REGINA v. BRENTFORD JUSTICES, *Ex parte* CATLIN

1975 Jan. 30, 31; Feb. 3

Lord Widgery C.J., Ashworth and Michael Davies JJ.

Justices—Jurisdiction—Summons, validity of—Document in form of summons bearing rubber stamped facsimile signature of justice and setting out alleged offence—Defendant appearing before justices with document before them—Whether constituting valid information—Whether jurisdiction depending on validity of summons or information

Justices — Summons — Validity — Facsimile signature of justice — Whether rubber stamping of signature proper—Whether summons to be issued without laying information before justice—Magistrates' Courts Rules 1968 (*S.I.* 1968 *No.* 1920), *r.* 81

The applicant received a document which bore a justice's facsimile signature applied by rubber stamp and was in the form of a summons to appear to answer an information before justices on a specified date within six months of an alleged offence of careless driving; the document stated that the information had been laid and brief particulars of the offence were set out. On the specified date the document was laid before the justices, the case was called on and the applicant, who attended unrepresented, applied for and was granted legal aid and the case was adjourned. At an adjourned hearing counsel for the applicant objected that the justices had no jurisdiction to adjudicate on the ground that the "summons" did not comply with rule 81 of the Magistrates' Courts Rules 1968 [1] since it was not signed by, or on the express instructions of, the justice before whom the information was laid if, which was not admitted, any information had been laid. The justices overruled the objection and convicted the applicant.

On an application for an order of certiorari to quash the conviction:—

Held, refusing the application, that the validity of the proceedings before the justices depended on the information not on the summons, which was merely a convenient form for bringing a defendant before the court; and that any defect or invalidity that there might have been in the summons was irrelevant in the circumstances because the document laid before the justices on the specified date was sufficient to constitute the information against the applicant; so that, when she appeared before the justices within six months of the offence, they were then and thenceforth clothed with jurisdiction and her conviction was unassailable (post, p. 463B, D–G).

Reg. v. *Hughes* (1879) 4 Q.B.D. 614 applied.

Per curiam. An erroneous or invalid summons may be fatal to proceedings against a proposed defendant if the error or invalidity cannot otherwise be rectified within time (post, p. 461B).

Dixon v. *Wells* (1890) 25 Q.B.D. 249, D.C. considered.

A justice's facsimile signature may properly be applied by rubber stamp to a summons by the justice, or by a clerk or his employee with the justice's general or specific authority (post, p. 462F).

[1] Magistrates' Courts Rules 1968, r. 81: see post, pp. 459H—460A.

Reg. v. *Fox* (1958) 120 Can.Crim.Cas. 289 applied.

Per Lord Widgery C.J. A serious instance of maladministration arises if a justices' clerk's office issues summonses without information being laid before the justice (post, p. 464C).

The following cases are referred to in the judgment of Michael Davies J.:

Bennett v. *Brumfitt* (1867) L.R. 3 C.P. 28.
Dixon v. *Wells* (1890) 25 Q.B.D. 249, D.C.
Morton v. *Copeland* (1855) 16 C.B. 517.
Reg. v. *Fox* (1958) 120 Can.Crim.Cas. 289.
Reg. v. *Hughes* (1879) 4 Q.B.D. 614.

The following additional cases were cited in argument:

Atterton v. *Browne* [1945] K.B. 122; 114 L.J.K.B. 68, D.C.
Brooks v. *Bagshaw* [1904] 2 K.B. 798, D.C.
Pearks, Gunston & Tee Ltd. v. *Richardson* [1902] 1 K.B. 91, D.C.
Hunter v. *Coombs* [1962] 1 W.L.R. 573; [1962] 1 All E.R. 904, D.C.
Reg. v. *Shaw* (1865) 10 Cox C.C. 66, C.C.A.
Rex v. *Wilson, Ex parte Battersea Borough Council* [1948] 1 K.B. 43; [1947] 2 All E.R. 569, D.C.

APPLICATION for an order of certiorari.

