Police (Property) Act 1897—*application initiated by complaint—unopposed at hearing by police—whether jurisdiction to order costs*

R. v. Uxbridge Justices, ex p. Commissioner of Police for the Metropolis

Court of Appeal: Lord Denning M.R., Sir George Baker and Sir Stanley Rees: June 12, 1981.[12]

The applicant had been arrested and sentenced to 18 months' imprisonment in connection with currency offences. While they were investigating the offences, the police came into possession of, and held, money in the form of currency notes which they had found in the applicant's house and which he claimed belonged to him. The applicant applied while he was in prison to justices for the delivery of the money to him pursuant to section 1 (1) of the Police (Property) Act 1897. A summons in the form of a complaint was issued addressed to and served on the Commissioner of Police for the Metropolis for his attendance to answer the complaint. The police did not oppose the application at the hearing. The justices ordered the return of the money and awarded the applicant £350 costs. The Divisional Court dismissed [1981] 1 W.L.R. 112; [1980] Crim.L.R. 649 an application by the Commissioner for an order of certiorari to quash the order on the ground that the justices had no power to make an order for costs on an application under the Act of 1897. The Commissioner appealed.

Held, dismissing the appeal (Lord Denning M.R. dissenting), that the procedure by way of complaint was (*per* Sir George Baker) a proper procedure (*per* Sir Stanley Rees), the necessary procedure in the circumstances, for the applicant to use for his application and accordingly the justices had jurisdiction under section 55 (1) of the Magistrates' Courts Act 1952 (now s. 64 (1) of the Magistrates' Courts Act 1980) to make the order for costs.

Held, further that it was in general undesirable for magistrates to make orders for costs against the police in cases where they did not oppose the making of an order under the Act of 1897 for the delivery of property in their possession; and (*per* Lord Denning M.R. and Sir George Baker) the form of notice of application where there was no complaint, such as was used in the Metropolitan Magistrates' Courts, was a valid notice of application.

[*Reported by A. H. Bray, Esq., Barrister.*]

Commentary. Section 1 (1) of the 1897 Act provides that where property has come into the possession of the police in connection with their investigation of a suspected offence . . . "a court of summary jurisdiction may, on *application* either by an officer of police or by a claimant of the property, make an order for the delivery of the property to the person appearing to the magistrate or court to be the owner thereof, . . ." The problem in the present case arises because magistrates have no inherent jurisdiction to make an order for costs, and the only statutory power to make such an order which could be applicable in this case is contained in section 55 (1), Magistrates' Courts Act 1952 (now s. 64 (1) of the 1981 Act). The section provides that "On hearing of a *complaint*, a magistrates' court shall have power in its discretion to make such an order as to costs—(*a*) on making the order for which the complaint is made, to be paid by the defendant to the complainant; . . , as it thinks just and reasonable. As the power is only conferred "on the hearing of a complaint" the question arises of whether these proceedings were properly begun by complaint. The practice seems to vary from one area to another—*per* Lord Denning M.R. in the Metropolitan District an application *simpliciter* is considered appropriate, while in Uxbridge only a complaints form was available for Mr. Prasad's legal representatives. Which is correct? In the court below, Donaldson L.J. drily observed that the *Justice of the Peace*, "admirable journal though it is, has adverted to this question on three occasions and has twice come down on one side of the fence and once on the other." It would appear that the Court of Appeal is faring little better, with Lord Denning M.R. (dissenting) considering that an application was the only correct procedure, Sir George Baker that reference in the 1897 Act to an application did not bar process by complaint and summons, and Sir Stanley Rees that the procedure by way of complaint was not only permissible but indeed compulsory "where there were ascertainable parties involved in an application."

Obviously the procedure under the 1897 Act may have to be commenced by application, particularly where the police are left in possession of property at the end of an investigation and are unaware of the identity of the owner. (An officer handing over property without an order is open to an action in tort by the true owner. *Winter* v. *Bancks* (1901) 65 J.P. 468.) By contrast, where there are several claimants seeking an order for the same property, or where the police oppose the making of an order in favour of a claimant whose title they doubt, proceedings by way of complaint seem more appropriate. (Though it has been said that the statutory procedure should not be used to resolve complicated disputes as to ownership. *Raymond Lyons & Co. Ltd.* v. *Metropolitan Police Commissioner* [1975] 2 W.L.R. 197.) Where, as here, the police have no objection to the making of an order opinions may legitimately differ but it is submitted that proceedings by way of complaint are still appropriate but that it will be a rare case where an order for costs ought to follow.

[*Commentary by D. J. Birch.*]

Information—laying information—whether laying involves consideration of information

R. v. Leeds Justices, ex p. Hanson
R. v. Manchester Stipendiary Magistrate, ex p. Hill
R. v. Edmonton Justices, ex p. Hughes
R. v. Gateshead Justices, ex p. Ives
R. v. Dartford Justices, ex p. Dhesi
Moody v. Anderton

High Court of Justices: Queen's Bench Divisional Court: Griffiths L.J. and Woolf J.: June 22, 1981.[13]

[12] For the Commissioner: *Alan Rawley Q.C.* and *Stuart Sleeman* (instructed by the Solicitor, Metropolitan Police). For the applicant: *John Lloyd Q.C.* and *Michael Harrington* (instructed by Edward Mackie & Co., Ealing).

