83/76

SUPREME COURT OF VICTORIA

WRIGHT v KNIGHT; SMITH v WRIGHT; SMITH v HENRY

Dunn J

9 August 1976

CRIMINAL LAW – DRUGS – POSSESSION/SMOKING INDIAN HEMP – PROOF OF "INDIAN HEMP" – ANALYST'S CERTIFICATE CONSIDERED – CERTIFICATE BY ANALYST NOT BOTANIST ACCEPTED – FINDING BY MAGISTRATE THAT CHARGES PROVED – REFUSAL BY MASTER TO GRANT ORDER NISI – WHETHER MASTER IN ERROR: *POISONS ACT* 1962, SS26(1), 27(1), 31(1), 56(1).

The defendants were convicted of possessing and smoking Indian Hemp. The grounds on which it was sought to review the convictions were:
(a) there was no sufficient evidence that the "substances" were or contained Indian Hemp within the meaning of the Act;
(b) there was no evidence from the Government Botanist as to the identity of any of the substances;
(c) there was no evidence that any or either of the Defendants were persons qualified to give expert opinion as to the nature and identity of the substances; and
(d) that the Magistrate wrongly admitted evidence that the Defendants had committed offences other than those with which they were charged. Upon appeal—

HELD: Appeal dismissed.

1. The need to use the precise words (Cannabis Sativa L) is not a necessary requirement under the *Poisons Act*, if the conclusion that the material is Indian Hemp, as defined, is established otherwise.
***Anglim & Cooke v Thomas* [1974] VicRp 45; (1974) VR 363; and**
***Hardy v Gillette* [1976] VicRp 36; (1976) VR at p396, applied.**

2. Section 56(1) of the *Poisons Act* made the analyst's certificate sufficient evidence of —
(a) the identity of the thing analysed
(b) the result of the analysis
(c) the matters relevant to such proceedings stated in such certificate.

3. As to charges of smoking, each of the applicants admitted to smoking the cigarettes of which the butts formed part. The butts were item 3 referred to in the analyst's certificate.

4. No question of possession arose in the cases of the applicant Wright. For those reasons there was no substance in ground 1(a). As to ground (b) there was no reasonable ground in which it could be held that only a botanist could give the necessary testimony that the plant material was Cannabis Sativa L, and to hold that it was would be inconsistent with the two South Australian cases in this Court to which reference has already been made. As to (c) it was sufficient to say that there was sufficient proof, without reliance on any admission by the applicant as to the identity of the material. As to (d) there was no substance in this ground.
***R v Rance* (1976) Crim LR 311, referred to.**

DUNN J: Indian Hemp is defined in s26(1) of the Act to mean 'the fresh or dried aerial parts of the plant known as Cannabis Sativa L whether or not the resin has been extracted therefrom and resinous or other extract obtained from the plant by whatever name such parts or extracts are called'. Section 26 is in the first part of Part III of the Act, which Part is headed – 'Drugs Of Addiction'. That expression is defined in s3(1) of the Act to mean 'any substance or preparation specified in Schedule Eight to this Act or added thereto by proclamation'. In the list of drugs of addiction in Schedule Eight appears 'Cannabis (Indian Hemp)', That is the only reference in that Schedule to Indian Hemp. It follows that the expression Cannabis (Indian Hemp) means Indian Hemp as defined in s26(1).

The argument for the applicants was that there was no evidence or no sufficient evidence that the material smoked by or in the possession of the applicants belonged to the plant Cannabis Sativa L. The basis of this argument was that the analyst's certificate did not refer by name to

Cannabis Sativa L, and in any event the identity of the plant could be proved only by a botanist, and finally that the applicants were not qualified to admit the identity of the relevant material.

For these propositions reliance was placed on two decisions of the Supreme Court of South Australia – *Whitmore v Harding* (1974) 9 SASR 363 and *Dimitriou v Samuels* (1974-5) 10 SASR 331. There is no doubt that there has to be admissible evidence to prove where the offence is alleged relates to Indian Hemp, that the material falls within the definition of Indian Hemp in s26(1). The two South Australian cases turn on the fact that the evidence of the analyst in the first case and the certificate of the analyst in the second did not use the words 'Cannabis Sativa L' and accordingly for the purposes of the *Narcotic and Psychotropic Drugs Act* 1934-72 of South Australia the evidence was insufficient.

The need to use those precise words is not a necessary requirement under the *Poisons Act*, if the conclusion that the material is Indian Hemp, as defined, is established otherwise — see *Anglim & Cooke v Thomas* [1974] VicRp 45; (1974) VR 363; *Hardy v Gillette* [1976] VicRp 36; (1976) VR at p396.

The analyst's certificate in each of the present cases described the materials as follows:

> 'The green vegetable materials (Items 1 and 2) the cigarette butts (Item 3) and the dark brown miscous fluid (Item 4) each contained tetrahydrocannabinol which is an active principle of Cannabis (Indian Hemp).
>
> Cannabis (Indian Hemp) and active principles of Cannabis (Indian Hemp) are each listed as drugs. of addiction under Schedule Eight of the *Poisons Act*, 1962'.

There can be no question but that in using the words Cannabis (Indian Hemp) the analyst is using them with the meaning they bear in the act.

Section 56(1) of the *Poisons Act* makes an analyst's certificate sufficient evidence of —

(a) the identity of the thing analysed
(b) the result of the analysis
(c) the matters relevant to such proceedings stated in such certificate.

As to charges of smoking, each of the applicants admitted to smoking the cigarettes of which the butts formed part. The butts were item 3 referred to in the analyst's certificate.

No question of possession arises in the cases of the applicant Wright. For these reasons there is no substance in ground 1(a). As to ground (b) there is no reasonable ground in which it could be held that only a botanist could give the necessary testimony that the plant material was Cannabis Sativa L, and to hold that it was would be inconsistent with the two cases in this Court to which I have already referred. As to (c) it is sufficient to say that there was sufficient proof, without reliance on any admission by the applicant as to the identity of the material. As to (d) there is no substance in this ground – see *R v Rance* (1976) Crim LR 311.
