60/84

HOUSE OF LORDS

CHIEF CONSTABLE of NORFOLK v CLAYTON and ANOR

Lord Fraser of Tullybelton, Lord Edmund-Davies, Lord Scarman, Lord Roskill and Lord Templeman.

16, 17, 21 February, 17 March 1983

[1983] 2 AC 473; [1983] 2 WLR 555; [1983] 1 All ER 984; [1983] 77 Cr App R 24.

PRACTICE AND PROCEDURE – MULTIPLE INFORMATIONS – JOINDER OF COUNTS – SEVERAL DEFENDANTS CHARGED – WHERE FACTS CONNECTED JUSTIFYING JOINT TRIAL – WHETHER COURT MAY HEAR INFORMATIONS TOGETHER WITHOUT CONSENT OF DEFENDANTS: *MAGISTRATES' COURTS RULES* 1981 (UK).

Rule 12(1) of the *Magistrates' Courts Rules* 1981 (UK) reads:

"Subject to any Act passed after 2nd October 1848, a magistrates' court shall not proceed to the trial of an information that charges more than one offence."

Section 6(2) of the *Magistrates (Summary Proceedings) Act* 1975 (Vic) provides:

"Charges for offences punishable on summary conviction may be joined in the same information but any charge so joined shall, if the defendant so requests, be dealt with separately."

Where a defendant is charged on several informations, or two or more defendants are charged on separate informations, and in either case the facts are sufficiently connected to justify a joint trial, the Court may try the informations together if it is fair and just to do so, notwithstanding that the consent of the defendant or defendants to that course being taken has not been forthcoming.

LORD ROSKILL: (with whom the other Law Lords agreed) ... **([1983] 2 AC 489)** Magistrates' courts today try the vast majority of criminal cases that arise for hearing in this country as well as many civil cases. Any rule of practice or procedure which makes their task more difficult or demands subservience to technicalities is to be deprecated and your Lordships may think that this House should now encourage the adoption of rules of procedure and practice which encourage the better attainment of justice, which includes the interests of the prosecution as well as of defendants, so long as the necessary safeguards are maintained to prevent any risk of injustice to defendants.

My Lords, in the last two decades much additional work has been entrusted to magistrates' courts and magistrates receive training to enable them to learn their business and to bear this extra workload. Many cases are now tried summarily which 20 or 30 years ago would have been tried at quarter sessions or even assizes. The policy of Parliament has been to legislate so as to lighten the ever increasing burden now borne by Crown Courts by transferring a part of that burden to magistrates' courts. The evolution of the offence triable "either way" is an example of this policy. It is not entirely easy to see why in principle when, subject to certain well established safeguards and to the discretion of the trial judge to sever counts in an indictment and to order separate trials of those severed counts, indictments can today contain many counts and charge more than one offender where the facts alleged show the necessary connection, magistrates' courts should invariably be compelled in the **[490]** absence of express consent to try separately each information and each offender who is separately charged, however closely the facts are connected. No statute enjoins that magistrates' courts should follow this procedure or prohibits them from adopting that practice and procedure best suited to contemporary needs.

My Lords, in *R v Assim* [1966] 2 QB 249; (1966) 2 All ER 881; (1966) 50 Cr App R 224 a five-judge Court of Criminal Appeal presided over by Lord Parker CJ considered at length the circumstances in which it was proper to join separate offenders charged on separate counts in the same indictment. The court understandably shrank from laying down exhaustive rules dealing

specifically with every type of case. But in its judgment delivered by Sachs J the court laid down this general rule of practice in relation to indictments, at p261:

> "As a general rule it is, of course, no more proper to have tried by the same jury several offenders on charges of committing individual offences that have nothing to do with each other than it is to try before the same jury offences committed by the same person that have nothing to do with each other. Where, however, the matters which constitute the individual offences of the several offenders are upon the available evidence so related, whether in time or by other factors, that the interests of justice are best served by their being tried together, then they can properly be the subject of counts in one indictment and can, subject always to the discretion of the court, be tried together. Such a rule, of course, includes cases where there is evidence that several offenders acted in concert but is not limited to such cases. Again, while the court has in mind the classes of case that have been particularly the subject of discussion before it, such as incidents which, irrespective of there appearing a joint charge in the indictment, are contemporaneous (as where there has been something in the nature of an affray), or successive (as in protection racket cases), or linked in a similar manner, as where two persons individually in the course of the same trial commit perjury as regards the same or a closely connected fact, the court does not intend the operation of the rule to be restricted so as to apply only to such cases as have been discussed before it."

