J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL No. 107/1975

BEFORE: The Hon. Mr. Justice Luckhoo, P. (Ag.)
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Watkins, J.A. (Ag.)

MICHAEL HYLTON

&

THE ATTORNEY GENERAL - APPELLANTS

v.

KENNETH PATRICKSON - RESPONDENT

A.S. Huntley for the appellants.

W. Bentley Brown for the respondent.

February 19; April 9, 1976

Luckhoo, P. (Ag.):

This is an appeal against the decision of the resident magistrate for the parish of Kingston giving judgment for the plaintiff in an action claiming damages for false imprisonment and malicious prosecution.

At about 8.45 p.m. on June 21, 1973, the plaintiff was driving his Vauxhall motor car along Regent Street approaching the Spanish Town Road. Sitting beside him was a female companion one Claudette Francis. The defendant Hylton, a district constable stationed at Denham Town Police Station in the parish of Kingston, was on special duty along the Spanish Town Road. As the plaintiff's car reached the junction of Regent Street with Spanish Town Road Hylton requested the

plaintiff to stop and the plaintiff did so. Hylton who was in civilian clothes identified himself to the defendant and told him that he would like to search his car. The plaintiff readily agreed and both he and Claudette Francis came out of the car. Hylton proceeded to search the plaintiff's car in the plaintiff's presence. There is a conflict of evidence as to whether Hylton used a flashlight in the course of his search. Hylton maintained that he did while the plaintiff asserted that the search was carried out in the dark. During the course of the search of the car Hylton came upon two packages which he opened in the plaintiff's presence. The packages contained two sticks of vegetable matter which upon examination turned out to be ganja. There is a further conflict in the evidence as to where the packages were found. Hylton asserted that he had removed the bottom section of the rear seat before he came upon the packages whereas the plaintiff asserted that Hylton put his hands down towards the floor and then came out with the packages. When the contents of the packages were revealed the plaintiff denied any knowledge of the existence of the packages. He told Hylton that he had shortly before stopped at a gas station and left his car parked there; that on his return Claudette Francis who had remained seated in the car told him that in his absence an Indian man had come into the back of the car and searched the seat and that on her asking him what he was doing the Indian man told her that he knew him (the plaintiff). The plaintiff suggested that Hylton should go to the gas station to find out what the Indian man had been doing in the back of the car. This Hylton declined to do. He arrested the plaintiff and Claudette Francis and took them to Denham Town Police Station where they were charged with the unlawful possession of ganja. There the plaintiff was cautioned and he again said that he did not know how the parcels came to be in his car. Both the plaintiff and Claudette Francis were tried upon an information charging them with possession of ganja, contrary to s. 7(c) of the Dangerous Drugs Law, Cap. 90.

At the close of the case for the prosecution Francis was discharged and the trial proceeded against the plaintiff. He was convicted on August 1, 1973 and sentenced to pay a fine of $60 in default to be imprisoned for 3 months. The conviction was quashed by the Court of Appeal on January 23, 1974 and his sentence was set aside.

The plaintiff's subsequent claim in damages for false imprisonment and malicious prosecution was based on two main grounds -

(i) That there was no reasonable or probable cause for the arrest or prosecution of the plaintiff;

(ii) that in the circumstances of this case Hylton had no authority, statutory or otherwise, to arrest the plaintiff.

It is convenient to deal first with the second main ground upon which the plaintiff's claim is based. Reliance is placed in this regard on the provisions of s. 23 of the Dangerous Drugs Law, Cap. 90 which relates to the power of arrest. Section 23 provides as follows:

> "Any constable may arrest without warrant any person who has committed, or attempted to commit, or is reasonably suspected by such constable of having committed or attempted to commit, an offence against this Law, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to or cannot be ascertained by him."

It was urged on behalf of the plaintiff that there was no evidence upon which the defendant could reasonably believe that the plaintiff would abscond or that his name and address could not have been ascertained by the defendant so as to empower the defendant to arrest the plaintiff. I do not think that this section is applicable to the case of a person found in possession of ganja or any of the other substances the possession of which is prohibited under the Dangerous Drugs Law, Cap. 90 and thereupon arrested. By its very terms the section refers to an offence against the Law which has already been committed or already attempted or is reasonably

suspected by a constable of having been committed or attempted and not to a continuing offence which a constable himself observes being committed.

