

THE
CRIMINAL APPEAL
REPORTS
1981

EDITOR
PERCY METCALFE
M.A.(Cantab.), of the Inner Temple, Barrister

VOLUME 72

LONDON
SWEET & MAXWELL
1981

AUSTRALIA

The Law Book Company Ltd.
Sydney : Melbourne : Brisbane

CANADA AND U.S.A.

The Carswell Company Ltd.
Agincourt, Ontario

INDIA

N. M. Tripathi Private Ltd.
Bombay
and
Eastern Law House,
Calcutta
M.P.P. House,
Bangalore

ISRAEL

Steinmatzky's Agency Ltd.
Jerusalem : Tel Aviv : Haifa

MALAYA : SINGAPORE : BRUNEI

Malayan Law Journal (Pte.) Ltd.
Singapore

NEW ZEALAND

Sweet & Maxwell (N.Z.) Ltd.
Auckland

PAKISTAN

~~Pakistan~~ Law House
Karachi

The Criminal Appeal Reports

VOLUME 72

Table of Cases

ADAMS (1829)	9	Cooper (1852)	9
Afromar Inc. v. Greek Atlantic Cod Fishing Co. (The Penelope II) (1980)	280	— v. Wandsworth Board of Works (1863)	159
Alderson v. Booth (1969)	350	Cordrey and Carvello (1980)	242
Allsop (1977)	242	Cork JJ. (1882)	337
Anderton v. Wish (1980)	20, 22, 23, 359, 360, 363	County of London Quarter Sessions Appeal Committee, <i>ex p.</i> Met. Police Comr. (1948)	338, 341
Andrews v. D.P.P. (1937)	86, 87	Cox v. D.P.P. (1963)	72
Atkinson v. Walker (1976)	195	Crimliss (1976)	261
Att.-Gen. v. Bradlaugh (1885)	93	Crook (1977)	115, 116
Aubrey-Fletcher, <i>ex p.</i> Thompson (1969)	338		
BADJAN (1966)	242	DALLISON v. Caffery (1965)	164, 195
Bailey v. Wilson (1968)	173	Daniel v. Morrison (1980)	195
Barker v. Wilson (1980)	72	Davies v. D.P.P. (1954)	355, 357, 358
Barnes (1970)	242	Davis v. Lisle (1936)	224, 230, 302, 304, 305
Barras v. Aberdeen Steam Trawling and Fishing Co. (1933)	89	Deakin (1972)	325
Beer (1976)	292	Deeming, <i>ex p.</i> (1892)	220
Bennett (1928)	261	Derrick v. Customs and Excise Comrs. (1972)	75
Bertrand (1867)	220	Diggin (1980)	242
Bessell v. Wilson (1853)	1, 4	Dillet's case (1887)	219
Black-Clawson International Ltd. v. Papierwerke A.G. (1975)	101	D.P.P. v. Beard (1920)	292
Boardman v. D.P.P. (1974)	287	— v. Boardman (1975)	9
Bodmin JJ., <i>ex p.</i> McEwen (1947)	252, 258, 261	— v. Humphreys (1976)	258, 307, 311
Bogacki (1973)	206	— v. Hyam (1974)	187
Boggeln v. Williams (1978)	242	— v. Kilbourne (1973)	286
Brentford JJ., <i>ex p.</i> Jones (1979) ...	366, 368	— v. Majewski (1976)	34, 36-38
Broad (1979)	252, 257	— v. Merriman (1972)	9
Brown (1976)	195	— v. Morgan (1975)	36, 178, 184- 186, 188, 189, 191, 212, 216, 217
Burgess (1968)	221	— v. Shannon (1974)	121, 123-125
Burnby, <i>ex p.</i> (1901)	233, 234, 236	Dodd v. Monger (1704)	350
		Donnelly v. Jackman (1969)	180, 195
CAIN AND SCHOLICK (1975)	296-298	Doughty (1965)	287, 288
Canadian Pacific Wine Co. v. Tuley (1921)	350	Downes (1875)	85, 87, 96, 99, 102, 103
Carver (1978)	43-46	Duncalf (1979)	112-114
Case of the Six Carpenters (1610)	347, 350	Dyson Holdings Ltd. v. Fox (1976)	159, 160
Chan Wei Keung v. R. (1967) ...	218, 219, 221		
Chandler (1855)	83	EDKINS v. Knowles (1973)	227
Chic Fashions (West Wales) Ltd. v. Jones (1968)	350	Elias v. Pasmore (1934)	350
Chisam (1963)	178, 184	Ellis (1973)	312
Christie v. Leachinsky (1947) ...	164, 166, 168, 194, 198, 199, 345	Evans (1847)	9
Clark v. H.M. Advocate (1968)	97	Everett v. Ribbands (1952)	336, 338
Clifford v. Bloom (1977)	135-138		
Cockin (1826)	9	FAITHFUL (1950)	31
— (1836)	9	Feely (1972)	238, 247
Collier and Stenning (1965)	164	Fennell (1970)	184
Connelly v. D.P.P. (1964)	160, 258, 310, 311	Forbes and Webb (1865)	180
		Friend (1802)	83
		Fuschillo (1940)	11
		Fusilier, The (1865)	48, 53-55, 58, 59

