

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURTS CRIMINAL APPEAL No. 104/66

BEFORE: The Hon. Mr. Justice Lewis, Ag. President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

R. vs ANTHONY GREEN

Mr. W.K. ChinSee for the Crown

Mr. D.V. Daley for the appellant

18th, 19th May, 1966.

LEWIS, P.(Ag.),

The appellant was convicted on the 31st of March, 1966, by the learned Resident Magistrate of the Sutton Street Court, on an information which read as follows:-

"Anthony Green of 19 Emerald Road of the said parish of Kingston, on Wednesday the 2nd of March, 1966, with force at Kingston and within the jurisdiction of this Court had in his possession one(1) copy Information Bulletin published in Prague the importation of which has been prohibited under the provisions of Section 3, of Chapter 397 by the Prohibited Publications (Consolidation and Amendment) Order, 1950, published in the Jamaica Gazette Supplement (Proclamations Rules and Regulation) on Monday 30th October, 1950 as amended by the Prohibited Publications (Amendment) No 2) Order 1962 published in the Jamaica Gazette Supplement (Proclamations, Rules and Regulation) on Friday, December 14, 1962 as amended by Proclamations, Rules and Regulations, The Undesirable Publications(Prohibition of Importation) Law on Thursday, October 14, 1965.

Contrary to Section 4(2) of Chapter 397."

/He....

He pleaded not guilty, and evidence was led that on the 2nd of March, 1966, a police Corporal named Buchanan searched his house under a search warrant issued under the Undesirable Publications Law and there found a document called "Information Bulletin." He seized this document as well as certain other books which he also found on the premises. The gazette dated October 14, 1965, pertaining to an Order cited as the Prohibited Publications Order, 1965, made under the Undesirable Publications (Prohibition of Importation) Law was put in evidence. It appeared in the course of cross-examination that this document named "Information Bulletin" was published by Peace and Socialism Publishers, of Prague.

Buchanan was the only witness, and at the close of the case for the prosecution learned Counsel for the appellant, who also appeared in the Court below, took the point that the Order was bad on the ground of vagueness and uncertainty in so far as it purported to prohibit importation of the publication "Information Bulletin." He also contended that the Order was bad, in so far as it purported to prohibit the importation of all publications of Peace and Socialism Publishers of Prague. The learned Magistrate convicted the appellant on the information as it stood, no amendment having been asked for, or suggested, and the appellant now appeals from this conviction.

The first observation to be made with respect to this information is that it refers to the prohibition under the Prohibited Publications (Consolidation and Amendment) Order, 1950, as amended by the Undesirable Publications (Prohibition of Importation) Law. In point of fact the Prohibited Publications Order, 1965, revoked the Prohibited Publications (Consolidation and Amendment) Order, 1950, and that revocation, of course, carried with it the revocation of all amending orders, so that if a charge is to be laid against the appellant at all, it ought to have been laid in respect of a prohibition under the

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Prohibited Publications Order of 1965. It is not upon this that the Court bases its decision in this case, however. We mention it merely to indicate the very careless manner in which this information was prepared, and the lack of attention which has apparently characterised the whole of these proceedings.

In this Court learned Counsel for the appellant has renewed the contention which he made in the Court below. He has submitted that Section 3 of the Law gives the Minister power to prohibit specified publications, or in case there is a previous order prohibiting a specified publication by specified publishers, then power by a subsequent order to prohibit all publications by those publishers. With respect to the prohibition of "Information Bulletin," he submits that this is vague and uncertain. He relies upon the fact that two other documents both entitled "Information Bulletin" were put in, one hailing from British Guiana and the other from Sofia, and that the police Corporal stated in evidence that whereas he would consider that those were banned, though he gave no reason, he would not consider that an "Information Bulletin" which hailed from the United States of America, or which, though published in Jamaica was brought in from some place outside of Jamaica, would come within the ban.