It is, therefore, necessary to examine those provisions of the Constabulary Force Law, Cap. 72 which relate to the power of arrest by constables without a warrant, s. 4 of the Constables (District) Law, Cap. 70 having conferred on every district constable in the exercise of his office all the powers of constables. Section 18 of Cap. 72 empowers a constable without warrant to arrest any person found committing any offence punishable upon indictment or summary conviction. Possession contrary to law being a continuing offence the finding of a person in possession of ganja is the finding of that person committing an offence punishable on summary conviction and a constable is thereby empowered to arrest without a warrant. A further power of arrest is given by s. 22 of Cap. 72 in special cases including a case where a person is known or suspected to be in the unlawful possession of opium, ganja, morphine, cocaine or any other dangerous or prohibited drugs. This is a situation which is to be distinguished from that contemplated by s. 18 for in the former the person who may be arrested without a warrant has not been found committing the offence of unlawful possession of a dangerous or prohibited drug though when he is taken before a Justice of the Peace as required by that section he may be found in possession of a dangerous or prohibited drug and then would be found committing the offence of unlawful possession. In the instant case when the parcels containing ganja were found in the car owned and driven by the plaintiff (the stopping of the car and search of the car and its occupants by the defendant without a warrant were authorised by s. 23 of the Constabulary Force Law, Cap. 72) that was evidence that the plaintiff was found committing the offence of possession of a dangerous drug and unless there was something more which might indicate that he was not in fact in possession of the ganja so

found, that is, that he was not in a position which justified the belief that he was committing the offence charged, the defendant would be empowered under the provisions of s. 18 of Cap. 72 to arrest him without warrant, and this is so even though the court may find the facts to be different. See Downing v. Capel (1867) L.R. 2 C.P. at p. 464 per Keating, J. There was nothing in the evidence which indicated that the plaintiff was not in a position which justified the belief that he was committing the offence charged and I would hold that his arrest was justified under the provisions of s. 18 of the Constabulary Force Law, Cap. 72.

It is not without significance that in R. v. John Wallace (1946) 5 J.L.R. 38 and in Herman King v. Regina (1968) 12 W.I.R. 268 the Court of Appeal of Jamaica in the former and this Court and the Judicial Committee of the Privy Council in the latter did not make any reference to s. 23 of the Dangerous Drugs Law, Cap. 90 as being applicable to the arrest of the respective appellants upon whose person ganja was found on a search made by a constable. Instead reference was made to the provisions of ss. 18 and 22 of the Constabulary Law, Cap. 72 in that regard as authorising an arrest in the respective circumstances though not a search of the appellants' person. Turning now to the provisions of s. 39 of Cap. 72 it is for the plaintiff to allege and prove, if the arrest is invalid, that the defendant acted maliciously in or had no reasonable or probable cause for arresting him. See Cooper v. Cambridge (1930) Clark's Rep. at pp. 339, 341. This is also the case where a claim in malicious prosecution is brought against a constable.

On behalf of the plaintiff it was urged that when told by the plaintiff of what he said Claudette Francis had informed him about the presence of the Indian man in his car, the defendant ought to have gone to the gas station to endeavour to find the Indian man and to ascertain why he had

entered the plaintiff's car. The defendant's reason for declining to do as the plaintiff wished in this regard was that he was afraid that he would be ganged up against having suffered such an experience on previous occasions in the course of his duties as a district constable. It was urged that the defendant's neglect to pursue inquiries in this direction indicated that he had no honest belief in the plaintiff's guilt and that in the absence of such inquiries there was no reasonable or probable cause either for the plaintiff's arrest or for his prosecution. I do not agree with this contention. As Bramwell, B. observed in Perryman v. Lister (1868) L.R. 3 Ex. at p. 202, "it does not follow that because it would be very reasonable to make further inquiry, it is not reasonable to act without doing so." While it is true that had such inquiries been made before the plaintiff was taken to a police station there would have been no ground for holding that the defendant was liable for false imprisonment (see Dallison v. Caffery (1965) 1 Q.B. 349) it does not follow that failure to make such inquiries must result in the defendant being liable in damages for false imprisonment or malicious prosecution. Even if the defendant's explanation for his refusal to go in search of the Indian man alleged to have been seen by Caludette Francis is rejected and his failure is regarded as a dereliction of duty (and I am not persuaded that it is in view of the nebulous information given in respect of "an Indian man") in circumstances where ganja is found in a motor vehicle driven by the owner and in which the only passenger is one whom it cannot reasonably be held was in sole possession thereof it would be wholly unreasonable to conclude that the defendant had no honest belief that the plaintiff was in possession of the ganja found in his car and, therefore, that the defendant had acted maliciously or that there was no reasonable or probable cause either for the plaintiff's arrest or for his subsequent prosecution. It was essentially a matter for the tribunal before whom the plaintiff was tried to say whether

or not the plaintiff was in possession of the ganja found in his car and not for the defendant to so determine.