GHANI v. Jones (1970) ... 2, 195, 302, 303	Liverpool JJ., <i>ex p.</i> Molyneaux (1972)	58
Gordon (1963)	Lopez and Sattler (1858)	49
Gorman v. Standen (1963)	Loughlin (1951)	9
Grant (1980)	Lowe (1973)	89, 92, 97
Great Central Railway Co. v. Bates (1921)	Lowery v. R. (1973)	80
Greenfield and Others (1973)	Ludlow v. Burgess (1971)	180, 194, 196, 197, 199, 345
Greenstein and Green (1975)		
Greenwich JJ., <i>ex p.</i> Carter (1973) ...		
Griffiths (1974)		
	McCarthy (1980)	218, 219, 221
HADLEY v. Perks (1866)	McPherson (1973)	20, 22, 24, 25
Hale (1979)	Macrea, <i>Ex p.</i> (1893)	220
Hall (1845)	McVitie (1960)	112, 114-116
Hallatt (1980)	Mallett (1978)	64
Hargreaves v. Alderson (1964)	Manchester City Stipendiary Magistrate, <i>ex p.</i> Snelson (1977) ...	252, 258
Harris (1860)	Mancini v. D.P.P. (1941)	190
Hartog v. Colin and Shields (1939)	Manners-Astley (1968)	138
	Mansell (1980)	242
Harvey v. Pocock (1843)	Mason (1980)	16, 17
Hastings, <i>Re</i> (1958)	Mayne (1973)	345
—, <i>Re</i> (No. 2) (1958)	Meech (1973)	22
—, <i>Re</i> (No. 3) (1959)	Merrick and Others (1980)	121, 124
Hendon JJ., <i>ex p.</i> Gorchein (1974) ...	Midwinter (1971)	358
H.M.S. Archer (1919)	Miller (1976)	205, 207
Heydon's case (1584)	— and Hanoman Ltd. (1959) ...	112, 115
Hogan (1851)	Mills v. Cooper (1967)	258
Holah (1973)	Monaghan (1870)	83
Holmes (1980)	Moon (1969)	238, 248, 249
Holroyd (1841)	Morris v. Beardmore (1980) ...	224, 226, 227, 229-231, 302, 305, 306, 344, 345, 350, 351, 353
Hornby (1844)	— v. Crown Office (1970) ...	332, 339, 340
Horry (1949)	Muff and Muff (1979)	242
Houghton and Franciosy (1979)		
	NAYLOR (1979)	5, 7
Howells (1977)	Nelson (1967)	263, 265
Howlett (1843)	— (1977)	112, 115
Hudson (1980)	Noor Mohamed v. R. (1949)	288
Hyam v. D.P.P. (1974)	North London Met. Magistrate, <i>ex p.</i> Haywood and Brown (1973) ...	335
	Nottingham JJ., <i>ex p.</i> Davies (1980) ...	150
IBRAHIM v. R. (1914)	Novac (1977)	287-290
Inwood (1973)		
JEMMISON v. Priddle (1971)	OAKLEY v. Jackson (1941)	83
Johannsen (1977)	O'Driscoll (1977)	38
Jones (E. J. M.) (1970)	Owens v. H.M. Advocate (1946)	184
KAMPELI (1975)		
Kelson (1909)	PALMER v. R. (1971)	190
Kenlin v. Gardiner (1967) ... 180, 194, 199	Parry v. Forest of Dean District Council (1976)	233-236
King (1963)	Partridge (1836)	9
— v. Hodges (1974)	Petham (1846)	83
Knight (1864)	Penny (1980)	242
Kray, <i>Re</i> (1965)	Petch (1909)	85, 89, 97
	Pharmaceutical Society of Great Britain Ltd. v. Boots Cash Chemists (Southern) Ltd.	20, 360
LACIS v. Cashmarts (1969)	Phillpot (1853)	83
Langmead (1864)	Piddington v. Bates (1961)	183
Lansbury v. Riley (1914)	Pilgram v. Rice-Smith (1977)	363
Large (1939)	Pordage (1975)	291, 293
Lawrence (1980)	Porritt (1961)	178, 184, 189
— v. Met. Police Comr. (1971) ...		
Leary (1977)		
Leigh v. Cole (1853)		
Lemsatef (1977)		
Levy v. Levy (1979)		

