IN THE COURT OF APPEAL [1996] QCA 469

SUPREME COURT OF QUEENSLAND

Appeal No. 123 of 1995

Brisbane

Before Fitzgerald P.
McPherson J.A.
Shepherdson J.

[Hulett v. Laidlaw]

BETWEEN:

GERRARD BARTHOLOMEW FRANCIS HULETT

Applicant

AND:

BETTY MARY LAIDLAW

Respondent

EX PARTE: GERRARD BARTHOLOMEW FRANCIS HULETT

REASONS FOR JUDGMENT - FITZGERALD P.

Judgment delivered 22 November 1996

This is an appeal by way of order to review against the decision of a magistrate dated 20 April 1995 that the appellant keep the peace and be of good behaviour towards the respondent for a period of six months from that date. The order was made under sub-s. 6(3)(b) of the Peace and Good Behaviour Act 1982.

Under s. 4 of that Act, a proceeding for such an order is commenced by complaint in writing on oath before a Justice of the Peace that a person has made a threat of a specified kind relating to the complainant's person or property and that the complainant is in fear of the

person complained against; if the justice is satisfied that "the matter of the complaint is substantiated" and that "it is reasonable in the circumstances for the complainant to be in fear of" the person complained against, a summons may be issued requiring the person complained against to appear before a Magistrates Court. The Court is required by s. 6 to "hear and determine the matter of the complaint" (sub-s. 6(1)) and may dismiss it or make an order such as that made in this case.

The "matter of the complaint" is the threat and that the complainant is in fear of the person complained against; sub-s. 6(1) does not expressly require the Magistrates Court to be satisfied that it is reasonable in the circumstances for the complainant to be in fear of the person complained against, and it is unnecessary for present purposes to determine whether such a requirement need always be met; however, it would ordinarily be inappropriate to make an order against a person complained against unless the complainant had a reasonable fear of that person. Some support for that view is to be found in Part III of the Act, under which a person who contravenes an order commits an offence rendering him or her liable to a substantial penalty.

The complainant in the present case, Betty May Laidlaw, who was the respondent in this Court, made a complaint on 6 January 1995. A summons was issued the same day addressed to "Gerry Hartley", the person complained against, alleging that he had "threatened the complainant at Woodridge Railway Station to attack her with a knife. The complainant is in fear of future threats as the respondent has been verbally threatening her with physical harm for approx. three months"; according to the summons, the Justice of the Peace who issued it was "satisfied that it is reasonable in the circumstances for the complainant to be in

fear of the defendant", presumably Gerry Hartley, whose address was shown as 6 Marlow Street, Woodridge. The appellant, Gerrard Bartholomew Francis Hulett, apparently lived at the time at 5 Ellen Street, Woodridge, and was a Guard with Queensland Railways. There is no suggestion that the Justice of the Peace had information additional to what was stated in the complaint (see s. 5 of the Act), and it is impossible to see how he could have considered that the statutory pre-conditions for a complaint had been satisfied; the grounds set out in the complaint (against Gerry Hartley) were "he put Station Master on Bowen Hills Station Marter to throw me off if I do not behave it has happened over period 3 weeks and again on last Wednesday afternoon with a knife".

Particulars were later given which indicated that two incidents were relied upon, neither of which occurred on the Wednesday prior to the complaint. Both incidents were alleged to have occurred at Bowen Hills Railway Station, the first on 3 December and the second on 17 December 1994. According to the complainant, she was waiting at the station with her husband, Thomas William Laidlaw, on both occasions. She said that on the first occasion the appellant approached her and threatened to kill her and she saw the handle of a knife protruding from the pocket of his shorts, and that, after threatening her, the appellant spoke to the station master who approached her and asked her to behave herself. Her version of the second incident was that the appellant approached her and her husband and threatened physical harm to her, showing her the knife.

