



of an investigation into any offence is in any building, ship, vehicle, box, receptacle or place, such court or such Justice of the Peace may by warrant (called a search warrant) authorise a police officer or other person therein named to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for is found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

25. (1) Every search warrant may be issued at any time and may be executed on any day between the hours of sunrise and sunset, but the court or Justice of the Peace may, by the warrant, in its or his discretion, authorise the police officer or other person to whom it is addressed to execute it at any time.

(2) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the person executing the search warrant and on production of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(3) If ingress into or egress from such building or other place cannot be so obtained, the person executing the search warrant may break open such a place or building.

(4) Where any person in or about such building or place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched by a person of the same sex.

(5) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(6) If any appeal is made, or the person is committed for trial, the court may order it to be further detained for the purposes of the appeal or trial.

(7) If no appeal is made, or if no person is committed for trial, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit, and is authorised or required by law to dispose of it otherwise.

26. (1) Every search warrant shall be in the form set out in Schedule 11 and under the hand of the person issuing the same and, when issued by a court, shall bear the seal of such court.

(2) Every search warrant shall remain in force until it is executed or until it is cancelled by the person or court issuing the same.

(3) A search warrant may be directed to one or more persons and may be executed by all or any one or more of them.

(4) A search warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

(5) A search warrant may be executed at any place in the island."

The search warrant Ex. 1 is in the following form

and terms:

"THE CRIMINAL PROCEDURE CODE

(Law 13 of 1975)

SCHEDULE 11

(Section 26)

To Insp Rankine and other officers of the  
Cayman Islands Police Force

WHEREAS I/The Court am/is satisfied by information on oath that there is reasonable suspicion of the commission of the offence of Possession of Ganja, and it has been made to appear to me/this Court that the production of the following article (s) is/are essential to the enquiry into the said offence Possession of Ganja

This is to authorise and require you to enter upon and search the premises of one Mitchell. Barks, situated at West. Bay and if discovered to take possession of the said article (s) and produce the same forthwith before a Court; returning this warrant with an endorsement certifying the manner of its execution

Given under my hand (and the seal of the Court)  
this 10th day of February 1981.

Sgd. G. E. Rankin

Justice of the Peace."

There is no evidence that Insp. Rankine or the virtual complainant, D/C Parsons, exercised their powers under section 5 (1) of the Misuse of Drugs Law. Neither stated that he had reasonable grounds to suspect that ganja was concealed in the premises concerned. Indeed it was expressly stated that they were executing the search warrant and nothing further.

Section 5(3) gives wide powers to a justice of the peace in issuing a search warrant, but it is clear that both in form and substance that the search warrant was not issued under those powers.

It is apparent on the face of the search warrant that it was issued under section 24 of the Criminal Procedure Code. Having elected to proceed under and invoke these powers the contents and

execution of the search warrant must comply with the provisions governing a search warrant<sup>issued</sup> under section 24.

It was argued that sections 24, 25, 26 and Second Schedule govern the issue of search warrants under any law, including section 5 (3) of the Misuse of Drugs Law. In view of the conflicts between these provisions I do not accept that this can be so. For example, the search warrant Ex. 1, follows precisely the wording and form set out in the Second Schedule of the Criminal Procedure Code. The form suited to a search warrant under section 5 (3) of the Misuse of Drugs Law would have to be different to tailor to that section.

One must recognise that the liberty of the subject and the quiet enjoyment of property are involved and it is important that any legal invasion of these rights must be properly founded on legal authority and exhibit confidence that due care was taken in invoking the provisions with knowledge of the consequences.

It is a matter of substance that a specific provision was invoked rather than another and one cannot accept that because the wider powers conferred by a provision not invoked existed those wider powers can be grafted on to the provision invoked.

In my view, exhibit 1 can only be governed by sections 24, 25 and 26 of the Criminal Procedure Code.

Applying those principles it appears from the search warrant that while Insp. Rankine was named in it D/C Parsons was not. Section 24 specifically calls for the naming of the police officer or other person who is to execute the warrant. Section 26 (4) permits endorsing over to others - this provision was not invoked. It is not sufficient to address the search warrant to a named officer and "other officers of the Cayman Islands Police Force". If that means all other police officers it is equivalent to addressing the warrant to all officers of the Cayman Islands Police Force. That that is

defective is clear from King v. Reginam 1968 2 All ER 610. It contravenes an express provision of section 24. That is more than a technicality. These provisions are so framed to protect the liberty of the subject and must be observed.

Furthermore, section 24 requires that the thing or things to be searched for shall be named in the warrant. Here in the place provided for naming that thing the words "Possession of Ganja.", echoing the offence suspected of having been committed, were inserted. While it could be argued that this was merely an oversight and that "ganja" was intended, it remains nevertheless a defect and leaves one with the uneasy suspicion that due care was not taken in considering the issue of the warrant.

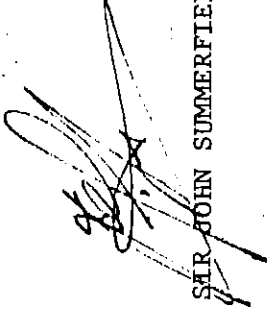
Finally, it was accepted by both police officers that the search warrant was executed before sunrise. This is clearly irregular, contravening section 25 (1).

For the foregoing reasons I have concluded that the search warrant Ex. 1 was defective and irregularly executed. On the facts of this case, it follows that D/C Parsons and all other police officers (other than Ins. Rankine) who entered the premises against the owner's will were trespassers. D/C Parsons could not therefore be said to have been acting in the due execution of his duty.

Having regard to the way the case has been presented it seems pointless to leave the issue of simple assault to the jury. Indeed, having regard to the disparate weaponry with which the respective parties were armed it seems to me that, on the basis that D/C Parsons was a trespasser and the occupants had a right to evict him, no reasonable jury, properly directed, should convict of assault in the circumstances of this case. It would certainly be unsafe to leave the issue to a jury.

For the foregoing reasons I hold that there is no case to answer.

I should add that I am convinced that the police officers acted bona fide throughout.



SIR JOHN SUMMERFIELD.

30th June 1981.