TABLE OF CASES

xi

Power (1978)	116
Practice Direction (1971)	150
Prager (1971)	164
Prater (1959)	242
Prescott, <i>Re</i> (1980)	252, 260
Prince (1875)	105, 109
Public Prosecutor v. Teng (1973) ...	157, 158

QUINN (1978)	112, 114
--------------------	----------

RATTEN v. R. (1971)	39, 42
Rice v. Connolly (1966)	195
Riel v. R. (1885)	219, 220
Robson v. Hallett (1967) ...	227, 302, 304
Rose (1884)	178, 184
Rothfield (1938)	152, 158

ST. ALBANS JUVENILE COURT, <i>ex p.</i>	
G. (1981)	366, 368, 370
Sakhuya v. Allen (1972)	226, 227
Sang (1979)	164
Sarpedon, <i>The</i> (1877)	48, 52, 53, 58
Sasson v. Taverner (1970)	226, 227
Sbarra (1918)	11
Scarrott (1977)	281, 287, 289, 290
Schama and Abramovitch (1914) ...	9
Scott v. Met. Police Comr. (1974) ...	243
Secretary of State for the Environ- ment v. Hooper (1981)	277
Senior (1899)	83, 88, 89, 92, 93, 95-99, 102, 103
Seymour (1954)	9
Shaw (Derek) (1974)	355, 358
Sheehan v. Moore (1975)	291-294
Sheppard (1974)	243
Sinclair (1968)	238, 244, 248
Sloggett (1971)	325
Smith (1862)	9
— (1915)	289, 290
— (David Raymond) (1973) ...	36-38, 178, 189, 190

South West London Magistrates' Court, <i>ex p.</i> Brown and Others (1974)	335
South Western Magistrates' Court, <i>ex p.</i> Beaton (1980)	327, 330
Southampton JJ., <i>ex p.</i> Green (1976)	332, 339
Stafford v. D.P.P. (1973)	250
Steane (1947)	186
Stephenson (1979)	34, 36-38
Stone v. Dobinson (1977)	83
Subramaniam v. Public Prosecutor (1956)	42
Sweet v. Parsley (1970) ...	90, 93, 144, 187

TASAMULUG (1971)	312
Theodorous (1909)	9
Tideswell (1905)	9
Tolson (1889)	187, 212, 215
Toohy v. Met. Police Comr. (1965) ...	78
Trigg (1963)	358
— v. Griffin (1969)	226
Turnbull (1976)	209, 211
Turner (1974)	78, 80, 81

WAGSTAFFE (1868)	95, 96, 102
Walker (1934)	97
Wallace (1972)	345
Wallett (1968)	292
Ward's case (1636)	350
Warner v. Met. Police Comr. (1968)	143, 145, 187
Waterfield and Lynn (1963)	195
Welham v. D.P.P. (1960)	119, 249
Weston (1879)	178, 183
Wiley v. Peace (1951)	195
Williams (1910)	83
— (1976)	312
Wilson v. Inyang (1951)	185
Wiseman v. Borneman (1971) ...	152, 159, 160
Woking JJ., <i>ex p.</i> Gossage (1973) ...	335, 337