The applicant, Anne Tricia Catlin, applied for an order of certiorari to quash her conviction by Brentford justices, sitting at Brentford Magistrates' Court on January 3, 1974, of having driven without due care and attention. The grounds of application were that (1) the purported summons by which the applicant was brought before the court to answer the charge was invalid in that (a) the summons was not issued by a justice of the peace before whom the information supporting the summons had been laid in accordance with section 1 of the Magistrates' Courts Act 1952; (b) the summons was not signed by the justice of the peace who issued it, nor was the facsimile signature of the justice impressed on the summons personally by him by means of a rubber stamp, nor was the facsimile signature of the justice impressed by means of a rubber stamp on the summons by another with the specific authority of the justice with respect to the summons, and accordingly the summons was not signed in accordance with rule 81 of the Magistrates' Courts Rules 1968; (2) for the reasons aforesaid the justices were without jurisdiction to try the charge; and (3) for the reasons aforesaid the conviction was founded on a summons that was inherently defective. The justices and the prosecutor were respondents to the application.

The facts are stated in the judgment of Michael Davies J.

Andrew Hillier for the applicant. The summons is invalid on two grounds. First, it is not issued by a justice who heard the information on which the summons is purportedly based, contrary to section 1 of the Magistrates' Courts Act 1952. Secondly, the facsimile signature of the justice does not constitute a signature of the summons as required by rule 81 of the Magistrates' Courts Rules 1968.

As to the first ground, a court does not have jurisdiction over a defendant who is invalidly summonsed and who objects to the court's jurisdiction when appearing to that summons: *Dixon* v. *Wells* (1890) 25 Q.B.D. 249; *Pearks, Gunston & Tee Ltd.* v. *Richardson* [1902] 1 K.B. 91. [Reference was made to *Rex* v. *Wilson, Ex parte Battersea Borough Council* [1948] 1 K.B. 43 and *Brooks* v. *Bagshaw* [1904] 2 K.B. 798.]

Alternatively, if the ratio of *Dixon* v. *Wells*, 25 Q.B.D. 249, was that, in that case, a summons had to be issued within 28 days, the present case is on all fours with *Dixon* v. *Wells* in that an information has to be properly laid within six months: section 104 of the Act of 1952. No information was so laid.

As to the second ground, rubber stamp signature is permissible only if it is impressed by the justice whose name it bears or, possibly, with his specific authority in relation to a particular summons provided he has seen it. Appearance under protest to such a summons does not waive the irregularity.

Donald Farquharson Q.C. and *Michael Gettleson* for the respondent prosecutor. A distinction must be drawn between an information and a summons. An accused person is tried on an information not on a summons. An information has two purposes, namely, to justify the issue of a summons or warrant and to serve as the charge on which the accused person is tried: section 1 and section 13 of the Magistrates' Courts Act 1952.

By section 100 of the Act of 1952 no objection can be taken to error in an information or summons, but the court must ensure that the information is not defective before conviction. The purpose of section 100, which re-enacts the proviso to section 1 of the Summary Jurisdiction Act 1848 (Jervis's Act), is to prevent reliance on error in formalities in summary proceedings. It does not relate to fundamental defects. Informations can be laid orally, where a warrant is not applied for, but must be laid before a justice within six months of the commission of the offence: section 104 of the Act of 1952. In the present case the information was laid before the justices when the applicant appeared before them on October 4, 1974, which was within the six months.

A summons may not issue unless the justice authorising it has considered the information. If the information in the present case was not laid before the justice whose name appears on the summons then the summons is invalid. But the validity of the summons is not essential to the jurisdiction of the justice. Process is not essential to the jurisdiction of the justices to hear and adjudicate: *per* Hawkins J. in *Reg.* v. *Hughes* (1879) 4 Q.B.D. 614, 625. So long as the accused person is physically before the justices and they have jurisdiction to try the information the invalidity of the summons is irrelevant.

It makes no difference if the accused person challenges the jurisdiction. This point was not clear in *Reg.* v. *Shaw* (1865) 10 Cox C.C. 66 but in *Reg.* v. *Hughes*, 4 Q.B.D. 614, a court of 10 judges, of whom one dissented, held that presence of the accused person and jurisdiction of the justices were sufficient, and did not refer to the making of a protest as affecting the position.

