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G-119-6 2

Final amount -
13,1966

IN THE PRIVY COUNCIL

No. 32 of 1965

ON APPEAL FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :-

PETER FELIX - Corporal Appellant

-and-

IVAN THOMAS Respondent

CASE FOR THE APPELLANT

1. This is an appeal by special leave of the Judicial Committee granted on the ~~24th March~~ ^{24th March} 1965 from the judgment of the Court of Appeal of Trinidad and Tobago (Wooding C.J. and McShine and Hyatali JJ.A) dated the 30th June 1964 dismissing the appeal of the Appellant from the Order of a Magistrates' Court dated the 22nd April 1963 dismissing the complaint of the Appellant, made under the Summary Offences Ordinance Ch.4. No.17, Section 36, that the Respondent, being, upon the execution of a search warrant, found in possession of articles (namely drugs and hypodermic syringes) which the Appellant had reasonable cause to suspect to have been stolen or unlawfully obtained, should give an account to the Magistrate by what lawful means he came by the same. RECORD
P.41
2. On the 7th October 1962 the Appellant applied to a Magistrate for a warrant to search the premises of the Respondent and stated on oath that there were reasonable grounds for suspecting that certain specified articles (including jewellery, whisky and gelignite) which would afford evidence as to the commission of an indictable offence namely shopbreaking and larceny were concealed on the said premises. The Magistrate acting under the Summary Offences Ordinance Ch.4 No.17 Section 37 issued a warrant to search the premises for the said articles. P.1
3. On the 4th February, 1964, the learned Magistrate gave his reasons for dismissing the complaint, setting out the facts he found. He found as facts that, when the Appellant executed the search warrant he did not discover the articles named in the warrant, but he did discover and seize the articles which were the subject of the complaint. Those articles were in a tin under a bed in the Respondent's bedroom. P.16

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The Respondent's reputed wife who, unlike the Respondent, was present during the search had said: "Since I came to live here with (the Respondent) three years ago I saw these things there. I asked him about them and he replied 'Leave them there, mind your own business'". The Respondent, who was seen later, had persisted in a denial of any knowledge of the articles. The grounds given for suspecting the articles to have been stolen or unlawfully obtained were the place in which they were found, the types of medicine and the type of person in whose possession they were found: the Respondent was not a medical student and had no licence to sell the drugs.

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4. The learned Magistrate, after calling upon the Respondent to account by what lawful means he came into possession of the articles, held the suspicions of the Petitioner to be unreasonable and that he had failed to establish possession in the Respondent. He gave as his reason for so holding: that he considered the Respondent's statement to be reasonable and probable; that the police witnesses had led no evidence to the effect that drugs of the type found had been reported stolen, so that their suspicions were not reasonably founded; that a wide variety of circumstances in which the drugs could be in lawful possession might be conceived, and that the drugs might have been lying in the Respondent's house for years (there was no evidence to the contrary); that there was no evidence that the Respondent was prohibited from having the drugs; and that there was no evidence the Respondent was selling the drugs or required a licence to sell them.

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5. The Court of Appeal (save for mentioning that the premises on which the articles were found were owned by the Respondent) did not deal with the reasons for the Magistrates' findings or with the findings themselves. Their Lordships drew attention to the content of the oath sworn by the Appellant when applying for the search warrant. This indicated, in their view, that for the purpose of obtaining a search warrant the Appellant was invoking a different statutory provision from that under which the warrant purported to be granted. They said:

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"Accordingly, although captioned 'Search Warrant (Ch.4 No. 17, Sec. 37)' it is manifest that it was issued under the authority of s.5. of the Indictable Offences (Preliminary Enquiry) Ordinance, Ch.4. No.1."

