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GN9.6.2

Judgment 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

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Solicitors for the
Appellant.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the
Respondent.

i.

IN THE PRIVY COUNCIL

No. 32 of 1965

ON APPEAL

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RECORD OF PROCEEDINGS

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UNIVERSITY OF LONDON
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1.

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

RECORD OF PROCEEDINGS

No. 1

INFORMATION

2396/62

In the
Princes Town
Magistrates
Court

No. 1

Information

7th October
1962

TRINIDAD AND TOBAGO

COMPLAINT WITHOUT OATH

(Part 1, 3rd Schedule, Ch. 3 No. 4)

Princes Town Police Station

m.c. 5/10 (1962)

County of Victoria

Peter Felix Corporal
of Police No. 4282

Complainant

versus

(1) Althea Burkett
(2) Ivan Thomas

Defendant

10

20

In the
Princes Town
Magistrates
Court

No. 1

Information
(continued)

7th October
1962

Peter Felix Corporal of Police No. 4282
of Rio Clara Police Station
comes before me the undersigned Magistrate for the
said District, and complains against (1) Althea
Burkett (2) Ivan Thomas of (1) (11) Langua Road
Princes Town

for that the said Althea Burkett and Ivan Thomas on
Sunday 7th October 1962 at Langua Princes Town in
the County of Victoria upon the execution of a
search warrant was found in possession of articles
namely, 28 phials of Pethidine Hydrochloride, 4
bottles of Silcomplex, 3 Phials of Terramycin, 2
Phials of distilled water, 2 Phials of Neuro B 12,
1 Phial of Lam -B- Tal Forte, 4 Surgical Hypodermic
needles, 20 Phials of Adrenaline Injections which
No. 4282 Corporal Felix has reasonable cause to
suspect to have been stolen or unlawfully obtained,
Contrary to Section 36 of the Summary Offences
Ordinance Ch. 4 No. 17.

and the said Peter Felix Cpl. No. 4282
prays that the said Althea Burkett
Ivan Thomas

may be charged to answer the said complaint.

Peter Felix Corporal of Police No.4282
Complainant

7/10/62

Sgd. G. Singh
JUSTICE

Before me this 8th day of October, 1962
at Princes Town Magistrate's Court.

No. 2

Endorsement
on Information

7th October
1962

Received on 8.10.62
Exhibit p.S. 2. (pan
with medicines)

Sgd. P. Felix Cpl.
8.10.62

Bond entered
8/10/62

No. 2

ENDORSEMENT ON INFORMATION

Endorsement at back of
information.
8.10.62.

P.H. Rd. 22.10.62 B.W.S.
\$150.00 each

But if not bailed then
Rd. 15.10.62 on bail fixed.

30

Defendant's to cite witnesses.

22.10.62

Rd. 12.11.62 Fresh Summons Deft. wits.

12.11.62.

Rd. 26.11.62 C.B. F.S. defts wits.

26.11.62

Rd. 10.12.62 C.B. F.S. Nos. 2 & 4 defts wits

10.12.62

Rd. 7.1.63 F.S. Nos. 2 & 4 defts wits.

7.1.63

P.H. rd. 11.2.63 for decision

11.2.63

Further Rd. 11/3/63 for decision

11/3/63

Further Rd. 8/4/63 C.B. for decision

8.4.63

Rd. 22/4/63 for decision.

Mr. Shah for defendants.

Dismissed against both defendants.

24.4.63

Notice of appeal filed by Complainant
against both defendants.

Bond W/S in \$120.00 Asst. Alfred James
accepted as surety.

Sgd. A.J.K.
C.P.

Cite for deft. I. Thomas, 10/x/62

(1) William Bushe, Lengua Road Princes Town

(2) Ramjohn Ali, Perry Young Road, P/Town -
 $\frac{1}{4}$ mile from Petit Cafe Cemetery on the Perry
Young Road, also about 300 feet from the
Junction of Moruga Road and Perry Young
Road.

(3) Ramnanan, 3rd. Co. Br. Rd. P. Town.

(4) Guy Tickrasingh. Lengua Road - $\frac{1}{2}$ mile
South of the defendant on Lengua Road
4 w/s/ issued on 14.11.62

F.S. 27/11/62

F.S. 11.12.62 2 W.S.

In the
Princes Town
Magistrates
Court

No. 2

Endorsement
on Information
(continued)

7th October
1962

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In the
Princes Town
Magistrates
Court

PROSECUTION EVIDENCE

No. 3

EVIDENCE OF PETER FELIX

No. 3

Peter Felix
Examination

Princes Town Magistrate's Court
on 8.10.62
Before Mr. Roy Jananan,
Magistrate Trinidad and Tobago.

Court sits at 9 a.m.

A.S.P. James prosecutes for the police.
Case No. 2396. The Charge is read to the
defendants. 10

Peter Felix sworn states

I am a Corporal of Police No. 4282 stationed
at Rio Claro Police Station. I am the Complainant
in this case. At 7.45 a.m. on Sunday 7th October
1962, another policeman and I went to the defen-
dants' home. There I saw Althea Burkett. I told
her I was in possession of a warrant to search the
premises of Ivan Thomas. I asked her if Ivan
Thomas lived there. She said yes and that she is 20
the reputed wife of Thomas and living with him for
three years. She said Thomas was not home and he
was out taking a trim. I read the warrant to her
and told her what I was searching for. This is
the warrant. (Warrant put in and marked P.F. 1).
After reading the warrant I searched the premises.
The other police assisted in the search. I went
into the bedroom and under the bed I found this
tin. It was closed. Althea Burkett was present.
In her presence I opened the tin and found a 30
quantity of medicines - 3 boxes containing
Pethidine Hydrochloride, 4 boxes containing
Silcomplex, 1 box Lam-B-Tol Forte, 2 phials of
distilled water, 4 surgical Hypodermic needles,
3 phials of Terramycin, 20 phials of Adrenaline
injections, 2 phials of Neuro B. 12. All these were
found inside the pan. There were other packages
but they were empty. I asked Althea Burkett to
account for the presence of these medicines and
she replied, "Since I came here to live with 40
Ivan Thomas 3 years ago I saw these things
there. I asked him about them and he replied,
'Leave them there. Mind your own business'.

In the
Princes Town
Magistrates
Court

No. 3

Peter Felix
Examination
(continued)

I took possession of these medicines and a statement was recorded from the defendant I didn't record the statement. About 15 minutes later I saw Ivan Thomas. He was shown these very items and told by Inspector Browne (I was present) that these were found inside his home and he requested him (defendant) to account for their presence there. The defendant replied, "I know nothing at all about those things". A statement was also recorded from him. About 5 minutes later the defendant, Ivan Thomas, on his way to the Police Station with the police met his wife, the other defendant, Althea Burkett, and in his presence and hearing she was asked by Inspector Browne to account for these items which were found inside their home where Ivan Thomas also lives and she replied, "I told you already from the time I came to live here with Ivan Thomas those things were there. I asked him about them and he told me to mind my own business. To this Ivan Thomas replied, "She know what she saying. She say a lil' to much." The defendants were both taken to the Police Station and charged with this offence. My grounds for suspicion are

- (1) The place where these things were found,
- (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.

(At this stage, Mr. Shah, Barrister at law, appears for the defendants to ask for bail and not to defend the matter. He asks the Court to fix bail for the defendants and to assign a reasonable time in which the defendants may give an explanation.

CROSS EXAMINED BY ALTHEA BURKETT:

Cross-
examination by
Althea Burkett

I found the pan in your bedroom under the bed. I didn't find it under the house. Cpl. Lawrence was present in our party. He didn't find the pan under the house.

In the
Princes Town
Magistrates
Court

No. 3

CROSS EXAMINED IVAN THOMAS:

When I came at your home you were not there. I met you on the road in company with other persons. Inspector Browne spoke to you. He told you he found the pan inside your bedroom. He didn't say the pan was found under the house.

