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The State at the Prosecution
of Frank Byrne.

Prosecutor

And

District Justice Joseph
Plunkett

Respondent

The Application to have the conditional Order granted by
MacMahon J made absolute was made before Mr Justice Darcy
and Judgment was given on the 1st July 1985.

For the Prosecutor: Paul O'Higgins BL.

For the Respondent: Susan Denham BL.

"The facts are simple. On the 15th January 1985 the
Applicant was convicted of an Offence under Section
49 and of an Offence under Section 53 of the Road Traffic
Act 1961-1978. These are summary Offences. The Offences
were alleged to have been committed on the 9th December
1983. The Petty Sessions Act 1851 provides that a
complaint in relation to a summary Offence must be
made within 6 months of the commission of that Offence.
Other time limits apply in relation to certain specific
Offences but they do not have relevance to this Application.
If the complaint was not made within six months then
it would not be possible for the prosecution to proceed
nor for the District Justice to convict the Application
of any Offences. The summonses in this Case are of

the modern computerised variety. Printed in the top right hand corner of each summons is 'Date of Complaint' and following that '01/05/84'. Underneath is printed 'Date of Summons' and following that '10/08/84'. There follows in the body of the summons an instruction to the Defendant to appear at Rathfarnham Court House on a certain date on the grounds that a complaint had been made to a District Court Clerk by the Complainant Garda and also a Statement of the alleged Offence. In the course of cross examining the complainant Garda in the lower court Counsel for the Defendant asked the Garda on what date he had made a complaint to the District Court Clerk stated on foot of the summons to have received a complaint. The Complainant Garda was unable to give evidence of having communicated with the District Court Clerk at all and stated that he had filled in a computer form requesting summonses probably on some date within 6 months of the alleged Offences. The Garda could not say on what date he had done this but said that once it was done he had handed the form to his sergeant. He could not of his own knowledge say what happened to the form after he had placed it in the hands of his sergeant. The Defence Counsel then put the Prosecution on Notice that the Defence was calling on the prosecution to give proper proof of when a complaint was made to the District Court Clerk who purported to have received the complaint. The District Justice then stated that he did not require proof that a complaint was made within six months of the alleged Offence as the date of the summons was sufficient for him as evidence. The Defence Counsel then suggested that there was proof available to the Prosecution and he called on them to call as a witness or provide for cross examination the District Court Clerk purported to having received the complaint on the date alleged. In the event the District Justice declined to allow such evidence to be called and proceeded to convict the Defendant upon his not going into evidence. The statutory provision relating to the 6 months time limit within which a complaint must be made has been extended to the Dublin Metropolitan District by the

the parties that if in fact a complaint was not made within 6 months then the District Justice would not have had jurisdiction to entertain the matters before him. It is the contention of Counsel for the Prosecutor and Applicant for judicial review that once he had called upon the Prosecution to prove an essential matter that the onus was then on the Prosecution to call proper evidence of that matter. It was contended before me on behalf of the Respondent that the date on the summons constituted prima facie evidence of the date on which a complaint was made and that if the Defence wished to contest that date then the Defence should call evidence to so contest it.

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G. J. J. J.

Whether or not a complaint was made, in relation to an alleged Offence, within six months of the date of the alleged commission of the Offence, is an essential matter and if the Defence calls for evidence thereof from the Prosecution then the Prosecution must satisfy the Court that a complaint was made within 6 months.

A common instance of judicial review is when the High Court is called upon to review a property Case from the Circuit Court when there has been no evidence of a Certificate of Poor Law Valuation. Another instance of judicial review is regarding the Special Criminal Court when there is no evidence before that Court of a direction from the DPP that a matter before it could not have been disposed of in the Ordinary courts in relation to non scheduled Offences. Those Courts would be acting in excess of jurisdiction if those proofs were not before them. As regards the statutory provision providing for a six month time limit in relation to summary matters, there is a long line of authorities culminating in the Case of he Minister for Agriculture V Norgro which deals with whether the statutory provision goes to the jurisdiction of the District Court or is a matter for Defence. They hold that the six months provision does not go to the Jurisdiction of the District Court however the Case before me is not that simple.

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That is a Case in which Finlay P., as he then was, gave judgment in a Case stated, (23rd July 1979). The head note of that Case states:

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"The Summons was issued in the District Court and was served on the Defendant. The summons recited that a complaint had been made to the issuing Clerk that the Defendant had committed a summary offence on the 30th May 1977, and the summons commanded him to attend the Court on the 1st February 1978, and answer the complaint. The summons gave no indication of the date on which the recited complaint had been made. When the matter came before the District Justice he was of the opinion that he had no jurisdiction to enter upon the determination of the charge alleged in the complaint. However, he stated a Case for the opinion of the High Court and inquired whether he was correct in believing that he had no jurisdiction to embark upon the hearing of the charge since the summons did not disclose that the complaint had been duly made within the period allowed by the Act of 1851.

Held by Finlay P., in answering in the negative the question posed,

1. That proof of the provisions of Section 10, paragraph 4, of the Act of 1851 have been satisfied is not a condition precedent to the exercise by the District court of its jurisdiction to commence the hearing of criminal proceedings to which that enactment applies.
2. Accordingly, an issue based on that enactment may be determined by the District Court as part of the exercise of its jurisdiction in such proceedings."

