

Peter Felix - - - - - Appellant

v.

Ivan Thomas - - - - - Respondent

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH JUNE 1966.

Present at the Hearing:

LORD MORRIS OF BORTH-Y-GEST

LORD HODSON

LORD WILBERFORCE

[*Delivered by* LORD MORRIS OF BORTH-Y-GEST]

This is an Appeal (by special leave granted on the 14th April 1965) from a judgment of the Court of Appeal of Trinidad and Tobago (Wooding C. J., McShine and Hyatali J. J.) dated the 30th June 1964 whereby the Court dismissed an Appeal by the appellant from the Order of a Magistrates' Court dated the 22nd April 1963. By that Order the learned Magistrate sitting at Princes Town dismissed the complaint or information of the appellant (who is a Corporal of Police) which charged the respondent under section 36 of the Summary Offences Ordinance—(Chapter 4 No. 17).

On the 7th October 1962 the appellant obtained from a Justice of the Peace a warrant to search the premises of the respondent. The appellant had sworn an oath that there was reasonable ground for believing that a pair of gold bracelets, a grip, White Horse Whiskey, gellignite and cash were concealed in the premises of the respondent at Lengua Road, Princes Town, and that such goods would "afford evidence as to the commission of an indictable offence namely Shop Breaking and Larceny under section 27(a) of Ch. 4 No. 11". The Search Warrant referred on its face to "Ch. 4 No. 17 Sec. 37". That was a reference to section 37 of the Summary Offences Ordinance. That section authorises a Magistrate to issue a Search Warrant if information is given on oath "that there is reasonable cause for suspecting that anything stolen or unlawfully obtained" is concealed or lodged in any house, store, yard or other place or on any land whether enclosed or not or in any vessel. The section further lays down what course is to be followed when a Search takes place.

Subsections (3), (4)(a) and (5) are as follows:—

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

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

in such house, store, yard, place, or vessel, if the constable has reasonable cause to suspect any such person as is hereinbefore mentioned to have been privy to such concealment or lodging as aforesaid.

(5) A Magistrate may call upon any such person as is mentioned in the last preceding subsection to give an account, to the satisfaction of the Magistrate, by what lawful means any such thing as aforesaid came to be in such place as aforesaid, and any person who fails so to satisfy the Magistrate shall be liable to a fine of ninety-six dollars, or to imprisonment for six months."

Though the Search Warrant that was issued referred to "Ch. 4 No. 17 Sec. 37" the wording to the effect that the named goods would "afford evidence as to the commission of an indictable offence" suggests that it may really have been issued under the provisions of section 5 of The Indictable Offences (Preliminary Enquiry) Ordinance Ch. 4, No. 1. That section, so far as relevant, provides as follows:—

"Section 5.

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

(a) . . .

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

(c) . . .

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

The Search Warrant was executed at 7.45 a.m. on the date that it bore (which was the 7th October 1962). The police arrived at the respondent's premises at 7.45 a.m. The respondent was not then there but the police were admitted by one Althea Burkett who was the respondent's reputed wife. None of the articles mentioned in the Search Warrant were found. The warrant was however endorsed to the effect that certain articles were found underneath the bed in the bedroom. They were as follows:—

"28 phials Pethidine Hydrochloride, 4 bottles 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."

Those articles were seized by the police. Althea Burkett was taken into custody. The respondent was having a trim at the barber's premises. The police went to those premises and the respondent was later seen and was taken into custody. What then happened was that the appellant laid an information or complaint against Althea Burkett and the respondent. The complaint as laid was "for that the said Althea Burkett and Ivan Thomas 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 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."

In the complaint there was no reference to section 37. The reference was to section 36 of the Summary Offences Ordinance Ch. 4 No. 17. That section is as follows:—

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.

(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.

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

It will be seen that in proceeding under that section the appellant, who arrested the respondent without warrant, was asserting that the articles which were seized were in the possession of the respondent, that they were so in his possession “in any manner or in any place”, and that the appellant had reasonable cause to suspect that the articles had been stolen or unlawfully obtained.

