

IN THE COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

Appeal No. 226 of 1992

Brisbane

[Woods v. Beattie]

BETWEEN:

WILLIAM ROBERT WOODS

Appellant

- and -

ROY FREDERICK BEATTIE

Respondent

The President
Mr Justice McPherson
Mr Justice Derrington

Judgment delivered 23/03/93

Judgment of the Court.

**ORDER NISI MADE ABSOLUTE WITH COSTS TO BE TAXED. MATTER
REMITTED TO THE MAGISTRATES COURT TO BE DEALT WITH ACCORDING TO
LAW.**

CATCHWORDS: **LIMITATION OF ACTIONS - When time begins to
run "matter of complaint comes to the
knowledge of the complainant" s. 420(2)
Electricity Act 1976.**

WORDS AND PHRASES - "matter of complaint"

Counsel: Mr P. Munro for the appellant
No appearance for the respondent

Solicitors: Messrs. Thynne and Macartney for the
appellant

Hearing Date(s): 19/03/93

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Before The President
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REASONS FOR JUDGMENT - THE COURT

Judgment delivered 23/03/93

This is the return of an order nisi to review a decision of the Magistrates Court at Gympie dismissing a complaint against the respondent that he had, between 18 February 1985 and 14 November 1991, prevented a SEQEB electricity meter from duly registering the quantity of electricity supplied to his property.

The only ground argued concerned whether or not the prosecution had been commenced out of time as the Magistrate held.

On 20 September 1991, the prosecutor, an employee of the South East Queensland Electricity Board, received a telephone call from an anonymous informant stating that the respondent "had by-passed the meters in respect of the load to the back

shed since 1984 ...".

It was not until almost two months later, on 13 November 1991, that another employee of SEQEB attended the property and, according to his evidence as it was opened in the Magistrates Court, ascertained that the respondent had performed the act alleged.

The complaint was issued on 13 May 1992.

So far as presently material, sub-section 420(2) of the Electricity Act 1976 (as amended) provides:

"A prosecution for an offence against this Act may be commenced ... within 6 months after the matter of complaint comes to the knowledge of the complainant"

It was not disputed before this Court that the complaint was out of time if the period of six months commenced on 20 September 1991 but was in time if the period commenced on 13 November 1991. No reliance was placed by the prosecutor upon the other element of sub-section 420(2) of the Electricity Act because of the course which the proceedings took in the Magistrates Court.

The prosecutor relied upon Smith v. Baldwin ex parte Smith (1979) Qd R 380, in which reference was made by W.B. Campbell J., with whom Stable J agreed, to Bernecker v. White (1890) 4 QLJ 1.

In Bernecker v. White, the time ran from "the discovery" of the offence and in Smith v. Baldwin the time began when "the commission of the offence comes to the knowledge of the complainant". In both cases, it was held that time did not start to run until the complainant had reasonable grounds for believing that an offence had been committed. In effect, it was held that, when information was supplied by a member of the public, time did not commence to run until investigation had been made and the complainant "had such information before him as to give reasonable grounds for such belief": Smith v. Baldwin at p.385F. At the foot of the same page it was said:

"The complainant should be given a reasonable opportunity of finding out whether statements made to his office by a member of the public have any substance in them and whether they justify the institution of proceedings for an offence under the Act."

At p.386D, it was said that "... knowledge that some person claims that another person has committed an offence does not amount to knowledge that the offence has been committed. Time ... does not run from the time of the lodgment of a grievance ... with the complainant"

While these cases may provide some guidance, they cannot be directly applied. Both were concerned with different phrases from that contained in sub-section 420(2) of the Electricity Act. Further, legislation which the Electricity Act repealed and replaced had used the phrase considered in Smith v. Baldwin: see sub-section 69(2) of the Southern Electricity Authority of Queensland Act 1952 as amended; sub-section 78(2) of the Northern Electricity Authority of Queensland Act 1963 as amended; sub-section 81(1) of the Regional Electricity Authorities of Queensland Act 1945 as amended.

It is necessary to have regard to the terms of the provision which is presently material. The period commences when the complainant first has knowledge of "the matter of complaint". The matter of complaint is the act or omission alleged in the complaint by which a prosecution is commenced, in this instance (leaving aside the dates alleged) that the respondent had prevented the electricity meter from duly registering the quantity of electricity supplied. The question is when the prosecutor first had that knowledge.

This is essentially a question of fact, the resolution of which is not advanced by judicial exegesis to substitute another set of words for the ordinary language used in the subsection. The critical word used is "knowledge" which, in the context, bears a meaning different from a bare allegation, especially an allegation from an anonymous source. The prosecutor had information that the act alleged had been performed by the respondent but, until investigation confirmed what was alleged, his only "knowledge" was that an allegation had been made. The information which the complainant had did not amount to "knowledge" that the respondent had acted as the informant alleged.

In the circumstances, the Magistrate erred. Accordingly,

the order nisi is made absolute with costs to be taxed. The matter is remitted to the Magistrates Court to be dealt with according to law.