In the course of his judgment The President of the High Court said:

"It is clear that this particular complaint was a complaint coming within the provisions of paragraph 4 of Section 10 of the Act of 1851 and that, if the complaint was not made and the summons was not issued within 6 months of the date of the alleged Offence, that fact would

afford a good Defence to the Defendants. However, the issue which arises on the Case Stated as a matter of Law is whether that is a matter of Defence to be raised by the Defendants and determined by the District Justice upon evidence (as the complainant contends), or whether it goes to the root of the jurisdiction of the District Court to enter upon hearing of the complaint. I am satisfied that the contention of the complainant is correct and that the time limit arising under section 10 of the Act of 1851 is a matter of Defence for the Defendants and does not go to the jurisdiction of the District Court to entertain the summons.

There are two decisions of the High Court dealing with this question and I am prepared to follow both of them. The first is The State (Hempenstall) V Shannon. Whilst the point at issue in that Application for certiorari was the power of the District Court to award costs in a summons under the Married Women (Maintenance in case of Desertion) Act, 1886, a question arose as to whether the provisions of Section 21, SS(2) of the Courts of Justice Act, 1928 (applying paragraph 4 of Section 10 of the Act of 1851 to cases of summary jurisdiction within the Dublin Metropolitan Area) involve a sub-section dealing with jurisdiction. In the course of deciding that they did not, Hanna J. states at page 333 of the Report: - "The question whether an Offence is committed within time is portion of the evidence which must be given by the state following a plea of Not Guilty. It is a matter of Defence, not going to jurisdiction, in the strict sense of that term." This decision was refer to with approval in The Attorney General V Conlon.

In Conlon's Case a Case Stated was tried by a Divisional Court of the High Court and the point of law at issue was whether the District Court had jurisdiction to hear and determine a charge of larceny against a man who had been arrested in March, 1937, in respect of an offence which he was alleged to have committed early in 1936. The District Justice considered that the

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facts proved against the accused constituted a minor offence which was fit to be tried summarily (within the meaning of S. 77 B of the Courts of Justice Act, 1924) and the accused consented to being so tried. It was contended on behalf of the Attorney General that the District Justice had no jurisdiction to try the Case summarily in view of the provisions of para. 4 of S. 10 of the Act of 1851 because, as the District Justice had reached the appropriate determination under s. 77 B. of the Act of 1924, the Case became a Case of summary jurisdiction. It was held by the Divisional Court that the District Justice did have such jurisdiction, and it was an integral part of that decision that the time limit did not go to jurisdiction but was a matter of Defence. There were three judgments. Hanna J. stated that he agreed with the judgment of Maguire P. but added that the limitation of time laid down in s. 10 of the Act of 1851 is a Defence and does not go to the jurisdiction. O'Byrne J. in a lengthier judgment, stated at p. 766 of the report:- "In my opinion the jurisdiction to hear and determine the complaint is clearly confirmed by paragraph B of Section 77 in the Courts of Justice of Act 1924, and the limitation as to time is, as was decided by my learned colleague Hanna J. in The State (Hempenshall) v Shannon, a mere matter of Defence to be taken into account by the District Justice in determining the charge."

As I have indicated, I agree with these statements of the law which are extremely explicit. In my view, they determine the question at issue before me in this Case Stated. If the question of a time limit went to the jurisdiction of the District Court, the difficulty could not and would not be cured merely by a statement of the date of the issue of the summons being printed on it, for that would not be evidence before the Court since the summons is merely the Document containing the complaint. It would be necessary in every case for the complainant to prove as a preliminary matter the date of the issue, as distinct from merely setting it out in the summons. As the point was raised by the Defendants, I am quite satisfied that the complainant

...been permitted to prove the date of the issue of the summons."

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I have no hesitation in following the judgment of the former president of the High Court and as he now is, the Chief Justice, Mr Justice Finlay, and that of Hanna J., one of the greatest common lawyers to sit in these Courts, and that of O'Byrne J., in the above Cases. However, to say that the six month time limit is a matter for Defence does not mean that it is a matter which Counsel for the Defence must seek to prove negatively and which the prosecution can ignore. The Prosecution must prove their Case. There are some Cases in which the prosecution must prove every aspect of their Case without been called upon to do so. There are some Cases such as this were it is open to the Defence to call on the Prosecution to prove something. It is clear that the fact that a complaint has been made or the date on which such complaint was made in a matter wholly within the knowledge of the Prosecution.

An accused person could not possibly know when a complaint was made. To say that something is a matter for Defence means that it is a matter to be raised by the Defence. When the matter raised is a matter peculiarly in the knowledge of the Prosecution then it is up to the Prosecution to call evidence of that fact or matter. When this matter was raised by the Defendant's Counsel in the lower court I say firmly that the Prosecution should have proved it. I therefore make absolute the conditional order made herein on the 28th day of January 1985 by McMahon J.

Solicitor for the Prosecutor: Killeen & Company.

Solicitor for the Respondent: Chief State Solicitor