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QUEEN'S BENCH DIVISION — HIGH COURT OF JUSTICE (UK)

R v EPSOM JUSTICES; ex parte GIBBONS

Watkins LJ and Taylor J

24 June, 27 July 1983 — [1983] 3 All ER 523; [1983] 3 WLR 873

PRACTICE AND PROCEDURE – INFORMATIONS FOR UNLAWFUL ASSAULT – SUMMONS AND CROSS-SUMMONS – WHETHER DISCRETION IN COURT TO HEAR INFORMATIONS TOGETHER.

Where a summons and a cross-summons arise out of informations founded on the same facts and circumstances, a magistrates' court cannot order that they be tried together, notwithstanding that the parties consent to a joint trial.

WATKINS LJ: ... **[875 WLR; 524 All ER]** The question posed to this court in *Aldus v Watson* [1973] QB 902 was, having regard to the fact that each of four defendants was charged separately with an identical offence arising out of the same set of facts and that it was the joint action of the defendants which caused the offences, were the justices right to refuse them separate trials? This court's answer to that was, applying *Brangwynne v Evans* [1962] 1 WLR 267; (1962) 1 All ER 446, that where separate informations are preferred against two or more defendants a magistrates' court has no power to try the informations together without the defendants' consent, even though each defendant is charged with an identical offence arising out of the same set of facts. In *Brangwynne's case* [1962] 1 All ER 446, it was held:

> "It has always been a principle of law that a defendant in a magistrates' court can only be called on to answer one charge at a time unless he consents, either expressly or impliedly, to informations being heard together; accordingly, a magistrates' court should never proceed to hear two or more informations at the same time without expressly asking the defendant whether he consents to that course."

The absence of consent in the present case by the constable, the prosecutor, to a joint hearing of the two informations in the light of these **[876]** authorities, obviously induced the decision of the justices complained of. They regarded the absence of consent as depriving them entirely of a discretion to decide the procedural point in issue, according to notions of what would have been a just and reasonable manner of proceeding. However, the House of Lords in *In re Clayton* [1983] 2 AC 473; [1983] 1 All ER 984; [1983] 2 WLR 555, in reviewing *Brangwynne v Evans* [1962] 1 WLR 267; (1962) 1 All ER 446, *Aldus v Watson* [1973] QB 902 and a number of other cases bearing upon practice and procedure in magistrates' courts, ruled that lack of consent by a defendant or a number of defendants, although an important consideration, does not deprive justices of a discretion to proceed in their court in a manner which, in the circumstances appears to them to be just.

In the only speech, Lord Roskill, at pp564-565, stated in clear terms how this discretion should be exercised. Justices would, in my view, be well advised to follow carefully the guidance there provided. I do not enlarge this judgment by quoting the relevant passages, solely and simply because the circumstances to which that decision can be applied differ from those which obtain in the present case. In *In re Clayton* [1983] 2 AC 473; [1983] 1 All ER 984; [1983] 2 WLR 555, and in all those cases reviewed in it, the facts involved either the trial of one defendant upon more than one information, or the trial of more than one defendant upon separate informations. Here, what is contemplated is the trial of two informations together upon one of which the prosecutor is the constable and upon the other that same constable is the defendant. Therefore, Mr Pratt, who has appeared before us, instructed by the Solicitor of the Metropolitan Police, argues that the present case is vitally distinguishable from *Clayton's case*. There are many reasons, he has submitted, why it would be wholly impractical for informations such as are usually referred to as summons and cross-summons to be heard together even if the prosecution and defence agreed to such a course being taken. The following seem to be the most impressive of the reasons; some

of which were easily foreseeable, I think, before argument upon them was developed.

It is a basic right of every defendant to decline to cross-examine prosecution witnesses, to make a submission of no case to answer at the close of the prosecution, to decline to give evidence and to make any kind of address to the court. When that person is both defendant and prosecutor in the same proceeding, how is he to decide in advance how he would conduct himself in these respects when he may, according to the procedure decided upon, either have to prosecute or defend at short notice? Problems may well arise about the order in which witnesses will be called on one side or the other. Who really will have the right to go first and who to make the final address? Suppose one or other of the persons involved has previous convictions, how is the question to be resolved as to whether to allow those to be referred to, if such an issue properly arises? The calling of the wife of one of these persons could give rise to difficulties.

Justices should not, it is said, be subjected to a proceeding which could give rise to these and many other complications of evidence and procedure which might well defy the ability of the most experienced of judges to resolve. Furthermore, we are invited to have regard to the sinister purpose with which some cross-summonses are served and which would probably encourage an exacerbation of the tendency to use the cross-summons merely as an unjustifiable weapon of defence if a joint hearing of summons and cross-summons is permitted. **[877]** Mr Crambrook endeavoured valiantly to minimise the force of these arguments by contending that the present and *Clayton's case* are not distinguishable. Justices, he said, should be masters of their procedure, subject only to a proper and just exercise of their discretion.

Accordingly, the justices should be called upon to exercise their discretion in accordance with the guidance provided in *Clayton's case*. I do not agree with him. No argument was addressed to the House of Lords upon the matter of joint trial of summons and cross-summons and I see no reason, therefore, to suppose that they could have had that in their contemplation when reaching their conclusions upon very different circumstances. The kind of trial which concerns us cannot, I think, be sensibly compared for procedural purposes with any of the kinds of trials referred to in *Clayton's case*. It produces unique considerations and I believe that these must lead to the conclusion, accepting as I do Mr Pratt's submissions, that summons and cross-summons can in no circumstances be tried together. There is no authority to the contrary and I am persuaded that justices do not have the power to permit a proceeding of that kind to take place no matter who condescends to consent to do it.

Accordingly, although they did so for a reason which I think was inappropriate. I am of the view that the justices reached the right decision and should, as they intend, hold separate trials. I would dismiss this application.

TAYLOR J: I agree.
