steps had been taken. There is a rebuttable presumption of regularity which has the effect that public acts of this nature are taken to be properly performed unless evidence is led to show that this is not the case. But it is not necessary that I act upon this presumption, for s32(5) provides that a failure to comply with these requirements “does not affect the validity, operation or effect of the subordinate instrument”.

12. I mention, too, that Regulation 202 provides that the *Acts Interpretation Act* 1901 (Cth) applies to the interpretation of the Road Rules and that this Act, by s46AA, permits an instrument to incorporate a document by reference. It may be, however, that the point raised by Mr Smart is not one of interpretation.

13. There is no arguable case for relief here.

4. Has Her Majesty Queen Elizabeth II., as lawful Sovereign of the United Kingdom and of this State of Victoria, given Her personal signification and pleasure to the Constitution Act 1975, No 8750/1975, of the Parliament of Victoria?

14. This is a very confusing and confused argument. As best I understand it Mr Smart contended that the *Constitution Act* 1975 (Vic) was invalid so that any Act of the Parliament performed thereafter, including the passing of the *Road Safety Act* 1986 and the regulations made under that Act were likewise invalid.

15. The argument seems to be this. The Commission given to his Excellency Sir Henry Winneke

as Governor of Victoria on 18 April 1974 conferred upon him certain powers, including those contained in Letters Patent dated 29 October 1900 which constituted the office of the Governor of Victoria. On that date in 1900, too, Her Majesty Queen Victoria issued certain instructions to the Governor which included in cl VII:

“The Governor shall not, except in the cases hereunder mentioned, assent in Our name to any Bill of any of the following classes:- ... 2 Any Bill whereby any grant of land or money or other donation or gratuity, may be made to himself...”

The *Constitution Act* 1975 included provisions with respect to the Governor’s salary.

16. Mr Smart also referred me to the *Australian States Constitution Act* 1907 (Eng) which required that a bill of an “Australian State Parliament which affects the salary of the Governor must be reserved for the signification of His Majesty’s pleasure thereon”.

17. Included in Mr Smart’s exhibits was a copy of the *Constitution Act* 1975 with the signature of the Governor there appearing under the following words:

“I reserve this bill for the signification of Her Majesty’s pleasure thereon”.

18. Finally, I was provided with an extract from the Government Gazette of 19 November 1975 which shows that the Bill was so reserved and that “by an Order in Council dated the 22nd day of October 1975, Her Majesty has been pleased to assent to same”. The proclamation recording this is signed by the Governor and dated 18 November 1975.

19. In the circumstances, if the legal position was as Mr Smart outlined it, it is clear enough that the *Constitution Act* 1975 was properly assented to. There is no substance in this point and no arguable case here.

5. Who is the “Crown in right” of the State of Victoria?

20. I regret that I found Mr Smart’s development of this point entirely incomprehensible. Nor is it apparent to me that anything about this topic could have a bearing upon the validity of the conviction which he seeks to impugn. I am not persuaded that there is here an arguable case.

21. Accordingly, I am satisfied that the Master was correct in refusing the application for appeal under s92 of the *Magistrates’ Court Act*. The appeal against the Master’s order will be refused. The order of the Magistrates’ Court of Victoria at Geelong made on 14 October 2004 stands.

[1] Notwithstanding that I was told that the correct surname of the appellant was Mr Anthony-Ivan-Smart, I refer to him in the interests of brevity as Mr Smart.

[2] *City of Greater Geelong Act* 1993 s5. See, too, *Local Government Act* 1989 s5A.

[3] In *Smart v City of Whitehorse* [2004] VSC 374, Cummins J so held.

APPEARANCES: The Appellant Smart appeared in person. For the Respondent City of Greater Geelong: Mr Gibbons, counsel. Harwood Andrews Lawyers.
