JAMAICA

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL No. 253/65

BEFORE: The Hon. Mr. Justice Henriques (Presiding)
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

R. vs DALRYMPE SMITH
&
ALVIN BROWN

Mr. C. Orr for the Crown

Mr. M. Tenn for the appellant

1st February, 1966.

SHELLEY, J.A. (Acting),

The appellant, Alvin Brown, was tried together with one Dalrympe Smith by the learned Resident Magistrate for the parish of Saint Mary, on the fifth of November, last year. Both were convicted of being in possession of a quantity of excisable goods on which the duty leviable by Law had not been paid, contrary to Section 93(a) of Chapter 119 of the Revised Edition of the Laws of Jamaica.

Alvin Brown filed grounds of appeal, Dalrympe Smith filed no grounds of appeal. There being no grounds of appeal filed by Dalrympe Smith under Sec. 296 of Cap. 179 The Judicature (Resident Magistrate's) Law he is deemed to have abandoned his appeal and his appeal is dismissed.

The facts are that the appellant Brown went to shop premises belonging to one Percival Williamson on the 22nd of September, 1965, and something transpired there. Out of what transpired, it seems - I can say no more than that, because the Information on the point is not with the records and the notes

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are very scant on the subject of that Information - it seems that these two persons, Smith and Brown, were charged with "selling spirits". What that indicates we do not know. However, that Information was dismissed after submissions were made, firstly, that the evidence of Williamson was unreliable and secondly, that the possession related to certain articles found in the trunk of the car and there was no proof they contained spirits. The learned Resident Magistrate ruled there was no case to answer on that charge.

We will therefore proceed, so far as this appeal is concerned, on what other evidence there is on the records without having recourse to Percival Williamson's evidence. I might mention here that at one stage in arguing this appeal, Mr. Tenn for the appellant Brown urged that the evidence of Williamson has bearing on the matter, in that, the same car in which Brown travelled came with several men to Williamson's shop and it was suggested that Smith and Brown were only handling these things; but learned Counsel who appeared for Brown before the learned Resident Magistrate submitted that Williamson's evidence was unreliable; it is strange, to say the least of it, that we should now be asked to consider Williamson's evidence in regard to this appeal. The evidence as it stands, ruling out Williamson's, is that of one Wilbert Cammock, who was the shop-keeper at Rochdale in Saint Mary where on this 22nd day of September, he said that a Hillman car drove up. Three men came in the shop from the car; Brown being one of them; they ordered food, one said "look beside my seat" and this witness, Cammock saw Smith coming back with an imperial quart tin, which he put on the counter and then the police and the Excise Officer came in. The third man asked who were these two men and he Cammock said they were police and Revenue Runner and the third man ran, then the police spoke to these two remaining persons, one being Brown, took them outside, opened the trunk of the car, took from the

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car two demi-johns, which are present here before us in Court - not tiny things by any means, quite large demi-johns.

The Revenue Runner, Walton, said that on this 22nd of September he went with Constable Charlton to Rochdale to this shop. He saw Brown and Smith there. Smith had an imperial quart bottle and a shell tin, he placed the bottle among some boxes with bottles. The policeman seized it, asked who was the driver of the car, Brown said he was and then they saw these two demi-johns, one was wrapped in a crocus bag, the other unwrapped, in the trunk of the car. The liquid in these containers was checked and found to be spirit of quite high strength, subsequently tested as appears by the certificate of the Collector General which is tendered in evidence, the imperial quart bottle containing 20 fluid ounces 160.3 percent proof spirit and one demi-john containing 3 gallons 20 fluid ounces 161.1 percent proof spirit.

The appellant, Brown gave evidence. He said he is a farmer, that he left Bog Walk on this 22nd of September to go to Port Maria to receive a car body. He picked up the other man, Smith, to go with him and outside Linstead a man flagged him down; he saw two parcels, the man asked him for a drive; he took him up and his bag was put in the trunk. He said the man sat in the back of the car. They eventually came to Rochdale and stopped. He Brown ordered a tin of sardines having left Smith in the car; this man asked Smith to bring the bag in the trunk for him, the police came and the man disappeared, Brown said the bottles were not his.

It is submitted by Mr. Tenn for Brown that there is no evidence upon which the Court could have come to the conclusion that Brown was in possession of any of these containers with spirits in them. The case rests squarely upon this question of possession, and Mr. Tenn submits that if the articles belonged to the third man who ran, then the learned Resident Magistrate was wrong in holding that Smith and Brown were in possession on

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the principle that a person who merely handles an article is not necessarily in possession; mere handling is not sufficient to establish possession. There is no doubt about it that is a sound principle of Law, but in this case it isn't a question of mere handling. One has to consider the fact that the learned Resident Magistrate had the exhibits and the witnesses before him, and having regard to all the circumstances of the case, we find that it was a very reasonable inference for the learned Resident Magistrate to draw that all three persons were party to the possession of these things, there was strong evidence from which that inference could be drawn and on the question of possession, therefore, the appeal fails.

Mr. Tenn also argued that there is no proof that the Certificate tendered in evidence which is referred to as a Certificate of the Collector General, was signed by the Collector General. He points out that Sub-section 2 of Section 117 of the Excise Duty Law, Chapter 119 states that the Certificate of the Collector General, or the Government Chemist as to the strnegth of any spirit shall be prima facie evidence of the strength thereof, in other words the Certificate is evidence only of the strength. Section 23 of the Evidence Law Cap. 118, however, lays down -

> " Whenever by any Law now in force or hereafter to be in force any certificate, official or public document or documents, or proceeding of any corporation, or joint stock or other company, or any certified copy of any document, by-law, entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any Court of Justice, or before any legal tribunal, or the Legislative Council or House of Representatives of this Island, or any Committee of the Legislative Council or House of Representatives or in any judicial proceeding, the same shall respectively be admitted in evidence provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed

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by the respective Laws made or to be hereafter made, without any proof of the seal or stamp where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence."

In our view there is no necessity at all to prove the signature of the Collector General where a Certificate such as this purports to be signed by the Collector General. There is no merit in that ground. The appeal, therefore, fails, conviction and sentence are affirmed.