It is well to bear in mind the words of Cave, J. in the Divisional Court in Brown v. Hawkes (1891) 2 Q.B. at p. 722 -

> "Malice, in its widest and vaguest sense, has been said to mean any wrong or indirect motive; and malice can be proved, either by showing what the motive was and that it is wrong, or by showing that the circumstances were such that the prosecution can only be accounted for by imputing some wrong or indirect motive to the prosecutor. In this case I do not think that any particular wrong or indirect motive was proved. It was said that the defendant was hasty and intemparate ..... He may ..... have been hasty, both in his conclusion that the plaintiff was guilty and in his proceedings; but hastiness in his conclusion as to the plaintiff's guilt, although it may account for his coming to a wrong conclusion, does not show the presence of any indirect motive."

In the Court of Appeal in that case Kay, L.J. (1891) 2 Q.B. at p. 727 said -

> "As I understand the argument for the plaintiff, it was said that the evidence to prove malice was that the defendant did not make proper inquiry as to the facts of the case. If that is all, and if that evidence is sufficient, the result would be that the finding of the first question put to the jury, that would, without more, determine the action in favour of the plaintiff. That cannot be so, and when I look at the evidence (as I have done with care) to find what evidence there was of sinister motive, I can find none on which the jury could reasonably find that the defendant was actuated by malice."

There was not a tittle of evidence in the instant case that in effecting the arrest the defendant acted maliciously. Indeed the learned Resident Magistrate seemed to have come to the same view for his conclusion is thus expressed - "I came to the conclusion that the plaintiff was wrongly arrested wihout reason, there was no reasonable cause for the imprisonment or for the subsequent prosecution." The question is - was there evidence to support a finding that the defendant acted without reasonable or probable cause in (a) effecting the plaintiff's arrest (b) prosecuting the plaintiff. The learned resident magistrate said "The plaintiff was only arrested because he did not know the plaintiff and not because

of finding (him) in possession of ganja. The defendant refused to carry out the request of the plaintiff to go to the nearby gas station and to search for the Indian man. This is strongly against the defendant and nothing in his evidence supports the defence set up for him. For these and other reasons I give judgment for the plaintiff."

I have already stated that in my view the evidence does not support the conclusion reached by the learned resident magistrate.

One further word as to the question of the defendant's refusal to go go in search of the Indian man and make inquiries as to his activities as alleged by Francis. Viscount Simonds in his opinion in Glinski v. McIver (1962) A.C. at p. 745 said -

> "A question is sometimes raised whether the prosecutor has acted with too great haste or zeal and failed to ascertain by inquiries that he might have made facts that would have altered his opinion upon the guilt of the accused. Upon this matter it is not possible to generalise, but I would accept as a guiding principle what Lord Atkin said in Herniman v. Smith (1938) A.C. 305 that it is the duty of a prosecutor to find out not whether there is a possible defence but whether there is a reasonable and probable cause for prosecution."

It is also well to bear in mind what Diplock, L.J. said in Dallison v. Caffery (1965) 1 Q.B. at p. 370 -

> "Where a felony has been committed, a person, whether or not he is a police officer, acts reasonably in making an arrest without a warrant if the facts which he himself knows or of which he has been credibly informed at the time of the arrest makes it probable that the person arrested committed the felony. This is what constitutes in law reasonable and probable cause for the arrest."

That passage in the judgment of Diplock L.J. is not without some relevance to the circumstances of a case such as this where an offence punishable on summary conviction has been committed by some person and it must not be overlooked that the defendant testified that his reason for stopping the car and searching it for ganja was because of certain information he had received shortly before. In these circumstances it can hardly be said that the finding of ganja in the car driven by the plaintiff

after he had received such information in relation to a car of a like general description did not make it probable that the plaintiff was in possession of the parcels and their contents.

Out of deference to the approach taken by my brothers I ought to say that in my view this is not a case of a plaintiff's arrest and subsequent prosecution taking place as a result of a defendant purporting to act upon a reasonable suspicion that the plaintiff had committed an offence as was the case in Dumbell v. Roberts (1944) 1 All E.R. 326. That was a case in which the plaintiff claimed damages for false imprisonment against three constables where he had been arrested without warrant and charged with the unlawful possession of a quantity of soap flakes within the meaning of s. 507 (1) of the Liverpool Corporation Act, 1921. As Goddard, L.J. pointed out at p. 331 in the case of an arrest for unlawful possession the power of arrest without warrant is statutory only.