There was a hearing before a learned Magistrate. It began on the 8th October 1962. It was continued on the 7th January 1963. On the first of those dates the appellant gave evidence. He gave his account of the execution of the search warrant and of his seizure of the articles mentioned in the information. He said that when the respondent had been asked to account for the presence of the articles he had said “I know nothing at all about those things”. The respondent had also given a written statement at 8.30 a.m. on the 7th October in which he had denied any knowledge of the pan and contents and in which he further said: “The police met me trimming to-day and told me that they found a pan with medicine and injection needles—they showed me the pan and the contents as above and I told them I don’t know anything about it.” In his evidence the appellant gave three reasons for suspecting that the articles had been stolen or unlawfully obtained. They 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. He added also that Althea Burkett and the respondent were not medical students and had no licence to sell the articles.

Althea Burkett gave evidence on the 8th October 1962 and so did the respondent. In his evidence the respondent said that the police told him that a tin containing medicines was found inside his house but that the first time that he saw the tin or its contents was when the police showed him the tin.

The learned Magistrate gave his decision on the 22nd April 1963. He dismissed the case against both defendants and by the Order of Dismissal of that date it was recorded that “it manifestly appears to the said Court that the said complaint is not proved”.

By notice dated the 24th April 1963 the appellant appealed against the refusal to convict. The appeal was “on the grounds that 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”.

Later (on the 4th February 1964) the learned Magistrate recorded his reasons for his decision. He held that in the bedroom of the respondent under a bed the police had found a tin containing the various items of medicine and surgical instruments. His findings may be summarised as follows: (1) The prosecution had not established possession of the articles in Althea Burkett (2) Neither had they established such possession in the respondent. He was not the sole occupant of the house and the tin had been found in his absence. He had consistently denied any knowledge of the presence of the tin of medicines in his house. His account was "reasonable and probable". (3) The police suspicions were not reasonably founded.

The last mentioned finding was supported by a number of reasons. There was no evidence that the police had any information that medicines of the type found on the premises had been reported lost or stolen. There were many circumstances under which medicines of the type and quantity found could be in possession without their having been stolen or unlawfully obtained. There was no evidence that Althea Burkett or the respondent were prohibited by law from having in their possession the types and quantities of medicines such as were found. Nor was there evidence that they were selling the medicines or needed a licence either to sell or to keep the medicines. The articles might have been lying in the house for years and it could not be held that Althea Burkett and the respondent were guilty of an unlawful possession.

In the Court of Appeal a question was raised by the Court itself, although not canvassed by the parties, as to whether the appellant "acted 'intra' or 'ultra vires'" in resorting to section 36 of the Summary Offences Ordinance. The question as raised by the Court of Appeal was whether section 36 was "to be interpreted as having reference to goods 'in transitu' or under control in a public place only or to goods anywhere generally". After reviewing the course of the legislation prior to and leading to The Summary Offences Ordinance Ch. 4 No. 17 and after considering a number of authorities the Court held that the words "in any place" in section 36 must be given a restricted meaning and must be construed as meaning in any public place. Accordingly they held that the appellant had no authority to seize the articles in the respondent's house and that it was incompetent for the Magistrate to call on the respondent to account for the articles. For that reason they dismissed the appeal so far as the respondent was concerned. They did not express any view in regard to the finding of the learned Magistrate that possession in the respondent was not established. Nor did they refer to the finding of the learned Magistrate that police suspicions were not reasonably founded. They did refer specially to the charge against Althea Burkett which they said had been rightly dismissed as the evidence of possession in her was wholly inadequate. They held therefore that so far as she was concerned the appeal must "in any event" fail.

Leave to appeal against the judgment of the Court of Appeal was only sought and obtained in relation to the respondent and not in relation to Althea Burkett. On behalf of the appellant it was submitted that the Court of Appeal was in error in its construction of section 36 and that the words "in any place" do not bear the limited meaning of any private place. Though the reasons set out in the printed case of the appellant seemed only to raise the question of construction a submission was made to their Lordships that if the appellant's contentions on construction should succeed the case should be remitted to the Court of Appeal for them to consider the validity of the findings of the learned Magistrate with which the Court of Appeal had not dealt.

The conclusion of the Court of Appeal was reached after considering section 36 in its context in the Summary Offences Ordinance and after having regard to what were presumed to be the intentions of the Legislature and after considering whether assistance could be derived from a study of the course of legislative developments. To some of these matters their Lordships must now turn.