At the hearing on 20 April 1995, sworn evidence was given by the respondent, her husband, the station master, and the appellant, who denied the allegations. Although the magistrate considered that the appellant was evasive in responding to questions, her finding that the

incidents occurred is extraordinary. The respondent's husband, who the magistrate found was credible, reliable and honest, gave evidence which supported the respondent's allegations that the appellant had threatened her but did not support her allegations concerning a knife. The magistrate also considered the station master to be thoroughly reliable and credible, and his evidence was that whenever he saw the respondent she was agitated. Her behaviour at the Magistrates Court amply bore that out. The magistrate found her demeanour was unusual and unsettling, and that she was emotionally unstable and prone to exaggeration. It was also recorded that there were disparities between the evidence given by the respondent and her husband, and "huge disparities" between the particulars provided and the respondent's evidence. The magistrate further noted that four months had elapsed between the alleged threats and the hearing, without any suggestion that the appellant had threatened the respondent again.

Section 8 of the Act provides, so far as presently material, that:

> "Subject to this part and subject to any necessary modifications and any modifications prescribed by regulation the provisions of and proceedings and procedures under the Justices Act 1886 applicable in the case of the prosecution of an offence in a summary way under that Act are applicable in the case of proceedings by way of complaint in respect of which an order to keep the peace and be of good behaviour may be made pursuant to section 6 as if such complaint were a complaint in respect of such an offence."

By s. 146 of the Justices Act 1886, if a defendant pleads not guilty, the court is to "proceed to hear the complainant and [his] witnesses, and the defendant and [his] witnesses, ... and, upon consideration of all the evidence adduced, determine the matter and shall convict the defendant or make an order against [him] or dismiss the complaint as justice may require ...".

The respondent submitted that proof beyond reasonable doubt is not required to establish a

complaint under s. 4 of the Peace and Good Behaviour Act, and drew a distinction between the terms of s. 8 and s. 12 of that Act, which is contained in Part III "Offence Provisions"; s. 12 provides that proceedings for an offence against Part III may be instituted in a summary way under the Justices Act. I am unable to see how s. 12, or the difference between its terms and those of s. 8, provides any assistance to the respondent.

It can also be accepted that, as the respondent submitted, proceedings on a complaint under s. 4 of the Peace and Good Behaviour Act are not criminal in nature. However, the terms of s. 8 indicate that a proceeding in respect of a complaint under s. 4 is to be heard and decided as if the complaint were a complaint in respect of an offence being prosecuted in a summary way under the Justices Act; that is consistent with the requirement of a threat of the type necessary to ground a complaint, which must be related to either assault of the complainant or damage to his or her property.

Even if proof beyond reasonable doubt of "the matter of the complaint" is not required[1] before an order can be made under sub-s. 6(3)(b) of the Peace and Good Behaviour Act, it is plain that the strength of the evidence necessary to establish the basis for an order under s. 6 must take into account the seriousness of the allegation made against the person against whom the complaint is made: see, for example, Briginshaw v. Briginshaw (1938) 60 C.L.R. 336; Helton v. Allen (1940) 63 C.L.R. 691; Rejfek v. McElroy (1965) 112 C.L.R. 517; Neat Holdings Pty Ltd v. Karajan Holdings Pty Ltd (1992) 67 A.L.J.R. 170.

It is clear from her decision that the magistrate considered that she need be satisfied only on

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[1] As is my tenative opinion notwithstanding Percy v. D.P.P. [1995] 3 All E.R. 124.

the balance of probabilities, and there is no indication that she took into account the strength of the evidence necessary to establish the material facts on that standard when so serious a matter as a threatened assault with a knife was to be found. On either view of the necessary standard of proof, the evidence did not support the order which was made.

Further, as I have stated earlier, the summons should not have been issued.

Finally, there was no finding that the respondent was fearful of the appellant at the time when the complaint or order was made, or that such fear would have been reasonable despite the period which had elapsed since the alleged offending conduct.

