

39/97

## SUPREME COURT OF VICTORIA

**ARNOTT v HIS HONOUR JUDGE HOWSE and HENDERSON**

Harper J

1 August 1997

**PROCEDURE – CHARGE AND SUMMONS CONTAINING TWO SHEETS FILED – FIRST SHEET SIGNED BY REGISTRAR – SECOND SHEET NOT SIGNED – WHETHER OPEN TO CONCLUDE THAT SECOND SHEET NOT FILED: MAGISTRATES' COURT ACT 1989, S26(1).**

A. was charged on summons with three offences. One of the charges was set out on the first sheet of the summons. This sheet was signed by a Registrar and contained a clear indication that further charges were contained or set out on another sheet. The second sheet containing these charges was not signed by a Registrar. At the hearing of the charges, A. submitted that the charges contained on the second sheet had not been filed and accordingly, the court had no jurisdiction to deal with those charges. This submission was rejected by the Court. Upon originating motion—

**HELD: Motion dismissed.**

**1. The provisions of s26(1) of the *Magistrates' Court Act 1989* ("the Act") are mandatory in that a failure to file a charge removes any jurisdiction which a court may otherwise have to deal with that charge.**

**2. The question in the present case was whether the court could conclude that the charges set out in the second sheet had been filed. Given that the summons was produced to the court by a Registrar, that the second sheet clearly related to the same defendant as the first and that there was nothing to suggest that the second sheet was other than the sheet containing a continuation of the charges from the first sheet, there was evidence whereby the court could conclude that both sheets had been filed as required by the Act.**

**HARPER J: [1]** I have before me an originating motion and a summons on that originating motion, each of which was issued on 20 July 1997. By the originating motion the plaintiff seeks, apart from the usual orders under Rules 45.05(2), 5.03(1) and 8.05(2), a declaration that the charge and summons purportedly filed and issued out of the Magistrates' Court at Sunshine on 11 July 1996 had not been so filed, or at least that there was no evidence sufficient to prove that the charge and summons had been filed. By the originating motion the plaintiff also seeks orders in the nature of mandamus directed to the County Court at Melbourne that charges under, respectively, s18(1)(a) and s49(1)(f) of the *Road Safety Act* stand dismissed on appeal. The application is based upon the proposition that, when the County Court heard by way of rehearing an appeal from the Magistrates' Court, there was no evidence upon which the County Court could hold that the charge or charges upon which the relevant summons was based had been filed. By s26(1) of the *Magistrates' Court Act 1989* a criminal proceeding must be commenced by filing a charge with a Registrar unless the defendant is under arrest (a circumstance which does not obtain here). I am prepared to accept that the provisions of s26(1) are mandatory and that the failure to file a charge removes any jurisdiction which a court may otherwise have to deal with that charge. The question then is whether there was any evidence that in this case the relevant charges had been filed.

**[2]** The Crown contends that the plaintiff was charged with three offences arising out of the relevant incident. One of those charges is set out on the first of what the Crown contends is a summons of two sheets. The first sheet contains a number of boxes opposite various headings. One of those headings reads "Are there more charges?" And opposite that heading are two boxes; one has next to it the word "no", and the other has next to it the notation "yes - see 'continuation of charges' attached".

The document in evidence before the County Court in this case showed that the box with the notation "yes - see 'continuation of charges' attached" next to it was marked with a cross, while the box with the word "no" next to it was left blank. There is a clear indication on the face

of the first of the two sheets upon which, according to the Crown, the summons was set out, that further charges were contained or set out in another sheet. The first of those sheets bears a rubber stamped signature, which the plaintiff accepts is the signature of a Registrar within the meaning of s26 of the Act. The document before the County Court of two pages was not similarly stamped or signed on its second sheet. Opposite the words "signature of Registrar" on the second sheet, no signature (whether stamped or otherwise) appears.

The plaintiff submits that on that evidence it was not open to the County Court to hold that the second sheet and, more particularly, the charges set out on the second sheet, had been filed. Accordingly, the plaintiff submits, there was no jurisdiction in either the [3] Magistrates' Court or the County Court to deal with the two charges set out on what the Crown contends is the second sheet.

In my opinion the point resolves itself around the purely evidentiary issue whether there was evidence upon which the County Court Judge could properly act, and upon which he could properly conclude, that the charges set out in the second sheet had been filed. In my opinion there was such evidence. Even given that the second sheet bears no signature, nevertheless it was produced by a Registrar within the meaning of that expression in the Act when called upon to do so before the County Court. There is nothing to suggest that the two sheets in the possession of the Registrar at that time were not the two sheets forming as one whole the charge and summons upon which the Crown relied and relies.

The second sheet produced by the Registrar before the County Court clearly related to the same defendant (the present plaintiff) as the first, and there is nothing to suggest that the second sheet is other than the sheet containing the continuation of charges to which the first sheet refers. Given that the first sheet was filed, given that the Registrar whose signature the first sheet bears was required to satisfy himself or herself that the summons which was sought to be issued through the office of that Registrar contained two pages, and given that the Registrar ought to have satisfied himself or herself that the charges contained on each of the two pages were known to the law before that Registrar agreed to issue the summons, it seems to me that there is evidence upon which [4] the County Court judge could conclude that both sheets were "filed" as required by the legislation. This evidence arises partly from the presumption of regularity in what the Registrar did, but more particularly in the conjuncture between the two pages produced to the County Court and the fact that they were produced by a Registrar with their being no suggestion that they did not at all relevant times accompany each other. Accordingly, in my opinion, the application made by originating motion and by summons should be dismissed. (Discussion re costs) I order that the application be dismissed with costs to be taxed, and when taxed, to be paid to the defendants.

**APPEARANCES:** For the Plaintiff: Mr P Billings, counsel. Battley & Co Pty, Solicitors. For the Defendants: Mr P Reynolds, counsel. Peter Wood, Solicitor, Office of Public Prosecutions.

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