BRANGWYNNE *v.* EVANS.

[QUEEN'S BENCH DIVISION (Lord Parker, C.J., Ashworth and MacKenna, JJ.), January 25, 1962.]

Magistrates—Procedure—Summary trial—Information—Three informations heard at same time without defendant's consent—Convictions on each information—Validity.

It has always been a principle of law that a defendant in a magistrates' court can only be called on to answer one charge at a time unless he consents, either expressly or impliedly, to informations being heard together; accordingly, a magistrates' court should never proceed to hear two or more informations at the same time without expressly asking the defendant whether he consents to that course.

Dictum of LORD GODDARD, C.J., in *Edwards* v. *Jones* ([1947] 1 All E.R. at p. 832) applied.

Principle in *R.* v. *Ashbourne JJ., Ex p. Naden* ([1950] W.N. 51) applied.

[As to trial of two or more informations charging distinct offences, see 25 HALSBURY'S LAWS (3rd Edn.) 187, 188, para. 339.]

Cases referred to:

Edwards v. *Jones*, [1947] 1 All E.R. 830; [1947] K.B. 659; [1948] L.J.R. 1003; 111 J.P. 324; 2nd Digest Supp.

R. v. *Ashbourne JJ., Ex p. Naden*, [1950] W.N. 51; 94 Sol. Jo. 148; 2nd Digest Supp.

Case Stated.

This was a Case Stated by justices for the county of Glamorgan in respect of their adjudication as a magistrates' court sitting at Neath on Feb. 27, 1961. The respondent, Glyn Evans, preferred three informations against the appellant, William Kenneth Brangwynne, each information charging that on Feb. 3, 1961, he stole certain articles from one of three different shops in Neath, contrary to the Larceny Act, 1916, s. 2. On the hearing of the informations, the first charge was read out to the appellant and he elected summary trial and pleaded not guilty. Immediately thereafter, the second charge was about to be put to him when his counsel intimated that the defence desired the charges to be heard separately and, accordingly, did not consent to the charges being heard together and contended that the justices had no power so to do.

It was contended on behalf of the respondent that the charges all related to the same day and formed a series of offences of the same character, that one or more of the witnesses on one charge were also witnesses on another, and that the justices had a discretion whether to try the charges together or separately.

The justices, being of opinion that the informations as laid were good and that they had a discretion whether to try the charges together or separately, decided in the circumstances contended on behalf of the respondent to try the three charges together. They heard the evidence, convicted the appellant on each charge, fined him on the first charge and ordered him to pay costs on each of the second and third charges. The appellant now appealed. The questions for the decision of the High Court were whether the justices were right to hear the charges together and whether the convictions were good.

R. Bowen, Q.C., and *H. W. J. Ap Robert* for the appellant.

W. L. Mars-Jones, Q.C., and *J. C. Rutter* for the respondent.

LORD PARKER, C.J.: I have sympathy with these justices, because one would feel that, today at any rate, it would be right that they should have jurisdiction in a case such as this to hear the three informations together, the discretion being exercised in such a way as would not create prejudice for the defendant. I am quite satisfied, however, that it has always been a principle of our law that a defendant can only be called on to answer one charge at a time

in a magistrates' court. An illustration of that is to be found in s. 10 of the Summary Jurisdiction Act, 1848, (1) and in r. 14 of the Magistrates' Courts Rules, 1952, (2) whereby it is expressly provided that no information shall contain more than one charge. That is a good illustration of the principle to which I have referred, and, although there is no statutory provision on the point, it would seem to follow that, if that principle is to be adhered to, two informations, albeit each containing one charge, ought not to be tried at the same time, unless, of course, the defendant consents.

