It remains only to deal with one further point raised by Counsel for the respondents. Mr. Blake, relying on what was said by Lord Simon L.C. in *Colfar v. Coggins & Griffith* (*supra*) at page 328, argued that in order to raise the issue of failure to provide a proper system of work, the statement of claim should have set out what the proper system of work was and in what relevant respects it was alleged that it was not observed. Strict rules of pleading are not, however, required to be observed in the Resident Magistrates' Courts, and for that reason this point, even if it could properly be taken for the first time in the Court of Appeal, fails.

In our view, the answers of the jury in this case amounted to a verdict for the plaintiff and should have been so construed. The judgment entered for the defendants in the Court below must, therefore, be set aside and judgment entered for the plaintiff for the amount of damages assessed by the jury (that is to say £31 special, and £100 general damages) and costs. We see no reason for interfering with the jury's assessment of damages. The appellant must have his costs here (which we fix at £12) and below.

Solicitors: K. C. Burke for the appellant; Robinson, Phillips and Whitehorne for the respondent.

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3 C.A.J.B. 399.

R. v. OWEN SAMPSON

Criminal Law—Right of police constable to arrest—Towns and Communities Law, Cap. 135 s. 3—Offence committed within view of a constable—Jamaica Constabulary Force Law, Cap. 129, s. 18—Person found committing any offence.

The deceased, a police constable, heard indecent language used by one of a crowd assembled in a street of a town, but he was unable to identify the person who used the words. He asked who used them and the appellant admitted it was he. The deceased then arrested him for the use of the indecent language, and was taking him to the police station when the appellant stabbed the deceased, inflicting injuries from which he died.

HELD: (i) as the appellant did not use the indecent language within the view of the deceased, the deceased had no authority to arrest under powers conferred by s. 3 of the Towns and Communities Law, Cap. 135.

Isaacs. v. Kcech [1925] 2 K.B. 361 followed.

(ii) as the offence, being a misdemeanour, was not committed in the presence of the deceased, and as there was no reasonable ground for supposing that a breach of the peace was about to be committed or renewed in his presence, the deceased had no power of arrest at Common Law.

Griffin v. Coleman (1859) 4 H. & N. 265, and

Stevenson v. Aubrook [1941] 2 A.E.R. 476 referred to.

(iii) as the appellant was found committing an offence punishable on summary conviction, the deceased had authority to arrest under powers conferred by s. 18 of the Jamaica Constabulary Force Law, Cap. 129.

R. v. Howarth (1828) 1 Moody 206;

Downing v. Capel (1867) L.R. 2 C.P. 461;

Griffith v. Taylor 2 C.P.D. 194; and

Hanway v. Boultbee (1830) 1 M. & Rob. 174, followed.

Chong v. Miller (1933) J.L.R. 81 referred to.

APPEAL from conviction recorded and sentence passed by Carberry, J. in the St. James Circuit Court.

Appeal dismissed.

Edwards for the appellant:

DaCosta for the Crown.

cur. adv. vult.

1954. Jan. 22: The judgment of the Court (O'Connor, C.J., MacGregor and Cools-Lartigue, JJ.) was delivered by the Chief Justice.

O'CONNOR, C.J.: The appellant was convicted on the 19th November, 1953, of the murder, on the 14th March, 1953, of Donald Pryce, a police constable in Montego Bay. From that conviction he appeals. O'CONNOR, C.J.

The case for the prosecution was that about 9 p.m. on Saturday, 14th March, 1953, the appellant was standing in Barracks Road, Montego Bay, usng indecent language. About twenty-five people were present. Constable Pryce come on the scene and, apparently heard the bad language. He came up and asked who was "cursing this indecent language". An eye-witness, one Rupert James says that the constable himself heard the words (and this appears to be true from the fact that he asked who was using them); but, as James put it, he "couldn't see the person through the crowd was so large. He could not pick out the definite man who was cursing". The appellant replied to the constable "It's me". Constable Pryce then said: "Come, we go down", by which the witness, James, understood that the constable was arresting the appellant for using indecent language. The constable did not at that stage lay hands on the appellant, but the appellant and he went off together in the direction of the police station. The circumstances were such that it was quite plain that the appellant was being taken to the police station.