Section 507 (1) of the Act provides as follows -

> "(1) Any person brought before any court of summary jurisdiction charged with having in his possession any thing which there is reasonable ground to believe or suspect has been stolen and who does not account to the satisfaction of the court for his possession of the same shall be liable to a penalty ....."

Section 513 provides as follows -

> "It shall be lawful for any police constable and all such persons as he shall call to his assistance to arrest and detain without warrant (1) any person whose name and residence shall be unknown to such constable and cannot then be ascertained by him and who shall commit any offence against (inter alia) the provisions of ..... this part of this Act."

In that case two of the defendants had arrested the plaintiff without warrant and had made no attempt to ascertain the plaintiff's name and address either from the plaintiff himself or from his fellow employees who were readily accessible at the garage to which the defendants took the plaintiff and so had failed to comply with the condition precedent to the exercise of their right to arrest without warrant under s. 513 of the Act. Further, on the evidence

the defendants did not have reasonable grounds for suspecting that the plaintiff had stolen the goods. So there was no justification for arresting the plaintiff in that case. Scott, L.J. at (p.329) said -

> "The duty of the police when they arrest without warrant is, no doubt, to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty. The British principle of personal freedom, that every man should be presumed innocent until he is proved guilty, applies also to the police function of arrest - in a very modified degree, it is true, but at least to the extent of requiring them to be observant, receptive and open-minded and to notice any relevant circumstance which points either way, either to innocence or to guilt. They may have to act on the spur of the moment and have no time to reflect and be bound, therefore, to arrest to prevent escape; but where there is no danger of the person who has ex hypothesi aroused their suspicion, that he probably is an "offender" attempting to escape, they should make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. I am not suggesting a duty on the police to try to prove innocence; that is not their function; but they should act on the assumption that their prima facie suspicion may be ill-founded. That duty attaches particularly where slight delay does not matter because there is no probability, in the circumstances of the arrest or intended arrest, of the suspected person running away. The duty attaches, I think, simply because of the double-sided interest of the public in the liberty of the individual as well as in the detection of crime."

It is important to lay stress on the words in that passage - "they should make all presently practicable inquiries from persons present or immediately accessible who are likely to be able to answer their inquiries forthwith" - for in the instant case the plaintiff's request of the defendant to go to the gas station and look for "an Indian man" could hardly be said to present the occasion for practicable inquiries from persons present or immediately accessible.

I would hold that the plaintiff failed to discharge the onus placed upon him by s. 39 of Cap. 72 to show that the defendant, in arresting and prosecuting the plaintiff, did so maliciously or without reasonable or probable cause.

[illegible]

I would allow the defendant's appeal, set aside the order made by the learned resident magistrate and enter judgment for the defendant with costs in this Court $50 and in the court below to be agreed or taxed.

HERCULES, J.A.:

The Respondent herein was originally convicted on an information charging him with possession of ganja, contrary to Section 7 (c) of the Dangerous Drugs Law, Cap. 90.

I have had the advantage of reading the draft judgments of Luckhoo P. and Watkins J.A. and the facts are clearly recounted in both judgments.

There are two sections involved in any consideration of this matter. The first is Section 18 of the Constabulary Force Law, Cap. 72, which empowers a constable without warrant to arrest any person found committing any offence punishable upon indictment or summary conviction. This is a general provision of powers of arrest without restriction or limitation and it has been on the Statute books since 1869.

Then there is Section 23 of the Dangerous Drugs Law, Cap. 90, which provides -

> "Any constable may arrest without warrant any person who has committed, or attempted to commit, or is reasonably suspected by such constable of having committed or attempted to commit, an offence against this Law, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to or cannot be ascertained by him."

The Dangerous Drugs Law was enacted in 1948. It seems to me to be clear that this Section is specific and limited in scope. It is intended to cover offences under the Dangerous Drugs Law. It prescribes the requirements to be fulfilled when a constable is dealing with an offence against that Law. In my view it even imposes conditions precedent.