As was pointed out in the judgment of the Court of Appeal the earliest predecessor of section 36 was section 55 of the Summary Convictions (Offences) Ordinance No. 6 of 1868 which section was subsequently incorporated as section 79 of Ordinance No. 5 of the 1902 Consolidation of the Laws of Trinidad and Tobago. By that section it was "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. That section was replaced by section 8 of the Summary Convictions (Offences) (Amendment) Ordinance, No. 35 of 1914 by which it was 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". The next enactment, the Summary Convictions (Offences) (Amendment) Ordinance, No. 43 of 1916 made an Amendment so that in the newly enacted section (section 14) the words read "having in his possession or conveying in any manner".

At this stage it may be useful to refer to the wording of certain statutory enactments in England. In 1839 there was passed The Metropolitan Police Act, 2 & 3 Vict. Cap. 47, and also The Metropolitan Police Courts Act, 2 & 3 Vict. Cap. 71. By section 66 of the former Act certain powers of arrest without warrant were prescribed and included in the section were the words "and every such Constable may also stop, search, and detain any vessel, boat, cart or carriage in or upon which there shall be reason to suspect than [*sic*] any thing stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained". By section 24 of the latter Act it was provided that—

"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. . . ."

By section 55 of the latter Act it was provided that the two Acts should be construed and read as one Act.

In the case of *Hadley v. Perks* (1865) L.R.1.Q.B. 444 it was decided that section 24 of the latter Act was supplemental only to section 66 of the former Act and that the sections applied only to possession in the streets and not to possession in a house. Blackburn J. in his judgment said that "having in possession" and "conveying" in the 24th section (of the latter Act) meant the "having and conveying" mentioned in the 66th section (of the former Act) that authorised the summary arrest. It was held that section 66 supposed that a person was found in a public street with property upon him under such circumstances that there was good reason for suspecting that the property had been stolen or improperly obtained.

Their Lordships have traced the Ordinances down to that of 1916 (No. 43 of 1916). Section 14 (1) read—"It shall be lawful for a constable to arrest without warrant any person having in his possession or conveying in any manner anything which the constable has reasonable cause to suspect to have been stolen or unlawfully obtained." A question of construction came before the Supreme Court in 1917 in the case of *Lawrence v. Ojoe* (1917) 3 T'dad L.R. 28. The respondent Ojoe (a police constable) in consequence of receiving certain information from the manager of an estate searched the lands of the appellant Lawrence (in the appellant's presence) and found a quantity of dry coconuts (which were covered over with bush) which the constable suspected to have been stolen. The respondent had not got a search warrant. He arrested the appellant and brought him before a Magistrate. Section 14 (2) was in terms (so far as material) identical with the present section 36 (2). The Magistrate, after

hearing the evidence of the appellant Lawrence and the manager of the estate, called upon the appellant Lawrence to account. He failed satisfactorily to account and was convicted. His appeal was dismissed though in a dissenting judgment Lucie-Smith C. J. took the view that section 14 only applied to persons having goods (reasonably suspected to have been stolen or unlawfully obtained) in their possession *in transitu* and that before the magistrate had jurisdiction to call upon the appellant to account for the possession of the coconuts there should have been an information on oath that stolen goods were suspected to be on his land and a search warrant issued. The majority took the view that it was clear that the appellant had the coconuts in his possession and that the plain words of section 14 applied. Blackwood-Wright J. said—"Section 14 (1) of our Ordinance is complete in itself. It gives power to arrest. There is nothing to narrow its plain words."

The next Ordinance, which was an Ordinance to consolidate the law relating to offences punishable on summary conviction, was the Summary Convictions (Offences) Ordinance, No. 31 of 1921. The actual wording of section 36 of that Ordinance differed from the wording of section 14 of the 1916 Ordinance (No. 43 of 1916). Instead of the words "having in his possession or conveying in any manner" the words in the 1921 Ordinance (which are followed in section 36 (1) of the current Ordinance) were "having in his possession or under his control in any manner or in any place". These are the words which their Lordships have to consider. Though, as the history of the matter shows, there was divergence of opinion as to the meaning of the words which were contained in section 14 (1) of the 1916 Ordinance it would seem that when the 1921 Ordinance was enacted the majority decision of the Court in *Lawrence v. Ojoe* (*supra*) was accepted and followed. The new wording as their Lordships think was clear. In relation to it no assistance can be derived from the English case of *Hadley v. Perks* (*supra*). Accordingly when in the 1921 Ordinance and in the current Ordinance the words "in any place" are found their Lordships see no reason why they should not be given their ordinary plain clear meaning. To interpret "any" place as excluding all places except public places involves altering what has been enacted.