The appellant stopped at Shadyside Bar and asked the constable what he had been arrested for and the constable told him that he had arrested him for using indecent language. The appellant then said that he was not going further and again used an indecent word. He moved to go into the bar, whereupon the constable held him by the

waist of his trousers and hauled him along towards the police station. One Thompson came up and urged the appellant to go quietly and said that he would come and bail him, whereupon the appellant used indecent language to Thompson, and taking a knife out of his pocket, stabbed Thompson in the jaw. Constable Pryce then drew his baton. The appellant stabbed the constable in the face. The constable struck the appellant with the baton. (It is not clear whether this was before or after he stabbed the constable). A Mr. Earle came up and grappled with the appellant, but he bit him and got away, and the appellant then inflicted more stab wounds on the constable: three wounds in all, including a stab wound in the neck from which the constable died. The appellant ran away and escaped; but was later arrested.

The defence was insanity. The appellant said that he remembered nothing of the incident. He remembered working as a hatter at his shop at Barnett Street, and nothing more till he found himself in the general penitentiary. A witness called Fray, however, said that on the day following the incident the appellant had told him that he, the appellent, had "jucked" a policeman with a knife and had got himself into a little trouble. This, if true, would indicate that the appellant did recollect the incident on the following day.

The judge directed the jury on the facts and on the law relating to insanity, to murder and to manslaughter. They convicted the appellant of murder.

The original grounds of appeal filed by the prisoner were abandoned before us by counsel for the appellant. The argument was confined to the supplementary grounds filed later by counsel. Supplementary ground 1 reads:

> "The Jury were not directed that the power to arrest for using indecent language can only be exercised by a constable when the offence is committed in his view and that if they (the jury) should find as a fact that the offence was not so committed then the arrest of the prisoner by the constable was unlawful."

It is true that under section 3 of the Towns and Communities Law (Cap. 135) a constable may only arrest without warrant a person committing one of the specified offences (which include using indecent language) when the offence is committed "within view" of the constable; or when the person is charged by any credible person with committing the offence.

Here, the offence for which the appellant was arrested was committed, not within the constable's view, but within his hearing, and the appellant, in answer to the constable's immediate enquiry, admitted that it was he, the appellant, who had committed it.

In the case of *Isaacs v. Keech* [1925] 2 K.B. 361, it was said by Scrutton, L.J., that under a section in the Town Police Clauses Act, 1847, which empowered a constable to arrest a person who "within his view" committed any of the specified offences, the constable must actually see the person committing the offence in order to have the power to arrest him. Notwithstanding that the sense of hearing and not the sense of sight is the sense required to detect the use of indecent language, we think that we must construe a penal statute strictly in favour of the prisoner and hold that, as the constable did not see the appellant committing the offence, the power of arrest under section 3 of the Towns and Communities Law did not arise.

The question of whether the constable was entitled at common law to arrest the accused was not argued before us, but we have considered this question and do not think that he was. A constable has power, at common law, to arrest without warrant on reasonable suspicion of a felony having been committed; but has no power to arrest for a misdemeanour, unless a breach of the peace has been committed in his presence or there is reasonable ground for supposing that a breach of the peace is about to be committed or renewed in his presence. (*Halsbury* Vol. 9 pages 87, 88; *Griffin v. Coleman* (1859) 4 H. & N. 265; *Archbold* 32nd Edition page 1038; *Stevenson v. Aubrook* [1941] 2 A.E.R. 476).

Apart, however, from powers of arrest at common law or under the provisions of section 3 of the Towns and Communities Law, there is another statutory provision conferring powers of arrest without warrant upon police constables. This is section 18 of the Jamaica Constabulary Force Law (Cap. 129). That section so far as is material, reads as follows:

> "18. It shall be lawful for any Officer, Sub-Officer, or Constable of the Force, without warrant, to apprehend any person found committing any offence punishable upon indictment or summary conviction and to take him forthwith before a Justice of the Peace....."