[13] For the applicant Hanson: *David Mitchell* (instructed by Ward Bowie, for A. V. Hammond & Co., Bradford). For the prosecution: *John Hitchen* (instructed by Hewitt, Woollacott & Chown, for M. D. Shaffener, Wakefield). For the applicant Hill: *Michael Kershaw Q.C.* and *Roger Stout* (instructed by Betesh & Co., Manchester). For the prosecution: *Nicholas Simmonds* (instructed by D. S. Gandy, Manchester). For the applicant Hughes: *Adrian Salter* (instructed by Shepherd, Harris & Co., Enfield). The respondents were not represented. For the applicant Ives: *Michael Hodson* (instructed by Park Nelson & Doyle Devonshire

In five applications for judicial review and one appeal by way of case stated, it was contended that the information had not been laid within the statutory period. In the first case, an issue of fact arose as to when the information was laid. In the second, third and fifth cases the defendants received summonses to attend court on dates within the statutory period for laying the information. It was conceded that the summonses were invalid. In each of these cases, the justices adjourned the proceedings in the absence of the defendants and they did not appear before the justices until after the expiry of the statutory period. In the fourth and sixth cases, the defendant was convicted and then discovered that the issue of the summons had been delegated and the information had not been laid before a justice or a clerk to the justices.

Held, granting orders of certiorari in the fourth and sixth cases only, that an information was laid when its contents were brought to the attention of a justice or a clerk to the justices as a part of the prosecution process. The information was laid before the justices at the time when they adjourned the case and had before them the court register identifying the informant and giving particulars of the offence. The decision in *Gateshead Justices, Ex p. Tesco Stores Ltd.* [1981] 2 W.L.R. 419 was not authority for the proposition that laying the information necessarily involved the consideration of the information for the purpose of issuing criminal process. The consideration of the information for the purpose of issuing a criminal process was the judicial function that had to be performed by the justice or the clerk to the justices after the information had been laid.

[*Reported by Ying Hui Tan, Barrister.*]

OBTAINING BY DECEPTION

Pecuniary advantage—credit card—defendant's use after credit limit exceeded—whether representation of authority to use—whether shop assistant induced to sell goods by false representation—Theft Act 1968, *s.* 16 (1)

R. v. Lambie

House of Lords: Lord Diplock, Lord Fraser of Tullybelton, Lord Russell of Killowen, Lord Keith of Kinkel and Lord Roskill: June 25, 1981.[14]

The defendant possessed a Barclaycard. She had substantially exceeded her credit limit and been asked to return the card, but at the material time had not done so. She selected some items in a shop and tendered the card. The assistant checked her signature on the voucher against that on the card and ascertained that the total purchase was within the shop's "floor limit" and that the card was not on the current "stop list." She then allowed the defendant to take the goods. The defendant was subsequently charged with, *inter alia*, obtaining a pecuniary advantage by deception, contrary to section 16 (1) of the Theft Act 1968 and was convicted. She appealed against conviction, contending, *inter alia*, that the evidence had not shown that any deception had been operative, and the Court of Appeal (Criminal Division) allowed the appeal. The Crown appealed by leave of the House of Lords.

Held, allowing the appeal, that the representation arising from the presentation of a credit card had nothing to do with the defendant's credit standing at the bank but was a representation of actual authority to make the contract with, in the present case, the shop on the bank's behalf that the bank would honour the voucher on presentation: *Charles* [1979] A.C. 177. On that view, the existence and terms of the agreement between the bank and the shop were irrelevant, as was the fact that the shop, because of that agreement would look to the bank for payment. As to whether the shop assistant had been induced by the defendant's representation to complete the transaction and allow the defendant to take away the goods, had she been asked whether, if she had known that the defendant was acting dishonestly and had no authority from the bank to use the card in that way, she would have completed the transaction, only one answer was possible: "no." Although that question had not been put to her at the trial, where, as in the present case, no one could reasonably be expected to remember a particular transaction in detail, and the inference of inducement might well be in all the circumstances quite irresistible, there was no reason in principle why it should not be left to the jury to decide, on the evidence as a whole, whether that inference was in truth irresistible, as it was in the present case: *Sullivan* (1945) 30 Cr.App.R. 132, 136.

Per curiam. Had the defendant been charged with obtaining property by deception, contrary to section 15 of the Act of 1968, it is difficult to see what defence there could have been once the jury were convinced of the defendant's dishonesty.

[*Reported by Michael Gardner, Barrister.*]

Commentary. The point of law of general public importance certified by the Court of Appeal was: "In view of the proved differences between a cheque card transaction and a credit card transaction, were we right in distinguishing this case from that of *Commissioner of Metropolitan Police* v *Charles* upon the issue of inducement?"

For the reasons given in the commentary on the decision of the Court of Appeal, [1980] Crim.L.R. 726, it is respectfully submitted that no relevant distinction can be drawn between a cheque card transaction and a credit card transaction and that the question asked was correctly answered in the negative by the House of Lords.

The question which is not, with respect, satisfactorily answered is how there can properly be held to be an offence of obtaining by deception in *either* transaction in the light of the established principles of obtaining offences (which the House

for John Foley & Co., Newcastle-upon-Tyne). The respondents were not represented. For the applicant Dhesi: *Andrew Collins* (instructed by Hatten, Wyatt & Co., Gravesend). For the justices: *Richard Aikens* (instructed by A. H. Lewis, Dartford). For the prosecution: *Gregory Stone* (instructed by R. A. Crabb, Maidstone). For the appellant Moody: *John Reide* (instructed by Douglas-Mann & Co., for Casson & Co., Salford). For the prosecution: D. S. Gandy, Manchester). *Simon D. Brown* as *amicus curiae* (instructed by Treasury Solicitor).

[14] For the Crown: *Richard Curtis Q.C.* and *Michael Pert* (instructed by David Alterman & Sewell for David Picton & Co., Luton). For the defendant: *Patrick Back Q.C.* and *John Plumstead* (instructed by R. H. Lloyd & Co., St. Albans).