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YOUNG v. **DAY**

QUEEN'S BENCH DIVISION

123 JP 317

HEARING-DATES: 15 April 1959

15 April 1959

CATCHWORDS:

Road Traffic -- Notice of intended prosecution -- Place of offence not sufficiently specified -- Four-mile stretch of minor Road Traffic Act, 1930 (20 and 21 Geo. 5, c. 43), s. 21.

HEADNOTE:

A notice of intended prosecution under s. 21 of the Road Traffic Act, 1930, stated that the police were considering prosecuting the defendant for dangerous driving, among other offences, "at 7.40 p.m. on July 6, 1958, at Hothfield to Bethersden Road. It is alleged that while motor car No. MKJ 680 was being driven along the Hothfield to Bethersden Road in the direction of Hothfield the driver drove in such a manner that he narrowly avoided colliding with a motor car which was stationary on the offside of the road". The Hothfield to Bethersden Road was a minor road approximately four miles in length. The justices held tht the notice was invalid in that it did not sufficiently specify where the offence was alleged to have been committed and dismissed the information. On appeal by the prosecutor,

HELD: that the police could have specified the place of the alleged offence more accurately and that it was impossible to say that there were no facts on which the justices could come to the conclusion to which they came, and, therefore, the appeal must be dismissed.

INTRODUCTION:

CASE STATED by Kent justices.

An information was preferred at Ashford Magistrates' Court by the appellant, Raymond Albert Young, a police officer, charging the respondent, Michael Brian Westbrook Day, with dangerous driving. According to the facts found by the justices, on July 15, 1958, the police sent a notice of intended prosecution to the respondent which stated that they were considering prosecuting him for dangerous driving, among other offences, "at 7.40 p.m. on July 6, 1958, at Hothfield to Bethersden Road. It is alleged that while motor car No. MKJ 680 was being driven along the Hothfield to Bethersden Road in the direction of Hothfield the driver drove in such a manner that he narrowly avoided colliding with a motor car which was stationary on the offside of the road." The respondent was not warned at the time of the alleged offence nor was the summons issued within the next 14 days. The Hothfield to Bethersden Road was a minor

road approximately four miles in length. No accident had occurred, nor was the respondent stopped at the time of or after the alleged offence. The justices were of opinion that the notice was invalid in that it did not sufficiently specify where the offence was alleged to have been committed and dismissed the information. The prosecutor appealed.

COUNSEL:

Durand, Q.C., and Edie for the appellant.

Collard, for the respondent.

PANEL: LORD PARKER, C.J., DONOVAN AND SALMON, JJ.

JUDGMENTBY-1: LORD PARKER CJ

JUDGMENT-1:

LORD PARKER, C.J.: This is an appeal by way of Case Stated by justices for the petty sessional division of Ashford, Kent, before whom an information was preferred against the respondent for dangerous driving. When the matter came to be heard, a preliminary objection was taken that the provisions of s.21 of the Road Traffic Act, 1930, had not been complied with. There had been no warning of the respondent at the time. No summons was served on him within fourteen days, but undoubtedly on the ninth day a notice of intended prosecution was served, and it was said that the prosecution had failed in the notice sufficiently to specify the place where the alleged incident occurred. The notice itself was in these terms:

"I hereby give you notice that the driver of motor-car No. MKJ 680 has been reported for consideration of the question of prosecuting him of one or more of the following offences" [then there were set out five offences including dangerous driving] "contrary to ss. 11 and 12 of the Road Traffic Act, 1930, as applied by s. 11 of the Road Traffic Act, 1956. At 7.40 p.m. on July 6, 1958, at Hothfield to Bethersden Road. It is alleged that while motor-car No. MKJ 680 was being driven along the Hothfield to Bethersden Road in the direction of Hothfield the driver drove in such a manner that he narrowly avoided colliding with a motor-car which was stationary on the off side of the road."
That notice was served on the respondent, the owner of the vehicle

The short question here is whether, being obliged, as the police are under the section, to specify the place where it is alleged the offence was committed, they sufficiently complied with the section in describing the place of the offence as on the "Hothfield to Bethersden Road". The justices found that the Hothfield to Bethersden Raod was a minor road approximately four miles in length, and they went on to hold that, in their opinion, the preliminary objection was well founded, and accordingly the notice was bad in that the police could have identified the spot in that four-mile stretch where the alleged offence occurred. As was pointed out in Pope v. Clarke n(1), s. 21 is mandatory and provides that a notice of intended prosecution shall be served. So far as the matters which have to appear in that notice are concerned, the court held that they were directory, and that the test whether there had been compliance was whether the information specified was sufficient to bring to the attention of the alleged offender the indident which was going to be relied

upon. In that case details of the place had been given and the date had been given, but by a mistake the notice said that it had occurred at 1.15 p.m., whereas in fact the correct time was 11 a.m. In those circumstances, this court held that there could have been no question of the alleged offender being misled or prejudiced in any way, and they held that the notice was a good notice.

n(1) 117 J.P. 429; [1953] 2 All E.R. 704.

It seems to me that in all these cases it is a matter of degree whether the information given is sufficient, and, being a matter of degree, it must be a question of fact in each case. As counsel said in the course of his argument for the appellant, if the four-mile stretch had been along a main London road, it would be quite idle to suggest that the notice was sufficient if it did not specify more clearly the exact place in that stretch of road where the incident was said to have occurred. This, however, was a minor road, as the justices found. They had full knowledge, and on consideration of the matter, they felt that the police could have specified it more accurately. The police certainly had the information and it is obvious that they could have been more specific because, even if they could not specify the place by reference to an intersection, a building, or a church, they could indicate that the alleged offence took place a quarter of a mile from Hothfield or half a mile from Bethersden, or wherever the place was. It seems to me that this was a question of fact for the justices, and it is impossible for this court to say that there was no evidence which would entitle them to come to the conclusion to which they did. In my judgment, they came to the right conclusion, and this appeal must be dismissed.

JUDGMENTBY-2: DONOVAN J

JUDGMENT-2:

DONOVAN, J.: I agree. I would merely merely emphasise that there is a specific finding of fact in this case that the notice did not sufficiently specify the place where the alleged offence occurred. The question is whether as a mater of law the justices were disentitled to come to that finding. They clerly were not. They were entitled to take that view on their knowledge of the locality.

JUDGMENTBY-3: SALMON J

JUDGMENT-3:

SALMON, J.: I agree. I think that the question whether the place is sufficiently specified in the notice under s. 21 of the Road Traffic Act, 1930, is essentially a question of fact. For example, it clearly would not be enough to specify "Oxford Street" in London. On the other hand, I am far from saying there are not many country lanes where it would be sufficient to identify a place in the way in which it is specified in this notice, but the justices, who presumably know this country district, have come to the conclusion, which is one of fact, that the place was not sufficiently specified, and, in my view, it is impossible for this court to interfere with their finding.

DISPOSITION:

Appeal dismissed.

SOLICITORS:

Sharpe, Pritchard & Co. for N. K. Cooper, Maidstone; Cripps, Harries, Hall & Co.