existed. This argument fails to recognize that the subject matter of the power is the regulation of sales of potatoes, not the growing of potatoes for sale. Ths broad dissenting judgment does, however, serve to throw into relief the severity of the majority views.

Although the practical consequences of the decision have been nullified by the amending legislation, the case remains a useful illustration of the possible divergence in the approaches of different judges to the construction of the same measure, and the narrow approach to questions of ultra vires which is currently favoured.

POLICE OFFENCES ACT

Loitering

The South Australian Supreme Court has in two recent decisions, *Wilson* v. *O'Sullivan*[1] and *Mills* v. *Brebner*,[2] further clarified the meaning of s. 18 of the Police Offences Act, 1953-1962. This section is mainly used by the police in controlling the activities of homosexuals prone to frequenting public places, "peeping-tom" offenders, suspected milk can thieves and other nocturnal nuisances. The section reads as follows:

> "Any person who lies or loiters in any public place and who, upon request by a member of the police force, does not give a satisfactory reason for so lying or loitering shall be guilty of an offence."[3]

Both *Wilson* v. *O'Sullivan* and *Mills* v. *Brebner*, although unconnected, arise from similar factual situations. The appellant in each case was spoken to by police while in the vicinity of a public lavatory in the East Parklands. Their reasons for being there failed to satisfy the police and each was arrested and charged with a violation of s. 18 of the Police Offences Act.

The appellant Wilson was convicted in a summary hearing before a Special Magistrate who found it unnecessary to make a finding as to whether the explanation given to the Court was satisfactory, as *that* explanation was not made to the constable. In the second case the appellant Mills was also convicted although the Special Magistrate added that the explanation given in Court was satisfactory. The Special Magistrate considered the offence to be made out by the appellant's failure to give to the constable at the time an explanation which the Court considered was satisfactory to him. On both appeals the convictions were quashed and the judgments handed down do much to remove ambiguities apparent within section 18.

1. [1962] S.A.S.R. 194.
2. [1962] S.A.S.R. 209.
3. Penalty: £25 or three months imprisonment.

Before noting the effect of these decisions upon section 18 it is necessary to consider what elements constitute the offence and see how these elements have been interpreted in previous decisions. The section encompasses three elements each of which is necessary before the offence is complete. There should be (1) some person lying or loitering in a public place, (2) to whom a request is made by a police officer requiring an explanation for so lying or loitering, and (3) the failure to give a satisfactory reason to the police officer.

I. *Loitering in a Public Place.*[4]

Although the word "loitering" has been given judicial interpretation as it appears in the Lottery and Gaming Act,[5] that interpretation was not adopted in *Wilson* v. *O'Sullivan* where, instead, Travers J. agreed with the Special Magistrate in the summary hearing. "Loiter" in the Police Offences Act means:

> "to remain in a restricted but not necessarily defined area without any apparent or legitimate reason."[6]

II. *Request by a Police Officer for an Explanation.*[7]

This requirement has received judicial consideration in several cases.[8] The request made by the police officer must be concomitant in point of time with the lying or loitering, and occur as part of the one action, allowing time for immediate pursuit of a possible offender who runs away before being spoken to by the police. The explanation is required to be given to the police officer and not to the Court.[9]

III. *Failure to give a Satisfactory Reason for so Loitering.*

It is upon this aspect of the offence that the cases, the subject of this note, are most enlightening.

> "What s. 18 of the Police Offences Act requires the defendant to do is 'to give a satisfactory reason'. It does not require him to give all his satisfactory reasons, assuming he has more than one, nor does it require him to explain where he came from or where he intended going after leaving that area. In some circumstances those things might well be given as part of his "reason", but the Act does not require them. All that he is required by the Act to do is give *"a* satisfactory reason" for the acts alleged to constitute loitering."[10]

The final arbiter as to whether the reason given to the police officer was satisfactory is the Court, which must inquire into the facts and make a determination in the light of all the evidence.[11]

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4. "Public place" is defined in section 4 of the Act.
5. Section 63: *Johns* v. *Berry* [1934] S.A.S.R. 111; *Millikan* v. *Rosey* [1957] S.A.S.R. 97.
6. [1962] S.A.S.R. 194, 199. See also *Hagan* v. *Ridley* (1948) 50 W.A.L.R. 112, 124.
7. This appears to be a qualification upon the statement by Travers J. in *Wilson* v. *O'Sullivan* at 196 that "in the absence of a satisfactory reason, every loitering in any public place is an offence".
8. *Ryan* v. *Dinan* [1954] S.A.S.R. 67. *O'Sullivan* v. *Hormann* [1956] S.A.S.R. 198.
9. *Wilson* v. *O'Sullivan* [1962] S.A.S.R. 194, 199.
10. Id. at 199.
11. *Mills* v. *Brebner* [1962] S.A.S.R. 209, 212. *Ryan* v. *Dinan* [1954] S.A.S.R. 67, 69. See also *Defina* v. *Kenny* (1946) 72 C.L.R. 164, 168: per Latham C.J.

> "The 'reason' is required to be given to the constable and the Court is required to make a finding as to its reasonableness."[12]

How, then, may the word "satisfactory" be defined? Hogarth J. in *Mills* v. *Brebner* makes the following definition:

> . . . the section is satisfied if a person in the position of the appellant gives a reason which is in fact true and lawful, even though it does not convince the constable who puts the question, and even if that constable is acting reasonably in remaining unconvinced. . . . I consider, furthermore, that a reason, to be 'satisfactory', must be not only true and lawful, but sufficiently particularized to have some real meaning . . . what is sufficiently particular in each case will be a question of fact. It is not necessary, however, that when a sufficiently particular answer has been given, the person asked should have to produce convincing arguments to support the reason given, even if he is aware of those arguments at the time."[13]

It is now clear that a conviction for a breach of section 18 of the Police Offences Act will not automatically follow merely because the reason given fails to satisfy the arresting officer, if that reason is both true and lawful and sufficiently particularized to have some real meaning.

12. *Wilson v. O'Sullivan* [1962] S.A.S.R. 194, 201.
13. [1962] S.A.S.R. 209, 213.

LACHES

Delay After Issue of Writ

A formidable body of case law has developed around the equitable doctrine of laches in its application to suits for specific performance but the unusual facts of the recent High Court case of *Lamshed* v. *Lamshed*[1] presented a problem rarely considered by the courts.

The respondents claimed that the appellant was in breach of an alleged contract for the sale by the appellant of a grazing property situated at Cunliffe in South Australia. The agreement was dated 25th September, 1956, and the appellant formally repudiated the agreement as a binding contract by two letters of 27th November, 1956. On 5th April, 1957 the respondents issued a writ claiming specific performance of the agreement and damages. The pleadings were completed by 1st August, 1957, but it was not until 26th March, 1962 that the action was set down for trial. In the meantime the appellant had agreed on 11th February, 1962, to sell the property to a third party.[2]

1. (1963) 37 A.L.J.R. 301.
2. The third party placed a caveat on the title on 24th January, 1962, and on 31st January, 1962, the respondents followed with another caveat. The appellant warned this second caveat and on 23rd March, 1962, the Master extended the time for removal of the caveat conditionally upon the respondents setting the action down for hearing.