Table of Statutes

1361	Justices of the Peace Act (35 Edw. 3, c. 1)	332-340	1889	Prevention of Cruelty to, and Protection of, Children Act (52 & 53 Vict. c. 44)	85, 96, 103, 104	
1557	Abduction Act (4 & 5 Phil. & Mar. c. 8)—			s. 1	96, 103	
	s. 2	109		Public Bodies Corrupt Practices Act (52 & 53 Vict. c. 69)	163	
1839	Metropolitan Police Act (2 & 3 Vict. c. 47)	194, 197		1894	Prevention of Cruelty to Children Act (57 & 58 Vict. c. 41)	85, 88, 89, 92, 97, 103
	s. 66	193, 194, 197, 198, 199			s. 1	92, 96, 103
	Metropolitan Police Courts Act (2 & 3 Vict. c. 71) ...	197			Merchant Shipping Act (57 & 58 Vict. c. 60)	49-51, 55
	s. 24	197, 198			s. 72	53
	s. 55	197			s. 220	54
1845	Evidence Act (8 & 9 Vict. c. 113)—				s. 287	54
	s. 1	69			s. 506	54
1851	Evidence Act (14 & 15 Vict. c. 99)—				s. 511	54, 59
	s. 7	69			ss. 544-546	59
1854	Merchant Shipping Act (17 & 18 Vict. c. 104)	49, 53			s. 685	50, 54
	s. 458	52, 58, 59			s. 686	47-51, 55-59
1855	Merchant Shipping Act Amendment Act (18 & 19 Vict. c. 91)	49-51			s. 687	50
	s. 21	49, 57			s. 689	54
1858	Medical Act (21 & 22 Vict. c. 90)—		1904	Prevention of Cruelty to Children Act (4 Edw. 7, c. 15)	85, 89	
	s. 40	185		1907	Lights on Vehicles Act (7 Edw. 7, c. 45)	277
1859	Vexatious Indictments Act (22 & 23 Vict. c. 17)	155, 158			s. 5	277
1861	Larceny Act (24 & 25 Vict. c. 96)	52		1908	Children Act (8 Edw. 7, c. 67)	85, 89, 97, 101, 103, 104
	Malicious Damage Act (24 & 25 Vict. c. 97)	51			s. 12	89, 92, 103
	s. 72	51, 52		1909	Cinematograph Act (9 Edw. 7, c. 30)	76
	Offences against the Person Act (24 & 25 Vict. c. 100)	256, 258		1911	Perjury Act (1 & 2 Geo. 5, c. 6)—	
	s. 9	57, 58			s. 9	155
	s. 38	256		1913	Forgery Act (3 & 4 Geo. 5, c. 27)	118, 137
	s. 47	256			s. 1	137
	s. 55	109			s. 3	64-67, 69, 70, 117-119, 137
	s. 56	104-110			s. 4	137
	s. 57	58			s. 6	64-67, 117, 118
1868	Poor Law Amendment Act (31 & 32 Vict. c. 122)	103		1914	Criminal Justice (Administration Act (4 & 5 Geo. 5, c. 58)—	
	s. 37	85, 88, 95, 96, 102			s. 22	166
1870	Foreign Enlistment Act (33 & 34 Vict. c. 90)	58		1915	Indictments Act (5 & 6 Geo. 5, c. 90)—	
1872	Licensing Act (35 & 36 Vict. c. 94)—				s. 3	115
	s. 15	236		1916	Larceny Act (6 & 7 Geo. 5, c. 50)	52
1879	Bankers' Books Evidence Act (42 & 43 Vict. c. 11)	69		1932	Children and Young Persons Act (22 & 23 Geo. 5, c. 46)	101, 103
	Summary Jurisdiction Act (42 & 43 Vict. c. 49)—					
	s. 38	166				
1883	Explosive Substances Act (46 & 47 Vict. c. 3)—					
	s. 4	115				