P.20 1.38

which section does not empower a constable to seize anything other than that which is specified in the warrant, and does not impose a liability on anyone

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to account for his possession of anything seized. They said further that the Appellant appreciated that this warrant was issued under the authority of the Indictable Offences (Preliminary Enquiry) Ordinance rather than section 37 of the Summary Offences Ordinance because, as appeared from the complaint before the Magistrate, he resorted to powers exercisable under Section 36 of the latter Ordinance. They were therefore of opinion that

10 the appeal raised the question, which was not canvassed by the parties themselves, whether or not the Appellant, in seizing on private premises articles which were not specified in the particular warrant held by him, had acted intra or ultra vires. They thought the answer to this question turned upon whether section 36 contemplated entry by a constable upon private premises, in other words, upon the meaning to be attached to "any place" in the section. They were of opinion that

20 "in any place" ought to be construed as meaning "in any public place". They said:

"We therefore hold that (the Appellant) had no authority to seize or take before the magistrate any of the goods with the unlawful possession of which he charged the respondent, and it was incompetent for the magistrate to call upon him to account for the same."

They therefore dismissed the appeal.

30 6. The relevant provisions of the Summary Offences Ordinance Ch.4. No.17 are as follows:

"Stolen or unlawfully obtained goods"

Section 36.(1)

It shall be lawful for any constable to arrest without warrant any person having in his possession or under his control in any manner or in any place anything which the constable has reasonable cause to suspect to have been stolen or unlawfully obtained.

40 (2) The constable shall bring such person and thing before a Magistrate as soon as possible, and if such person does not, within a reasonable time to be assigned by the Magistrate, give an account to the satisfaction of the Magistrate by what lawful means he came by the same, he shall be liable to a fine of ninety-six dollars, or to imprisonment for six months.

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(3) If any person liable to arrest under the provisions of subsection (1) of this section escapes from any constable attempting to arrest him, or lets fall or throws away any such thing as in the said subsection is mentioned, it shall be lawful for any Magistrate or Justice, upon application, to issue his warrant for the arrest of such person, and upon his arrest such person shall be deemed to have been arrested within the meaning of the said subsection, and may be dealt with in the manner laid down in subsection (2) of this section. 10

37.(1) If information is given on oath to any Magistrate or Justice that there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged in any house, store, yard, or other place, or on any land whether enclosed or not, or in any vessel, it shall be lawful for such Magistrate or Justice, by warrant under his hand directed to any constable, to cause any such house, store, yard, or other place, or any such land, or any such vessel, to be entered and searched at any time of the day, or by night, if power for that purpose be given by such Warrant. 20

(3) If upon search made as hereinbefore provided, anything so stolen or unlawfully obtained as aforesaid, or any other thing which there shall be reasonable cause to suspect to have been stolen or unlawfully obtained, is found, the constable shall take the same before a Magistrate, or guard the same on the spot or in some place of security subject to the orders of a Magistrate. 30

(4)(a) The constable shall apprehend and bring before a Magistrate the person or persons in whose house, store, yard, place, or vessel anything as aforesaid shall be found, and also any other person found in such house, store, yard, place, or vessel, if the constable has reasonable cause to suspect any such person as is hereinbefore mentioned to have been privy to such concealment or lodging as aforesaid. 40

(5) A Magistrate may call upon any such person as is mentioned in the last preceding sub-section to give an account, to the satisfaction of the Magistrate, by what lawful means any such thing as aforesaid came to be in such place as 50

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aforesaid, and any person who fails so to satisfy the Magistrate shall be liable to a fine of ninety-six dollars, or to imprisonment for six months.

10 38.(1) It shall be lawful for any constable to enter on board any vessel in any harbour, bay, roadstead, or river, and to remain on board any such vessel for such reasonable time as he deems expedient, and if he has reasonable ground to suspect that there is on board of any such vessel anything stolen or unlawfully obtained, it shall be lawful for him to search, with any assistants, any and every part of such vessel, and, after demand and refusal of the keys, to break open any receptacle, and, upon discovery of anything which he may reasonably suspect to have been stolen or unlawfully obtained, to take such thing and the person in whose possession the same is found before a Magistrate to be dealt with as hereinbefore provided.