In my opinion, at least when taken in conjunction, these matters are such that the magistrate's decision cannot stand.

Accordingly, the order to review should be made absolute with costs to be taxed, and the order made by the magistrate quashed, and the proceeding dismissed.

IN THE COURT OF APPEAL

SUPREME COURT OF QUEENSLAND

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[Hulett v. Laidlaw]

BETWEEN:

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EX PARTE: GERRARD BARTHOLOMEW FRANCIS HULETT

Fitzgerald P.
McPherson J.A.
Shepherdson J.

Judgment delivered 22 November 1996

Separate reasons for judgment of each member of the Court, all concurring as to the orders made.

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1. THE ORDER TO REVIEW IS TO BE MADE ABSOLUTE WITH COSTS TO BE TAXED.

2. THE ORDER MADE BY THE MAGISTRATE IS QUASHED, AND THE PROCEEDING DISMISSED.

CATCHWORDS: ORDER TO REVIEW - order that the appellant keep the peace and be of good behaviour towards the respondent - appellant denied allegations made against him (i.e. that he threatened the respondent with a knife) - disparities in the respondent's evidence as well as other weaknesses in her evidence - whether the evidence was in support of the order made - standard of proof to be established under the Peace and Good Behaviour Act 1982 (s. 4.)

Peace and Good Behaviour Act 1982 ss. 4, 5, 6, 8, 10, 11 and 12
Justices Act 1886 s. 146

Briginshaw v. Briginshaw (1938) 60 C.L.R. 336
Dyke v. Whittleton [1969] N.S.W.L.R. 494
Everett v. Ribbands & Anor. [1952] 2 Q.B. 198
Percy v. D.P.P. [1995] 3 All E.R. 124
R. v. Robinson (1986) 60 A.L.J.R. 580

Counsel: Mr L.J.A. Hampson for the applicant.
Mr A Rafter for the respondent.

Solicitors: GPS Spencer Woodhead for the applicant.
Legal Aid Office for the respondent.

Hearing Date: 16 April 1996

REASONS FOR JUDGMENT - McPHERSON J.A.

Judgment delivered the 22nd day of November 1996

In proceedings initiated under the *Peace and Good Behaviour Act 1982* the appellant, who was defendant in the court below, was ordered to keep the peace and be of good behaviour. In this Court he submits that proceedings under that Act are not civil in character but criminal, and consequently that the magistrate went wrong in law in finding the facts leading to the order on a balance of probabilities only, and not beyond reasonable doubt.

Section 6(3)(b) of the Act authorises a magistrates court to order that a defendant to proceedings under the Act shall "keep the peace and be of good behaviour". Proceedings are initiated by complaint made in writing on oath before a justice of the peace that the defendant has threatened to do any one of a number of acts specified in paras.(a) to (d) of s.4, and further that the complainant is "in fear" of the defendant. If the matter of complaint is substantiated to the satisfaction of the justice of the peace, and he or she is also satisfied that it is "reasonable" in the circumstances for the complainant to be in fear of the defendant, then the justice may under s.4 issue a summons, or a warrant to bring the defendant before a

magistrates court. Under s.6(1) the proceedings then pass to the magistrates court for hearing and determination, which, "upon a consideration of the evidence", may result in either the dismissal of the complaint or an order to keep the peace: s.6(3).

The Act is a modern restatement of a part of the very ancient power of justices of the peace in England to bind persons over to keep the peace. The jurisdiction was originally conferred by 34 Edw. 3, c.1, and was recognised by the Full Court in 1882 as being exercisable by justices of the peace in Queensland. See *O'Kane v. Sellheim* (1882) 1 Q.L.J. 85, where the terms of the old statute of 1361 are set out. In 1886 a statutory jurisdiction to bind over was incorporated in Part VIII of the *Justices Act 1886*; but it, for some reason, was repealed in 1964, which then left only the procedure under O.XI of the Criminal Practice Rules of 1900 for exhibiting articles of the peace in the Supreme Court.