Since the Constabulary Force Law is anterior to the Dangerous Drugs Law, it is to be presumed that Parliament was aware of the general provision in the Constabulary Force Law and that it was specifically intended to whittle down the constable's general power of arrest in connection with offences under the Dangerous Drugs Law. To hold otherwise would be to

render Section 23 of the Dangerous Drugs Law absolutely meaningless. When a constable proceeds with an information based on the Dangerous Drugs Law, he must be shown to have complied with the provisions of that Law and there can be no recourse to the umbrella of the general provision of the Constabulary Force Law.

On the facts of the matter, there was neither evidence that the constable had reasonable ground for believing that Respondent would abscond unless arrested nor that the constable could not ascertain Respondent's name and address. But without fulfilling those requirements the arrest of Respondent was effected. The critical question is whether the failure to fulfil those requirements ~~initiated~~ vitiated the arrest. It would be unnecessary to go any further into the matter if the arrest became ~~initiated~~ vitiated.

Here I find the case of Dumbell v. Roberts and Others (1944) 1 All E.R. 326 quite apposite. In that case the English Court of Appeal was dealing with an arrest made under Section 513 (1) of the Liverpool Corporation Act, 1921, which provides -

> "It shall be lawful for any police constable and all such persons as he shall call to his assistance to arrest and detain without warrant (1) Any person whose name and residence shall be unknown to such constable and cannot then be ascertained by him and who shall commit any offence against (inter alia) (A) the provisions of this part of this Act."

The Editorial note in the report of Dumbell's case is quite noteworthy. It states: "Where special powers of arrest without warrant are granted by a local Act, the police must show that all the conditions of the local Act are fulfilled ....." Indeed, in a leading judgment, Scott L.J. held that when the constables arrested the Plaintiff without a warrant and made no attempt to ascertain the Plaintiff's name and address, they failed to comply with the condition precedent to the exercise of their right to arrest without warrant under Section 513 of the local Act.

It is my view that in the case under review the District Constable failed to comply with conditions precedent under Section 23 of the Dangerous Drugs Law. I find myself in agreement with the observations of Watkins J.A. on the questions of malice and reasonable and probable cause. The Appellant carried out his duties in a manner leaving much to be desired. He did not take sufficient care. In the result the Respondent was entitled to succeed on both claims. I would dismiss the appeal.

WATKINS, J.A. (Ag.):

This is an appeal against the decision of His Hon. Mr. H. Rowan Campbell, a resident magistrate for the parish of Kingston, giving judgment for the respondent in an action claiming damages for false imprisonment and malicious prosecution.

The material facts were these: At about 8.45 on the night of June 21, 1973 Hylton, a district constable and the first-named appellant, acting on information received some time earlier, signalled a motor vehicle at the intersection of Regent Street and Spanish Town Road to stop. The driver obeyed. He was the respondent Patrickson and with him in the car was a young woman named Claudette Francis. Hylton said that he wanted to search the car, and Patrickson, remarking "with pleasure", together with Francis immediately vacated the car. Two small sticks or "spliffs" of ganja were found. There was dispute as to whether the ganja was found on the rear floor of the car or under the rear seat thereof, and as to whether other parts of the car had also been searched, and if so, whether before or after the rear of the car was searched. These the learned resident magistrate on a proper understanding of his reasons for judgment resolved in accordance with the contention of the respondent. "The defendant" said the resident magistrate, "searched only the back floor of the car by the back seat and suddenly discovered two sticks of ganja." There was dispute also as to whether a flashlight had been used in the search, but no finding on this matter was specifically made. Having however produced the spliffs of ganja, Hylton showed them to Patrickson and said that they were ganja, whereupon Patrickson replied that he did not know anything about the ganja, that he did not know how it got there, and that he did not even smoke. During this time Miss Francis, dissolved into tears, began to narrate that at

a nearby gas station where shortly before Patrickson had stopped for about half hour leaving her in the car, an Indian man had, in the interval of Patrickson's absence, entered the rear of the car searching about, and when accosted by her as to his activities had replied that he had known Patrickson for a long time. Thereupon Patrickson, according to his own testimony, requested Hylton to go back to the gas station to make enquiries about the Indian man. Hylton in his testimony however denied that Patrickson had asked him so to do, but asserted that Patrickson had merely said that "he (presumably Hylton) should go down to the gas station and find out what the Indian man was doing in the back of the car before I arrested him." This controversy the learned resident magistrate likewise resolved in favour of the respondent. "The plaintiff" he wrote "then explained to defendant of the action of the Indian man in searching the car and requested the officer to return to the station to see if the Indian man could be found. This the defendant refused to do as he himself said when cross-examined." Hylton then directed Patrickson to drive his car to the Police Station. Patrickson refused and Hylton thereupon arrested both Patrickson and Francis, conveyed them in his car to the Denham Town Police Station where he charged them both with possession of ganja. It was the testimony of Hylton that both in the street and at the police station Patrickson maintained a vigorous and persistent denial of knowledge of the presence of the ganja in his car (See R. v. Cyrus Livingston (1952) 6 J.L.R. 95), that though he had searched the person of Patrickson he found no incriminating material upon him, indeed not as much as a cigarette butt. It was the testimony of Patrickson that prior to the date charged he had not known Miss Francis, that she had requested the kindness of a lift in his car and he had obliged. Before arrest Patrickson was asked neither for his name nor his address, but two hours after arrest he secured his release on bail at the instance, presumably, of the officer in charge of the Denham