In some instances, for example, section 108 of the Food and Drugs Act 1955, provision is made for special time limits for the serving of a

summons. If the time limit is not then adhered to, justices do not have jurisdiction: *Dixon* v. *Wells*, 25 Q.B.D. 249.

A protest to jurisdiction, where appropriate, should be made at the outset of the proceedings and if the justices hold against an accused person he should withdraw, if he wishes, to appeal to the Divisional Court. He should not participate in the trial of the information and take his chance of acquittal as the applicant did. [Reference was made to *Atterton* v. *Browne* (1944) 114 L.J.K.B. 68.]

Anthony Scrivener for the respondent justices. First, it is perfectly proper for a rubber stamp signature to be used. Secondly, the actual affixing of the signature can be delegated.

The issuing of the summons is not a judicial act. It is the result of a judicial act in examining the information. The examining of the information is a judicial act. The issuing of the summons is purely administrative and can be delegated: see Lord Goddard C.J. in *Rex* v. *Wilson, Ex parte Battersea Borough Council* [1948] 1 K.B. 43, 46.

As a general rule a personal signature is not required and delegation is permissible: *Morton* v. *Copeland* (1855) 16 C.B. 517, 535; *Bennett* v. *Brumfitt* (1867) L.R. 3 C.P. 28 and *Reg.* v. *Fox* (1958) 120 Can.Crim.Cas. 289 and the cases referred to in the judgment.

As to waiver, the respondent justices concur with the argument of the respondent prosecutor.

Hillier in reply. The events of October 4, 1974, cannot constitute the laying of an information since the justices sitting on that date were unaware that proceedings on that occasion were subsequently to be construed as the laying of an information. Further, the events of that day cannot constitute the laying of an information for the purposes of the present conviction since it was purportedly based on the information as originally laid on September 7, 1974.

LORD WIDGERY C.J. I will ask Michael Davies J. to give the first judgment.

MICHAEL DAVIES J. Miss Anne Tricia Catlin moves this court for an order of certiorari to bring up and quash a conviction of her by Brentford justices on January 3, 1974, for an offence of driving a motor vehicle without due care and attention. The alleged offence took place on April 30, 1973. A summons was issued on September 7, 1973, which summons is exhibited to an affidavit sworn in these proceedings by the applicant's solicitor. It is agreed that the summons in question bore the facsimile signature of a justice of the peace for the appropriate petty sessional division, and that it was applied not by the justice himself but in the magistrates' clerk's office. In the affidavit to which I have already referred it is deposed that at a subsequent hearing it was accepted by the court that, and here I quote from the affidavit:

> ". . . although general authority was conferred on the clerks in the court office to use the rubber stamps on court summonses, in general, individual summonses issued by the court were not specifically

A examined by the justice whose name they bore before the affixing of the signature."

That summons appointed or purported to appoint October 4, 1973, as the hearing date of the allegation of careless driving against the applicant. On that date the applicant, then of course the defendant, appeared before the Brentford magistrates' court, unrepresented on that occasion by counsel or B solicitor. An affidavit has been filed on behalf of the respondent prosecutor, made by Inspector Bradley who at all material times was acting as court inspector at the Brentford magistrates' court, and one looks at that affidavit in order to see what occurred on October 4. Mr. Bradley's affidavit reads:

C "... On October 4, 1973, the said summons was duly entered in the court register and in the list of cases for hearing that day; that list and the summons were laid before the justices, the case was called on, the applicant applied for and was granted legal aid, and the case was adjourned to November 1, 1973."