At one time in England a proceeding of that kind was instituted and conducted *ex parte*. Even if the defendant was present when the application was heard, he was not permitted to contradict the facts sworn against him (*R. v. Doherty* (1810) 3 East 171; 104 E.R. 334), but at most to show that the application was made from malice or in bad faith. The jurisdiction could, without any formal application, be exercised in any proceedings in which the defendant was charged but acquitted of an offence: see *ex parte Davis* (1871) 36 J.P. 551; or even against a complainant who failed to prove a charge made by him against someone else: *R. v. Wilkins* [1907] 2 K.B. 380. Provided there was a sufficient basis for exercising the power, binding over was regarded as involving a discretion (*R. v. Tregarthen* (1833) 5 B. & Ad. 679; 110 E.R. 941), which could be challenged in proceedings for prerogative relief in a superior court if, but only if, some matter essential to jurisdiction was

shown to have been absent. Binding over to keep the peace was, as Blackburn J. described it in *ex parte Davis* (1871) 35 J.P. 551, "a precautionary measure to prevent a future crime, and is not by way of punishment for something past". Consistently with this approach to the jurisdiction, evidence of past events, although admissible, was relevant only as suggesting reasons why a breach of the peace was apprehended in the future.

It would not have been possible to regard proceedings begun and conducted in that way as criminal in character, which may explain why at that time there was no direct authority on the point in issue here. The *Peace and Good Behaviour Act 1982* now envisages a procedure in two stages, in the first of which the complainant is expected to establish *ex parte* but on oath certain jurisdictional prerequisites. Although s.4 refers to a defendant "answering" the complaint, the procedure contemplated by s.6(1) at the second stage is a hearing and determination of the "matter of complaint". That expression is used in s.4 to describe the prerequisites for jurisdiction specified in paras.(a) to (c) along with the further requirement that the complainant be shown to be "in fear" of the defendant. The requirement of s.4 that the fear must also be "reasonable" appears to be a factor going more to the discretion to be exercised by the justice of the peace in deciding whether or not to summon the defendant rather than a jurisdictional element or "matter of complaint" as such.

By s.8 of the Act, the hearing and determination before the magistrate is to be conducted according to the procedures applicable, although with some modification, in the case of prosecution of an offence in a summary way under the *Justices Act 1886*. Having been summoned, or arrested and brought before the court, the

defendant therefore has essentially the same rights as any other person of opposing the order sought against him. His right under the old law to produce evidence that the complaint has been made “from malice or vexation only” is specifically retained by s.6(2); but, in preserving it, s.6(2) also provides that it is available “without limiting any other evidence given by or on behalf of a defendant ...”.

The features of the legislation so far described involve substantial departures from the procedure at one time followed in England in applications to keep the peace. In the end, however, I consider they fail to convert the process to one that is criminal rather than civil in character. The appellant naturally enough placed much stress on s.8 of the Act as showing that the statutory proceedings were intended to be criminal. The submission is plainly not without force; but it is also legitimate to regard s.8 as having been drawn with the specific purpose of avoiding that result. Procedures applicable to summary prosecution of an offence are extended to complaints under the Act; but they are to be applied “as if” the complaint “were in respect of such an offence”. In assimilating the statutory procedure to the procedure for summary prosecution of offences, the legislation appears to have deliberately stopped short of expressly declaring a matter of complaint under the Act to be an offence. Contravening an order to keep the peace may, if further proceedings are instituted, result in conviction of an offence under s.10 of the Act; but there is nothing to suggest that the order itself involves conviction for an offence: contrast s.11 of the Act. The opposite view appears to have been adopted by a Divisional Court in *Percy v. D.P.P.* [1995] 3 All E.R. 124, at 133-134; but in England there are differences in the legislative context and also in the attitude of English

courts to the standard of proof which make that decision inapplicable in Australia: *Refjek v. McElroy* (1965) 112 C.L.R. 517, at 520-521.

