

09/84

FEDERAL COURT OF AUSTRALIA

COWARD and ORS v ALLEN and ORS

Northrop J

19 March 1984 — [1984] FCA 53; [1984] 52 ALR 320

PROCEDURE – ISSUE OF SEARCH WARRANT – WHERE WARRANT GRANTED TO SEARCH MOTOR VEHICLE – WHETHER MOTOR VEHICLE "A HOUSE, VESSEL, OR PLACE" – IF NOT, WHETHER WARRANT VALID OR WHETHER SEVERABLE: *CRIMES ACT* (Cth) S10.

A Justice of the Peace issued 3 search warrants authorizing certain Federal Police Officers to enter premises occupied by C. and to seize and remove a large number of things including documents. In 2 of the warrants, the Justice, in addition to granting each warrant to enter and search a place, authorized the entry and search of motor vehicles irrespective of where those motor vehicles happened to be. Following execution of the warrants, C. obtained orders nisi calling upon the Justice and the police officers to whom each warrant had been granted to show cause why each warrant should not be quashed. One of the grounds was that the warrants which authorized entry and search of the motor vehicles were beyond the power conferred on the Justice and therefore invalid. On a motion for prohibition—

HELD: Motion refused.

(1) Under s10 of the *Crimes Act* (Cth.), a Justice may grant a search warrant authorizing any constable named therein to enter at any time any house, vessel or place named or described in the warrant.

(2) Where a warrant is directed to a motor vehicle, the warrant is valid if the motor vehicle comes within the meaning of the words "house, vessel, or place" in s10 of the *Crimes Act* (Cth.).

(3) The word "place" in s10 of the *Crimes Act* (Cth.) should be construed as meaning "a part of space of definite situation".

(4) As the motor vehicles mentioned in the warrants were not defined by reference to a part of space of definite situation, but merely by their registration numbers and the places at which they were usually garaged, they were not a "place" within the meaning of the words "any house, vessel, or place" contained in s10 of the *Crimes Act* (Cth.).

(5) Accordingly, that part of the warrants which authorized entry and search of the motor vehicles was *ultra vires* and therefore invalid.

(6) However, the offending words were severable from the warrants without affecting the validity of the rest of the warrants.

NORTHROP J: *[His Honour set out the procedural steps taken by C., he satisfied himself that the Federal Court had jurisdiction to hear and determine the proceedings seeking prohibition, and he set out the full terms of two of the warrants. He dealt with the question of construction of the warrants and whether the warrants contained sufficient particularity, and continued]: ... [26] A reference to the second and third warrants shows that the Justice granted each warrant to enter and search a place and in addition to enter and search a motor vehicle irrespective of where that motor vehicle happened to be. In each warrant the place is defined as premises identified by [27] reference to an address and extended to any house on those premises as well as to "garages, sheds, store-rooms and containers at the said premises".*

In the authorization contained in the warrants, those premises are referred to as the said place". If a motor vehicle happened to be on those premises at the time of entry and search, presumably the search could extend to and include the seizure of things as described found inside that motor vehicle. In the two warrants, coextensive with the described place, each warrant identified a motor vehicle. Part of the identification of the motor vehicle referred to the vehicle "which is usually garaged at the said premises". The words in the authorization and the said vehicle" make it clear that the warrant is directed to the motor vehicle irrespective of where it is situated and to be valid the motor vehicle must be a "house, vessel, or place" within the meaning

of those words contained in s10 *Crimes Act*. Counsel for the respondents contended that a motor vehicle was a "place" within s10 *Crimes Act*. A reference to any dictionary illustrates that the word "place" has many different meanings. Generally, the word is found in conjunction with other words and must take its meaning from the context in which it is used, in this case s10 *Crimes Act*. The word "place" is used in the context of a power to authorize the entry and search for things in any house, vessel, or place".

The section was first enacted in 1914, [28] see s10 Act No. 12 of 1914, and for present purposes was in the same form as it is now. The section was based on s679 *Criminal Code* (Qld) as enacted by the *Criminal Code Act* 1899 (Qld) where the same phrase "any house, vessel, or place" appeared, punctuation and all. The word "house" has many different meanings and need not be limited to a place in which human beings reside. The phrase "House of Parliament" illustrates this. A caravan while parked and used as a dwelling may be a house, but is it a house when being towed on a public road? The word "vessel" is normally used to denote a sea-going craft or ship, but has many other meanings.

Questions can arise as to whether an aircraft, especially a large commercial aircraft, is a vessel. Are shipping containers vessels, and if so, are they vessels when packed or stacked ashore? In the present case, it is not necessary to determine all these questions or the question of whether caravans, aircraft, ships or containers are places. In its context in s10 *Crimes Act* the word "place" should be construed as meaning "a part of space of definite situation". Thus, the place can be defined by reference to an area of land, whether private or public, or an area of space, for example by reference to a specified floor in a multi-storied building. The place may be private or public. The place may be part of an airport or a seaport. Provided the place is defined with sufficient particularity, the authority to search could be expressed to include an authority to search all things found on or within that place, whether a motor [29] vehicle, a caravan, a container, or an aircraft. The essential feature, however, must be a definition of a place by reference to a part of space of definite situation.

In the two warrants, the motor vehicles are not defined by reference to a part of space of definite situation. Motor vehicles, of necessity, move from place to place and the warrants purport to authorize the persons named in them to enter and search the motor vehicles no matter where they happen to be. In my opinion, a motor vehicle described merely by its registration number and the place at which it is usually garaged is not a "place" within the meaning of the words any house, vessel, or place" contained in s10 *Crimes Act* and that part of the warrants which authorizes entry and search of the motor vehicles is beyond the power conferred on the Justice to grant a warrant and therefore is invalid.

In my opinion, however, the offending words, being the words underlined in the second warrant set out in these reasons, can be severed from the warrant without affecting the validity of the rest of the warrant. This can be done by reference to paragraph 46(b) *Acts Interpretation Act* 1901, and see *R v Commonwealth Industrial Court Judges; Ex parte Cocks* [1968] HCA 86; (1968) 121 CLR 313; [1969] ALR 161; 43 ALJR 32, per Kitto J at p323. The warrants are valid instruments to the extent to which they are not in excess of the power conferred by s10 *Crimes Act*.

In any event, this is a case where at common law the [30] offending parts of the warrants can be severed and the remaining parts remain valid; see *Kingsway Investments (Kent) Ltd v Kent County Council* [1971] AC 72; [1970] 1 All ER 70 per Lord Reid at AC pp89-91 and Lord Upjohn at pp112-4. The severance question did not call for consideration by the majority of their Lordships and the dissent of Lord Reid and Lord Upjohn on the substantive issue required them to consider the severance question. These facts do not detract from the authority of the passages relied upon. It is interesting to note that in *Alder's case* [1977] 37 Canadian Criminal Cases (2d) 234, the Court severed offending parts of a search warrant without quashing the whole of it. In the present case, the offending parts of the warrants can be severed without affecting in any way the remaining parts of the warrants. There is no suggestion that the motor vehicles were searched at any place other than at the premises described at Wheelers Hill and Mornington respectively.

Accordingly, the motions for prohibition by Coward and Herman respectively must each be refused.