

THE HIGH COURT

1982 No. 696 S.S.

BETWEEN:-

THE STATE (AT THE PROSECUTION OF PATRICK DONEGAN)

Applicant

-and-

DISTRICT JUSTICE HUBERT  
WINE

Respondent



Judgment of O'Hanlon J., delivered the 18th day of March, 1983.

This Application to make absolute a Conditional Order of Certiorari in respect of an Order of the Respondent sending the Prosecutor forward for trial to the Dublin Circuit Court, was listed for hearing before me on the same day as another case entitled The State (at the Prosecution of Dermot Sherry), Prosecutor .v. District Justice Hubert Wine, Respondent (1982 No. 694 S.S.).

The legal issue in both cases is the same. It concerns the entitlement of the Defence to cross-examine witnesses whose names appear in the list of witnesses intended to be called for the prosecution, where the Defence requires such witnesses or any of them to give evidence by way of sworn deposition in the course of the preliminary examination conducted by the District Justice pursuant to the provisions of the Criminal

Procedure Act, 1967.

In each of the two cases District Justice Wine ruled that if the application were made by or on behalf of the accused person to have such witnesses made available at the preliminary examination to have evidence taken from them by way of sworn deposition, the entitlement of the accused was to examine such witnesses in chief but not to cross-examine them. The correctness of this ruling was challenged in both sets of Certiorari proceedings; the same Counsel appeared for the Prosecutor in both cases, and the same Counsel appeared for the Respondent in both proceedings.

In the Judgment already given by me in Sherry's case, I held that the District Justice was correct in the manner in which he interpreted the provisions of the Criminal Justice Act, 1967 and I allowed the cause shown and discharged the Conditional Order of Certiorari which had been granted.

As the legal issue raised for consideration is the same in the present case as in Sherry's case, I propose to make the same Order in this case, allowing the cause shown and discharging the Conditional Order of Certiorari already made. As the case appeared to me to involve a matter of procedure of some importance in criminal cases generally, and as it appeared to involve a significant change in previous procedure which was

not recognised generally since the enactment of the Act of 1967, I allowed each party bear their own costs in Sherry's case and I make the same Order in relation to the costs in the present case also.

*R. J. O'Hanlon*

R. J. O'HANLON

Approved.

18th March 1983.