We are unable to accept Mr. Edwards' argument, based on the maxim *generalis specialibus non derogant*, that section 18 of the Jamaica Constabulary Force Law cannot apply to specific offences mentioned in the Towns and Communities Law to which section 3 of that Law applies, because the Jamaica Constabulary Force Law is a general enactment passed later than the Towns and Communities Law. We are unable to see that section 18 of the Jamaica Constabulary Force Law, which deals with the constabulary and, among other things, sets out their powers of arrest with or without warrant, abrogates or repeals or derogates in any way from section 3 of the Towns and Communities Law. Section 3 of that Law confers a

power of arrest without warrant for certain offences committed "within view" of a constable: section 18 of the Jamaica Constabulary Force Law confers powers of arrest without warrant upon constables (among other constabulary officers) in respect of persons "found committing" any offence punishable as therein mentioned. "Within view" of a constable is not the same as "found committing". (*Simmons v. Millingen* (1846) 15 L.J. (N.S.) 102 per Erle J. at page 105). It appears to us (subject to what is said hereafter about taking the arrested person before a Justice of the Peace) that the arrest of the appellant in the present case was lawful if he was "found committing" the offence of using indecent language; and was unlawful if he was not "found committing" that offence. The matter is important because, if the arrest was unlawful, the offence would, as the jury were informed by the trial Judge, be manslaughter and not murder.

Where a power is conferred by statute to arrest a person found committing an offence, the arrest must, in most cases, be made while the offence is actually being committed, or on fresh pursuit. (*Halsbury* Vol. 9 p. 95 paragraph 120; *R. v. Howarth* (1828) 1 Moody 206; 168 E.R. 1242); *Downing v. Capel* (1867) L.R. 2 C.P. 461; *Griffith v. Taylor* 2 C.P.D. 194). In *Hanway v. Boultbee* (1830) 1 M. & Rob. 14; 174 E.R. 6, a person was held to have been "found committing" a trespass on a dog when he struck a dog with unreasonable violence in the presence of its owner; the owner sent for a constable who immediately came and followed the plaintiff and arrested him a mile from the scene. Tindal C.J. said that the words of the statute (which authorised the immediate apprehension of a person "found committing" any offence against the Act) "must not be taken so strictly as to defeat its reasonable operation. Suppose a party seen in the act of committing a crime were to run away, and immediate and fresh pursuit be made, I think that would be sufficient. So in this case the party is actually seen in the commission of the act complained of; as soon as possible an officer is sent for and he is taken as soon as possible. No greater diligence could be required; and that being the case, I think it must be treated as an immediate apprehension for an offence which the plaintiff, supposing in the circumstances that it was an offence at all, was "found committing"."

It will be observed that in *Hanway's* case, the constable was not present and did not himself, with any of his senses, perceive the commission of the offence. In the case of *Chong v. Miller* (1933) J.L.R. 81, it was held that to justify arrest under section 19 of Law 8 of 1867, which also contained the words "found committing", the constable must have perceived with his own senses (whether of seeing, hearing or otherwise) the commission of the offence in question. That decision is binding upon us and we accept it, drawing attention, however, to the cases *contra* cited by Hallett J. in *Stevenson v. Aubrook* (*supra*) at pp. 479, 480. In the present case the constable was present and heard the offence committed and was immediately told by the appellant himself that it was he, the appellant, who had committed it: whereupon the constable forthwith arrested the appellant. We think that the appellant was "found committing an offence punishable upon summary conviction" within section 18 of the Jamaica Constabulary Force Law, and that constable Pryce was entitled to arrest him without warrant and take him before a Justice of the Peace. Constable Pryce would be justified in taking him to a Justice of the Peace *via* the Police Station.

Accordingly, we think that the arrest was lawful and that the appellant was not entitled to resist it, and that killing constable Pryce in resisting it would be murder and not manslaughter.

The learned trial judge was not precisely correct in telling the jury that if the evidence was that the prisoner used indecent language on the streets, in law the constable was entitled to arrest him for that. A more precise direction would have been that if the prisoner used indecent language in the view of the constable, or if he was found by the constable using indecent language and forthwith arrested, the arrest was lawful. We have held, however, upon the eye-witness evidence for the prosecution unchallenged by the evidence for the appellant, that the appellant was "found committing" the offence by the constable. Accordingly, upon the facts of this case the direction was sufficient and, in our view, the appeal should not be allowed upon ground 1.

Ground 2 was to the following effect:

> The jury were directed that if an arrested person does not know the reason for his arrest then he has a right to be informed and if they (the jury) should find as a fact that he was not so informed then the arrest was unlawful."