1933	Children and Young Persons Act (23 & 24 Geo. 5, c. 12)	83, 85, 89, 95, 97, 101, 103
	s. 1	82-95, 97-101, 103
	s. 48	202, 367, 369-371
	s. 53	202
	s. 56	371
	s. 99	367
	Administration of Justice (Miscellaneous Provisions) Act (23 & 24 Geo. 5, c. 36)	152-155, 157, 158
	s. 2	151-153, 155, 156, 162
1936	Public Order Act (1 Edw. 8 & 1 Geo. 6, c. 6)	297
	s. 5	256
	s. 5A	295-298
1937	Firearms Act (1 Edw. 8 & 1 Geo. 6, c. 12)	145
1947	Exchange Control Act (10 & 11 Geo. 6, c. 14)	239
1948	Companies Act (11 & 12 Geo. 6, c. 38)—	
	s. 188	239
	Criminal Justice Act (11 & 12 Geo. 6, c. 58)	340
	s. 17	339
	s. 20	30
	s. 29	31
	s. 80	367
1952	Customs and Excise Act (15 & 16 Geo. 6 & 1 Eliz. 2, c. 44)—	
	s. 56	115
	Magistrates' Courts Act (15 & 16 Geo. 6 & 1 Eliz. 2, c. 55)	202
	s. 7	253, 255
	s. 28	29, 30
	s. 29	263
	s. 38	163, 168, 266, 267, 270, 271
	s. 91	331-336, 338
	s. 102	330
	s. 104	235
	s. 126	336, 367
	Cinematograph Act (15 & 16 Geo. 6 & 1 Eliz. 2, c. 68)	76
1953	Prevention of Crime Act (1 & 2 Eliz. 2, c. 14)—	
	s. 1	115
1956	Magistrates' Courts (Appeals from Binding over Orders) Act (4 & 5 Eliz. 2, c. 44)	333, 335
	Sexual Offences Act (4 & 5 Eliz. 2, c. 69)	236
	s. 6	327-329
	s. 33	39, 41, 232-234, 236
1957	Homicide Act (5 & 6 Eliz. 2, c. 11)—	
	s. 1	90
1959	Obscene Publications Act (7 & 8 Eliz. 2, c. 66)	72, 74
	s. 1	71-75, 77, 78
	s. 2	71, 72, 76
	s. 4	76
1960	Road Traffic Act (8 & 9 Eliz. 2, c. 16)—	
	s. 2	115
	Administration of Justice Act (8 & 9 Eliz. 2, c. 65)—	
	s. 1	23, 38, 177, 192, 232, 262, 323, 353
1961	Criminal Justice Act (9 & 10 Eliz. 2, c. 39)—	
	s. 1	30
	s. 4	337, 341
	ss. 38, 39	341
1963	Children and Young Persons Act (c. 37)—	
	s. 29	204, 365-367, 370
1964	Police Act (c. 48)—	
	s. 51	1-3, 171-173, 178, 193, 194, 196, 251, 256, 257
	Drugs (Prevention of Misuse) Act (c. 64)	145
	s. 1	145
	Sched.	145
1967	Criminal Law Act (c. 58)	172, 175, 176
	s. 2	171-173, 175-177, 302, 305
	s. 3	171, 172, 175, 176, 344, 346, 349
	Matrimonial Homes Act (c. 75)	279
	Road Traffic Regulation Act (c. 76)—	
	s. 78	224
	Criminal Justice Act (c. 80)	69, 157, 340
	s. 1	157
	s. 8	90, 93, 191
	s. 9	64-69, 274
	s. 17	310, 311
	s. 22	149
	s. 39	339, 340
	s. 56	30, 263
	s. 85	145
	s. 91	1, 2
1968	Criminal Appeal Act (c. 19)—	
	s. 1	9
	s. 2	111-113, 115, 116, 122, 142, 238, 248, 249, 354, 355, 358
	s. 33	59, 162, 290, 326
	Firearms Act (c. 27)—	
	s. 1	143-145
	s. 24	145
	s. 25	145
	s. 57	143, 144
	Theatres Act (c. 54)	77
	s. 2	76
	s. 3	76
	Theft Act (c. 60)	11, 13, 24, 48, 52, 167, 361, 364
	s. 1	19-25, 359, 361, 362
	s. 3	19-25
	s. 5	19, 20, 22, 364
	s. 12	204-206
	s. 15	363
	s. 17	60-64
	s. 20	165
	s. 21	139, 140
	s. 22	8, 11, 323, 324, 326

1968	Justices of the Peace Act (c. 69)—		1972	Road Traffic Act— <i>cont.</i>	
	s. 1	334		s. 93	263, 264
1969	Children and Young Persons Act (c. 54)	204, 370		s. 99	209
	s. 1	365, 368		s. 101	272, 273
	s. 6	200–202, 365, 367, 368		s. 143	209
	s. 7	333, 371		s. 164	209
	s. 29	270		s. 188	272–275, 277, 280
	s. 70	367		Sched. 4	209, 272, 278
	s. 72	365		Sched. 14	368
1971	Vehicles (Excise) Act (c. 10)—			Criminal Justice Act (c. 71)—	
	s. 8	131, 133, 134		s. 36	60, 61, 65, 67, 71, 72
	s. 9	131, 134	1973	Powers of Criminal Courts Act (c. 62)—	
	s. 26	135–138		s. 12	333
	Courts Act (c. 23)—			s. 19	331, 332, 336, 338–340
	s. 4	147, 149		s. 43	26–28
	s. 10	131, 133	1974	Juries Act (c. 23)	14, 17
	s. 13	148		s. 5	18
	Misuse of Drugs Act (c. 38) ...	45,	1976	Prevention of Terrorism (Temporary Provisions) Act (c. 8)	270
		319, 321		Bail Act (c. 63)	147, 270
	s. 2	318		s. 4	148
	s. 4	318–323		s. 5	147, 148
	s. 5	43, 44		Sched. 1	148
	s. 6	318–323		Race Relations Act (c. 74)—	
	s. 7	321, 322		s. 70	295–297
	s. 8	318–322	1977	Criminal Law Act (c. 45)	112,
	s. 37	318, 320–322			114, 122, 198, 296,
	Sched. 2	318			298, 329
	Criminal Damage Act (c. 48) .	47,		s. 1	111–114, 116, 295–298
		48, 51, 52, 57, 59,		s. 4	295–298
		189, 190, 253		s. 5	111–114, 116, 121, 122,
	s. 1	33–35, 37, 38, 47, 48,			124, 125
		56, 126–129, 251, 253, 254		s. 19	200–204, 365, 367–370
	s. 5	33–38, 190		s. 20	200, 202, 203, 250,
	Town and Country Planning Act (c. 78)	235			251, 253, 254, 259,
	s. 89	235			365, 367–369
1972	Road Traffic Act (c. 20)	208,		ss. 21, 22	200, 202, 203, 254,
		344, 351, 353			365, 367–369
	s. 1	115		s. 23	200, 202, 203, 250–
	s. 8	223, 224, 226, 228,			257, 259, 260, 365,
		230–232, 306, 343, 344, 346,			367–369
		347, 349–351, 353		s. 24	200, 202, 203,
	s. 9	223, 224, 228, 306, 343,			365, 367–369
		344, 347, 351, 353		s. 44	354
	Pt. II	273		s. 52	318–323
	s. 40	272, 273, 276		s. 53	71–73, 76, 77
	s. 43	209		Sched. 4	253
	ss. 68–81	277			