20 7. The Indictable Offences (Preliminary Enquiry) Ordinance Ch.4. No.1. so far as is relevant, provides as follows:

30 "Section 5. (1) Any Magistrate" (which by s.2(2) includes any Justice)" who is satisfied by proof on oath that there is reasonable ground for believing that there is any building... or place -

(a)

(b) anything which there is reasonable ground for believing will afford evidence as to the commission of (an indictable) offence.....

(c)

40 "may at any time issue a warrant under his hand authorising any constable to search such building... or place for any such thing, and to seize and carry it before the Magistrate issuing the warrant, or some other Magistrate, to be by him dealt with according to law."

8. Other relevant statutory provisions are as follows:

The Summary Courts Ordinance, Ch. 3. No. 4.

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"Section 73 (3) Where larceny of any kind is charged and the evidence establishes the commission of an offence against section 36 or section 37 of the Summary Offences Ordinance, the defendant shall not be entitled to have the complaint dismissed but he may be convicted of the offence the commission of which the evidence establishes and punished accordingly.

(4) Where the receiving of any property knowing the same to have been stolen is charged and the evidence establishes the commission of larceny of any kind or of an offence against section 36 or section 37 of the Summary Offences Ordinance, the Defendant shall not be entitled to have the complaint dismissed but he may be convicted of the offence the commission of which the evidence establishes and punished accordingly. 10 20

(5) Where an offence against section 36 or section 37 of the Summary Offences Ordinance is charged and the evidence establishes the commission of the offence of larceny of any kind or of receiving property knowing the same to have been stolen, the defendant shall not be entitled to have the complaint dismissed but he may be convicted of such larceny or of receiving property knowing the same to have been stolen and punished accordingly. 30

(7) No person so convicted of any one of the offences mentioned in the preceding subsections shall be liable to be afterwards prosecuted for any other of the said offences, upon the same facts." 40

The Spirits and Spirit Compound Ordinance Ch.32
No. 9.

"Section 112(1) It shall be lawful for any Officer to arrest without warrant any person having in his possession or under his control in any manner or in any place any spirits which the Officer has reasonable cause to suspect have been unlawfully made.

(2) If any Officer shall have reasonable cause to suspect that any such spirits are kept, stored or lodged in any house, building, yard or place, then in such case it shall be lawful for such Officer by day or night to break the doors or any part of such house, building, yard or place, and to enter into and search such house, building, yard or place where he shall know or suspect that any such spirits are kept, stored, or lodged, and proceed as aforesaid.

(3) The Officer shall bring any person found having in his possession or under his control in any manner or in any place any spirits suspect to have been unlawfully made as aforesaid, and also any such spirits recovered, before a Magistrate as soon as possible. And if such person, within a reasonable time to be assigned by the Magistrate, shall fail to satisfy the Magistrate that such spirits have been lawfully made or imported, and that the proper duties have been paid thereon, such person shall incur a penalty of nine hundred and sixty dollars, and all such spirits, and all packages containing, and all animals, vehicles, vessels and boats made use of in conveying such spirits shall be forfeited; and if any such person having been found by any Officer in possession of any such spirits, or having any such spirits under his control in any manner or in any place, shall let fall or throw away the same, or cause such spirits to be destroyed or thrown away, and shall fail to satisfy the Magistrate as aforesaid, then, in addition to the penalty aforesaid he shall incur a further penalty of two hundred and forty dollars.

9. Their Lordships considered the wording of section 36 of the Summary Offences Ordinance Ch.4 No. 17: in the context of the other sections brought together under the title "Stolen or unlawfully obtained goods"; in the light of the legislative history of the provisions of this Ordinance; and, in the light of English, Trinidadian and other West Indian Authorities. They said:

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P.23 1.38-
P.24 1.1

"It appears, then, that the statute has made specific provision for entry in cases where private premises including vessels are to be searched and, in each instance, the authority to search is conditional upon the existence of reasonable cause (or ground) for suspecting the presence thereon of something actually stolen or unlawfully obtained. In making such provision the legislature must be taken to have recognized that at common law the privacy of a man's premises is inviolable and that nobody can lawfully enter them except by invitation or leave or in pursuance of some legal authority."