The jury were directed that the constable was under a duty to inform the prisoner of the reason for his arrest.

It is not the law that if the jury found that the prisoner was not so informed, the arrest was unlawful: there would be no obligation to inform him if, from the circumstances, he must know for what he was being arrested. In the circumstances of the present case the appellant must have known the reason for his arrest. In any event, as pointed out by the learned Judge, he was informed of it specifically by the constable before the constable laid forcible hands on him and before any violence occurred.

There is nothing in this ground.

Ground 3 was as follows:

> "The jury were not directed as to the legal position if they (the jury) should find as a fact that the injuries were accidentally inflicted."

The jury were told that in order to justify a verdict of guilty of murder the Crown must show that the injuries were intentionally inflicted, as something different from accident. As, after that direction, they brought in a verdict of murder, it is obvious that they thought that there was nothing accidental about the wounding. No defence of accident was set up. It would have been quite impossible for any reasonable jury to find accidental wounding on this evidence, and we cannot see that it made any difference at all whether the jury knew the legal result of a finding of accident, since they made no such finding and could not reasonably have made such a finding on the evidence before them.

Ground 4, which was as follows, was not pressed on the appeal:

"4. The jury were directed that—

> "To establish a defence on the grounds of insanity it must be clearly proved that....."

meaning that the insanity of the prisoner must be clearly proved."

The passage complained of is taken word for word from the model direction to juries laid down by the Judges in the *McNaghten* case, That case has been approved again and again and attempts to modify that direction have again and again been rejected. The Judge told the jury quite distinctly what "clearly proved" meant when the onus of proof is on the defence, and that the degree of proof required was only a balance of probabilities. There is nothing in ground 4.

The appeal must be dismissed.

Solicitor: H. R. Campbell.

Note: The appellant applied to the Judicial Committee of the Privy Council for leave to appeal, but on April 26, 1954, leave was refused.

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14 S.C.J.B. 705

HIGH COURT, 1954

Feb. 1, 5

R. v. LESTER LASELVE SIMMONDS AND VINCENT MADDEN TRUMAN

Justices of the Peace Jurisdiction Law, Cap. 433, s. 45—Committal of accused to Circuit after commencement of Circuit—Accused deprived of right to copy of depositions before the first day of the sitting of the Circuit Court.

A committal to the Circuit Court on a day after the Circuit has commenced, is bad, in that it will deprive the prisoner of his right, under s. 45 of the Justices of the Peace Jurisdiction Law (Cap. 433), to a copy of the depositions on which he was committed 'before the first day of the sitting' of the Circuit Court.

R. v. Thomas Maddison and Others, 33 C.A.R. 30, followed.

R. v. Murray, 25 C.A.R. 129 referred to.

APPLICATION to fix date for trial.

Application refused. Documents remitted to Resident Magistrate, St. Andrew.

R. Ashenheim for Simmonds:

Moody for Truman:

Cruchley, Q.C., Solicitor General and *DaCosta* for the Crown.

cur. adv. vult.

1954. Feb. 5: Cools-Lartigue, J. read the following judgment:

COOLS-LARTIGUE, J.: On the 8th January, 1954, the two accused were committed by the Resident Magistrate, St. Andrew, to stand their trial on the 1st day of February, 1954, during the current session of the Home Circuit Court. It is common ground that the first day of the current session of the Home Circuit Court was the 7th January, 1954. COOLS-LARTIGUE, J.

As the two accused were allowed bail conditioned that they appear at the Home Circuit Court to stand their trial on the 1st February, 1954, on such charge or charges as may be preferred against them, and it was not possible for the trial to begin on that day, I was asked by the learned Solicitor General, who appeared for the Crown, to fix a date for the trial of the accused. He suggested Monday, the 22nd day of February next and submitted various cogent reasons why that date would be convenient both to the Court and to the Crown, and at the same time cause no inconvenience or hardship to the accused.

Mr. Ashenheim, who appeared for the accused Simmonds, opposed the fixing of Monday, the 22nd February, as the day for the commencement of the trial of the two accused. He submitted that the committal of the two accused to stand their trial on the 1st February, 1954, during the current session of the Home Circuit was illegal for