In *The Queen v. Robinson* (1986) 60 A.L.J.R. 580, the High Court held that an order to enter into a good behaviour bond was not a "sentence" for the purpose of an appeal by the crown under s.669A(1) of the Criminal Code (Qld.). By contrast, in *Dyke v. Whittleton* [1969] N.S.W.R. 494 an order of that kind made under s.547 of the Crimes Act (N.S.W.) was held to be a form of "punishment" against which an appeal was competent under the Criminal Appeal Act 1912 (N.S.W.). In reaching that conclusion, the Court of Criminal Appeal relied on the fact that s.547 appeared in a part of the Crimes Act referring to offences punishable by justices. The whole section, said Street C.J., with whom Herron and Kinsella JJ. agreed, "seems to me to be penal in its general effect. It comes within a part of the Crimes Act referring to offences ...". His Honour considered that s.547 created an "offence of threatening violence or injury to another ...".

By the time the Act was passed in 1982, *Dyke v. Whittleton* had been reported. Substantial similarities in the two legislative provisions suggest that s.547 may possibly have formed the source of the later Queensland statute. Even so, what was said in *Dyke v. Whittleton* does not mean that the present appeal must be upheld. In Queensland the corresponding jurisdiction was invested not by a provision dealing with offences in either the Criminal Code or the *Justices Act 1886*, but by a distinct and separate enactment. That difference may seem slight, but in *Dyke v. Whittleton* it was regarded as crucial.

There are other considerations tending to confirm that the statutory procedure in Queensland is not intended to be criminal in character or to attract the criminal

standard of proof. One is that it has obvious points of resemblance with injunctive relief commonly granted to restrain conduct of a comparable kind. It would surely be an odd result if an order restraining threatened behaviour of the kind specified in s.4 could be obtained by injunction in civil proceedings on a balance of probabilities but, under the Act, only on satisfying the criminal standard of proof. Another consideration is that, although some of the acts specified in paras.(a) to (d) of s.4 might also constitute offences under chap.38 of the Criminal Code if accompanied by the requisite intent, s.4 of the Act is concerned not with the criminality of the acts in question, but simply with their tendency to promote breaches of the peace. The Act of 1982 sets out to restrain or deter such conduct independently of any legal justification there might be for it . Criminality is not necessarily the object, or the only object, to which the legislation is directed.

There is no compelling reason why conduct that is not an offence should have to be established by evidence attaining the level of proof required for criminal charges. Indeed, if such a requirement were insisted upon, it would deprive the Act of much of its utility in protecting those members of the community who are defenceless against more powerful aggressors. Equally, however, it appears that s.4 is directed to threats to do or to procure acts ordinarily involving or associated with violence to person or property. A finding, or even a complaint, that such a threat has been made has, or is liable to have, adverse consequences for the reputation or standing defendant in such proceedings. To that extent, *Dyke v. Whittleton* may be correct in viewing the general effect of the statutory provisions as penal. It is not simply that the defendant may be ordered to refrain from breaches of the law. An order under the Act may effectively deter him from using reasonable

force to vindicate his legal rights. Taking these considerations into account, I respectfully agree with the view adopted in the reasons of Fitzgerald P. that the character of the allegation in proceedings under the Act ought to be considered in assessing the weight of the evidence in a case like the present. See *Briginshaw v. Briginshaw* (1938) 60 C.L.R. 336, as well as *Refjek v. McElroy* (1965) 112 C.L.R. 517 and other authorities in that tradition which are cited in his Honour's reasons. Judging by the reasons given by the magistrate for her decision, this was a consideration which was not adverted to in the court below.