So far as this court is concerned, we are bound by the decision of the court in *Edwards* v. *Jones* (3). It is true that that case was dealing with proceedings in which two charges had been embraced in one information, and, accordingly, it can be said that certain passages in the judgment of LORD GODDARD, C.J., which are relevant to this present case are obiter, but if one looks further, one finds that this is authority for what I referred to as the general proposition that nobody should be called on to answer more than one charge at a time in a magistrates' court. LORD GODDARD said (4):

> "There is no ground for saying that, if an information discloses two offences, the justices can hear the two offences together and then say: 'We will convict on one'. That would be giving the go-by to the provisions of s. 10 of the Summary Jurisdiction Act, 1848, which makes it perfectly clear that in a justices' court a defendant can only be called on to answer one charge at a time. If there are two informations against a defendant, on which the facts are very much the same, it is, of course, open to the defendant to agree to the two summonses being heard at once. That is constantly done. In this case the appellant did not agree to anything of the sort. He took the objection that the information was bad, and so it was."

Later (5), he says this:

> "That emphasises the point which I have been making that the defendant is never to be called on to answer two charges at the same time unless there are two separate informations and he consents to their being heard together."

If there was any doubt on the matter, it seems to me that it is resolved by a later decision of this court, *R.* v. *Ashbourne JJ., Ex p. Naden* (6). There, as in the present case, there were in fact two informations, and, although the defendant did not expressly object to the hearing of the two informations together, he was not asked to give his consent. The court found on the facts that the justices were justified in assuming that the defendant's solicitor did consent to both charges being heard together, but the whole basis of the decision is that, unless the defendant consents either expressly or impliedly, it is wrong for two informations to be heard at the same time. It may be that the notes in STONE'S JUSTICES' MANUAL (1961 Edn., pp. 258, 2752) which deal with *Edwards* v. *Jones* (3), do not make the position really clear for justices, and it may be also that the misconception has sprung up to the effect that the principle which I have been trying to enunciate only applies in the case of traffic offences and to the two alternative charges of dangerous driving and driving without due care and attention. It may be that, for that reason, justices are being misled, but, in my judgment, the principle is one of perfectly general application and, accordingly, justices should never proceed to hear two or more informations at the same time without expressly asking the defendant whether he consents to that course. If he does so consent, then, as the cases show, there is no objection.

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(1) See now the Magistrates' Courts Act, 1952, s. 1 (1); 32 HALSBURY'S STATUTES (2nd Edn.) 421.
(2) S.I. 1952 No. 2190; 13 HALSBURY'S STATUTORY INSTRUMENTS 46.
(3) [1947] 1 All E.R. 830; [1947] K.B. 659.
(4) [1947] 1 All E.R. at p. 832; [1947] K.B. at p. 662.
(5) [1947] 1 All E.R. at p. 832; [1947] K.B. at p. 664.
(6) [1950] W.N. 51.

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The next question is: what, in those circumstances, should be done? It seems to me that the convictions on these three informations were reached contrary to law in the sense that the procedure which the justices adopted ought never to have been adopted and, as it was contrary to law, the only course which this court can take is to quash those convictions.

ASHWORTH, J.: I agree.

MacKENNA, J.: I agree.

Convictions quashed.

Solicitors: *Seeley & Son*, agents for *E. W. P. Thomas*, Neath (for the appellant); *Lewin, Gregory, Mead & Sons*, agents for *County Prosecuting Solicitor*, Glamorgan (for the respondent).

[*Reported by* HENRY SUMMERFIELD, ESQ., *Barrister-at-Law.*]

PRACTICE NOTE.

[QUEEN'S BENCH DIVISION (Lord Parker, C.J., Ashworth and Fenton Atkinson, JJ.), February 9, 1962.]

Magistrates—No case to answer—Criminal charge—Considerations for guidance of justices.

LORD PARKER, C.J.: Those of us who sit in the Divisional Court have the distinct impression that justices today are being persuaded all too often to uphold a submission of no case. In the result, this court has had on many occasions to send the case back to the justices for the hearing to be continued with inevitable delay and increased expenditure. Without attempting to lay down any principle of law, we think that as a matter of practice justices should be guided by the following considerations.

A submission that there is no case to answer may properly be made and upheld: (a) when there has been no evidence to prove an essential element in the alleged offence; (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.

[*Reported by* C. G. LEONARD, ESQ., *Barrister-at-Law.*]
