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premises, namely the Todd Tavern, contrary to s 45D of the *Summary Offences Act*. The first defendant issued a summons pursuant to s 23 of the *Justices Act* directed to the Commissioner of Police requiring him to appear before the CSJ and to produce copies of statements made by the police officer who first spoke to the second defendant on the day of the alleged offence, a copy of notes made by the police officer and copy of the original statement made by any other police officer who was present when the second defendant was first spoken to by police. On 12.07.94 a Magistrate entertained argument as to whether the summary court had jurisdiction to set the s 23 *Justices Act* summons aside.

**Held**, per Martin CJ (1) The CSJ established by the *Justices Act* has no jurisdiction to set aside any summons issued pursuant to s 23 of that *Act*. The position in the NT is different from South Australia where the Magistrates' Court issues subpoenas. Section 23 of the *Justices Act* provides for the action of a

## Supreme Court Notes

by Anita Del Medico

separate and distinct functionary from the court. The obligation on a justice of the peace or clerk pursuant to that section is to be satisfied that the summons sought is for a prescribed purpose and the obligation is separate from and independent of the court. The CSJ has no power to supervise the acts of the justice or the clerk.

*Limbo -v- Little* (1989) 65 NTR 19 at 35, followed.

*Holland -v- Sammon* (1972) 4 SASR 1; *Hunt -v- Wark* (1985) 40 SASR 489; *R -v- Robertson* (1983) 21 NTR 11; *Botany Bay Instrumentation & Control Pty Ltd -v- Stewart* (1984) NSWLR 98, referred to.

(2) There is an onus on an accused seeking production and inspection of witness statements to show that there is an issue or issues in the case to which

the documents relate, otherwise an accused is simply embarking on a fishing expedition and that is not permissible.

*R -v- Roberston* (supra) followed.

Although the present summons sought documents with sufficient particularity, a purpose falling within the scope of s 23 had not been identified. The summons was an abuse of process and should be set aside. The purpose in seeking to have the specified documents produced was an attempt to identify whether any relevant issue might arise in the prosecution, and further was effectively seeking discovery, which is objectionable.

*Sobh - v- Police Force of Victoria* [1994] 1 VR 41, approved.

M. Howden instructed by CAALAS for the Appellant

J. Stirk for the respondent.



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