The evidence before the magistrate was, as the President's reasons also disclose, singularly unimpressive. For my part I would not be persuaded that it is critical for a complainant to testify, in so many words, to her fear of the defendant, even if prudence suggests that such evidence ought always to be given if it is available. In some instances, however, an inference of fear may arise by necessary implication from the nature of the threat viewed in the circumstances in which it was made: cf. *R. v. Dunn* (1840) 12 Ad. & E. 599, at 619; 113 E.R. 939, at 948. In the case before us there was evidence from the complainant's husband, who was found by the magistrate to be a credible, reliable and honest witness, that the appellant threatened to kill her. In all but exceptional cases that would ordinarily be enough to raise an inference that a person like the present complainant was put in fear of the defendant. Peculiar as in many respects the facts of the case appear to be, once it is accepted that the threat was made there is nothing to suggest that the defendant did not mean what he was found to have said to the complainant.

At the same time, her worship made no specific finding that the complainant was in fear of the defendant. Her final conclusion that an order should be made against the defendant might, under some circumstances, be taken to show that she made that necessary intermediate finding implicitly. However, having regard to matters already mentioned here and to others referred to in the reasons of the President, I agree that the order made below cannot stand. One of those matters is the discrepancy between the name and address of the person referred to in the complaint and the quite different name and address, as they appeared at the hearing, of the defendant himself. Even assuming that they were one and the

same individual, it is remarkable that the initiating proceedings were not amended in the course of the proceedings below to correct that variance between the evidence and the complaint.

I agree that the order to review should be made absolute with costs. The order below should be set aside and the complaint dismissed

REASONS FOR JUDGMENT - SHEPHERDSON J.

Judgment delivered 22November, 1996

I have had the benefit of reading the reasons for judgment prepared by the President and by McPherson J.A. I agree with the orders proposed by the President and the reasons given by the President and McPherson J.A. save that I wish to make the following observations concerning the standard of proof.

In my view, proceedings on a complaint under s.4 of the *Peace and Good Behaviour Act* 1982 are "analogous to a criminal proceeding". This phrase is taken from a judgment of Lord Justice Denning (as he then was) in Everett v. Ribbands & Another (1952) 2 Q.B. 198 at p.206. That case concerned an action for malicious prosecution in which the plaintiff had alleged (inter alia) that the defendant, a Detective Sergeant of the Metropolitan Police and another person had falsely and maliciously required sureties of the peace against him. Such sureties had been ordered. On a preliminary point of law the trial judge (Devlin J.) held that in an action for malicious prosecution it was essential to aver that the proceedings complained of terminated in the plaintiff's favour, and that this applied where the result of those proceedings was merely that the plaintiff was ordered to enter into a recognisance to keep the peace and to find sureties for his good behaviour and that the plaintiff's action was not maintainable.

Denning L.J., as a member of the Court of Appeal gave a short review of what he described as "the very ancient power of a magistrate to require a man to provide sureties". He

considered the situation up to 1879 and (at p.204-5) in speaking of the pre 1879 situation said:-

> "It is plain that this procedure was not a prosecution. It was a legal process intended to prevent the man from doing wrong. It was a drastic form of quia timet proceedings."

He later said (at p.205):-

> "Since 1879 an order for sureties has entirely changed its nature. It has ceased to be a mere legal process and has become a full legal hearing. A complaint has to be served on the defendant and he must be given a full opportunity of being heard in his own defence. The procedure is the same as any other complaint. If the court finds against the defendant, it may order him to find sureties or in default be imprisoned for six months."

