J A M A I C A

IN THE COURT OF APPEAL

CAYMAN ISLAND CRIMINAL APPEAL NO. 3/65

BEFORE: The Hon. Mr. Justice Henriques, Presiding

The Hon. Mr. Justice Moody

The Hon. Mr. Justice Eccleston (Acting)

R. vs D O R I S L E V Y

Mr. W.K. Chin See for the Crown

Mr. K. Brandon for the appellant

16th March, 1966.

MOODY, J.A.,

This is an appeal from the Stipendiary Magistrate of the Cayman Islands in respect of a conviction on a charge of the appellant being a person practising obeah contrary to Section 3 of Chapter 266.

The circumstances appear to have been that Detective Corporal Whittaker who was then stationed in the Cayman Islands had been a policeman in Jamaica for sixteen years and he had investigated cases over a period of fifteen years. That he went on the 7th of September, 1965, to the premises of the appellant, armed with a search warrant and proceeded to make a search. He also made a note at the time that he executed this search of the articles found. A considerable number of articles were found, and they were all put in evidence, and he purported to give evidence that these items were used in the practice of obeah.

The learned Counsel for the appellant at the trial submitted that the information did not disclose an offence, and that the appellant was entitled to have disclosed formal accusation of every ingredient necessary to constitute the offence, and in effect submitted that there was no case to answer and did not call the appellant to give evidence.

/The learned...

The learned Stipendiary Magistrate in his judgment surveyed the history of the Law and dealt with the amendment to the Obeah Law in Section 8 which states that:

> " In charging any person with being a person practising obeah, it shall be sufficient in the charge to state that he is a person practising obeah, and if anyone of the acts mentioned in the definition of a person practising obeah in section 2 of this law, is proved against him, he shall be liable to conviction on such charge and to the punishment provided by section 3 of this Law."

The learned Stipendiary Magistrate found the appellant guilty and passed a sentence of six months imprisonment.

The appellant before us submitted 8 grounds of appeal and in our opinion it is quite doubtful whether most of them do amount to a ground of appeal at all, but dealing with first of all the submission made by Counsel as to the charge being in the proper form, it was pointed out to learned Counsel that the law was amended by Law 18 of 1899, so that where hitherto it was necessary to give particulars of the acts of obeah which were alleged, subsequent to Law 18 of 1899, it was no longer necessary to do so. Law 18 of 1899, section 2 states that:

> " In charging any person with being a person practising obeah, it shall be sufficient in the charge to state, that he is a person practising obeah, and if anyone of the acts mentioned in the definition of a person practising obeah, in Section 3 of the Obeah Law, 1898, is proved against him, he shall be liable to conviction on such charge and to the punishment provided by Section 4 of the said Law."

That amendment to the Law came into being after the decision

/in the...

in the cases of R. vs Bryan and R. vs Mitchell, reported in Clarke Supreme Court Judgments p.101, so it appears that there is no merit in that point which the appellant urged before us.

The gravamen of this appeal rests on whether or not it was sufficient on the mere finding of articles in the possession of the appellant to constitute the offence. Section 7 of Chapter 266 of the Obeah Law states:

> " Whenever upon any search as aforesaid, any instrument of obeah is found, the person in whose possession it is found shall be deemed, unless and until the contrary is proved, to be a person practising obeah within the meaning of this Law, at the time at which the instrument of obeah was so found."

Turning then to section 2 of Chapter 266, the interpretation section - an "instrument of obeah" is there defined as meaning "anything used, or intended to be used by a person, and pretended by such person to be possessed of any occult or supernatural power."

Now, turning to the evidence in this case, an effort was made by the prosecution to lead evidence from Detective Corporal Whittaker, that he had had some experience in cases of obeah, and that in fact, he had knowledge of objects which are used in the practice of obeah.

The learned President referred Counsel for the appellant to the case of R. vs Chambers reported at Stephens Supreme Court Decisions, p. 1533, where it appears on page 1534 at the end of that page, this passage:

> " One piece of evidence was, however, received which, in my opinion, was clearly inadmissible. Reid, the constable, speaking of the occasion of the appellant's arrest, said: 'I got this bag. I have had experience in prosecuting cases of obeah

/before, and...

" 'before, and similar articles have been produced at those trials to what I found in this bag in defendant's possession.' This is mere matter of prejudice. It suggests without proof that a number of articles used in the practice of obeah were found, and it conveys the opinion of the policeman that the articles had probably been so used by the defendant."

We are of opinion that that passage is particularly apposite in the circumstances of this case. The remaining evidence given was in regard to the search and finding of the articles alleged to be instruments of obeah. There is no evidence whatsoever to satisfy the second clause in the definition of the 'instruments of obeah', viz. that the appellant was a person who pretended that any of these items so found by the detective possessed any occult or supernatural powers at the time at which those items were found.

In the circumstances, if that portion of the evidence is completely disregarded there is no evidence left to support the conviction against the appellant. For these reasons the appeal is allowed and the conviction set aside.