Peter Felix
Cross-
examination
by Respondent

(To the Court.) It is a wooden house with two bedrooms. It is a little more than 5 feet from the ground. The nearest home to that house is about 1/4 mile away as far as my memory goes. The defendants' home is an old house, not too very old. The doors and windows are not too very sound. From the outside you can actually peep through the door and windows. I didn't check to see if there were bolts on the door. It might be possible that the doors and windows could be easily opened from the outside. I remember only one stair case which was at the back of the house and which leads to the kitchen and then to the hall and then to the bedrooms. This warrant was taken out to search the defendants' house on the grounds that a pair of gold bracelets and gelignite and whisky had been stolen. None of these things were found.

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Re-
examination

RE EXAMINED: The tin is in the same condition as I found it. I didn't dust it. There were other policemen there when I found it. Inspector Browne and Sgt. Lawrence were there when the items were found. (Pan with exhibits put in together and marked P.S. 2.).

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No. 4

No. 4

Anthony Lewis

EVIDENCE OF ANTHONY LEWIS

Examination

ANTHONY LEWIS SWORN STATES:

I am a Corporal of Police No. 4455. I was one in a party that went to the defendant's home. I assisted in the execution of a warrant at the defendants' home. I was present when a tin was found under the bed containing drugs. Inspector Browne was the senior person in the party. He spoke to Althea Burkett. I took a statement from her. I didn't use any threats or promises. I read it over to her. She

40

appeared to understand it. She signed it. Inspector Brown witnessed the statement. (Statement read, put in and marked A.L.1). Some time after I saw Ivan Thomas. Inspector Brown spoke to him. He made a statement. I took it down in writing. I read it over to him. He appeared to understand it. He signed it. I held out no promises or threats to him. Inspector Browne witnessed it. (Statement read, put in and marked A.L.2.).

In the
Princes Town
Magistrates
Court

No. 4

Anthony Lewis

Examination
(continued)

NOT CROSS EXAMINED DEFENDANT NO. 1 Althea Burkett:

CROSS EXAMINED NO. 2 DEFENDANT. IVAN THOMAS:

Cross-
examination
by Respondent

I went to your house. I know you very well, I met you $\frac{1}{4}$ mile away from your home in company with other persons. The Inspector spoke to me.

CASE FOR PROSECUTION CLOSED.

Court rises at 12 noon for lunch.

Court resumes at 1 p.m.

DEFENCE EVIDENCE

No. 5

No. 5

EVIDENCE OF ALTHEA BURKETT

Althea Burkett

ALTHEA BURKETT sworn states:

Examination

I live Lengua Road. I am a housewife. Ivan Thomas is my reputed husband. I heard the evidence of Cpl. Felix. I saw him produce in evidence a tin from which he took out certain medicines. I didn't have that tin under my bed in a bedroom. The tin was under the house. I don't know for how long. I don't know who put it there. I don't know the contents of the tin. It is not true that the tin was found inside my house. The police asked me if I saw Ivan Thomas used things from the tin I said no.

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In the
Princes Town
Magistrates
Court

No. 5

Althea Burkett

Cross-
examination

CROSS EXAMINED BY THE PROSECUTOR:

I was inside when the police found the tin. There were other tins like that under the house. I saw the tin in Sgt. Lawrence's hand. I was then in the yard. I didn't see where he took it from. Some place under my house has dust and other places don't have dust. The tin was very dirty yesterday. It is now clean. I didn't give Cpl. Lewis a statement. They asked me to sign a paper. I don't know what was written in the paper. They didn't read it over to me. I asked my husband about the medicine when I saw it under the house. It is a few months now.

10

(To Court. I asked him about the medicine in the tin P.F.2.)

(Continuing.) I opened the box and it smelled like medicine. I am not a drug student. My husband is not a drug student.

NOT CROSS EXAMINED BY IVAN THOMAS.

No. 6

Ivan Thomas

Examination

No. 6

EVIDENCE OF IVAN THOMAS

IVAN THOMAS sworn states:

My name is Ivan Thomas. I live Lengua Road. I am a proprietor. I own lands and animals and a house. Althea Burkett is my reputed wife. I heard the police say a tin containing medicines was found inside my house. The first time I saw this tin is when the police showed me the tin. I never saw it under the house. There are many other pans like that under the house. I gave the police a statement and signed it.

30

Cross-
examination
by Appellant

CROSS EXAMINED BY THE PROSECUTOR:

The very first time I saw the contents in the pan was when the police showed me it. It is not true that my wife showed me the medicine a few months ago. (The witness is shown the Pethidine Hydrochloride packet.) I can't read

it. I can spell it but I can't pronounce it. The woman (Althea Burkett) is living with me approximately two years.

(To the Court. My wife don't work anywhere. She does home work. She works in my field. She is not working for anybody else. My wife don't work for anybody outside.)

BY LEAVE TO THE PROSECUTOR:

10 I was in company with many persons when the police met me. I don't know their names. I was taking a trim at Ramnanan. Other persons came while I was taking a trim. I know some of the persons; Ramjohn Ali; Gree - an Indianman; John Thomas; William Bush. There were others but I don't know their names. They met me trimming.

(To Court: I want to call witnesses)

Althea Burkett states: I want to call witnesses.

20 Remanded to 22.10.62 Bail with a surety in \$150.00 each. If not bailed remanded to 15.10.62 on bail fixed. Defendant to cite witnesses.

In the
Princes Town
Magistrates
Court

No. 6
Ivan Thomas
Cross-
examination
by Appellant
(continued)

No. 7

PROCEEDINGS

Princes Town Magistrate's Court,
On 7/1/63
Before Mr. Roy Jananan,
Mag. T. & T.

No. 7

Proceedings
7/1/63

COURT SITS AT 9 a.m.

INSPECTOR SAUNDERS PROSECUTES FOR THE POLICE.

CASE NO. 2396 (Part Heard) resumed.

30 At this stage Mr. M. Shah, Barrister at law, appears for the defendants and states: "I am asking the Court for leave to recall the complainant in the witness box for cross examination principally on the evidence he has given which only a medical man or a

In the
Princes Town
Magistrates
Court

No. 7

Proceedings
(continued)
7/1/63

chemist is capable of giving and he (the complainant) had done so merely by reading labels in Court. It is on this aspect of evidence I would like cross examine in order to show that he has no knowledge of evidence he has deposed in this respect. I make the application because soon after the defendants were arrested they were brought before the Court while they were still in custody and they had to conduct the case without having an opportunity of obtaining legal aid or advice. I consider the nature of articles alleged to be found vital to the question of reasonable suspicion".

10

APPLICATION REFUSED:

No. 8

William Bush

Examination

No. 8

EVIDENCE OF WILLIAM BUSH

WILLIAM BUSH sworn states:

I live Lengua Road about $\frac{1}{4}$ mile from the defendant. I remember Sunday 7th October, 1962. I had occasion to go to the home of the defendants that day. I got there around 6.30 a.m. I went to Ivan Thomas. I went to him to get some wages. I didn't meet him home. I met the female defendant, his madam, home. She told me where he was. While there I didn't see anyone else come. From there I went to Ramnanan's house which is about $\frac{1}{4}$ mile away. There I saw Ivan Thomas. I spoke to him. While there I saw the police van arrive with about 6 policemen. They came to Ramnanan's premises. The policemen had a pan with them. One of the policemen said to Ivan Thomas, "Your name is Ivan Thomas?" He said, "Yes". The policeman said, "We found this pan in your premises. You know the pan?". Ivan Thomas said "No." The policeman took out something and showed him (Ivan Thomas) saying, "You know this?" Ivan Thomas said, "This is the first time in my life I saw this. The police took away Ivan Thomas. When the policeman had told Ivan Thomas "We found this pan in your premises," Ivan said, "What part of my premises?". The policeman said, "Outside." Ivan Thomas said, "Remember you said you found this pan outside my premises."

