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## SUPREME COURT OF NEW SOUTH WALES

**PALMER v ROBINSON**

Yeldham J

26 June 1987

**PROCEDURE – INFORMATION FOR AN OFFENCE – ELEMENTS OF ALLEGED OFFENCE SET OUT – WRONG ACT AND SECTION INADVERTENTLY INSERTED IN INFORMATION – WHETHER INFORMATION DEFECTIVE – WHETHER DISMISSAL OF APPROPRIATE.**

**An information is required to set out in proper terms the matters which are alleged to constitute the offence. Accordingly, a magistrate was in error in dismissing an information where the wrong Act and Section had inadvertently been inserted.**

**YELDHAM J:** [1] This is an appeal by way of case stated from a decision of a magistrate, who dismissed an information against the respondent. From that dismissal the informant appeals to this court. The respondent was charged with having in her custody a number of articles which may reasonably be suspected of being stolen or otherwise unlawfully obtained. Although the magistrate states in the stated case that the information contains the words "contrary to the provisions of s40(1)(a) of the *Summary Offences Act 1970*", it does no such thing.

The relevant charge sheet is annexed to the stated case. Against the box which makes provision for "act and section under which charge laid" there has been typed in "96/1970 section 40(1)(a)". Against the entry "offence" there is typed in "that Sandra Robinson on 22 January 1986 at Erskineville in the State of New South Wales did have in her custody sixty pairs of garden shears, three radio cassette players, two equalisers which may reasonably (be) suspected of being stolen or otherwise unlawfully obtained".

The learned magistrate, for reasons which no doubt appeared to him to be good, but for reasons which I entirely fail to understand, dismissed the information, because the Act and section under which the charge was laid was not No. 96 of 1970 s40, but the *Crimes Act* s527C. Act No. 96 of 1970 is the *Summary Offences Act*, which was in force from 1970 until August 1979, when repealed. By Act No. 72 of 1979 s527C was inserted into the *Crimes Act*.

For present purposes, the offence of goods in custody was re-enacted in exactly the same terms as those which formerly appeared in *Summary Offences Act*. There is no difference that I can discern between the wording creating the two offences. It is clear that all that is required to be done in the laying of an information is to set out the matters which are alleged to constitute the offence. There is no requirement (and I have never heard of any) which obliges the informant to set out the particular Act and section and certainly I know of no principle of law which entitles a court to dismiss an information if couched in proper terms so far as the elements of the offence are concerned merely because, in a box which calls for "Act and section under which charge laid", the wrong Act has, by inadvertence, been inserted.

[2] Perhaps 150 years ago when technicalities were the order of the day a decision such as this might have been upheld, but I am quite unable to discern any ground upon which the magistrate was entitled to do as he did, and it is crystal clear that his decision was erroneous in point of law. I answer the question in the stated case in the affirmative and I remit the matter to the magistrate with that expression of opinion. In the circumstances, I will not make any order for costs.

[Judgment reprinted, with kind permission, from 8 Petty Sessions Review, p3692].