After that appearance at court on October 4, when, as I have said, the applicant attended and was granted legal aid, she subsequently by D letter to the court dated October 30, 1973, pleaded guilty or purported to plead guilty to the offence alleged against her. The matter was laid before the justices in her absence on November 1, but for technical reasons unconnected with the substance of the present application it was not possible for the justices in any event to deal with the case as a plea of guilty by letter, and accordingly they adjourned the matter for the applicant to attend. She did so on November 29, 1973, when counsel on her behalf E applied for leave—which I interpolate to say was almost certainly not necessary in the circumstances—to withdraw the plea of guilty made or purported to have been made by letter. That leave, if it was required, was certainly given, and counsel on behalf of the applicant then submitted that, for reasons to which I will come in a moment, the court had no jurisdiction to adjudicate on the matter purportedly before them. The F case was further adjourned for argument to January 3, 1974, on which date the applicant's submissions on jurisdiction were rejected, and the justices proceeded to hear the case and convicted her.

That is the history of the matter, and the applicant in this court, as she did before the justices, attacks the summons to which I have referred on the ground that it was not signed by or on the express instructions of the justice before whom the information was laid if, which is not admitted, G any information was ever laid. So, says the applicant, the justices were without jurisdiction certainly if a protest to the jurisdiction was made, as indeed it was.

The attention of this court has been drawn to rule 81 of the Magistrates' Court Rules 1968 which provides:

H "(1) A summons shall be signed by the justice issuing it or state his name and be authenticated by the signature of the clerk of a magistrates' court. (2) A summons requiring a person to appear before a magistrates' court to answer to an information or complaint shall

state shortly the matter of the information or complaint and shall state the time and place at which the defendant is required by the summons to appear. . . ."

The applicant submits to this court that the issue of the summons was a judicial act, that by reason of a breach of the rule to which I have referred it was of no effect and that, accordingly, everything which occurred subsequently was of no consequence because, says the applicant, the justices had no jurisdiction.

Much reliance was placed by the applicant on *Dixon* v. *Wells* (1890) 25 Q.B.D. 249, and I read the last two paragraphs of the headnote, at p. 250:

> "A complaint having been made to two justices of a borough against the appellant for an offence under the above Acts,"—which were the Sale of Food and Drugs Acts 1875 and the amending Act of 1879—"a summons was signed and issued by another justice, who had not heard the complaint, and was served on the appellant. The appellant thereupon appeared before the stipendiary magistrate of the borough, but objected that the summons was invalid and the magistrate had no jurisdiction to hear the case. The magistrate being of opinion that the defect, if any, in the summons was cured by the appearance of the appellant, heard the case and convicted him:— ***Held***, that the summons, having been signed and issued by a justice who had not heard the complaint, was invalid; that the defect was not cured by the appearance of the appellant, as he appeared under protest; that the provisions of 43 & 44 Vict. c. 30 section 10"—and I will return to those in a moment—"were imperative, and not merely directory, and that as no summons had been duly served in accordance with them the magistrate had no jurisdiction, and the conviction was wrong."

At first that portion of the headnote, which is the material portion, might well be taken as indicating that *Dixon* v. *Wells* was authority for the simple proposition that any defect in the summons caused an invalidity which deprived the justices of any jurisdiction. However, when the judgments in that case are looked at and indeed when the headnote is read more carefully, it is quite plain in my view that the decision of the court was based on and depended on the provisions of section 10 of the Act of 1879, and that Act required proceedings for a breach of the Act of 1875 to be taken within 28 days from the time of the purchase of the food or drug, the quality of which it was sought in the proceedings to attack. Lord Coleridge C.J. said, at p. 257:

> "But it seems to me that in this case the legislature has made it a condition precedent to the magistrate's jurisdiction that the proceedings should be brought within the operation of section 10"—that is, within the 28 days—"and that in all prosecutions under the Act certain things shall be done and certain things shall not be done. The section is not only directory, but strongly imperative. In the present case there was, in my opinion, no summons. I think that, according to section 10, which applies to this case, it was essential to the juris-

diction that it should be exercised in 28 days, and that it was not so exercised, and the appellant is entitled to our judgment."

In other words, in my view, *Dixon* v. *Wells*, 25 Q.B.D. 249 is indeed authority for the proposition that, if there is an error or invalidity about a summons, then it may be fatal to the proceedings against the proposed defendant if it is too late by reason of the expiration of time or any other reason to put the matter right in some other way, and certainly does not justify the submission—as I understand it, this is the submission of the applicant—that any fault in a summons is quite incurable and destroys jurisdiction for ever, at least unless a further summons is issued.