(He was referring to the relevant English legislation and I pause to say that the current Queensland legislation does not enable the Magistrate to imprison in default)

At pp.205-6 he said:-

> "If I thought that an order to find sureties was today a mere legal process, as it was before 1879, I would be in favour of the plaintiff's argument. But I do not think it is today a mere legal process. It now bears many of the characteristics of a criminal proceeding. The procedure is much the same as in the case of a summary offence. The substance of the matter is, not only fear of what the accused man may do, but also a complaint of something he has already done, some words or conduct which give rise to apprehension of disorder or other breach of the law. An order can only be made against the man if two things exist: first, a threat by words or conduct to break the law of the land or to do something which is likely to result in a breach; secondly, a reasonable fear that this threat will be carried into effect. The order, once made, will result in imprisonment if the accused man has no friends to stand by him. This imprisonment must be founded on something actually done by him. It would be contrary to all principle for a man to be punished, not for what he has already done but for what he may hereafter do. Hence there must be something actually done by him, such as threats of violence, interference with the course of justice, or other conduct which gives rise to the fear that there will be a breach of the law. It is this conduct which is the subject of the complaint and which must be proved before an order for sureties can be made.
>
> In these circumstances it seems to me that the proceedings are <u>analogous to a criminal proceeding</u> and that no action lies for maliciously instituting them unless they ended favourably for the plaintiff."
> (The underlining is mine.)

The general tenor of the above comment from pp.205-6 applies to the current Queensland

legislation save for the obvious difference in that at the hearing under s.6 of the Queensland Act the Magistrates Court has no power to imprison. Lack of such a power does not, in my view, cause the proceedings under s.6 to cease to be analogous to a criminal proceeding.

Although the above underlined words of Lord Justice Denning (as he then was) are obiter dictum they are in my view entitled to considerable weight. If applied to s.6 proceedings they do not mean that proceedings heard under s.6 require the Magistrates Court to be satisfied beyond reasonable doubt of the matters required to be proved by a complainant before deciding to make an order under s.6(3)(b). If in such proceedings a criminal offence were charged, then that offence must be proved beyond reasonable doubt (see Re N.E.G. A Solicitor (1940) QWN25). But no offence was charged against the applicant.

I turn now to s.8 of the Queensland Act which reads:-

> "**8 Application of Justices Act**. Subject of this Part and subject to such modifications, if any, as are requisite, the provisions of and proceedings and procedures under the *Justices Act* 1886-1980 applicable in the case of the prosecution of an offence in a summary way under that Act are applicable in the case of proceedings by way of complaint in respect of which an order to keep the peace and be of good behaviour may be made pursuant to section 6 as if such complaint were a complaint in respect of such offence."

In my view this section primarily requires the Magistrates Court when hearing and determining the matter of the complaint under s.6 to apply "the provisions of and proceedings and procedures under *The Justices Act* ... applicable in the case of the prosecution of an offence in a summary way under that Act ... ". Even though the concluding words of s.8 say "as if such complaint were a complaint in respect of such an offence" I do not consider that s.8 should be construed so that the Magistrates Court, when acting under s.6, is obliged to be satisfied beyond reasonable doubt of each of the matters required to be proved by a complainant before making an order that a defendant shall keep the peace and be of good behaviour.

It is I think, not unimportant to note that when an order is made under s.6, the Magistrates

Court does not first have to be satisfied that an offence has been committed although the court has to be satisfied (inter alia) of one or more of the matters referred to in paragraphs (a) to (d) inclusive of s.4 of *Peace and Good Behaviour Act* 1982. I note that in Percy v. DPP (1995) 3 All ER 124 the Divisional Court criticised the judgment of Denning L.J. in Everett v. Ribbands saying insofar as he "appeared to equate a breach of the peace to the commission of a criminal offence or breaking the law of the land, we think he went too far". That criticism does not detract from his view that the proceedings before him were analogous to a criminal proceeding.

I have concluded that although proof beyond reasonable doubt is not required before an order can be made under sub-section 6(3)(b), nevertheless, as the President has said in his reasons for judgment "the strength of the evidence necessary to establish the basis for an order under s.6 must take into account the seriousness of the allegation made against the person against whom the complaint is made" and the Magistrates Court must apply the principles of Briginshaw v. Briginshaw (1938) 60 CLR 336 and the other decisions which His Honour has cited.