A case which bears resemblance to the present one arose in 1930, the case of *Roberts v. Barban* 6 T'ad L.R. 113. The respondent in that case was under arrest on some charge and in connection with that charge the appellant obtained a search warrant to search the respondent's house for evidence in support of that charge. The appellant took the respondent to his house and made a search pursuant to a search warrant to search in respect of that charge. No evidence in support of that charge was found but the appellant then discovered in the house some goods which he had good reason to suspect had been stolen or unlawfully obtained. The appellant brought the respondent before a magistrate pursuant to section 36 (1) of the Summary Conviction Offences Ordinance, Cap. 25, on the basis that the respondent had the goods under his control. After the appellant had given evidence Counsel for the respondent took the objection that the respondent was improperly before the Court because there was no search warrant issued under section 37 (1) to search for stolen goods. The magistrate upheld the objection and dismissed the charge. He held that the Court had no jurisdiction. On appeal the magistrate's decision was held to be wrong. The appeal was allowed and the case was remitted for the magistrate to hear. The acting Chief Justice expressed surprise that the objection should have been taken and in reference to section 36 (1) said—"Words could not be wider."

In their judgment in the present case the Court of Appeal disagreed with the decision in *Lawrence v. Ojoe* (*supra*), preferring the dissenting opinion of Lucie-Smith C. J. and they also disagreed with the decision in *Roberts v. Barban* (*supra*) which they expressly over-ruled. In coming to their conclusion the Court of Appeal were influenced by an examination of the content and setting of section 36 in relation to other sections in the same part of the Ordinance.

Their Lordships take a different view. They consider that *Roberts v. Barban* was correctly decided. The language of section 36(1) is clear and their Lordships see no reason for introducing additional words in to it. The words in the section are "in any place". Those are different words from "in any public place". If the words in section 36(1) are being considered by themselves their meaning would not seem to admit of doubt. Nor have their Lordships found any reason as the result of an examination of the following subsections and sections of the Ordinance to give to the words any meanings other than their natural ones.

It must be recognised that section 36(1) does not give a police constable authority to enter premises. If he desires such authority in order to search premises he must obtain it. Reference has been made to section 5 of the Indictable Offences (Preliminary Enquiry) Ordinance Ch. 4 No. 1 (where there is reasonable ground for believing the presence of anything which there is reasonable ground for believing will afford evidence as to the commission of an indictable offence) and to section 37 of the Summary Offences Ordinance Ch. 4 No. 17 (where there is reasonable cause for suspecting the presence in certain places of something stolen or unlawfully obtained). If a constable enters private premises without any statutory authority or without a search warrant obtained pursuant to statutory authority or without any permission he may be a trespasser. But whether a constable can or can not justify his actual entry upon premises (and he would always be wise to arm himself with authority or with permission to enter) he may avail himself of the provisions of section 36 if he can fairly and fully satisfy the terms of the section. The section gives a wide power and the procedure laid down by it is special. It gives a special power of arrest and it involves a departure from established principle and practice in that it requires a person to give an account of his possession or control of goods and makes him liable to a penalty or to imprisonment if his explanation does not satisfy the magistrate. The section is therefore one to be applied strictly and to be used with caution.

In the present case the appellant alleged that the articles he found in the house (a) were in the possession of the respondent and (b) were articles which he (the appellant) had reasonable cause to suspect to have been stolen or unlawfully obtained. After hearing the respondent's evidence to the effect that he had no knowledge of the presence of the articles the learned Magistrate held that possession in him was not established. The respondent's explanation was held to be reasonable and probable. After hearing the appellant and considering all the evidence the learned Magistrate held that the appellant did not have reasonable cause to suspect that the articles had been stolen or unlawfully obtained. Having regard to the view that they took on the legal issue which they raised the Court of Appeal did not express any view as to the findings of the learned Magistrate on the two issues in the case which are above referred to. Their Lordships see no reason to think that the Court of Appeal should have been disposed to disagree with the findings of the learned Magistrate. There was evidence which warranted the learned Magistrate in reaching them. Their Lordships do not consider that the matter ought to be remitted to the Court of Appeal but rather that the dismissal of the complaint or information against the respondent (which dismissal was on the 22nd April 1963) should stand. Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed.

In the Privy Council

PETER FELIX

v.

IVAN THOMAS

DELIVERED BY
LORD MORRIS OF BORTH-Y-GEST