Table of Statutory Instruments, etc.

1964	Judges' Rules (Revised)	163,	1971	Crown Court Rules (S.I. 1971	
	164, 167-169, 267, 299			No. 1292)—	
	r. 4	299-301		r. 18	149
	Principle (d)	266, 267, 269,		Indictment (Procedure) Rules	
		270		(S.I. 1971 No. 2084)	151-
1965	Rules of the Supreme Court			153, 156, 158	
	(S.I. 1965 No. 1776)—			rr. 6, 7	151, 156
	Ord. 32, r. 6	160		r. 8	151, 153, 156
1967	Rules of the Supreme Court			r. 9	151, 156
	(Amendment No. 2) (S.I.			r. 10	156
	1967 No. 1809) (L.15)—		1978	Crown Court (Amendment)	
	Ords. 9 (12), 79	146-150		Act Rules (S.I. 1978	
1970	Rules of the Supreme Court			No. 439)	149
	(Amendment No. 2) (S.I.			Motor Vehicles (Construction	
	1970 No. 944)—			and Use) Regulations	
	Ord. 113	279		(S.I. 1978 No. 1017)—	
1971	Indictment Rules (S.I. 1971			reg. 107	272, 273, 275, 276
	No. 1253)—				
	r. 5	111, 112, 114-116			
	r. 6	111, 112, 114, 116			

Appellants and Applicants

AUSTIN, C. T. J.	104	LANDY, H.	237
Avison, S. P.	47	Longman, R. V.	121
BARRETT, A. G.	212	MOLYNEUX, B.	111
Barrett, J. G.	212	Murphy, D. J.	47
Barrington, B. J.	280		
Bloxham, A. J.	323	PEARCE, S. J.	295
Boyesen, P.	43	Plummer, L. E.	139
CERNIK, J. W.	307		
Clayton, T. E.	135	RAYMOND, S. P.	151
Cribben, V. D.	121	Reference by the Att.-Gen. (No. 1 of 1980)	60
DAVIES, M. G.	262	Reference by the Att.-Gen. (No. 2 of 1980)	64
Diggin, R. J.	204	Reference by the Att.-Gen. (No. 5 of 1980)	71
FARMBOROUGH, S. J.	111		
Fearn, C.	307	SMYTHE, C. O.	8
Fieldsen, L. A.	104		
GARLICK, C. P.	291	THORNLEY, W. J.	302
Griffiths, S. J.	307	Todd, R. C.	299
HARVEY, A. A.	139	Trigwell, B. R.	104
Hoof, M. A.	126	Turner, B. W. I.	117
Hudson, A. C. C.	163		
Hussain, I.	143	UYLETT, E.	139
JENKINS, R. D.	354		
KAYE, C.	237	WHITE, A. M.	237
Kelly, W. R.	47	Withers, I. D.	104
		YACOOB, D. S.	313

House of Lords

R. v. Sheppard and Another	82
----------------------------------	----

Privy Council

Prasad v. R.	218
-------------------	-----

Divisional Court

Albert v. Lavin	178	R. v. Croydon Crown Court, <i>ex p.</i>	
Anderton v. Cooper	232	Bernard	29
Anderton v. Wish (Note)	23	R. v. Felixstowe Justices, <i>ex p.</i> Bald-	
Barnett v. French	272	win (Note)	131
Clowser v. Chaplin	342	R. v. Kingston-upon-Hull Justices,	
Jaggard v. Dickinson	33	<i>ex p.</i> Hartung	26
Kaur v. Chief Constable of Hamp-		R. v. Leigh Justices, <i>ex p.</i> Kara	327
shire	359	R. v. Ramsgate Justices, <i>ex p.</i> War-	
Lambert v. Roberts	223	ren and Others	250
Lindley v. Rutter	1	R. v. Reading Crown Court, <i>ex p.</i>	
McShane v. Northumbria Chief Con-		Malik	146
stable	208	R. v. St. Albans Juvenile Court, <i>ex p.</i>	
Oxford v. Peers	19	G.	200
Pedro v. Diss	193	Sherman and Apps, <i>Re</i>	266
R. v. Amersham Juvenile Court,		Swales v. Cox	171
<i>ex p.</i> W.	365	Taylor v. Chief Constable of Kent ...	318
R. v. Canterbury and St. Augustine		Veater v. Glennon and Others	331
Justices, <i>ex p.</i> Klisiak	250	Woodhouse v. Hall	39