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CROSS EXAMINED BY A.S.P. JAMES:

In the
Princes Town
Magistrates
Court

No. 8

William Bush

Cross-
examination
by Appellant

10 I saw about 6 policemen. I know two Mr.
Lawrence and I can't remember the other. Two were
in police clothes and the remainder in civilian.
The Inspector spoke to Ivan Thomas. At the time I
didn't know he was an Inspector. It was after I
found out that he was an Inspector. I heard he was
an Inspector in front of the Police Station. I was
in front of the Police Station about 3.30 I know
Ivan Thomas was locked up and I came to see him.
They took out something from a pan, something like
a little pack. The police spoke to the defendant
in Ramnanan's place. I now say the police spoke
to the defendant in the road facing Ramnanan's
house. When I said Ramnanan's place, I meant in
front of Ramnanan's house. Ramnanan, myself and
Ivan Thomas and a little boy named Ramjohn Ali
were present when the police came. They were at
the side of the road. Everything took place in
20 front of Ramnanan's place. I was there all around
7 a.m. I had no time piece, that is only a rough
average.

No. 9

No. 9

EVIDENCE OF RAMNANAN

Ramnanan

Examination

RAMNANAN sworn states:

30 I am a barber, I live Lengua Road. I remember
7.10.62. I know the defendant. I saw him that day.
I live on Lengua Branch Road, 3rd. Company road. I
remember the day the policeman came and met Ivan
Thomas at my place. He had come for a trim in the
morning: When the police arrived I was not finished
trimming yet. The police called Ivan Thomas. He
went to them. I heard them speak to him. There
were about 6 to 7 policemen. The police jeep stopped
on the road in front of my place. The police came in
and asked if Ramnanan lived there I said "Yes". He
said, "Who is Ramnanan?" I said "I". He told me "All
right, you go aside." Then he called Thomas. He
said to the defendant, "Your name is Ivan Thomas?"
40 Ivan said, "Yes". He said "I got something in your
premises. I went on a search this morning." The
defendant said, "What it is you find on my premises?"

In the
Princes Town
Magistrates
Court

No. 9

Ramnanan

Examination
(continued)

The policeman said "Come and see if you know these articles. "I didn't see all the articles but I saw little small boxes when the police took them out of the pan. Ivan said, "When you say you found something on my premises what you mean? Which part you find it?" The policeman said, "Outside." After the conversation between the police and the defendant, the police took Ivan in the jeep. They said they wanted a statement. They took Ivan Thomas away. Ivan was about 1½ hrs. by me before Police came.

10

CROSS EXAMINED BY THE PROSECUTOR:

Cross-
examination

I was trimming the defendant by the side of the road. The police jeep pulled up right there. The police spoke to the defendant at the back of the jeep. The Inspector asked the defendant "You know we is police?" Besides Ivan Thomas, the policeman and me, there were other police men there. I heard the Inspector ask everyone to move and let him speak to Thomas. They kept talking till everybody started moving up, moving up, and then they took a statement.

20

Re-
examination

RE-EXAMINED:

Though the Inspector said to move away I still kept within hearing distance.

No. 10

No. 10

Ramkissoon
Singh

EVIDENCE OF RAMKISSOON SINGH

Examination

RAMKISSOON SINGH sworn states

I have got a nick name. They also call me Guy Tickka Singh. I live Lengua Road about ½ mile from Ivan Thomas. I remember Sunday 7.10.62. I rent land. I went about 6 a.m. to my land to cut grass. That land is bounded with Ivan Thomas' land, near his home. While I was in my land I observed the police jeep come and stop in front of Ivan Thomas' house. The policemen came out of the jeep and went into the defendant's yard. They spoke to the female defendant. A few policemen went inside the house and a few stayed in the yard. I saw Sgt. Lawrence left the yard

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and go to the police jeep, took up a baking powder pan and went back in the yard; and the police men who had gone inside the house came back outside and all of them were together. Sgt. Lawrence had the pan in his hand. Then they left and went in the jeep and went in the direction of Ramnanan's house. The policemen who went in the defendant's house went in with no pan in their hands, and the police who came out of the defendant's house came out with no pan. I saw only one pan that day.

In the
Princes Town
Magistrates
Court

No.10

Ramkissoon
Singh

Examination
(continued)

Cross-
examination
by Appellant

CROSS EXAMINED BY THE PROSECUTOR:

When the policemen came out of the jeep some went inside the house and some remained outside. Sgt. Lawrence then went back in the jeep and took a pan from inside the jeep. That was the first time I saw the pan. I didn't hear anything which he said. I saw all of them bunch up together. All this happened in front of the defendant's home. This happened all around 6.30 a.m.

/s/ Roy Janan
Magistrate, Trinidad and Tobago
County Victoria, Princes Town.

Defendants are remanded to 11.2.63 for decision.

No. 11

No. 11

DECISION

Decision

Princes Town Magistrate's Court, on
22.4.63.

22nd April
1963

Before Mr. Roy Jananan, Mag. T. & T.

Court sits at 9 a.m.

Sgt. Philips prosecutes for the police.
Case No. 2396/62. Mr. M. Shah for defendants. No.1
defendant reported pregnant & ill. Later she
appears. Case Dismissed against both defendants.
Drugs to be forfeited.

Sgd. Roy Jananan,
Magistrate, T & T.
22.4.63.

In the
Princes Town
Magistrates
Court

ORDER OF DISMISSAL OF COMPLAINT OR INFORMATION

TRINIDAD AND TOBAGO

Magistrates - 15

No.12

2396/62

Order of
Dismissal
of Complaint
or Information

Order of Dismissal of Complaint or Information.

(Part IV, Schedule III, Ch. 3 No. 4.)

22nd April
1963

Princes Town Magistrate's Court, County of
Victoria.

Peter Felix Cpl. No. 4282 Complainant,

versus

10

(1) Althea Burkett	} of Lengua Road, Princes Town	Defendants
(2) Ivan Thomas		

Peter Felix Cpl. No. 4282 having made a complaint that (1) Althea Burkett (2) Ivan Thomas (hereinafter called the defendants) on Sunday 7th October 1962, at Lengua, Princes Town in the County of Victoria upon the execution of a search warrant was found in possession of articles namely, 28 phials of Pethidine Hydrochloride, 4 bottles of Silcomplex, 3 phials of Terramycin, 2 phials of distilled water, 2 phials of Neuro B12, 1 phial of Lam -B- Tol/Forte, 4 Surgical Hypodermic needles, 20 phials of Adrenaline injections which No. 4282 Cpl. Felix has reasonable cause to suspect to have been stolen or unlawfully obtained, Contrary to Section 36 of the Summary Offences Ordinance Ch.4 No.17. And both the said parties having appeared before the said Court in order that it should hear and determine the said complaint whereupon the matter of the said complaint being by the said Court duly considered (it manifestly appears to the said Court that the said complaint is not proved and) the Court therefore dismisses the same.

20

30

Dated this 22nd day of April 1963.

Sgd. Roy Jananan,
Magistrate,
T & T at Princes Town.

40

15.

No. 13

NOTICE WHERE COURT REFUSES
TO MAKE CONVICTION OR ORDER

In the
Princes Town
Magistrates
Court

TRINIDAD AND TOBAGO

Magistrates - 47
Case No. 2396/62

No.13

Form of Notice where Court refuses to make a
Conviction or Order.

Notice where
Court refuses
to make
Conviction
or Order

(Sec. 129 - Ch. 3 No. 4. as repealed and replaced
by Sec. 8. of Ordinance 18 of 1957).

24th April
1963

10 To A.J. Karamath, Esq.,
Clerk of the Peace, Magistrate's Court
P/Town Court.

TAKE NOTICE that, I, Peter Felix Cpl. of Police,
aggrieved by the refusal of Roy Jananan, Esq.,
Magistrate, County of Victoria, to make any
conviction or order upon a certain complaint or
information bearing date of the 8th day of October
1962 wherein

IVAN THOMAS was charged with

20 (set out substance of complaint or information)
for that he on Sunday 7th. October 1962, was
found in possession of articles, namely, 28 phials
of Pethidine Hydrochloride, 4 bottles of Silcomplex,
3 phials of Terramycin, 2 phials of distilled water,
2 phials of Neuro B12, 1 phial of Lam B Tol Forte, 4
Surgical Hypodermic needles, 20 phials of Adrenaline
Injection which No. 4282 Cpl. Felix has reasonable
cause to suspect to have been stolen or unlawfully
obtained, Contrary to Ch.4. No.17 Sec. 36.
30 do appeal against such refusal to convict on the
grounds that (1) 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.

