

## JUSTICES ACT PROCEDURE

### *Change of Plea Not Permitted by Section 106a.*

*R. v. Mills, ex parte Edwards*<sup>1</sup> is a decision concerning the procedural powers of justices when trying minor indictable offences summarily by virtue of s. 106a of the Justices Act 1935-1956. The defendant was charged with four counts of simple larceny contrary to the provisions of s. 131 of the *Criminal Law Consolidation Act* 1935-1956. In the court of summary jurisdiction for the conducting of preliminary examinations pursuant to the provisions of s. 106 of the *Justices Act* 1921-1956 the Special Magistrate was required by s. 106a of that Act to inform the defendant of his right to plead guilty to the informations. The defendant did in fact plead guilty to the informations, whereupon, without taking any evidence, the Special Magistrate heard the prosecution on the defendant's previous convictions. The question of penalty was then discussed with the defendant's counsel seeking and obtaining a remand to enable the defendant to set his affairs in order. One month later the case came on for hearing, with the defendant's counsel applying for leave for the defendant to change his plea to not guilty. The prosecution objected that the defendant had already been convicted, but the Special Magistrate made the order giving the defendant leave to change his plea. The prosecuting officer then brought a motion before the Full Supreme Court (Mayo A.C.J., Reed and Abbott JJ.), claiming that the Special Magistrate having convicted Mills had no power to permit the pleas to be changed.

S. 106a of the *Justices Act* 1921-1956, provides a means whereby a person charged with a minor indictable offence found in s. 120 may at his preliminary examination before committal plead guilty and have his case tried summarily. The section is in the following terms:—

(1) Where the defendant appears before a special magistrate or two or more justices and the information charges the defendant with an offence cognizable by a special magistrate or justices under section 120, the defendant at any stage of the proceedings, and whether any statement has been taken from any witness or not, may plead guilty to the offence or any of the offences charged against him, and the magistrate or justices shall at the commencement of the proceedings inform the defendant of his right so to plead.

(2) If the defendant pleads guilty to any such offence —

(a) the magistrate or justice shall, in relation to that offence, be a court of summary jurisdiction within the meaning of this Act; . . .

(d) the plea of guilty may be withdrawn as provided in subsection (3) of this section.

(3) If after the defendant has so pleaded guilty to an offence, the magistrate or justices, upon consideration of any facts stated by the prosecution or given in evidence, is or are of opinion that the time for taking the plea should be postponed—

(a) he or they may order that the plea of guilty be withdrawn; . . .

The Full Court found that the Special Magistrate in allowing the defendant to change his plea after conviction upon his counsel's appli-

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1. (1958) S.A.S.R. 54.

cation had acted outside the powers given him by s. 106a. Mayo A.C.J. and Abbott J. took the view that under s. 106a, if and when the defendant chooses to plead guilty, the court becomes a court of summary jurisdiction for the purpose of the charge, but, . . . only to deal with the matter on the plea of guilty, and that if and when the defendant intimates that he pleads guilty a duty is immediately cast upon the Magistrate to decide whether or not the time for "taking" the plea of guilty should be postponed. "Before anything else is done in continuation of the proceedings, the Magistrate must address his mind to the question (i.e. of taking the plea) and adopt an opinion based on the subject matter that has been brought to his notice."

If the Magistrate decides that the time for the taking of the plea of guilty ought to be postponed, then it is ordered that the plea be withdrawn under s. 106a (3) (a). If the Magistrate continues the proceedings in any way, either by expressly "taking" the plea of guilty or by impliedly doing so (for example, by entering a conviction and remanding the defendant for sentence), then the inference is that he has considered the matter and decided that the time for "taking" the plea need not be postponed.

The adjournment by the Magistrate was obviously not for the purpose of considering the postponement of "taking" the plea, but rather for the convenience of the *convicted* defendant; the information had been endorsed "Convicted" at the time that the plea was taken. The third Judge (Reed J.) suggested that if an order to withdraw the plea is not made because the Magistrate improperly failed to exercise his discretion to do so then there may be a remedy. But there was no proper ground in the present case to suggest that the Magistrate should have made such an order.

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## POLICE OFFENCES ACT, 1953-1957, s. 41

### *Elements of Offence of Unlawful Possession.*

*Wallace v. Hansberry*<sup>1</sup> raises two interesting problems: what are the elements of the offence of unlawful possession of personal property constituted in s. 41 of the *Police Offences Act* 1953-1957; and how far may a Magistrate or a Judge take the conduct of a trial into his own hands in the interests of justice.

S. 41 provides:

"(1) Any person who has in his possession any personal property which either at the time of such possession, or at any subsequent time before the making of the complaint under this section in respect of such possession, is reasonably suspected of having been stolen or unlawfully obtained shall be guilty of an offence."

The section supersedes s. 93 of the *Police Act* 1936 and provides a complete departure from it. It is simpler in content and was clearly designed to render the body of case law surrounding the older section no longer applicable.

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1. [1959] S.A.S.R. 20.