The applicant goes on to say and submit to this court that an information must be tried within six months of being laid and cannot be effectively and lawfully tried if no valid summons is issued and served during that time. Indeed it is of course so, as the respondents accept, that an information must be laid within six months of the offence, but they do not accept that the summons plays the vital role which the applicant in this court contends. Both respondents submit that the information is what is vital to the validity of the proceedings, not the summons, that the information and the consideration of it by a justice is a judicial act which cannot be delegated but that a summons is simply a convenient form prescribed by section 1 (1) of the Magistrates' Courts Act 1952 for bringing the defendant before the court if a warrant is not issued. The attention of this court was drawn to *Reg.* v. *Hughes* (1879) 4 Q.B.D. 614. I read the headnote:

"H, a police constable, procured a warrant to be illegally issued, without a written information or oath, for the arrest of S, upon a charge of 'assaulting and obstructing him, H, in the discharge of his duty.' Upon such warrant S. was arrested and brought before justices, and was, without objection, tried by them and convicted. H, was afterwards indicted for perjury committed on the said trial of S, and convicted:—*Held*,"—by Lord Coleridge C.J. and eight other judges, with one dissenting—"that H was rightly convicted, notwithstanding that there was neither written information, nor oath, to justify the issue of the warrant, and that the justices had jurisdiction to hear the charge, though the warrant upon which the accused was brought before them was illegal."

Lopes J. in a short judgment said, at p. 622:

"The facts of this case, and the Acts of Parliament and authorities which bear upon it, have been fully gone into by the judgments of the other members of the court, which I have read."—He said that he agreed with them.—"I think the warrant in this case was mere process for the purpose of bringing the party complained of before the justices, and had nothing whatever to do with the jurisdiction of the justices. I am of opinion that whether Stanley was summoned, brought by warrant, came voluntarily, was brought by force, or under an illegal warrant, is immaterial: being before the justices, however brought there, the justices, if they had jurisdiction, in respect of time and place over the offence, were competent to entertain the charge,

and being so competent, a false oath, wilfully taken, in respect of something material, would be perjury." A

Then in a longer judgment, Hawkins J., having said in a sentence, on which reliance is placed, at p. 625, "Process is not essential to the jurisdiction of the justices to hear and adjudicate," goes on to say:

"The illegality of the warrant and of the arrest did not however affect the jurisdiction of the justices to hear the charge, whether that B hearing proceeded upon a valid verbal information, followed by an illegal process, or upon an information for the first time laid in the presence of Stanley, upon which he was then and there instantly charged."

The respondents further contend that the affixing of a signature to the summons may be delegated, and it can be conveniently stated for the C purposes of this judgment that the English cases dealing with this question are referred to, examined and analysed in the Canadian case of *Reg.* v. *Fox* (1958) 120 Can.Crim.Cas. 289. I only need, I think, to read the headnote from that case:

"The signature of the justice issuing a summons or warrant under"— the Canadian Criminal Code—"need not be in his own handwriting. D It may be affixed by means of a rubber-stamp facsimile not only by the justice himself but also by another person if the latter is expressly authorised to do so or, if he is subject to the control and direction of the justice, if he is acting in accordance with the established practice in the justice's office. In no case however may a summons or warrant be signed or stamped in blank."

E

As I have said, the English cases, including *Morton* v. *Copeland* (1855) 16 C.B. 517 and *Bennett* v. *Brumfitt* (1867) L.R. 3 C.P. 28 were all examined.

In my judgment it is plain as stated in *Reg.* v. *Fox* that it is perfectly proper for a signature to be affixed by way of rubber stamp, whether applied by the justice or by a clerk or an employee of the magistrates' clerk with the authority, general or specific, of the justice, and that conclu- F sion, but for one matter would be sufficient in my view to dispose of this application because, assuming that an information was indeed laid before the justice whose signature in facsimile form subsequently appeared on the summons, then all the applicant's attack on the subsequent proceedings would fall to the ground straight away and it would not be necessary to consider the other points raised in this application.