Dated this 24th day of April 1963

Before me,

A.J. Karamath
Clerk of the Peace,
Princes Town.

Sgd. P. Felix 4282 Cpl.
Appellant.

40 24/4/63

In the
Princes Town
Magistrates
Court

No. 14

MAGISTRATE'S REASONS

No.14

CPL. PETER FELIX APPELLANT/COMPLAINANT

VERSUS

Magistrate's
Reasons

(1) ALTHEA BURKETT

4th February
1964

(2) IVAN THOMAS RESPONDENTS/DEFENDANTS

Appellants were charged with being found in possession, on the execution of a search warrant on 7th October, 1962, of 28 Phials of Pethidine Hydrochloride, 4 bottles of Silcomplex, 3 Phials of Terramycin, 2 phials of distilled water, 2 phials of Neuro B 12, 1 Phial of Lam-B- Tal Forte, 4 Surgical Hypodermic needles, 20 Phials of Adrenalin Injections which the appellant/complainant had reasonable cause to suspect to have been stolen or unlawfully obtained. 10

Contrary to Section 36 of the Summary Offences Ordinance, Ch. 4 No. 17.

The facts found were as follows:

On Sunday 7th October, 1962, at 7.45 a.m. appellant and another Policeman went to Lengua Road, Princes Town to make a search of the premises of Ivan Thomas. They were armed with a Search Warrant (P.F. 1) to search for a pair of gold bracelets, a grip with white horse whisky, gelignite and cash which were suspected to have been concealed on the said premises. Ivan Thomas was not on the premises. Althea Burkett, reputed wife of Thomas was present however, and the search was carried out by the Police in her presence. The articles enumerated in the Search Warrant were not found. 20 30

In the bedroom of the respondents, under a bed, the Policemen found a tin containing the various items of medicine and surgical instruments mentioned above. On being asked to account for their presence Althea Burkett said 'Since I came to live with Ivan Thomas three years ago I saw these things there. I asked him about them and

he replied 'Leave them there, mind your own business'. A statement was taken from Burkett in writing (A.L.1) in which she gave an explanation to the same effect.

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Princes Town
Magistrates
Court

Some time later the said morning the Police encountered Ivan Thomas. Thomas was shown the articles and told by the Police that they had been found inside his house. Thomas' account was that he knew nothing about them. In a written statement (A.L.2) Thomas again denied all knowledge of the articles. Both respondents were then taken to the Police Station and charged.

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Reasons
(continued)

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The grounds for suspicion given by appellant were (1) The place where the articles were found (2) The type of medicines and (3) The types of persons in whose possession they were found. The respondents were not Medical students and had no licence to sell those items.

Respondents were called upon by the Court to account. Burkett said that the tin was not found under her bed, but that the Police had found it under her house. She did not know how long it was there nor could she tell who had placed it there.

Ivan Thomas emphatically persisted in his denial of any knowledge of the medicines. The first time he had seen the tin, he said, was when the Police had showed it to him.

I dismissed the complaint for the following reasons:

(1) In the case of Althea Burkett the prosecution had not established her possession of the articles. Burkett had admitted knowledge of the presence of the tin of medicines, but had denied possession or control of it. It is true that in her evidence on oath she had lied when she said that the tin had been found under the house, but this did not assist in fixing possession in her.

(2) With respect to Ivan Thomas, he had consistently denied any knowledge of the presence of the tin of medicines in his house. When confronted by the Police, he immediately disclaimed any knowledge of it. Thomas was not the sole occupant of the house and the tin had been found in his absence. In the circumstances, I considered his explanation reasonable and

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(continued)

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probable. I was not satisfied that the prosecution had established possession in him.

(3) The Police witnesses had led no evidence that they had had any information that medicines of the type found on the premises had been reported lost or stolen. Consequently it appeared that their suspicions were not reasonably founded.

(4) It is conceivable that there could be a wide variety of circumstances under which medicines of the type and quantity found in this case could be in the possession of persons without necessarily being stolen or unlawfully obtained. These articles were found inside the house of the respondents and might have been lying there for several years - and there was no evidence to the contrary. In such circumstances I was of opinion that the respondents could not be held guilty of an unlawful possession. 10

(5) There was no evidence that the respondents were persons, or belonged to a class of persons who were prohibited by law from having in their possession the types and quantities of medicines such as were found on their premises. 20

(6) There was no evidence that respondents were selling these medicines. There was no evidence that a licence was required to sell or to keep these medicines.

In the result I held that the suspicions of the appellant/complainant were unreasonable, and further, that the prosecution had also failed to establish possession in the respondents. 30

/s/ Roy Jananan
Senior Magistrate, County Victoria,
San Fernando.

4th February, 1964.

No. 15
JUDGMENT

In the Court
of Appeal

TRINIDAD AND TOBAGO

No. 15

IN THE COURT OF APPEAL

Judgment

No.74 of 1964

30th June,
1964.

Between

PETER FELIX, Cpl. Appellant

- and -

ALTHEA BURKETT and
IVAN THOMAS Respondents

10 Before: The Honourable Sir Hugh Wooding, C.J.
" " Mr. Justice A.H. McShine, J.A.
" " Mr. Justice I.E. Hyatali, J.A.

Mr. C.A. Kelsick, Q.C. for appellant

30th June, 1964.

J U D G M E N T

20 On Sunday 7th October 1962, the appellant
obtained a warrant to search certain premises at
Lengua Road in Princes Town. It described them as
the premises of the respondent Ivan Thomas. If
fact, they were owned by him and occupied by both
the respondents who lived together as man and
wife. "Ex facie", the warrant was obtained by
the appellant proving on oath to the satisfaction
of a justice that there was reasonable ground for
believing that certain specified goods and cash
were concealed on the premises and would afford
evidence as to the commission of an indictable
offence, namely, shopbreaking and larceny.
30 Accordingly, although captioned "Search Warrant
(Ch.4 No.17, Sec.27)", it is manifest that it was
issued under the authority of Section 5 of the
Indictable Offences (Preliminary Enquiry)
Ordinance, Ch.4 No.1, which so far as material
reads as follows:

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"(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)

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

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(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".

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It will be observed that nothing in the section empowers the constable entrusted with the execution of the warrant to seize and take before a magistrate anything whatever save the specified objects of the authorised search. Nor does it impose any liability upon anyone to account for anything found upon any such search.

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In this respect it falls very far short of the extensive powers granted when a search warrant is issued under Section 37(1) of the Summary Offences Ordinance, Ch.4 No.17. Such a warrant may be obtained only if information is given on oath to a magistrate or justice that there is reasonable cause for suspecting that anything stolen or unlawfully obtained, by which must be meant "actually (and not merely reasonably suspected to be) stolen or unlawfully obtained", is concealed or lodged in any premises. But on any search so authorised it is provided by Sub-sections (3) and (4) of Section 37 that -

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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, 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.

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

(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 a 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".

Returning to the facts, it would seem that, despite the caption to the warrant which he obtained, the appellant appreciated that it was really issued under the authority of Section 5 of the Indictable Offences (Preliminary Enquiry) Ordinance. We say so because, having found none of the goods or cash mentioned therein, and having

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seized the altogether different goods which he found and which he alleged he had reasonable cause to suspect to have been stolen or unlawfully obtained, he resorted to the powers exercisable, not under Section 37 but, under Section 36 of the Summary Offences Ordinance when he arrested and took the respondents before a magistrate to give an account by what lawful means they came by the same. That this is so appears clearly from the formal complaint drawn up and laid against the respondents. We therefore raise the question, although not canvassed by the parties themselves, whether in so doing he acted 'intra' or 'ultra vires'.