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P.25 11.10-
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"If, as we think, the legislature recognized that it was necessary to clothe the police with power to enter vessels without a warrant as provided by s.38 and to authorize the issue of a search warrant in the circumstances and subject to the conditions specified in s.37, it cannot have contemplated when enacting s.36 that a constable would be scouting around or prying upon private premises his entry upon which was without the authority of a warrant. And still less do we think that the legislature could possibly have contemplated that a constable would be unlawfully and consequently a trespasser, upon premises and yet have authority to arrest without warrant any person having in his possession or under his control in such premises any thing which he merely suspects, however reasonably, to have been stolen or unlawfully obtained. It seems to us, therefore, that s.36 must have been intended to have effect elsewhere than upon private premises, in which event it would fall, in our opinion, to be interpreted in a restricted sense as referable only to goods 'in transitu' or under control in any manner in a street or other public place."

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10. Their Lordships then examined section 79 of the Summary Convictions (Offences) Ordinance, No. 5 of the 1902 consolidation of the laws of Trinidad and Tobago, which they said was an early predecessor of section 36. Section 79 made it:

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"lawful for any constable to apprehend and detain any person carrying or conveying any article whatsoever which such constable may have reasonable cause to suspect to be stolen or to contain any stolen goods, and to take such person and such article, and goods, if any"

before a justice. Their Lordships examining this section, stated that:

10 "The phrase used was 'carrying or conveying' without any reference to place, thereby obviously limiting the range of the constable's authority to the apprehension and detention of persons in transit (admittedly, therefore, in the street or other public place) with goods reasonably suspected to be stolen." P.27 1.21

They noted that this provision was repealed and re-enacted by the Summary Convictions (Offences) (Amendment) Ordinance No. 35 of 1914 section 8, P.27 11.30-41

20 which section added goods suspected to have been unlawfully obtained to goods suspected to have been stolen. Further, that there was another amendment in 1916. (The Summary Convictions (Offences) (Amendment) Ordinance No. 43 P.27 1.48- P.28 1.5

of 1916) by section 14 of which "conveying" was expanded to: "having in his possession or conveying in any manner". They were of opinion that the purpose of this amendment P.28 1.10

30 was to bring the provisions of the Ordinance into line with corresponding English legislation, i.e. The Metropolitan Police Courts Act 1839, s.24. They referred to Hadley v Perks (1866) L.R. 1 QB Cas.444 in which "having in his possession or conveying" in the English Act was construed as P.28 1.27- P.32 1.22

40 meaning having in possession in a street or other public place, and they said that, had there not been a later change in the wording of the statute (in 1921) they would have overruled Lawrence v Ojoe (1917) 3 Trinidad L.R. 28. This was a case decided by the Full Court in Trinidad in 1917 on section 14 of the 1916 Ordinance when it was held that Hadley v Perks did not apply to the Trinidad legislation; further, that a constable had not acted unlawfully in arresting without warrant a person on whose premises he had found goods he suspected to have been stolen. They then remarked that the present section 36 had come into existence in 1921, when the Summary Convictions (Offences) Ordinance No. 31 of that year was passed. Although the 1921 Ordinance changed the earlier language it was expressed by its long title to be: P.28 1.27- P.32 1.22

50 "an Ordinance to consolidate the law relating to

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offences punishable on summary conviction."

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11. Their Lordships then considered the Trinidad authorities on the interpretation of section 36, all of which were decisions of the Full Court. They dealt with Dennis v. Sylvester (1923) 5 Trinidad L.R. 56, where goods had been seized on the premises of a man who was thereupon charged under section 36. They observed that although the Full Court had tacitly assumed "any place" to mean "any place, public or private", the decision of the Court quashing the conviction had been given on quite other grounds. They then turned to Dehaney v Carrington (1924) 5 Trinidad L.R. 121 where a search warrant had been obtained and goods apparently named in the warrant had been seized. These goods had been deposited with the owner of the premises by Dehaney, against whom complaint was made under section 36, on the ground that the goods were under his control. Their Lordships distinguished this case, in which the conviction was upheld, on the ground that the sole point there was whether the police were entitled to telescope the procedure prescribed by the Ordinance, and summon Dehaney under section 36 without calling first upon the custodian of the goods to account for his possession under section 37. Finally their Lordships referred to Roberts v Barban (1930) 6 Trinidad L.R. 113. In this case the respondent was found to have, on his premises, goods which the police reasonably suspected to have been stolen. There was no search warrant. The Respondent was charged under section 36 and the argument was advanced by him on the appeal that there ought not to have been a conviction because there was no search warrant. Walton Ag.C.J. in rejecting this argument, had said:

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P.33

"This section is so clear that one wonders at the objection taken - words could not be wider".

Their Lordships overruled this case.

12. Their Lordships then referred to, and distinguished, various other West Indian authorities of persuasive force, and continued:

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"In our judgment, then, when due

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P.41 1.2

10 consideration is given (a) to the express provision in s.37 for the issue of a warrant to authorise the police to enter and search private premises and to seize there, not only such stolen or unlawfully obtained goods, if any be found, as are specified in the warrant, but also any thing found in the course of such search which there may be reasonable cause to suspect to have been stolen or unlawfully
20 obtained; (b) to the express authority granted by s.38 to enter on board any vessel upon a public waterway and, subject as therein provided, to search it and seize any thing found in the course of such search which may be reasonably suspected to have been stolen or unlawfully obtained; (c) to the absence from s.36 of any right or power of entry or of any means or
30 provision for obtaining a right or power of entry, upon any private premises whatever; and (d) to the inviolability at common law of the privacy of premises upon which the public have no right, invitation or licence to enter: it is not competent to construe s.36 as an intendment by the legislature that the police may enter as trespassers upon any private premises or, assuming they have entered any such
40 premises by any proper authority or licence, that they may exercise thereon any of the exceptional powers, not otherwise exercisable by them, with which the section specially invests them. From this it follows that, if they enter any private premises by the authority of a search warrant issued under s. 5 of the Indictable Offences (Preliminary Enquiry) Ordinance, they can seize and carry therefrom only such things, if found, as are specified in the warrant as the objects of their search, and that the only statutory powers to seize on search and require an account to be given to a magistrate for any thing for which they were not specifically authorised to search are those conferred by ss.37 and 38 of the Summary Offences Ordinance."

50 13. It is respectfully submitted that the Court of Appeal erred in construing "any place" as "any private place" and that the plain meaning of the words ought to attach to the former expression. It is submitted that section 36 creates an offence, which is that of failing to give a

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satisfactory account by what means the party charged came into possession or took control of goods which a constable has reasonable grounds for suspecting to have been stolen or unlawfully obtained. That upon such a charge it is necessary for the prosecution to establish by evidence possession or control, and reasonable belief, and that all other matters, including the manner in which such evidence has been obtained (viz whether by lawful or by unlawful means) and the place where they were obtained are irrelevant, unless, and then only so far as they tend to establish the existence of either or both of these two ingredients of the offence. It is respectfully submitted that the Court of Appeal erroneously assumed the only alternative to entry upon private premises by statutory permission (direct or indirect) was unlawful entry. In so assuming they overlooked that a constable might be on private premises without statutory permission but nonetheless lawfully, e.g. by invitation. If the Court of Appeal is correct, then a constable cannot exercise the powers conferred by section 36 if he is invited onto premises by the owner thereof, who suspects another person lawfully thereon to have stolen goods in his possession and who communicates that suspicion to the constable. It is respectfully submitted that an interpretation of the section which will cause these results is irrational and is not to be regarded as the intention of the Legislature, as gathered from the plain words of the section.