However, in this case it may be that, as the applicant I think wished G this court to infer from the documents before it, the justice before whom the information was originally laid was not the one whose signature appeared on the summons in facsimile form, and indeed I think the applicant would go further and say that this court should infer in all the circumstances of this case, and proceed on the basis, that no information was ever placed before any justice prior to the issue of the summons; the H summons was a mere creature of a clerk in the magistrates' court office. It is not necessary to embark on an examination of that aspect of the matter, indeed this court would be quite unable to do so in view of the

material before it, but Mr. Scrivener on behalf of the respondent justices conceded certainly that, if the summons had come into existence in the manner to which I last referred, namely, as a purely administrative operation without any information being laid, then the summons would be bad, and if that was the case or if the summons indeed is invalid on any basis it is necessary to consider the subsequent events.

On behalf of the respondents it is said that, if the summons was defective or invalid for the reasons to which I have referred, it does not matter because, say the respondents, the information is the vital matter. An information performs the dual function of being a statement of the offence, which usually leads to the issue of a summons, but also it is the charge on which a defendant is ultimately tried. It is practical common sense, the respondents say, and I agree with them, that on October 4, 1973, in the circumstances which I have described the applicant, then the defendant, did in fact appear before the justices, the document called a summons was laid before the justices then sitting, as the affidavit of the court inspector proves, and that document or summons did contain the charge. So that, therefore, the justices on October 4 had placed before them the charge within six months of the offence. The respondents concede that, if the six months had expired and the summons which had been issued was for any reason invalid, the placing of it before the justices on October 4 would be insufficient to found jurisdiction, but the six months had not expired. The summons contained these words:

> "Information has been laid this day by Police Constable . . . Kinnard . . . for that you on the 30th April, 1973 at Staines Road, Hounslow, Middlesex, junction with Hospital Road and Hibernia Road . . . did commit the undermentioned offence:—"

and then the offence is stated, and that was sufficient to clothe the justices then and thenceforth with jurisdiction whatever was wrong, if anything, with the summons before.

It seems to me that the respondents' contention is correct. The applicant was there, she was before the court, the summons was before the court—and by summons I mean the document—and that contained sufficient to constitute the information against her. She asked for legal aid. She did not merely appear to protest and then walk out. True, she had no legal adviser at that time, but that seems to me to be in this context immaterial. From then on the procedure leading to conviction which followed was, in my judgment, correctly carried out, and is unassailable.

In the circumstances of this case, it seems to me to be unnecessary to consider further arguments addressed to this court in relation to the importance of a protest to the jurisdiction. Indeed, in my judgment, upon the facts of this case, they are not relevant. If the summons as a document was invalid and if the respondents had to rest their case solely on that, then no doubt the question of whether or not the applicant had waived any invalidity by failing to protest would have become a very important issue. But the crux of this case, as I have said more than once, is in my judgment what happened on October 4, the information being placed before the justices then within six months of the offence, and the correct procedure was thereafter followed.

Accordingly, when ultimately they decided that they had jurisdiction to hear this case and did so, the justices in my view were correct, and the applicant has failed to establish grounds which would justify certiorari in this case. I would refuse the application.

ASHWORTH J. I agree.

LORD WIDGERY C.J. I entirely agree with the order proposed for the reasons so clearly given by Michael Davies J. It must, however, be remembered that before a summons or warrant is issued the information must be laid before a justice and he must go through the judicial exercise of deciding whether a summons or warrant ought to be issued or not. If a justice authorises the issue of a summons without having applied his mind to the information then he is guilty of dereliction of duty and if in any particular justices' clerk's office a practice goes on of summonses being issued without information being laid before the justice at all, then a very serious instance of maladministration arises which should have the attention of the authorities without delay. The application is refused.

Application refused.
Order for payment of justices' costs out of central funds.
No application for prosecutor's costs.
Legal aid taxation of applicant's costs.

Solicitors: *Gamlens & Roebuck, Harlington; Solicitor, Metropolitan Police; E. G. B. Taylor, Brentford.*

L. N. W.