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Section 36 should be quoted in full. It reads as follows:

"(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.

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(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 within the manner laid down in subsection (2) of this section".

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The language of subsection (1) is certainly sweeping in its generality, but the whole tenor of subsection (3) suggests that the section contemplates a manual or physical possession of the objects of suspicion, or a control of them in some manner, in a street or other public place. Is section 36, then, to be interpreted as having reference to goods 'in transitu' or under control in a public place only or to goods anywhere generally?

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To answer this question it is necessary in the first instance to examine the context in which section 36 appears. It is one of five sections under the rubric "Stolen or unlawfully obtained goods". It is followed by section 37 which authorises, and defines the powers ancillary upon the issue of a warrant to search "any house, store, yard, or other place, or on any land whether enclosed or not, or in any vessel" (that is to say, therefore, on any private premises whatsoever or wheresoever) in which there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged. Next, there is section 38 which empowers a constable to enter on board any vessel (which again would be private premises) in any harbour, bay, roadstead or river and, if during such reasonable time as he may be there he has reasonable ground to suspect that there is on board anything stolen or unlawfully obtained, to search the vessel and, upon discovery of any thing 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 give an account. The remaining provisions of this group of sections have to do with consequential powers and, therefore, for present purposes may be ignored. It appears, then, that the statute has been 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 recognised that in 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

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of some legal authority. In this regard we would refer to the observations of Atkin L.J. in Great Central Railway Co. v. Bates (1921) 3 K.B. 578 where a policeman claimed damages for injuries he sustained through falling into an unfenced sawpit inside a warehouse which he entered to see if everything was right as he had observed one of its doors open after dark. Atkin L.J. said - see pp. 581/2:

".....it appears to me that he had no right to enter these premises at all, and I think that counsel.....has been a little hard put to it to defend the right of entry in these circumstances. It can hardly be suggested that the right exists in respect of a dwellinghouse. If it did, the privacy of an Englishman's dwellinghouse would be most materially curtailed. In view of the limitations that have been laid down over and over again as to the right of a constable to force a door, and as to the limitations of his powers unless he has a warrant, or in cases of felony, it appears to me quite impossible to suggest, merely because a constable may suspect there is something wrong, that he has a right to enter a dwellinghouse either by opening a door or by entering an open door or an open window and go into the house. It is true that a reasonable householder would not as a rule object if the matter was done "bona fide" and no nuisance was caused. But the question is whether the constable has the right to enter. 10 20 30

This is a matter of very considerable importance, because the case has been put on the analogy of a person having a right as a matter of public duty to enter into premises, and we know that such powers and privileges are occasionally given to persons who are not constables. It appears to be very important that it should be established that nobody has a right to enter premises except strictly in accordance with authority". 40

To the same effect is Davis v. Lisle (1936) 2 A.E.R. 213 in which it was reaffirmed that the

right of the police to enter premises without the authority of a warrant is extremely limited and that, generally speaking, no constable is entitled to enter or remain on private premises except on the invitation or with the permission, express or implied, of the occupier. Hence, no doubt, the statutory authority specifically given by section 38 to a constable to enter on board a vessel without being empowered by a search warrant so to do.

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10 If, as we think, the legislature recognised that it was necessary to clothe the police with power to enter vessels without a warrant as provided by section 38 and to authorise the issue of a search warrant in the circumstances and subject to the conditions specified in section 37, it cannot have contemplated when enacting section 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
20 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
30 obtained. It seems to us, therefore, that section 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.

In approaching the matter as we have done, we have been guided by the advice of the Privy Council in Canada Sugar Refining Co. v. Reg. (1898) A.C. 736, at p. 741, that -

40 "Every clause of a statute should be construed with reference to the context and to other clauses of the Act so as, so far as possible, to make a consistent enactment of the whole statute."

We have also adopted, thus far in part, the view of Sankey J. in Attorney-General v. Brown (1920)

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1 K.B. 773. at pp. 791/2. that in construing an
Act it is -

"legitimate to consider (1) the state of the law at the time the Act of Parliament was passed, and the changes it was passed to effect; (2) the sections and structure of the Act of Parliament as a whole: see Stradling v. Morgan, Plowd. 199. where it is said,

'The judges of the law in all times past have so far pursued the intent of the makers of statutes that they have expounded Acts which were general in words to be but particular were the intent was particular..... The sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend but to some things,which expositions have always been founded upon the intent of the Legislature, which they have collected sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion';

and see also Heydon's Case (1584) 3 Rep. 7 and Hawkins v. Gathercole (1855) 6 De. G., M. & G. 1, per Turner L.J., where he says:

'In determining the question before us, we have therefore to consider not merely the words of this Act of Parliament, but the intent of the Legislature, to be collected from the cause and necessity of the Act being made, from a comparison of its several parts, and from foreign (meaning extraneous) circumstances, so far as they can justly be considered to throw light upon the subject' "

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10 Having already sought to collect the intent of the legislature by reference to the context in which Section 36 appears, let us now consider whether any and what assistance may be had from examining its history. Its earliest predecessor was Section 55 of the Summary Convictions (Offences) Ordinance, No. 6 of 1868, subsequently incorporated as Section 79 of Ordinance No. 5 of the 1902 Consolidation of the Laws of Trinidad and Tobago. That section made it "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 to show by what lawful means he came to be in possession thereof. Three features should be noticed. First, the section referred in no way to unlawfully obtained goods as distinguished from stolen goods; secondly, 20 the phrase it 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; and, thirdly, it recognised that any such goods might be carried in a container or howsoever otherwise not exposedly.

30 Its first descendant was Section 8 of the Summary Convictions (Offences) (Amendment) Ordinance, No. 35 of 1914, which repealed and replaced the earlier provision. It was thereby made "lawful for a constable to arrest without warrant any person conveying in any manner anything which the constable has reasonable cause to suspect to have been stolen or unlawfully obtained". Again, three features should be noticed: (1) it brought for the first time within the section goods reasonably suspected to have been unlawfully obtained; (2) it retained beyond a doubt the limitation of the constable's authority to the arrest without warrant of persons in transit in the street or other public place with "suspect" goods; and (3) it used the comprehensive phrase "conveying in any manner", still without reference to place, in lieu of the rather more prolix language previously employed. But as shortly as 40

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two years later another amending Ordinance was enacted, the Summary Convictions (Offences) (Amendment) Ordinance, No.43 of 1916, by Section 14 of which the phrase was expanded to read "having in his possession or conveying in any manner". What "cause or necessity" was there for this change of language? And what was intended to be achieved thereby?

We have failed to uncover any necessity for so speedy a change. But we think that the 1916 Ordinance may have been prompted by a desire to bring its provisions more closely in line with corresponding statutes then in force in England. And the English counterpart of Section 8 of Ordinance No.35 of 1914 was Section 24 of the Metropolitan Police Courts Act, 1839, which provided as follows:

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"Every person who shall be brought before any of the said magistrates charged with having in his possession or conveying in any manner anything which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such magistrate how he came by the same, shall be deemed guilty of a misdemeanour

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The expression "having in his possession or conveying" as used in that section had been construed in Hadley v. Perks 1866) L.R. 1 Q.B. Cas. 444 as meaning precisely the same as "having or conveying" in Section 66 of the Metropolitan Police Act, 1839, which empowered any constable to stop, search and detain "any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained" and to which Section 24 of the Metropolitan Police Courts Act was held to be supplemental. And the meaning ascribed thereto was, in the words of Blackburn J.,

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"the legislature intended to confer this summary power only in the case where a person was 'having and conveying' in the sense of 'having' ejusdem generis with 'conveying', being in the streets or roads with them, or carrying them about, or perhaps loitering in the streets in such a

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way that it might be assumed he was carrying them, and probably in the case of his being taken into custody when he has brought them to a pawnbroker, or to a person to whom he offers them for sale."