Town Police Station pursuant to powers in that behalf contained at section 28 of Cap. 72 of the 1953 Revised Law of Jamaica, the Constabulary Force Law, inasmuch as it does not appear on the evidence that Patrickson was taken before a Justice of the Peace in compliance with section 18 of the same Law (but see Tims v. John Lewis & Co. (1951) 1 All E.R. 814 at p.817 lines C to G). Miss Francis was of course dismissed at the criminal trial without being called upon, whilst Patrickson's conviction and sentence were reversed on appeal. Thereafter proceedings in false imprisonment and malicious prosecution followed.

The issues. The appellant's statement of claim after reciting the material facts, alleged that "the first-named defendant maliciously and without reasonable and probable cause arrested and imprisoned the plaintiff for possession of ganja ..... and the first-named defendant maliciously and without reasonable or probable cause prosecuted the plaintiff for the said offence ....." The defence in their statement to the court below did not plead any particular common law or statutory power of arrest, and it may be questioned whether on the basis of this deficiency in their pleadings alone a judgment in favour of the respondent was not properly returnable on the claim for false imprisonment. However, they simply denied malice and affirmed the existence of reasonable or probable cause for both the false imprisonment and the prosecution. Mundane, then, as the circumstances of this case were, they raise on the pleadings, apart from the issue of malicious prosecution, the important question of the liberty of the subject on the one hand, and, on the other hand, the equally important subject of the scope, in the context of reasonable and probable cause, of the very necessary police statutory powers of arrest without a warrant all the more so having regard to the custodial responsibility conferred upon the courts in respect of fundamental rights guaranteed to every citizen under our Constitution.

The Law. Before examining these issues, the question of ~~relevant~~ the statutory power of arrest relevant to the circumstances as well as another matter incidental thereto may briefly be laid aside. First the well-known general power of arrest without a warrant where indictable or summary offences are "found committed" by a Constable and contained at section 18 of Cap. 72 seem apt to cover the circumstances of this case. Next, it is my view that the specific power of arrest without a warrant contained in section 22 of Cap. 90, the Dangerous Drugs Law, (in operation at the material time), could equally well have been prayed in aid, inasmuch as such possession of the ganja, if any, as Patrickson could be said to have had, would have ceased when the sticks or spliffs were seized by Hylton, whereafter it could reasonably have been contended, if at all, that Patrickson "had committed" an offence against the Dangerous Drugs Law. Thirdly, by section 4 of Cap. 70, the Constables (District) Law, district constables are vested with all the powers of constables, and so, in accordance with the majority judgment of the then Full Court in Rex ats. Wilks v. Oliver Jones (1936-1940) 3 J.L.R. 225, district constables are empowered to exercise the statutory power of arrest which by section 18 of Cap. 72 "it is lawful for any Constable" to exercise. Pursuant, then, either to section 22 of the Dangerous Drugs Law or, more apparently to section 18 of the Constabulary Force Law, a statutory power of arrest without a warrant obtained in the instant circumstances but as already indicated, no particular statutory power whatever was pleaded in justification of the arrest.

Turning then to the single issue joined in the case, namely: "Did the arrestor and prosecutor in exercise of his statutory power act with reasonable or probable cause or without malice"? The resident magistrate, sitting as he did, without a jury ~~joined~~ found the relevant facts, some of which have already been adverted to, but none of which was seriously challenged, if at all, before this Court and on the basis of those findings he came to the determination that there was an absence of reasonable