Central Criminal Court

R. v. Mackenny and Others	78
---------------------------------	----

[DIVISIONAL COURT]

BEFORE

LORD JUSTICE DONALDSON AND MR. JUSTICE MUSTILL

LINDLEY v. RUTTER

July 23, 24, 31, 1980

Police—Right of Search—Arrested Person—Female Defendant Arrested for Disorderly Conduct While Drunk—Search of Defendant and Forcible Removal of her Brassiere by Women Police Officers—Defendant Assaulting Women Police Officers—Whether Officers Acting in Execution of Duty—Police Act 1964 (c. 48), s. 51 (1).

Section 51 (1) of the Police Act 1964 provides: "Any person who assaults a constable in the execution of his duty . . . shall be guilty of an offence . . ."

The defendant was arrested for disorderly conduct while drunk and taken to a police station where she was placed in a cell. She refused to be searched by a woman police constable, a second woman police constable was summoned and they forcibly removed the defendant's brassiere. The constables in so doing believed they were acting in accordance with the chief constable's standing orders, which they understood to mean the removal of female prisoners' brassieres for their own protection. The defendant was charged, *inter alia*, with assaulting a police constable in the execution of her duty contrary to section 51 (1) of the Police Act 1964. She appealed on the ground that the constable was not acting in the execution of her duty when she removed her brassiere.

Held, that it was the duty of a police constable to ensure that prisoners in his charge did not injure themselves or others, or escape or assist others to do so, or destroy evidence or commit further crime; but that duty had to be exercised with regard to the disposition of each individual prisoner in all the circumstances of each particular case; and in the instant case the conduct of the woman police officer would require considerable justification; for although she was acting on the chief constable's standing orders it was impossible to justify such a standing instruction or the constable's conduct based upon it; accordingly, the woman police officer was not acting in the execution of her duty and the defendant was entitled to use reasonable force to resist; thus, the appeal would be allowed and the conviction quashed.

LEIGH v. COLE (1853) 6 Cox C.C. 329 and BESSELL v. WILSON (1853) 17 J.P. 52 considered.

Case stated by Exeter Justices.

1. On August 1, 1978, the defendant was charged by the prosecutor (i) that she on July 31, 1978, at Exeter, whilst in a highway called Belmont Road was guilty of disorderly behaviour whilst drunk, contrary to section 91 of the Criminal

Justice Act 1967, and (ii) that she on July 31, 1978, at Exeter unlawfully did assault Irene Fry, a constable of the Devon and Cornwall Constabulary in the execution of her duty, contrary to section 51 (1) of the Police Act 1964.

2. The justices heard the said charges on November 13, 1978, and found the following facts:

(a) At about 11.25 p.m. on July 31, 1978, Police Constable Rutter saw the defendant staggering in the street. She slumped over a garden gate and began to shout, scream and swear at Constable Rutter when he asked for her name and address in order to take her home. She smelt of liquor and Constable Rutter formed the opinion that she was drunk. She continued her disorderly conduct so Constable Rutter arrested her for being drunk and disorderly. At that time there was no question of her having committed any other offence.

(b) The defendant refused to enter the police car so it was necessary for Constable Rutter and another police officer to use reasonable force to put her into the car and to remove her from it when they arrived at the police station. The defendant continued to shout, scream and swear and she was put into a cell.

(c) W.P.C. Fry asked the defendant if she would allow herself to be searched but she refused. When Police Woman Fry attempted to search the defendant and to remove her brassiere for her own protection the defendant resisted and there was a struggle during which the defendant scratched the police woman's hand and kicked her knee, causing her to fall to the floor. The search was then carried out with the assistance of a second police woman, and the defendant's brassiere was removed. No other persons were present during the search.

(d) The removal of the defendant's brassiere was in accordance with the standing orders of the chief constable which applied to any female person arrested and placed in a cell.

(e) The defendant had not threatened to injure herself or any other person.

(f) The defendant used more force than was reasonably necessary to resist W.P.C. Fry's attempt to search her and to remove her brassiere.