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In his concurring judgment, Shee J. said that it seemed to him that Section 66 of the Metropolitan Police Act -

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10 "applies only to offences, or to the suspicion of offences, out of doors - to street offences, cases in which circumstances occur in the street, which give reason to suspect that property has been stolen or unlawfully obtained".

Likewise, Lush J. stated that the section -

20 "supposes that a person is found in a public street with property upon him under such circumstances that there is good reason for suspecting that the property has been improperly come by - stolen; and that if he were not apprehended at once he might get out of the way and evade detection altogether. Power is therefore given to stop such a person, without any proof or knowledge on the part of the constable that the property is stolen, but merely on suspicion".

30 In the circumstances, we hold the view that the change of language in the new Section 14 of Ordinance No.43 of 1916 to "having in his possession or conveying in any manner" afforded the police no larger powers than they had been given previously. Accordingly, in our opinion, that section provided no authority enabling them to arrest without warrant any person having in his possession in any house, store or other private premises any thing which might reasonably be suspected to have been stolen or unlawfully obtained. And it is instructive, we think, that power in that behalf was conferred expressly, and 40 for the first time in this country - but it is to be observed it has never to this day been conferred in England - by the very next section of the selfsame Ordinance. The provisions of its Section 15 went far beyond those which it displaced.

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Therefore, if a constable obtained a warrant to search any house, store or other private premises upon his swearing to an information that there was reasonable cause for suspecting that any thing actually stolen or unlawfully obtained was concealed or lodged therein, he could seize and take away, if found, only the thing specified in the warrant as having been stolen or unlawfully obtained. But by the new Section 15 he was empowered to seize and take away also any other thing found in the course of such search which there might be reasonable cause to suspect to have been stolen or unlawfully obtained. Further, the section authorised him to apprehend and bring before a magistrate the person in whose premises any thing so seized had been concealed or lodged, and any other person found in such premises reasonably suspected to have been privy to the concealment or lodging, to account by what lawful means such thing came to be in his possession. In our view, this extension of power granted by the new Section 15 confirms and puts beyond doubt that the new Section 14, like its predecessors, was restricted in its scope to the having in possession or conveying of "suspect" goods in a street or other public place.

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The view we hold is, we concede, in conflict with the decision of the majority of the Full Court in Lawrence v. Ojoe (1917) 3 T'ad L.R. 28, but we prefer the dissenting opinion of Lucie-Smith C.J. which, while recognising that Hadley v. Perks "was mainly decided on the ground that Section 24 of 2 & 3 Vict. c.71 is supplemental only to Section 66 of 2 & 3 Vict. c.47", nevertheless considered that -

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"the reasoning in the judgment seemsto show that having in his possession or conveying in Section 14 must be taken to apply to persons having in his possession in any place other than in a house, yard, etc., or any land, etc., inasmuch as the next section 16" (sic) "proceeds to deal with goods suspected to be concealed in a house, etc. If it is suspected that goods stolen or unlawfully obtained, not suspected to be stolen or unlawfully obtained, are concealed or lodged in any

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house, etc., or any land, etc. a search warrant must be obtained. There must be an information on oath that goods have been actually stolen".

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Five years later, the Summary Convictions (Offences) Ordinance, No.31 of 1921, was passed, its long title expressly declaring it to be "an Ordinance to consolidate the law relating to offences punishable on summary conviction". But its section 36 did not reproduce 'ipsissima verba' Section 14 of the Ordinance No.43 of 1916 which it replaced. Its subsection (1) provided, as it has continued to do ever since, that -

"It shall be lawful for a 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".

20

What, then, results from the change of language?

The presumption is that a consolidating statute reproduces and does not alter the pre-existing law. As Lord Watson speaking for the Privy Council explained in Administrator-General of Bengal v. Prem Lall Mullick (1895) L.R. 22 I.A. 107, at p. 116:

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"The very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating Act is passed".

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Whether in saying "to bring it down to date" Lord Watson was intending to imply that the object of consolidation is to collect the statutory law as interpreted by judicial decisions, however right or wrong they might later be found to be, is by no means clear. But that would appear to be the view propounded in Craies on Statute Law (6th Edition), at p. 361, where the learned author says:

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"Consolidation is the reduction into systematic form of the whole of the statute law relating to a given subject, as illustrated or explained by judicial decisions".

We need not pursue that aspect of the matter however. The presumption as to the effect of a consolidating statute is no more than a presumption. It may therefore be ousted if the language of the consolidating enactment is clearly different: see Gilbert v. Gilbert (1928) P.L., per Scrutton L.J. at p.8. Nonetheless, a change of language is not conclusive of a change of intent: see Grey v. I.R.C. (1960) A.C.1., per Lord Simonds at p.13. In the final analysis, therefore, the question resolves itself into one of interpretation. Our review of the history of the enactment, though perhaps of interest, has consequently not assisted us significantly. Had there been no change of language, we should have overruled the majority decision in Lawrence v. Ojoe. But since there has been a change of language, we must examine its form and context and interpret it accordingly. 10 20

What authority is there, then on the interpretation of Section 36 as it is at present? In Dennis v. Sylvester (1923) 5 T'ad L.R. 56. Lucie-Smith C.J. and Thomas J. appear to have assumed, without having specifically to decide, that the section embraces every case of a person having in his possession or under his control in any manner or in any place whatever, public or private, any thing which a constable has reasonable cause to suspect to have been stolen or unlawfully obtained. But, in the view of Russell J., it seemed - 30

"justifiable, in applying Section 36, to limit its effect to persons in acutal physical possession of goods suspected to be stolen, or having them under their control in the hands of carriers, and agents and servants with duties analogous to those of carriers. In any case, the line must be drawn somewhere" 40

The case, however, is authority only for the proposition enunciated by the majority judgments

of Lucie-Smith C.J. and Thomas J. that the section is inapplicable to goods known, and not merely suspected, to have been stolen and, accordingly, that when the police know and can identify the goods to be stolen goods a charge of larceny or receiving should be laid and proceedings under Section 36 either should not be taken at all or, if commenced, should be discontinued altogether.

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10 Another case in which the true construction of Section 36 was canvassed is Dehaney v. Carrington (1924) 5 T'dad L.R. 121. In that case, the Full Court disagreed with the view expressed by Russell J. in Dennis v. Sylvester and held that there was no warrant for the limitation by which he sought to restrict the scope of Section 36. In the opinion of that court, "control" was not limited to physical control; in their view, it was "a matter of fact whether the goods are under the persons' control in any manner or in any place"; and, in their interpretation, the phrase "in any manner or in any place" should be construed literally and, therefore, as meaning in any manner whatsoever or in any place wheresoever. But, it should be observed, police action began in Dehaney's case with the application by them for, and the issue to them of, a search warrant under Section 37. They were therefore empowered to take before a magistrate any goods found in the course of their search which there was reasonable cause to suspect to have been stolen or unlawfully obtained, and they could do so whether or not they also found any of the specified objects of their authorised search. The goods in respect of which Dehaney was called upon, but failed, to give an account to the satisfaction of the magistrate by what lawful means he came by them were accordingly lawfully seized and removed from where they had been found and were properly before the court. The one question remaining in issue was whether Dehaney was rightly charged. We have examined the original proceedings and find therefrom that the search authorised and carried out was of the shop of a tailor to whom Dehaney had given the cloth, which constituted the "suspect" goods, to be made up into a jacket and vest; but, instead of proceeding against the tailor as Section 37(4) required the police to do and then leaving it to the magistrate

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to trace possession of the cloth to Dehaney and on so doing to call upon him to account as prescribed by Section 39, the police bypassed the procedure laid down in the statute and proceeded by summons directly against him (he being then in custody on another charge), thereby asserting they were entitled to do so, under Section 36. By its interpretation of "control" the Full Court was able to support that view.

