

J. ...
23 Dec 60
25 308

THE UNLAWFUL POSSESSION
OF PROPERTY LAW IN
JAMAICA.

The Unlawful Possession of Property Law is essentially a law based upon reasonable suspicion.

Section 2 of Chapter 401 of the Revised Laws of Jamaica 1953 defines a suspected person as any person who:
(a) has had in his possession or under his control in any place anything being an article of Agricultural produce; or
(b) has in his possession or under his control in any place anything including an article of agricultural produce.

Under such circumstances as shall reasonably cause any constable or authorised person to suspect that, that thing has been stolen or unlawfully obtained.

Subsections (a) and (b) draw a distinction between Article of Agricultural Produce and other goods. It would appear that while under Sub-section (a), a person might be a suspected person in respect of an article of Agricultural Produce which he "has had" in his possession under sub-section (b) he must be found in possession of the thing at the time of arrest.

In R v Burgess (1962) 5 W.I.R. page 59, the Appellant, Burgess "was convicted of being a suspected person within the meaning of S. 5 (4) of the Unlawful Possession of Property Law, Cap. 401 being found in possession of goods which there was reasonable cause to suspect were stolen or unlawfully obtained. The appellant was seen to take some powder from a shop and put it in a bag, when he was accosted, the appellant dropped the bag and ran away. The appellant was apprehended shortly after and a constable summoned. On opening the bag, in it was found the powder taken from the shop, three clips and 3 1/2 dozen knives. Held: that the appellant was not a suspected person within the meaning of the law, as he had not been found by the arresting constable in possession of the things for which he was charged and consequently the constable had no power to arrest him under section 5 (1) of the law".

In Any Place:

In Felix vs Burkett and Thomas (1964) 7 W.I.R p339, The Court of Appeal in Trinidad held that "in any place" must be construed as meaning in any public place. However, on Appeal to the Privy Council, it was held that on their true construction the words "in any place" should be given their ordinary meaning and there was no reason for introducing the additional limiting word "public".

Felix vs Thomas (1966) 3 W.H.R. p. 902. "Reasonable Cause".

Reasonable Cause arises in two ways: (a) there being in fact reasonable cause for believing that thing and that the person in fact believes it or (b) where the thing to be believed is something essentially, one within the knowledge of a person or one for the exercise of his exclusive discretion, the words might well mean if such a person acting on what he thinks is reasonable cause (and of course acting in good faith) believes the thing in question see Liversidge vs Anderson (1941) A.C. 206 at pp 219, 220.

"Unlawfully Obtained"

There is a school of thought which is of the view that the words "unlawfully obtained" must be interpreted as ejusdem generis with the word stolen.

J.S. Kerr, Director of Public Prosecutions (Jamaica), in an article on the Unlawful Possession of Property Law had this to say "In my view, from the context and general tenor of the definition,

.....2.

by necessary implication "anything" should be interpreted to mean things capable of being stolen or unlawfully obtained (by Common Law or Statute)"

However, Sir Hugh Wooding in a judgement of the Court of Appeal of Trinidad and Tobago in Heller vs Grannesingh (1968) 13 W.I.R. p 267, held "the words unlawfully obtained" in section 36 of the Summary Offences Ordinance extend to obtaining by any unlawful means whatever; consequently it is not to be interpreted as being *ejusdem generis* with the word stolen and therefore is not restricted in its use to obtaining by some dishonest means.

It is my humble opinion that the view of the Learned Director of Public Prosecutions is to be preferred to that of Sir Hugh Wooding.

What if a person were to be found in possession of a watch which he had acquired from the bona fide owner in exchange for ganja? Although the medium of exchange was in itself unlawful, yet the article was lawfully obtained from a person who had authority to transfer possession.

Two major difficulties arise in the administration of this law. These difficulties relate to the Substantive law as well as to the Procedural law.

The Substantive difficulty relates to the question of, when does a person properly come within the ambit of a "suspected person".

It is the considered opinion that to bring a person within the ambit of a "suspected person" reasonable cause for suspecting must necessarily arise before a person is accosted. A Constable or Authorised person cannot by a series of questions and answers bring a person within the ambit of a suspected person. A series of questions and answers can only serve to confirm or remove a suspicion already formed but cannot create the reasonable cause for suspecting.

Section 4 (1) of Cap. 401 places upon a Resident Magistrate or a Justice of the Peace a duty to satisfy himself that reasonable cause for suspecting exists before issuing a Warrant. This view is further supported by the decision in R vs Stephens (1964) 6 W.I.R Page 311.

Duffus J.A.: "As this court has said time and again and mentioned in particular in R vs Parkinson in charges laid under the Unlawful Possession of Property Law, evidence must be given either specifically or inferentially that immediately prior to arrest the constable had reasonable cause to believe or suspect that the goods were unlawfully obtained"

The Procedural difficulty arises as to whether or not the Provisions of the Law are mandatory or directory. In R vs Wilfred Wright (1953) 6 J.L.R p 265, it was held that the provisions of section 5 (2) and section 5 (3) were "directory and not mandatory" the Court applied the Opinion of the Privy Council as delivered by Sir Arthur Channel in Montreal Street, Railway Co. vs Normadin (1917) A.C. 170 at page 175.

However, Fox J.A. in R vs Rolda Ricketts R.M.C.A. No. 43/71 (unreported) observed that the provisions of the law are strict and must be strictly followed and that failure so to do would be fatal to a conviction under the law.

The view of Fox J.A. is to be preferred to that expressed in R vs Wilfred Wright for the simple reason that the provisions of the law are onerous and can work great hardship upon an accused person.

.....

Quare: Has the decision in Rolda Ricketts' case over ruled the decision in Wright's case. See also R vs Lester Beckford (1934-35) J.L.R. p 18.

The prosecution having adduced evidence to establish that there is reasonable cause to suspect that the goods have been unlawfully obtained or stolen, then a burden is cast upon the defendant to account to the satisfaction of the Resident Magistrate. The burden, as is always the case where a burden rests upon the accused person, is discharged on a balance of probabilities.

The view has been expressed that the Account must not only be true but satisfactory to the Criminal Law. It is submitted that this view is not wholly correct. While the account must be satisfactory to the Criminal Law, yet it must not necessarily be true. If the account given is a probable one, i.e. if it leaves the Court in a reasonable doubt as to its truth or otherwise, then clearly the burden would have been discharged on a balance of probabilities.

An order to account must be in accordance with either section 5 (4) or section 10, depending on whether the defendant is charged under section 5 or sections 8 or 9. A wrong order to account is fatal to a conviction. See R vs Rolda Ricketts. Equally fatal is the omission to record the fact of the failure to give the appropriate account to the satisfaction of the Resident Magistrate.

Section 11 permits a Resident Magistrate to trace possession of the goods and to call upon a person or persons who have been in possession or control of the goods to give an account by what lawful means he came into possession.

As a final observation, I would strongly advocate the removal of this law from the Statute Books. The Provisions of this law are often used by unscrupulous law enforcing agents to get even with persons who are suspected of committing more serious crimes, and who cannot be apprehended because of the unavailability of the evidence.

My observations are that it is always the poorer class of people against whom allegations are made under this law.

LENSLEY H. WOLFE
29th June, 1974.