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J. J. G. and
13, 1966

IN THE PRIVY COUNCIL

No. 32 of 1965

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N:

PETER FELIX (CORPORAL) Appellant

- and -

IVAN THOMAS Respondent

C A S E FOR THE RESPONDENT

RECORD

10 1. This is an Appeal by Special Leave, granted upon the 14th day of April 1965, from a Judgment of the Court of Appeal of Trinidad and Tobago (Wooding C.J., McShine and Hyatali JJ.) dated the 30th day of June 1964, whereby the said Court dismissed an Appeal by the Appellant against a decision of the learned Magistrate sitting at Princes Town upon the 22nd day of April, 1963.

20 2. The principal question raised in the Appeal is whether the words "any place" occurring in Section 36 of the Summary Offences Ordinance Ch.4 No. 17 of Trinidad and Tobago are upon a true construction to be interpreted as only referring to a public place or whether they should be given a literal meaning or any other meaning.

30 3. Upon the 7th day of October 1962 the Appellant, who is a Corporal of Police, obtained from a Justice of the Peace a warrant to search the premises of the Respondent having sworn a oath that there was reasonable ground for believing that there were on these premises certain articles which were specified in the warrant which would afford evidence of the commission of an offence of Shop Breaking and Larceny. The warrant authorized a search for "the said things" and that "the same" be brought to a Justice. p.44

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RECORD

- pp. 4-5 4. It appears from the evidence that the warrant was executed upon the same day that it was issued which was a Sunday. A party of Police arrived at the Respondent's premises at 7.45 a.m. The Respondent was not present. The Police were permitted to enter by one Althea Burkett who was the Respondent's common law wife. None of the articles mentioned in the warrant was found but the Police did find a tin containing a quantity of medicines (including drugs) and 4 Hypodermic needles of which they took possession. 10

- p. 44 5. The said warrant was endorsed by the Appellant as having been executed and particulars were given of the articles found and taken away. The terms of the said warrant and endorsement are Annexure 1 hereto, and it would appear from the heading that the warrant was purported to be issued pursuant to Section 37 of the Summary Offences Ordinance Ch.4, No.17.

- pp. 1-2 6. It also appears that upon the same day, namely Sunday the 7th day of October 1962, the Appellant laid an information or complaint before a Justice of the Peace (not the Justice who had issued the warrant) as a result of which the Respondent and Althea Burkett were charged with an offence against Section 36 of the Summary Offences Ordinance. At no time during the subsequent proceedings does it appear to have been suggested that this was a mistake for Section 37. The said Section 36, which unlike Section 37 contains no reference to a search warrant, is Annexure 2 heretotogether with other relevant legislative provisions. 20

- pp. 4-9 7. The hearing commenced before the learned Magistrate on the 8th day of October 1962. The only facts in dispute appear to be the precise place where the tin was found and whether it was in a dirty condition. As regards the Respondent, there was no dispute that he was seen by the Police in the road about fifteen minutes after the conclusion of the search and that he denied all knowledge of the tin and its contents. The Appellant concluded his evidence-in-chief with the following observations:- 30

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grounds for suspicion are
 (1) The place where these things were found.

2.

- (2) The type of medicines, and
- (3) Also the types of persons in whose possession they were found.

The defendants are not medical students and have no licence to sell these items."

10 8. The hearing was continued and concluded upon the 7th day of January, 1963 and the learned Magistrate gave his decision on the 22nd day of April 1963 in which he dismissed the case against both Defendants and ordered the drugs to be forfeited. pp. 9-13 p. 14

9. Upon the 24th day of April 1963 the Appellant lodged a Notice of Appeal which contained two grounds:- p. 15

- (1) "The the said Magistrate, refused to make a conviction or order.
- (2) That the decision is unreasonable and cannot be supported having regard to the evidence."

20 10. The learned Magistrate gave the reasons for his decision upon the 4th day of February 1964 which can be summarized as follows:- pp. 16-18

- (1) That as regards Althea Burkett although she admitted knowledge of the presence of the tin, the prosecution had not established her possession of the articles.
- (2) The denial of the Respondent was accepted as reasonable and probable.
- 30 (3) There being no evidence of any information that the articles found had been lost or stolen, the alleged suspicions of the Police were not reasonably founded.
- (4) The articles might have been lying in the house for several years.
- (5) No evidence was given that the Defendants were selling or that a licence was required either to sell or keep the articles.

RECORD

The Respondent respectfully submits that the learned Magistrate was entitled upon the evidence to make such findings and that they should not be disturbed.

pp.19-41

11. The Judgment of the Court of Appeal was delivered on the 30th day of June 1964. The Court found (inter alia) that despite the caption referring to Section 37 of the Summary Offences Act the Search Warrant because it specified the goods and cash must have been issued under Section 5 of the Indictable Offences (Preliminary Enquiry) Ordinance Ch.4 No.1 which only authorizes seizure of the articles specified and does not impose any liability to account for anything found as a result of the search. By contrast, Section 37

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p. 19

authorizes the issue of a search warrant where information had been given on oath "that there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged in any premises." The Court held, it is submitted correctly, that the words "anything stolen or unlawfully obtained" must be construed as meaning actually stolen or unlawfully obtained and not merely reasonably suspected to be. Where a warrant under Section 37 is in the process of execution it is provided by Section 37 (3) that a Constable may take from the premises "any other thing which there shall be reasonable cause to suspect to have been stolen or unlawfully obtained."