or probable cause. The circumstances of this case bear in some material respects such close resemblance to those in the well-known case of Dumbell v. Roberts (1944) 1 All E.R. 326 that I make no apology for a rather fulsome reference either to the facts thereof or, later on, to the rationes decidendi. The ensuing skeleton facts of that case are taken verbatim from the report thereon: " The police overtook the plaintiff and having stopped him, inquired about his rear light and then asked him what was in a bag or sack he was carrying on the frame of his bicycle, and on being told soap flakes (which they knew was a rationed article though he did not) asked where he got them. He replied "from his mate." His mate called Appleton, was the regular driver of the ambulance of the Merseyside Hospitals Committee, of which the plaintiff was the regular attendant. The plaintiff was dressed in their uniform. It was in issue below whether he told the Police Appleton's name. He also told them he had come from "the garage"; so they went back. Again, there was an issue of fact as to whether he invited them to go to the garage or whether the police decided of their own motion to go back with him. Anyhow they did not ask the plaintiff's name and address before arresting him. The garage was the garage of the Hospital's Committee and some 18 men were employed there. They arrested him outside the garage on his telling them that his mate was not there and before making any inquiries inside the garage. He was subsequently that night charged with unlawful possession of some 12 or 14 lbs of soap flakes under the Liverpool Corporation Act 1921..... His case was disposed of on Sept. 23 when he was absolutely discharged." The consequential proceedings in false imprisonment were lost at first instance but on appeal were successful, the matter being returned to the court below for assessment of damages only. The Liverpool Corporation Act of 1921 conferred upon the police a power of arrest without a warrant where there was reasonable ground to believe or suspect that property in the possession of a person had been stolen or unlawfully acquired or detained, provided that the name and

residence of such person were unknown to the arreste and could not be ascertained by him. On their respective facts Dumbell's case and the instant one are marked by five important similarities, namely (i) both aggrieved parties had been found in actual possession of their respective articles, (ii) such possession existed in prima facie incriminating circumstances, (iii) both aggrieved parties asserted that their possession was in fact innocent, (iv) both invited the respective arresting constables to make presently realisable and reasonably enquiries, and (iv) both sets of arresting constables in fact made no such enquiries. On the law both cases share two equally important and material similarities, namely: (i) the respective statutory provisions in fact or in substance confer powers of arrest in circumstances of offences, generally described as "found committed", and (ii) the respective statutory powers of arrest permit arrest on reasonable suspicion, the Liverpool Corporation Act expressly and section 18 of the Constabulary Force Law impliedly, by judicial interpretation (See Isaac v. Keech (1925) 2 K.B. 354, particularly at p. 360 and Barnard v. Gorman (1941) 3 All E.R. 45). In allowing Dumbell's appeal the Court of Appeal rested their decision on two grounds (i) the non-observance by the Police of the Statutory pre-condition to arrest, namely asking for the arrested person's name and address, and (ii) failure to make the reasonable enquiries to which the circumstances gave rise, thereby exhibiting an absence of reasonable or probable cause. On this latter issue certain observations, some specific, others general, but both equally pertinent to this as to that case, fell from the lips of Lord Justice Scott. "The power" he said "possessed by constables to arrest without a warrant, whether at common-law for suspicion of felony, or under statutes for suspicion of various misdemeanours, provided always they have reasonable grounds for their suspicion is a valuable protection to the community; but the power may easily be abused and become a danger

to the community instead of a protection. The protection of the public is safe-guarded by the requirement, alike of the common law, and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called on before acting to have anything like a prima facie case for conviction (compare Glinski v. McIver (1962) A.C. at p. 745 and Dallison v. Caffery (1965) 1 Q.B. at p. 370); but the duty of making such enquiry as the circumstances of the case ought to indicate to a sensible man is, without difficulty, presently practicable, does rest on them; for to shut your eyes to the obvious is not to act reasonably. In the present case not only did the police fail to carry out section 513(1) (that is, to ask for the name and address of Dumbell), but, in my opinion, they failed to make such inquiry from either the plaintiff himself or those at the garage as would entitle them to think they had reasonable grounds for suspicion ..... For that reason also I hold that the judgment cannot stand and that there must be a new trial."

