

ACCOUNTANT GENERAL v MARRACHE

Supreme Court
Spry, C.J.
24 June 1977.

Limitation — period of, for complaints under s. 303 of the Public Health Ordinance — whether s. 115 of the Magistrates' Court Ordinance applies.
Revised Edition of the Laws — whether parts of laws omitted from the revised edition may be valid — Laws of Gibraltar Ordinance, 1960, ss. 2 (2), 10 (3) and 11.

The magistrates' court dismissed a complaint brought by the Accountant General under s. 303 of the Public Health Ordinance (Cap. 131, 1970 Ed.), as barred by limitation, applying s. 115 of the Magistrates' Court Ordinance (Cap. 95, 1965-69 Ed.). The Accountant General appealed by way of case stated.

Held: (i) Section 11 of the Laws of Gibraltar Ordinance, 1960, (No. 38 of 1960), saves parts of laws omitted from the Revised Edition, as well as entire enactments.

(ii) Section 179 (4) of the Criminal Justice Administration Ordinance (No. 24 of 1961) remains in force, notwithstanding its omission from the Revised Edition.

(iii) Section 132 (2) of the Magistrates' Court Ordinance remains in force, notwithstanding its omission from Supplements to the Revised Edition.

(iv) The period of limitation prescribed by s. 115 of the Magistrates' Court Ordinance does not apply to complaints made under s. 303 of the Public Health Ordinance.

Appeal by case stated.

The Attorney General (J.K. Havers, Q.C.) and C. Finch for the appellant.
A.B. Serfaty for the respondent.

29 June 1977: The following judgment was read—

This is an appeal by way of case stated from a decision of the learned stipendiary magistrate in which he held that the period of limitation contained in s. 115 of the Magistrates' Court Ordinance applies to complaints made under s. 303 of the Public Health Ordinance.

The learned Attorney General appeared on behalf of the Accountant General, the appellant, with Mr. Finch, and Mr. Serfaty appeared for the respondent.

Section 115 of the Magistrates' Court Ordinance, so far as is relevant, reads—

"Except as otherwise expressly provided by any law, the magistrates' court shall not...hear a complaint unless...the complaint (was) made, within six months from the time when...the matter of complaint arose:".

Section 303 of the Public Health Ordinance enables the Accountant General to take proceedings for the recovery of rates by way of complaint, and includes the words—

"notwithstanding anything contained in the Criminal Justice Administration Ordinance, at any time make a complaint..."

The Attorney General began by submitting that the words "the Criminal Justice Administration Ordinance" so included should be read and construed as meaning "the Magistrates' Court Ordinance." His argument runs as follows. The Public Health Ordinance was enacted in 1950. It contained as s. 295, a section substantially the same as the present s. 303. The words quoted above, referring to the Criminal Justice Administration Ordinance, were as they are today, but the ordinance referred to was that enacted as No. 40 of 1934. That ordinance contained provision in s. 97 in a Part relating to summary jurisdiction that where no time was specially limited for the making of a complaint, it was to be laid within six calendar months from the time when the matter of the complaint arose.

In 1961, the Magistrates' Court Ordinance was enacted and at the same time the Criminal Justice Administration Ordinance was repealed and replaced by a new ordinance with the same title, apart from the date. This ordinance contained no Part relating to summary jurisdiction, because that Part was now substantially contained in the new Magistrates' Court Ordinance and there was no equivalent of s. 97. The Magistrates' Court Ordinance, however, contained s. 115, which prescribed the same period of limitation for the making of complaints as had formerly been contained in s. 97 of the Criminal Justice Administration Ordinance. Section 179 of the new Criminal Justice Administration Ordinance provided for repeals and savings and subsection (4) reads—

"Any reference in any law to the Criminal Justice Administration Ordinance repealed by this Ordinance shall be construed as a reference to the appropriate provisions of this Ordinance or of the Magistrates' Court Ordinance."