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p. 21

pp.21-22

12. The Court then gave an additional reason for holding that the Appellant must have appreciated that the warrant was issued under Section 5 of the Indictable Offences (Preliminary Enquiry) Ordinance namely that he pursued the matter by resorting to the powers exercisable under Section 36 of the Summary Offences Act and not Section 37. The Court then proceeded to inquire, although the matter had not been raised by either of the parties to the

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Appeal, whether the acts of the Appellant were intra vires that section. The Respondent respectfully submits that whether the Appellant proceeded under Section 36 or Section 37 the learned Magistrate was equally entitled to come to the conclusions that he did and that such conclusions would also have provided an answer to a charge brought under Section 37 as the liability to account

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to the satisfaction of the Magistrate is the same in substance in Section 36(2) and in Section 37(5).

10 13. In considering the powers conferred upon constables by the said Section 36 the Court of Appeal, as they were entitled to do, considered the section as a whole and also compared and contrasted it with other sections of the Ordinance and previous similar enactments now repealed. Having examined the matter in this way the Court held that the words "any place" must bear the meaning of "any public place". The Respondent respectfully submits that this interpretation is correct in particular in that it accords with the marginal note of Section 36(1) namely "Arrest of person conveying goods" and also with the provisions of Section 36(3) relating to the escape of an arrested person or such person letting fall or throwing away anything the possession or control of which has led to his arrest. In addition, a contrary interpretation would appear to render redundant Section 37 and also Section 38 which relates to the powers of constables to board vessels.

pp.23-26
p.27 - p.32
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20 14. The Respondent therefore submits that the Court of Appeal were correct in over-ruling authorities to the contrary particularly Roberts v. Barban [1930] 6 Trinidad L.R. 113 which had put a wide general construction upon the words "any place" so as to include a private residence. The Court of Appeal therefore concluded that the Appellant had acted ultra vires and accordingly dismissed the appeal.

30 15. Against the Judgment of the Court of Appeal of Trinidad and Tobago, this Appeal to Her Majesty in Council is now preferred.

The Respondent humbly submits that this Appeal should be dismissed with costs for the following among other

R E A S O N S

40 (1) THAT the learned Magistrate arrived at conclusions of fact to which he was entitled to come upon the evidence and which should not be disturbed.

RECORD

- (2) THAT the Court of Appeal was correct in interpreting the words "any place" in the Summary Offences Ordinance Ch.4 No.17 Section 36 as being restricted to "any public place" and concluding that the Appellant had acted ultra vires his authority as a constable in seizing the goods which were the subject of the charge and in arresting the Respondent and another person.

JOHN A. BAKER

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ANNEXURE 1

P.F. 1
/s/ Roy Jananan
Mag. T & T.

TRINIDAD AND TOBAGO

Search Warrant

(Ch. 4 No. 17 Sec. 37)

COUNTY OF NARIVA

To 4282 Cpl. Felix

- 10 Whereas it appears, on the oath of Peter Felix Cpl. No. 4282 of Rio Claro P/Station that there is reasonable ground for believing that a pair of gold bracelets, a grip, white horse whiskey, gellignite and cash which will afford evidence as to the commission of an indictable offence namely Shop Breaking and Larceny under Section 27 (a) of Ch. 4 No. 11. are concealed in the premises of Ivan Thomas at Lengua Road, P/Town.
- 20 This is therefore to authorise and require you to enter into the premises at anytime and to search for the said things, and to bring the same before me or some other Justice.

Dated this 7th day of October 1962

Signed C. Nobbee

Justice

- 30 Executed by me the undersigned at Lengua Road Princes Town on Sunday 7th October, 1962 at 7.45 a.m. in the presence of Althea Burkett and the following articles found underneath the bed in the bedroom and seized, 28 Phials Pethidine Hydrochloride, 4 bots. Silcomplex, 3 phials terramycin, 2 phials distilled water, 2 phials Neuro B12, 1 phial Lam B Tol Forte, 4 Surgical Hypodermic needles and 20 phials Adrenaline Injections.

Signed: P. Felix 4282 Cpl.

ANNEXURE 2

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY)
ORDINANCE CHAPTER 4, No.1

Section 5

- "(1) Any Magistrate" which by section 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) 10
- (b) anything which there is reasonable ground for believing will afford evidence as to the commission of (an indictable) offence
- (c)
"may at any time issue a warrant under his hand authorising any constable to search such buildingor 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. 20
- (2) Every such warrant may be issued and executed at any time, and may be issued and executed on a Sunday.
- (3) When any such thing is seized and brought before any Magistrate, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the enquiry; and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on the trial. If no person is committed, the Magistrate shall direct such thing to be restored to the person from whom it was taken, unless he is authorised or required by law to dispose of it otherwise". 30 40

ANNEXURE 2 (Continued)

SUMMARY OFFENCES ORDINANCE - CHAPTER 4 No. 17

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.

10 (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.

20 (3) If any person liable to arrest under the provisions of sub-section (1) of this section escapes from any constable attempting to arrest him, or lets fall or throws away any such things 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 sub-section (2) of this section".

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Section 37

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"(3) Ifanything 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, if 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.

ANNEXURE 2 - (Continued)

(4) (a) The constable shall apprehend and bring before a Magistrate the person or persons in whose house..... anything as aforesaid shall be found, and also any other person found in such house....., 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.

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(b) If the constable fails or is, for any reason whatsoever, unable to arrest any such person as is hereinbefore mentioned, it shall be lawful for an Magistrate or Justice to issue his warrant for the arrest of any such person, or a summons requiring him to appear before a Magistrate at a time and place to be mentioned in the said summons".

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