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SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA

TERENCE LEONARD DETTON
(Appellant)

- and -

VERDUN BRIEN McNEIL
(Respondent)

The Supreme Court, (Brennan, A.J.) in its Appellate Jurisdiction at Port Moresby, on appeal from conviction and sentence by Court of Petty Sessions, Port Moresby, 30th May, 1960.

Criminal law - statutory offences - mens rea - onus of proof. Mens rea - Vagrancy Ordinance - drunkenness.

Appellant was convicted of being in the cabin of one S., deck-boy of the M.V.MALAITA without lawful excuse. The offence took place after midnight when Appellant, who had been drinking for some time, was discovered when S. awoke from sleep.

HELD : (i) the conviction was correct;

(ii) the proposition that :- because disproof of a criminal purpose attendant on a trespass is an answer to a charge, therefore a conviction cannot be supported unless the informant can point to a specific criminal intent on the part of the trespasser ignores the words creating the offence and inverts the onus of proof;

(iii) drunkenness is a defence only to an offence of which intent is an essential ingredient;

(iv) special reasons exist in this case which warrant a reduction of the penalty actually imposed.

Norman White, for the Appellant.
Paul Quinlivan, for the Respondent.

Cases referred to in argument.

(1) Carter v. Reaper (1920) V.L.R. 337.
Haisman v. Smelcher (1953) V.L.R. 625.
Wilkins v. Condell (1940) S.A.S.R. 139.
Abbott v. Pulbrook (1947) S.A.S.R. 57.

BRENNAN, A.J. delivered the following judgment :-

The Appellant brings this Appeal against a conviction under Section 4(2)(j) of the Vagrancy Ordinance; in the alternative he complains that the penalty is excessive. The Section is in these terms :-

> "Whosoever is without lawful excuse (the onus of proof of which excuse shall lie upon him) in or upon any dwelling-house, warehouse, shop, coach-house, stable or outhouse, or in any room of any dwelling-house, warehouse, shop, coach-house, stable or outhouse, or in any enclosed yard, garden or area, or in or on board any ship or other vessel when in Territorial waters or lying or being at any place within the Territory or in any cabin of any such ship or in or upon any mine or claim or at a place adjacent to any dwelling-house, warehouse, shop, coach-house, stable, outhouse, enclosed yard, garden, area, ship, vessel, mine or claim shall on conviction before any justice be liable to imprisonment with hard labour for a term not exceeding one year."

Some brief reference to the facts is necessary to an understanding of the submissions which follow. The Appellant came aboard a ship at the invitation or suggestion of a member of the ship's company. Before his arrival and during his visit to the ship he consumed quantities of liquor such as to affect him considerably. He then entered the Complainant's cabin, apparently switched on the light, was seized by the occupant, but escaped temporarily. It seems plain that he knew where he was and equally plain that his conduct was the hazy, somewhat irrational behaviour of one who has no clear idea of what he is doing and no clearly formulated intent to do any specific form of wrong.

It is submitted that the Section imports wrongful or unlawful intention as an essential ingredient; that proof of a bare trespass is not within the purview of the Section. The Section does not say so in terms. It then becomes necessary to consider whether such a construction is necessarily within the intendment of the Section. The authority firstly relied upon is

Carter v. Reaper . In that case a woman, who, with three detectives entered the informant's house in the erroneous belief that her husband was there committing adultery, was convicted on the footing of an identical Section, but successfully appealed. Hood J., pointing out that her honest belief in her right of entry had not been negatived, said: "It is a criminal section, and in this sub-section the burden of proof is placed upon any person found on the premises; that person must show that his presence was not for any criminal purpose. If he does that, his trespass is excused, not merely because he had any right or any belief in any right, though that would be sufficient, but simply by the absence of any wrong intention."

The case illustrates the difficulty of applying words designedly broad to cases where there is no moral turpitude on the part of the Defendant. This woman was "without lawful excuse" in the sense only that she had no answer to a civil trespass. It was held that such a case was not within the purview of the Section. But that does not assist the position of a trespasser against whom are proved circumstances of aggravation. In principle that appears to be correct and authority supports it. The Full Court of Victoria in Haisman v. Smelcher at p.628 said in reference to the phrase - "must show that his presence was not for any unlawful purpose" - It is not directed at behaviour that may, because of an infringement of some civil rights, give rise merely to a civil remedy; it is designed to make punishable conduct that is preparatory to or in furtherance of some criminal purpose, or which, by reason of its violating recognized standards of decency, tranquillity and decorum and the accepted usages of the community, is likely to put occupants in fear or apprehension and thus justify a binding over order."

Wilkins v. Condell, upon which Mr. White also relied, does not appear to me to assist him.

The present submission seems to me to be founded on a non-sequitur, namely, that because disproof of a criminal purpose attendant on a trespass is an answer to a charge under the Section therefore a conviction cannot be supported unless the informant can point to a specific criminal intent on the part of the trespasser. That proposition ignores the words of the Section and inverts the onus of proof. The authorities appear to me to support the first leg of the illustration propounded but that does not assist the Appellant.

Next it was submitted that the accused on the evidence should be acquitted on the ground of his drunkenness. Drunkenness is a defence only to an offence of which intent is an essential ingredient. I have already expressed my view that the subject offence is not one such. Drunkenness therefore is no answer, even if proved on the evidence.

In my opinion the conviction was sound.

As to penalty. If this offence involved an intrusion into a private home I should regard the penalty as quite proper, but it was in fact committed in the crew's quarters on a ship by a man whose previous good character is not challenged, and whose war service is meritorious. The stigma of conviction is for him itself a severe penalty, the more so as it stems out of his state of insobriety.

The Appeal is dismissed. The conviction confirmed. The Order of the Magistrate varied by substituting a fine of £10., in default twenty days for that of imprisonment ordered by the Magistrate. The Appellant will pay the costs of this Appeal.

Conviction upheld. Sentence varied.

reported by P.J. Quinlivan
Barrister and Solicitor.