Dehaney's case is distinguishable from the present in that there the police were authorised by the warrant which they obtained to seize and carry before a magistrate the cloth which became the subject of the charge, and that Dehaney was undoubtedly a person not only already in custody, but also liable to be called upon to give to the magistrate an account by what lawful means he came to be in possession of it. In effect, therefore, the sole point in that case was whether the police were entitled to telescope the procedure prescribed by the Ordinance and thereby to summon Dehaney before the magistrate, without first bringing the tailor, to account to him for his possession of the cloth. That point does not arise here, so it is unnecessary for us to express an opinion upon it.

The third and last case in which there was debate upon the true construction of Section 36 is Roberts v. Barban (1930 6 T'dad L.R. 113). The question in issue here appears to have been specifically raised there. The Full Court refused to cut down on the generality of the language, Walton Ag. C.J. saying that "the section is so clear that one wonders at the objection taken - words could not be wider". He nevertheless felt impelled to sound a note of warning "lest constables may think.....that they have an unlimited power of arrest". In so doing, he pointed out that -

"Where the suspected goods are in any house, store, yard or other like place, the constable should obtain a search warrant under Section 37(1) Section 36(1) does not authorise an entry. If he enters without a search warrant and without permission he may be treated as a trespasser, and should he

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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".

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10 Much the same comment was made by Lucie-Smith J., the other member of the court, although he was even more spirited in his refusal "to hold that a search warrant is a condition precedent to a constable's right of arrest without warrant under Section 36". Both were of the view that Section 36 was, so to speak, complete in itself and that there is nothing which could properly be invoked to narrow what to them was plainly and unquestionably its very wide scope. We cannot agree. We think there is.

20 Before proceeding, we would digress to consider here such authority as has come to our notice from other jurisdictions with similar enactments. We were referred, first, to the judgment of the Jamaica Court of Appeal in Obadiah Parkinson v. R. (1960) 2 W.I.R. 454 where the facts were similar to those in the case now before us. The charge was however laid under Section 8 of the Unlawful Possession of Property Law, which corresponds with Section 37 of our Summary Offences Ordinance, but the prosecution omitted to tender in evidence the search warrant authorising the police to enter the appellant's premises. It was held that the omission was fatal since the production of the warrant was 30 "something of substance going to the foundation of the charge". But the court went on to add that it was -

40 "at a loss to know why in the circumstance of this particular case the charge was not laid under Section 5 which the decision in R. v. Walters recognises as being procedurally correct. Detective Corporal Dyer was not looking for brassieres or haberdashery but for articles of hardware, which presumably were so specified in the warrant. Had he found the articles stated in the warrant, then the charge would have been correctly laid under Section 8. The search warrant undoubtedly gave legality to the entry of the appellant's premises but what excited the constable's

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suspicion regarding the haberdashery was the appellant's statement that he had obtained them from men working at the wharf. Surely therefore the appellant was arrested as a 'suspected person' as defined by Section 2 under the powers of arrest given by Section 5".

Our first observation is that the passage quoted was 'obiter' and is therefore not of the same persuasive authority as the reason for the court's decision. Further, although we must not presume to interpret Section 8(3) of the Jamaica Unlawful Possession of Property Law, we are by no means persuaded that the phrase therein used - "anything which the constable has reasonable cause to suspect to have been stolen or unlawfully obtained" - excludes things other than are specified in a search warrant issued under the authority of, or that the charge against Walters was incorrectly laid under, Section 8 of the Law. Further, we find it difficult to appreciate the relevance of the legality of the entry upon the appellant's premises, which were private premises, if "any place" as used in the definition of "suspected persons" in Section 2 means any place wheresoever. But it would seem that the thought that proceedings should have been taken under Section 5 (which, so far as material, appears to be in substance the same as our Section 36) had its roots in the earlier decision in R. v. Walters (1948) 5 J.L.R. 110. Looking at that case, however, we find that no question was raised as to the validity of proceeding under Section 2 of the (since repealed) Unlawful Possession of Goods Law, which for present purposes corresponded with Section 5 of the existing Unlawful Possession of Property Law. Altogether different contentions were canvassed. This may have been due to the dictum baldly expressed in R. v. Beckford (1934) 2 J.L.R. 18, at p.20, that whereas Section 24 of the English Metropolitan Police Courts Act, 1839, "is confined to things being conveyed in the streets", Section 2 of the repealed Law, which was 'ipsissimis verbis' Section 36 of our Ordinance, "refers to possession or control 'in any place' ". As in that case the person arrested had been carrying the suspect goods in a bag on a public road, the

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dictum was unnecessary for the decision and may well have been uttered 'per incuriam'. In any event, however, not being a reasoned pronouncement, it is of little persuasive authority.

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10 We have been unable to discover any authority on the subject in British Guiana. Section 96 of their Summary Convictions Offences Ordinance, No.17 of 1893, was in terms corresponding with Section 14 of our Ordinance No.43 of 1916 under which the charge in Lawrence v. Ojoe was successfully brought. But their Full Court decided in Martin v. Calder (1914) L.R.B.G. 12 that the section did not authorise the calling upon any person to account for having in his premises goods which were reasonably suspected to have been stolen or unlawfully obtained. Like Lucie-Smith C.J. in his dissenting judgment in Lawrence v. Ojoe, they held that the difference in language, such as it was, between the local and English enactments was insufficient to oust the application of the rule in Hadley v. Perks and therefore that the section applied only to the possession or conveying in the street or other public place of suspect goods. Subsequently, the British Guiana enactment was by Ordinance No.12 of 1915 amended to read, very much like our Section 36, as follows:

30 "Every person who is charged before the Court with having in his possession or under his control in any manner or in any place anything which is reasonably suspected of having been stolen or unlawfully obtained and who does not give an account to the satisfaction of the Court as to how he came by the same, shall be liable to a penalty"

40 We have endeavoured, but without success, to discover any case interpreting the amended section in any relevant particular. Apparently there is none. But we would nevertheless refer to Harris v. Braithwaite (1951) L.R.B.G. 24 the facts in which were very similar to those in the instant case. No point was taken there such as is under present consideration, but the Full Court adverted to the duty of constables, entrusted with warrants to search, to refrain from asking questions of the

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occupiers of the premises thereby authorised to be searched "except such as are necessary to enable them to carry out their search". The decision however turned on the insufficiency of proof of possession in the appellant, the magistrate having previously dismissed the charge against his reputed wife upon a finding that the possession was in him and not in her. The court warned, and we would echo the warning that -

"It is importantto bear in mind that it is only in connection with the nature or quality, whether innocent or criminal, of the accused's possession that the onus shifts and that there is no shifting of the onus in respect of the fact of possession".

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Accordingly, in the case under present appeal, the Solicitor-General quite properly conceded that the charge against the respondent Althea Burkett had been rightly dismissed as the evidence of possession in her was wholly inadequate. So far as she is concerned, therefore, this appeal must in any event fail.

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We return now from the digression. We had reached the view that the history of the enactment had not assisted significantly and that it is our duty to interpret it having due regard to its language and context. We accept the advice of the Privy Council in Attorney-General for Ontario v. Mercer (1883) 8 App. Cas. 767, at p.778, that -

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"It is a sound maxim of the law that every word ought, 'prima facie', to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context".

The literal interpretation is one which this court has previously adopted as right and proper for the construction of a statutory provision: see Augustus Hope Cpl. v. Lugier Smith (No. 478 of 1963). But we must also bear in mind the exception from the 'prima facie' rule which was recognised and approved since 1560 in Stradling v. Morgan (supra) and subsequently in a long line

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of authority. We have already referred to the judgment of Sankey J. in Attorney-General v. Brown, and we think it appropriate to cite here two further pronouncements. In Cox v. Hakes (1890) 15 App. Cas. 506, at p. 529, Lord Herschell said:

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"It cannot, I think, be denied that, for the purpose of construing any enactment, it is right to look not only at the provision immediately under construction, but at any others found in connection with it, which may throw light upon it, and afford an indication that general words employed in it were not intended to be applied without some limitation".