Turning now to the instant case the evidence established that the District Constable, having received certain information including a general description of a motor vehicle, stopped and searched the car of Patrickson which answered to that description. The information had been received at a time not significantly long before Patrickson's car was stopped. On the finding of the learned resident magistrate which was not challenged, Hylton had searched only the rear of Patrickson's car. It is clear that the limited locale of the search was influenced by the scope of the information received. On the production of the ganja Patrickson vigorously asserted his innocent possession of it, narrated to Hylton the story of the very recent rummaging of that self-same rear of the car by the Indian man at the nearby gas station and requested Hylton to visit the gas station to make enquiries. This narrative took place in the hearing and

presence of Miss Francis from whom the story was originally obtained, who was the only eye-witness of it and whose arrest Hylton equally contemplated. Whether Hylton's responses to these circumstances were those of a prudent and cautious constable, or, in the words of Lord Justice Scott, of "a sensible man" may be determined by his action or inaction and his own testimony, as the record reveals. Firstly, he paid no attention whatever to what Miss Francis was saying to him, material though it was or could have been in deciding whether his prima facie suspicions were justified. As he said "I was not listening to the lady when she told him of Indian man as she was crying. I concentrated on Patrickson. She was crying: if she said anything I would not have heard of her." Secondly, he paid no regard either to Patrickson's persistent claims to innocent possession nor to his anterior willingness to let him search his car. As far as he was concerned "when they are so willing, I suspect them." Thirdly, he showed no interest whatever in ascertaining Patrickson's name and address, information both reliable and available from Patrickson's driver's licence and insurance certificate, information which, however slight, might have eventually led, together with other information such as his occupation and so on, either to confirming or modifying his prima facie suspicion. "I did not know Patrickson before and his whereabouts, that is why I arrested him. Another matter was operating in my mind for I have had experience of things like this happening and the accused abscond." This answer also strongly suggests that the district constable might have indeed been seeking to invoke his powers of arrest without a warrant under the section of the Dangerous Drugs Law already referred to. Fourthly, he never raised with himself the question of the possible veracity of the story about the Indian man. Although the gas station was nearby and one of two cars was available to take them all there Hylton refused. "Yes, I refused" he said "I did so for I do not know if I went to gas station they would

not gang me down there." It is of course quite useless to speculate what might have happened if they had gone to the gas station when in fact they did not go there. The district constable made no attempt to secure police assistance to go to the gas station and it seems trite to observe that the liberty of the subject could hardly be made to fluctuate with the fortitude and courage or otherwise of a district constable. Lastly, but perhaps most revelatory, his reason for the arrest and subsequent prosecution of Miss Francis namely "also the girl was in possession", was one for which there was not the slightest scintilla of supporting evidence.. These acts together with the testimony itself of the district constable seem irresistibly to draw the portrait of an indifferent arrestor and prosecutor who, closing his eyes and ears to the obvious, proceeded both to arrest and to prosecute on the basis of a personal philosophy of 'guilt by association' drawn out of the books of his experience in which on his own testimony Patrickson had never been a character. Thus in the final paragraph of his reasons for judgment which regrettable for clarity and precision might have benefitted from greater assiduity to the task, the resident magistrate came to the conclusion that "the plaintiff was wrongly arrested wihout reason, there was no reasonable cause for the imprisonment or for the subsequent prosecution. The plaintiff was only arrested because he did not know the plaintiff and not because of finding in possession of ganja" meaning, as I comprehend him, "not finding in guilty possession of ganja." Reverting to the subject of the scope of the exercise of powers of arrest without a warrant, Lord Justice Scott once more said "The duty of the police when they arrest without warrant is, no doubt, to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty. The British principle of personal freedom, that every man should be presumed innocent until he is proved guilty, applies

also to the police function of arrest - in a very modified degree, it is true, but at least to the extent of requiring them to be observant, receptive and open-minded and to notice any relevant circumstance which points either way, either to innocence or to guilt. They may have to act on the spur of the moment and have no time to reflect and be bound, therefore, to arrest to prevent escape; but where there is no danger of the person who has ex hypothesi aroused their suspicion, that he probably is an "offender" attempting to escape, they should make all presently practicable enquiries from persons present or immediately accessible who are likely to be able to answer their enquiries forthwith. I am not suggesting a duty on the police to try to prove innocence; that is not their function; but they should act on the assumption that their prima facie suspicion may be ill-founded. That duty attaches particularly where slight delay does not matter because there is no probability, in the circumstances of the arrest, or intended arrest, of the suspected person running away. The duty attaches, I think simply because of the double-sided interest of the public in the liberty of the individual as well as in the detection of crime."

On the facts as found by the learned resident magistrate and on the applicable law I have no hesitation whatever in coming to the conclusion that in arresting and prosecuting the respondent the first-named appellant acted without reasonable and probable cause. I would therefore dismiss the appeal and affirm the judgment of the learned resident magistrate in favour of the respondent.

Luckhoo, P. (Ag.): In the result the appeal is dismissed and the order of the learned resident magistrate is affirmed. The respondent will get his costs $50 of the appeal against the appellants.