47/81

SUPREME COURT OF VICTORIA

PARKS v BULLOCK

King J

25 August 1981 — [1982] VicRp 22; [1982] VR 258

PRACTICE AND PROCEDURE – CERTIFICATES OF ANALYST AND BOTANIST - SERVED ON DEFENDANT WITHIN REQUIRED TIME UNDER S56 BUT IN NEW SOUTH WALES – OBJECTION TO ADMISSIBILITY ON GROUND SERVED OUTSIDE VICTORIA – QUERY AS TO PROBATIVE VALUE TO BE ATTACHED TO ADMISSIONS BY DEFENDANT THAT SUBSTANCE IN POSSESSION WAS INDIAN HEMP – CHARGES DISMISSED BY MAGISTRATE – WHETHER MAGISTRATE IN ERROR: *POISONS ACT* 1962, S62.

HELD:
(1) It is of no practical or legal significance where such notice under s56 of the *Poisons Act* 1962 is given so long as it is in fact given.

(2) Evidence from an admitted buyer and smoker of Indian Hemp is sufficient to enable a Court to give probative weight to his admission that a substance in his possession is Indian Hemp.

KING J: The Defendant Bullock was charged with the following offences under the *Poisons Act*.

> (1) Not being an authorized person under the provisions of the *Poisons Act* 1962, having in his possession Indian hemp (s27(1));
>
> (2) Smoking Indian hemp (s31(1));
>
> (3) Not being an authorized person under the provisions of the said Act, trafficking in Indian hemp (s32(1)).

At the hearing at the Magistrates' Court evidence was given by the informant of an interview which he and another police officer had with the defendant. He then tendered a certificate of analysis under the Act of a Government analyst purporting to be signed by the latter which reported that the material examined by him contained "Tetrahydrocannabinol which is an Active Principle of Cannabis (Indian Hemp)", and a certificate of the Senior Botanist of the Department of Crown Lands and Survey, and purporting to be signed by her, that the material examined by her "was found to be composed mainly of leaf material of Cannabis L.", which she said was otherwise known as "Indian Hemp".

It was proved that copies of the above certificates had been served on the defendant in New South Wales within the required time as provided by s56. No notice was given by the defendant that he required the analyst or botanist to attend as a witness. Objection was taken by Counsel for the defendant before the Magistrates' Court to the tender of the certificates on the ground that they were served outside Victoria. Argument was heard, and the Stipendiary Magistrate constituting the Court ultimately held the certificates to be inadmissible for this reason. He then went on to dismiss the charges for this reason.

On review the informant contended that His Worship was wrong in the reason he gave for dismissing the charges and that even if the certificates were inadmissible there was evidence before the Court in the form of admissions by the defendant in his interview with police officers that the substance found in his possession was Indian hemp, that he had smoked it, and that he had trafficked in it, and that this evidence should have been considered and evaluated by His Worship before he dismissed the charges.

The defendant, submitted that in statutory interpretation there is an overriding presumption that in the absence of express words which indicate that a statutory provision has extra-territorial application the Legislature does not intend it to have extra-territorial effect. He relied on the

following statement of Cussen J in *R v Franke* [1929] VicLawRp 53; [1929] VLR 285; (1929) 35 ALR 230 at p231. His Honour quoted a statement by Sir John Salmond in 33 *Law Quarterly Review* at p119, namely:

> "It is well settled that, at least in a penal statute, general words will not be given an extra-territorial operation unless an intention to give such an operation to the statute appears expressly or by necessary implication. All references, therefore, in such a statute to persons, acts or things will *prima facie* be restricted to persons, acts and things within the territorial limits of the jurisdiction of the Legislature".

Mr Uren for informant did not dispute the existence of this general principle, but submitted that it was not applicable to a procedural provision, such as s56. The effect of construing without territorial restriction the penal provisions relied on by the informant in these cases would be that the Crown in Parliament in right of the State of Victoria would be asserting its authority over activities within the area of authority of other State Parliaments. The inconvenience of such an interpretation is obvious.

However, no such difficulty arises from construing the word "services" in ss56(2)(a) and 56(3) of the *Poisons Act* so as to give it a general extra-territorial effect. This interpretation would not result in the Victorian Parliament exercising legislative power over acts done in New South Wales. The object of such service is to give a defendant notice that the procedure of s56 is being invoked by the informant, and it is of no practical or legal significance where such notice is given so long as it is in fact given. There is no reason for nullifying the procedural advantages given by the section by making its application depend upon where the defendant happens to be when notice is given to him. I think that the Magistrate should not have ruled the certificates tendered inadmissible for the reason he gave, that his dismissal of the three informations should be set aside, and that the informations should be referred back to him for further consideration.

Insofar as the second ground is concerned, the defendant maintains however that there is no basis in the evidence upon which the tribunal could have reasonably found that the defendant's statements (though admissible) had any probative value as admissions by him that the substance in his possession was Indian hemp. Reliance was placed on the fact that when the defendant was first asked what the substance in his possession was he said "marijuana", which is not identified by the evidence or the Act as Indian hemp. However, during the course of his interviews, the defendant was asked many questions about the substance found in his possession in which it was called "Indian hemp", and he answered these questions on the basis that that is what it was. At one point, at page 10 of the affidavit of Donald John Scott, the defendant is reported to have said that he bought "the Indian hemp". I think that there is in Scott's affidavit ample evidence that the defendant said and agreed that the substance concerned in the informations is Indian hemp.

It was further submitted that the defendant is not an expert on the identification of Indian hemp, and that consequently his admission should be regarded as uninformed and valueless, and that the question whether it has any probative weight is still open, and that if the Court's view is that the defendant had no personal knowledge of the fact he has admitted, his admission is of no probative value.

There was nothing in what the defendant said to the police that indicated that he did not know that the substance concerned was Indian hemp. Furthermore, there are indications that he was in a position to know what it was. He said that he had bought 100 sticks (of which 17 were found in his possession) and had smoked some of it mixed with tobacco. He said he had smoked Indian hemp before and had purchased some at another time. He said he had paid $1,250 for the 100 sticks he had bought on this occasion. As did Connor J in the similar case of *Relf v Webster* (1979) 24 ACTR 3 at p7, I think that evidence from an admitted buyer and smoker of Indian hemp is sufficient to enable a Court to give probative weight to his admission that a substance in his possession is Indian hemp, I think therefore that for this reason also the dismissals of the informations should be set aside and the informations re-submitted to the Magistrate for further consideration.