This principle was applied to committal proceedings in magistrates' courts by the Divisional Court in *R v Camberwell Green Stipendiary Magistrate, Ex parte Christie* [1978] QB 602; (1978) 2 All ER 377; [1978] 2 WLR 794. One information had been laid against a father charging him with murder of his child. A second information was laid against a woman charging her with an offence against the *Children and Young Persons Act* 1933. The father objected to the joinder of the committal proceedings against him and the woman on the ground that the magistrate had no power to hear them together since there were two informations against separate defendants charging each with a different offence. The stipendiary magistrate decided to hear the committal proceedings together and the father then sought to stop him from so doing. Reliance was naturally placed by counsel for the father on the decision in *Aldus v Watson* [1973] QB 902 which he asserted decided that a concurrent summary trial was "unlawful". But the Divisional Court applied the reasoning in *Assim's case* in the passage I have **[491]** just quoted and held that where the offenders and the offences for whom and for which committal was sought could be joined in one indictment, joint committal proceedings could properly take place. It may be that Lord Widgery CJ in giving judgment in *Christie's case* had second thoughts about what he had said in *Aldus v Watson* for he said [1978] QB 602, 607:

> "indeed I think it is probably wise not to be too far reaching in *dicta* which are concerned with matters of practice. Practice should vary from time to time, and the variation and correction of practice should not be restricted by excessively wide judgments already appearing in the law reports."

In an earlier part of his judgment he had plainly recognised the problem to which that decision could give rise in a case where, under section 18(3) of the *Magistrates' Courts Act* 1952, magistrates began to inquire into an information as examining justices with a view to committal for trial and then in pursuance of the powers conferred by that subsection decided to try the cases summarily. As examining justices they could, as the decision in *Christie's case* shows, hear concurrently the committal proceedings against two defendants charged on separate informations. Yet what was to happen once those proceedings had become summary proceedings? This difficulty becomes even more apparent when one looks at the present legislation, namely section 25(2) and (3) of the *Magistrates' Courts Act* 1980, the effect of which is correctly summarised in the side note as "Power to change from summary trial to committal proceedings, and *vice versa*". Can magistrates continue to hear without consent the several informations together in the summary proceedings or do they have to start again hearing them separately?

My Lords, the practical difficulties which arise from rigid adherence to the rule of practice enunciated in *Edwards v Jones* [1947] KB 659; [1947] 1 All ER 830 and in the later cases to which I have referred are indeed manifest. Common sense today dictates that in the interests of justice as a whole magistrates should have a discretion in what manner they deal with these problems. Suppose a defendant has 10 or 12 motoring offences charged in separate informations laid against him. He does not appear. If the present rule of practice is allowed to prevail, each of those 10 or 12 informations must be heard separately, often with the same witness or witnesses called and recalled 10 or 12 times to repeat themselves. Obstruction by a defendant is put at a premium. Today I see no compelling reason why your Lordships should not say that the practice

in magistrates' courts in these matters should henceforth be analogous to the practice prescribed in *R v Assim* [1966] 2 QB 249; (1966) 2 All ER 881; (1966) 50 Cr App R 224 in relation to trials on indictment. Where a defendant is charged on several informations and the facts are connected, for example motoring offences or several charges of shoplifting, I can see no reason why those informations should not, if the justices think fit, be heard together.

Similarly, if two or more defendants are charged on separate informations but the facts **[492]** are connected, I can see no reason why they should not, if the justices think fit, be heard together. In the present cases there were separate informations against the husband and the wife and a joint information against them both. I can see no rational objection to all those informations being heard and determined together. Of course, when this question arises, as from time to time it will arise, justices will be well advised to inquire both of the prosecution and of the defence whether either side has any objection to all the informations being heard together. If consent is forthcoming on both sides there is no problem. If such consent is not forthcoming, the justices should then consider the rival submissions and, under any necessary advice from their clerk, rule as they think right in the overall interests of justice. If the defendant is absent or not represented, the justices, of course, should seek the views of the prosecution and again if necessary the advice of their clerk and then rule as they think fit in the overall interest of justice. Absence of consent, either express where the defendant is present or represented and objects or necessarily brought about by his absence or the absence of representation, should no longer in practice be regarded as a complete and automatic bar to hearing more than one information at the same time or informations against more than one defendant charged on separate informations at the same time when in the justices' view the facts are sufficiently closely connected to justify this course and there is no risk of injustice to defendants by its adoption. Accordingly the justices should always ask themselves whether it would be fair and just to the defendant or defendants to allow a joint trial. Only if the answer is clearly in the affirmative should they order joint trial in the absence of consent by or on behalf of the defendant.

To give magistrates' courts this discretion and to change the practice and procedure which has seemingly prevailed in recent years is not to invite magistrates' courts to embark upon long and complicated summary trials with many charges being heard and many offenders being tried all at the same time. As Sachs J said in *R v Assim* [1969] 2 QB 249; (1966) 2 All ER 881; (1966) 50 Cr App R 224, it is impossible to lay down general rules applicable to every case which may arise but if justices ask themselves, before finally ruling, the single question – what is the fairest thing to do in all the circumstances in the interests of everyone concerned? – they are unlikely to err in their conclusion, for the aim of the judicial process is to secure a fair trial and rules of practice and procedure are designed to that end and not otherwise.

My Lords, in the result I would allow these two appeals and refuse the applications for judicial review. I would answer both the certified questions in the negative. Since the appeals to the King's Lynn Crown Court were adjourned pending the application for judicial review which have now failed, these cases must be remitted to that court to continue with the hearing of the appeals. Your Lordships may think it right in all the circumstances of these appeals to order that the costs of both the appellant and the respondents should be paid out of central funds.