This Court, of course, is not in any way bound by the opinion of a police Corporal as to what is, or is not banned within the terms of this Order. What it has to consider is the meaning of the section which gives the Minister power to prohibit the importation of publications and whether the prohibition as it appears in the relevant order falls within that meaning. Section 3 of the Undesirable Publications (Prohibition of Importation) Law reads as follows:-

"(1) Where the Minister is of opinion that the importation of any publication would be
/contrary....

contrary to the public interest, he may, by Order prohibit the importation of such publication, and in the case of a periodical publication may, by the same or subsequent Order, prohibit the importation of any past or future issue of such publication."

Sub-section(2) was added by Law No. 53 of 1953 and reads as follows:-

"(2) Where the Minister has by an Order under sub-section (1) of this section prohibited the importation of any publication he may, if, in his opinion it would be in the public interest to do so, by a subsequent order prohibit the importation of all or any other publications of the same publisher."

We think that in any Order prohibiting the importation of a publication there must be given sufficient information to identify the particular publication which it is intended to prohibit. This might consist, for instance, of the name of the publisher, the date and place of publication, or some other information by which the particular document can be identified. But it is essential that there should be sufficient certainty about the prohibition to enable the average citizen to know exactly what publication is prohibited. The wording of sub-section (2) appears, in our view, to bear out this opinion, because it says that all publications of a publisher may be prohibited where there is a previous order already specifying a particular publication by that particular publisher. If the legislature had intended that publications might be prohibited by means of vague and indefinite descriptions it would not have been necessary for this amendment to be passed.

Looking at this Prohibited Publications Order, 1965,

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we see that it states: "The importation of the publications set out in the Schedule is hereby prohibited." There is a long list and towards the end of the list appear the words "Information Bulletin." Now, everybody knows that "Information Bulletins" are published by large numbers of organizations both in and outside of Jamaica, and an information bulletin is merely the name given to a sheet or sheets of paper which purports to give information upon various subjects.

Learned Counsel for the Crown has submitted that the duty of the Court is merely to construe the Statute and not to say whether it is wide or far reaching. He submitted that the fact that only the words "Information Bulletin" appeared did not make it vague, as the intention might be to ban all information bulletins. It is well established that one difference between laws passed by the legislature and laws passed by other bodies in the exercise of delegated powers is, that in the latter case the legislation may be challenged in the Courts, which may in certain circumstances declare it invalid. It is unnecessary for this Court to refer to any authority on this point.

In our view, this prohibition, containing no such description as might identify any particular publication is too vague and uncertain to fall within the meaning of Section 3(1) and is therefore void.

The conviction as it stands, in respect of the possession of a document entitled "Information Bulletin," therefore, cannot stand. It was, however, submitted by learned Counsel for the Crown that if that was so, then this Court would have power to amend the information and conviction so as to bring it into line with the evidence that was given that this particular document was published by Peace and Socialism Publishers of Prague. He pointed to the fact that in the Order all publications of Peace and Socialism Publishers of Prague, Czechoslovakia

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were prohibited from importation.

Mr. Daley, for the appellant, however, took the point, that it had not been shown by the Crown that there was at the time this Order was made, any previous Order in which any specified publication by Peace and Socialism Publishers had been prohibited. The Court, however, does not consider it necessary to express any opinion as to whether or not the prohibition of all publications of Peace and Socialism Publishers of Prague, Czechoslovakia, is in law a valid prohibition, and we expressly leave that point open.

To accede to the application of learned Counsel for the Crown would in effect be to convict the appellant of an offence relating to his possession of a document published by certain specified publishers, as distinct from possession of a prohibited document irrespective of who the publishers might be. To do so would be to convict him without giving him an opportunity to raise any defence to this entirely new aspect of the particulars of offence that were alleged against him relating to the class of prohibited publications within which it was alleged that the document in his possession fell. Such a course would be manifestly unjust and this Court will not make such an amendment. The application of learned Counsel is refused.

The appeal is allowed, the conviction quashed and sentence set aside.