And Viscount Haldane L.C. in Watney, Combe, Reid & Co. Ltd. v. Berners (1915) A.C. 885, at p.891, spoke to the same effect as follows:

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"The intention" (of Parliament) "must be found in the language finally adopted in the statutes under construction, and in that language alone. No doubt general words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the Legislature, read in its entirety, points to consistency as requiring the modification of what would be the meaning apart from any context".

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The scheme of that part comprising the five sections of the Summary Offences Ordinance dealing with "stolen or unlawfully obtained goods" may, as we see it, be summed up thus. Section 36 deals with the possession or control of suspect goods "in any place"; Section 37 with them being concealed or lodged in private premises; Section 38 with their possession aboard vessels upon public waterways; and Sections 39 and 40 with procedural matter applicable generally. Are then the words

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"in any place" in Section 36 so wide and general in their scope - meaning "in any place wheresoever" - that Sections 37 and 38 are repetitious and therefore unnecessary, or are they to be interpreted as meaning any place other than such as are dealt with specifically in Sections 37 and 38? We think that reason and commonsense dictate

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that it must be the latter. It may be countered that although Section 38 deals specifically with vessels, Section 37 also includes them among the private premises therein enumerated. But Section 38 deals only with vessels upon public waterways and not, for example, with vessels in private docks or drawn up on shore. Further, Section 38 confers a statutory right of entry and power of search which Section 37 does not.

In our judgment, then, when due consideration is given (a) to the express provision in Section 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 obtained; (b) to the express authority granted by Section 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 Section 36 of any right or power of entry, or of any means or 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 Section 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 premises by any proper authority or licence, that they may exercise thereon any of the exceptional powers, not otherwise exerciseable 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 Section 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

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those conferred by Sections 37 and 38 of the Summary Offences Ordinance.

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10 For the foregoing reasons we overrule Roberts v. Barban and hold that the words "in any place" in Section 36 must be given a restricted meaning, that is to say, that they must be construed as meaning in any public place. 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 respondents, and it was incompetent for the magistrate to call on them to account for the same. The appeal is accordingly dismissed.

H. O. B. WOODING
Chief Justice

A. HUGH McSHINE
Justice of Appeal

20 ISAAC E. HYATALI
Justice of Appeal

No. 16

ORDER GRANTING SPECIAL LEAVE
TO APPEAL TO HER MAJESTY
IN COUNCIL

In the Privy
Council

No. 16

Order granting
special leave
to appeal to
Her Majesty
in Council

At the Court at Windsor Castle

The 14th day of April, 1965

PRESENT

14th April,
1965.

THE QUEEN'S MOST EXCELLENT MAJESTY

30 Lord President Sir Michael Adeane
Lord Chalfont Sir Elwyn Jones

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 24th day of March 1965 in the

In the Privy
Council

No. 16

Order granting
special leave
to appeal to
Her Majesty
in Council
(continued)

14th April,
1965.

words following viz.:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Peter Felix in the matter of an Appeal from the Court of Appeal of Trinidad and Tobago between the Petitioner and Ivan Thomas Respondent setting forth that the Petitioner is desirous of obtaining special leave to appeal to Your Majesty in Council from the Judgment of the Court of Appeal of Trinidad and Tobago dated the 30th June 1964: that by the said Judgment the Court of Appeal dismissed the Appeal of the Petitioner from the Order of a Magistrates' Court dated the 22nd April 1963 dismissing the Complaint of the Petitioner that the Respondent being found upon the execution of a search warrant in possession of articles which the Petitioner 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: that the substantial question upon which a decision is sought is whether upon a true construction of the Summary Offences Ordinance Ch. 4 No. 17 Section 36 the expression "any place" therein is to be interpreted as "any private place" or is to be given its plain face meaning or some other and if so what meaning: And humbly praying Your Majesty in Council to grant him special leave to appeal from the Judgment of the Court of Appeal of Trinidad and Tobago dated 30th June 1964:

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"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated the 30th day of June 1964:

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"And Their Lordships do further report to Your Majesty that the proper officer of the said Court of Appeal ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

In the Privy
Council

No. 16

Order granting
special leave
to appeal to
Her Majesty
in Council
(continued)

14th April,
1965.

10 HER MAJESTY having taken the said Report in-
to consideration was pleased by and with the
advice of Her Privy Council to approve thereof and
to order as it is hereby ordered that the same
be punctually observed obeyed and carried into
execution.

20 Whereof the Governor-General or Officer
administering the Government of Trinidad and
Tobago for the time being and all other persons
whom it may concern are to take notice and govern
themselves accordingly.

W. G. AGNEW.

EXHIBITS

"P.F.1." - SEARCH WARRANT

EXHIBITS

"P.F.1."

Search
Warrant

7th October,
1962.

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

Magistrates - 43

TRINIDAD AND TOBAGO

Search Warrant

(Ch. 4. No. 17. Sec. 37)

COUNTY OF NARIVA

To 4282 Cpl. Felix

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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
Sec. 27 (a) of Ch. 4. No. 11.
are concealed in the premises of Ivan Thomas
at Lengua Road, P/Town.

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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 G. Nobbee

Justice.

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 Hy
drochloride, 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.

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Signed P. Felix 4282 Cpl.

"A.L.1." - STATEMENT OF ALTHEA BURKETT

A.L. 1
Roy Jananan
Mag. T & T.
8/10/62

EXHIBITS

"A.L.1."

Statement of
Althea Burkett

Lengua Road

7th. October, 1962

7th October,
1962.

ALTHEA BURKETT states,

10 I am the reputed wife of Ivan Thomas and I
am living with him at Lengua Road. I am 25 years
old. It is about 3 years since I am living at
Ivan Thomas house when I first came to live here
I saw some pans inside the house containing
medicines and injection needles I ask Thomas about
the contents of the pan and he said to mind my own
business. To day Sunday 7th. October 1962 the
police searched my house at Lengua Road and found
20 the pan with all the medicines and injections
needles I never saw my husband using any of the
contents of this pan.

Signed Althea Burkett

Witness E. Browne Inspector 7.10.62 at 8.10 a.m.

I hereby certify that I took this statement from
Althea Burkett at Lengua Road, Princes Town on
Sunday 7th. October 1962 at 8.10 a.m. I read it
over to her she said it was correct and she signed
it.

Signed Anthony Lewis
Cpl. 4455

7/10/62

"A.L. 2". - STATEMENT OF IVAN THOMAS

EXHIBITS

"A.L. 2"

Statement
of Ivan
Thomas

7th October,
1962.

A. L. 2
Roy Jananan
Mag. T & T.
8.X.62.

Police - 27

TRINIDAD POLICE FORCE

STATEMENT

Name Ivan Thomas Station

Address Lengua Road Date 7 October 1962 10

Occupation

D.P. No..... Report No.

States

I do not know anything about the pan and contents. I do not know anything about these three packages marked Pethdine Hydrochloride 2 packages marked adrenaline injections, 4 packages of Silcomplex vitamins, 2 boxes of Lam B tol with three filled bottles, 3 filled bottle of Teramycin and 3 empty boxes marked Terramycin, 2 bottles of distilled water 5 cc four injections surgical hypodermic injection needles, one empty box marked Polly vi Sol drops M.F. 042, I left my wife Girly at home about 6 a.m. today with her two children, the house I live in is mine and I am living there ten years. The police met me trimming today and told me that they found a pan with medicine and injections needles they showed me the pan and the contents as above and I told them I don't know anything about it. 20 30

Signed Ivan Thomas

Witness - E. Brown Inspector 7.10.62
8.30 a.m.

I hereby certify that I took this statement from Ivan Thomas at Lengua Road, Princes Town on Sunday 7th October 1962 at 8.30 a.m. I read it over to him/her, he/she said it was correct and signed it. 40

Name Anthony Lewis Cpl.
No. 4455
Date 7.10.62

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

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.

Solicitors for the
Appellant.

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.

Solicitors for the
Respondent.