Hence, the Attorney General argues that s. 303 of the Public Health Ordinance should be read as if it contained the words—

“notwithstanding anything contained in the Magistrates’ Court Ordinance, at any time make a complaint...”,

in which case the period of limitation contained in s. 115 of the latter Ordinance would not apply:

Mr. Serfaty submitted that as s. 179 does not appear in the current revised edition of the Laws of Gibraltar, s. 303 of the Public Health Ordinance must be read as it stands. He argued strongly that s. 10(3) of the Laws of Gibraltar Ordinance, 1960, gives this court no power to look behind the revised edition. He submitted that s. 11, which relates to the validity of laws omitted from the revised edition, does not apply to parts of laws that are so omitted.

The first part of Mr. Serfaty’s argument is, I think, irresistible. It seems remarkable that s. 10(3) of the Laws of Gibraltar Ordinance, 1960 was not made subject to the provisions of s. 6(2), but it was not, and the courts must apply the statute law as enacted by the Legislature. With respect, however, I cannot accept the second part of Mr. Serfaty’s argument: s. 2(2) provides that any reference in the ordinance to a law shall include a reference to any part thereof. I have no doubt that s. 11 was intended to relate to laws omitted under the power conferred by s. 5, but it is not so limited and is wide enough to cover accidental omissions and if and so far as there is any conflict between s. 10(3) and s. 11, the latter must prevail under the general rules of interpretation.

Section 179 of the Criminal Justice Administration Ordinance (No. 24 of 1961) appears as a repealing enactment and as such was omitted from the revised edition under the power conferred by s. 5(b) of the Laws of Gibraltar Ordinance, 1960. However, subs. (4) of that section was neither repealing nor saving but interpretative, and would more appropriately have formed a separate section. However, it was included in s. 179 and was omitted from the revised edition as part of that section. I hold that it remains in force, notwithstanding its omission.

No reference was made in the argument to s. 132(2) of the Magistrates’ Court Ordinance, which provides that—

“Any reference in any other law to the Criminal Justice Administration Ordinance shall be deemed to include a reference to this Ordinance, in so far as such first mentioned reference is to any proceedings before, or powers of, the magistrates’ court or a court of summary jurisdiction.”

This provision was not omitted by the Commissioner for the revision of the laws but subsequently by the Attorney General exercising the powers conferred by Part II of the Laws of Gibraltar Ordinance, 1960, who inserted an explanatory note “Had its effect”.

If s. 179(4) of the Criminal Justice Administration Ordinance and s. 132(2) of the Magistrates' Court Ordinance are deemed to be still part of the statute law, it is, I think, clear that the reference to the Criminal Justice Administration Ordinance in s. 303 of the Public Health Ordinance must be interpreted as a reference to the Magistrates' Court Ordinance, because such a reference is entirely appropriate, as removing any possible conflict between s. 115 of that ordinance and the words "at any time" which immediately follow the reference. On the other hand, to interpret the reference as a reference to the Criminal Justice Administration Ordinance (No. 24 of 1961) would appear to make no sense, because there appears to be nothing in that ordinance to which reference would be appropriate.

I do not overlook the fact that the reference "Cap. 36" appears in the margin of s. 303 of the Public Health Ordinance, so apparently identifying the words "Criminal Justice Administration Ordinance" with No. 24 of 1961, not No. 40 of 1934, but such a reference is a mere guide, carrying even less weight than a marginal note, and cannot govern the interpretation of the section.

There is one other small matter that I should mention. Section 303 of the Public Health Ordinance originally provided for complaints to be made to a court of summary jurisdiction. The present edition refers to the magistrates' court. Had this been a specific amendment, I should have had to consider whether the retention of the reference to the Criminal Justice Administration Ordinance had not been intentional, but there has been no specific amendment: there was a general modification of other laws, effected by s. 132(1) of the Magistrates' Court Ordinance. I attach no significance to the fact that the Commissioner revising the laws implemented s. 132(1) when dealing with s. 303 of the Public Health Ordinance but overlooked s. 132(2), as well as s. 179(4) of the Criminal Justice Administration Ordinance.

Accordingly, I hold that the period of limitation prescribed by s. 115 of the Magistrates' Court Ordinance does not apply to complaints made under s. 303 of the Public Health Ordinance, and it is unnecessary to consider the other arguments put forward or the authorities cited. There was no other defence and it is unnecessary, and I was not asked, to remit the proceedings. The appeal is allowed and there will be judgment for the Accountant General in the sums of £69.79 on the first complaint, £279.14 on the second complaint and £334.95 each on the third and fourth complaints.