14. It is further submitted respectfully, that the decision in the case of Lawrence v Ojoe was correct, and that, for the reasons therein given the principle in Hadley v Perks did not apply to the legislation in Trinidad. Further, that if this principle did apply, and Lawrence v Ojoe was wrongly decided, then a change in the legislation was deliberately introduced in 1921 to give statutory effect to that decision. It is, as is respectfully submitted, significant that the then Chief Justice dissented from the majority view in Lawrence v Ojoe; also that the legislative change in Trinidad followed a legislative change with the same effect in British Guiana which in turn followed the decision in British Guiana in Martin v Calder (1914)

L.R.B.G. 12 holding that the Hadley v Perks principle applied to the then British Guiana legislation. It is submitted further that there is significance in the manner in which the wording of the 1921 legislation followed the words used by Blackburn J. in Hadley v. Perks, when he said:

10 "Now, taken by themselves alone, the words "having in his possession" of course include the case of a person having in his possession, at any time in any manner or in any place."

It is submitted that the change was effected to lay at rest doubts that may have existed by reason of Martin v Calder and the view of the Chief Justice in Lawrence v Ojoe.

20 15. It is respectfully submitted that although the Court of Appeal were correct in looking at section 36 in the light of the provisions of sections 37 and 38, they erred in drawing the conclusion that the absence of power of entry in section 36 meant that goods seized upon an unlawful entry could not found a complaint under that section. It is respectfully submitted that the correct view of section 36 is that given by Walton Ag. C.J. in Roberts v Barban (which case, it is submitted, was rightly decided) when he said:

30 "There can be no doubt now that the present wording of s.36(1) authorises a constable to arrest under the given circumstances in 'any place', and the Magistrate should have heard and determined the case before him. But a note of warning, I think, is necessary lest constables may think from this decision that they have an unlimited power of arrest. Where the suspected goods are in any house, store, yard or other like place, the constable should obtain a search warrant under s.37(1).
40 S.36(1) does not authorise an entry. If he enters without a search warrant without permission he may be treated as a trespasser, and should he find no suspected goods an action would probably lie against him and the damages may be heavy. If he does find such goods and secures a conviction, the damages would no doubt be very light. He

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should exercise careful discretion; in some cases it may be in the interests of justice to act promptly and take the risk, in other cases it may be better and safer to arm himself with a search warrant."

It is respectfully submitted that where the facts of a case suggest the commission of an offence under both sections 36 and 37, then it is open to the prosecution to proceed under either section, and that in such circumstances the differences between the sections is procedural only, in that in the case of proceedings under section 37 it is essential for the prosecution to prove the existence of a search warrant whereas under section 36 it is not necessary to prove a search warrant. It is submitted that this view, which accords with practice in Trinidad and other countries with similar jurisdictions, is supported by authority and is in accordance with the sense of Section 73 of the Summary Courts Ordinance, Ch. 3 No. 4. It is further submitted that this view is supported by the language used in the Spirits and Spirit Compounds Ordinance Ch. 32 No. 9 (which became law in 1934, that is, after the decision in Roberts v Barban). In the case of this Ordinance section 112(1) follows the language of section 36(1). Section 112(2) is a provision which is missing from section 36 and it renders lawful that which might be unlawful if done without warrant under section 36. It is submitted that this illustrates the intention of the Legislature in regard to section 36, which is that a constable may enter seize and arrest on private premises and that the safeguard for the individual against an abuse of power lies in the civil remedy available to him if the entry is effected without a warrant.

16. The Appellant respectfully submits that the decision of the Court of Appeal was erroneous and ought to be reversed, and this appeal ought to be allowed, for the following (amongst other)

R E A S O N S

1. BECAUSE on a true interpretation of section 36 of the Summary Offences

Ordinance, Ch.4. No.17 the expression "any place" therein appearing is not limited to "any private place" but bears its plain face meaning and thus embraces any place whether public or private.

2. BECAUSE the case of Roberts v Barban was correctly decided and ought to have been followed.

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3. BECAUSE the absence, in a constable, of power to enter premises does not mean that goods seized upon such premises after unlawful entry thereon by a constable cannot be used to found a charge under section 36 of the Summary Offences Ordinance.

GERALD DAVIES.

No. 32 of 1965

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
OF TRINIDAD AND TOBAGO

B E T W E E N:-

PETER FELIX - Corporal

Appellant

-and-

IVAN THOMAS

Respondent

CASE FOR THE APPELLANT

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