



1267

BETWEEN

MORRISON

Applicant

A N D POLICE

Respondent

Counsel: R.J. Laybourn for Applicant  
C.Q.M. Almao for Respondent

Hearing and  
Judgment: 7 September 1984

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ORAL JUDGMENT OF GALLEN J.

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The applicant faces a series of charges involving the use of a motor vehicle and I am informed that there were a number of incidents during the course of the day when the accident out of which the charges arise occurred. It appears that the applicant gave instructions to his legal adviser to defend all the charges. He was informed he had the right to elect trial by jury for some of the charges and relying on the advice he received, he elected trial by jury. After the hearing of depositions, he was committed for trial and was then apparently informed by his then solicitor that his solicitor was concerned over all the charges coming before a jury together. Approximately one week before the trial was due to commence, the applicant's then legal adviser declined to

act further. Mr Laybourn who now appears was assigned to act and in support of the application, relies upon a number of matters.

The first of these is the possibility of prejudice arising from a jury being concerned with what may be described as peripheral but prejudicial matters and which should not be taken into account in respect of all charges. If there is a serious risk of prejudice and if there is a problem relating to a number of charges heard together, then it is open to the applicant to seek severance.

The second point raised by Mr Laybourn is that the question involved raised difficult questions of law and mixed law and fact. In particular, there are problems of causation. While I accept that problems of causation can be difficult, they arise in most matters and are normally dealt with on the basis of directions.

I am concerned in this case that a matter which is normally dealt with in the District Court would, if the application was successful, be dealt with in the High Court, solely because it is now by reason of time limits, impossible for the applicant to change his election and have the matter dealt with before a Judge alone. The jurisdiction to deal with criminal trials in the High Court by a Judge alone is a very recent jurisdiction. It is special in nature and it has generally been accepted that it is designed to deal with cases

which pose problems of length, of complexity or which for one reason or another are undesirable to be dealt with before juries.

This case is essentially one depending on an assessment of a factual situation. It does not appear that it is likely to be a particularly long case. If there are serious problems of prejudice, then that could give rise to an application for severance within the District Court and I do not think that problems of causation alone are sufficient to justify the use of the special jurisdiction which the amendment to the Crimes Act contemplates.

Under those circumstances, the application will be refused.

R. G. G. /

Solicitors for Applicant: Messrs Fistonich, Hemara, Weir  
and Rennie

Solicitor for Respondent: Crown Solicitor, Hamilton