3. It was contended by the defendant that W.P.C. Fry was not acting in the execution of her duty in removing or attempting to remove an article of the defendant's clothing.

4. It was contended by the defendant that W.P.C. Fry was following standing orders from the chief constable to search all prisoners and to remove the brassiere from every female prisoner for her own protection lest she use the brassiere to hang herself.

5. The justices were referred to the commentary on section 51 of the Police Act 1964 in *Stone's Justices' Manual* (112th ed., 1979) pp. 110-1112, and to paragraphs 1410, 1411 in *Archbold's Criminal Pleadings Evidence and Practice* (40th ed., 1979) entitled "Police Powers of Search and Seizure."

6. The justices were of the opinion that the defendant was guilty of disorderly behaviour whilst drunk in Belmont Road, and that W.P.C. Fry was acting in the execution of her duty when she was assaulted by the defendant. The justices accordingly convicted the defendant of both charges, and she was fined £25 and £50 respectively, and ordered to pay £20 towards the prosecution costs.

The defendant appealed, and the appeal was argued on July 23 and 24, 1980, when the following case was cited in argument in addition to those referred to in the judgment of Donaldson L.J.: *GHANI v. JONES* [1970] 1 Q.B. 693.

The question for the opinion of the Court is whether on the facts found W.P.C.

Fry was acting in the execution of her duty when she was assaulted by the defendant.

Gayle Hallon for the defendant. *A. D. Hope* for the prosecutor.

Cur. adv. vult.

July 31. DONALDSON L.J. read the following judgment: Late at night on July 31, 1978, Miss Lindley, the defendant, was seen by a police officer staggering in an Exeter street. She draped herself over a garden gate and shouted, swore and screamed at the officer when he asked for her name and address. The purpose of the inquiry was eminently reasonable. He thought that she ought to be escorted home. She smelt of liquor and the officer rightly concluded that she was drunk. Her conduct and attitude left him no alternative but to arrest her and in due course she was convicted of disorderly behaviour whilst drunk. No complaint is or could be made of the arrest and conviction. We were told by Miss Hallon, who has appeared for the defendant, that before this night the defendant was a young lady of unblemished reputation and this offence was wholly out of character. However that may be, her reputation was certainly blemished that night, but it is fair to say that it was a relatively minor blemish and will quickly fade if not repeated.

This appeal concerns a more serious matter which arose out of subsequent events. After the arrest the defendant was invited to enter a police car in order that she might be taken to the police station. She refused and force had to be used to make her do so. On arrival at the police station force had again to be used to get her to leave the police car. The defendant continued to shout, scream and swear and quite properly was lodged in a cell. No more than reasonable force was used at any time and again no complaint is or could be made by or on behalf of the defendant in respect of these matters.

What happened next is best described in the words of the case stated by the Exeter City justices: "(c) W.P.C. Fry asked the defendant if she would allow herself to be searched but she refused. When W.P.C. Fry attempted to search the defendant and to remove her brassiere for her own protection the defendant scratched the police woman's hand and kicked her knee, causing her to fall to the floor. The search was then carried out with the assistance of a second police woman, and the defendant's brassiere was removed. No other persons were present during the search." This last finding is important as showing that no male police officers were present.

"(d) The removal of the defendant's brassiere was in accordance with the standing orders of the chief constable which applied to any female person arrested and placed in a cell.

(e) The defendant had not threatened to injure herself or any other person.

(f) The defendant used more force than was reasonably necessary to resist W.P.C. Fry's attempt to search her and to remove her brassiere."

So much for the facts. As a result of this incident, the defendant was further charged with unlawfully assaulting Irene Fry, a constable of the Devon and Cornwall Constabulary, in the execution of her duty contrary to section 51 (1) of the Police Act 1964. She was convicted and she now appeals by case stated by the Exeter City Justices. The only matter in issue is whether W.P.C. Fry was acting in the execution of her duty.

The wording of this offence is liable to be misunderstood by the public, but it is difficult to suggest an alternative form of words. However, I must make it

clear that there is no suggestion that W.P.C. Fry was acting otherwise than in accordance with what she believed to be her duty. The issue is whether what she did was justifiable in law. Police constables of all ranks derive their authority from the law and only from the law. If they exceed that authority, however slightly, technically they cease to be acting in the execution of their duty and have no more rights than any other citizen. This is a most salutary principle upon which all our liberties depend and it is not to be eroded merely because, as in this case, the limits of the constable's authority may not have been clearly defined and W.P.C. Fry was acting in the bona fide belief that she was authorised to act as she did. These considerations may well provide an answer to criticism of the officer concerned. They do not deprive the aggrieved citizen of any of her rights.

What then are the limits of the authority of a constable to search a person who is in custody and to remove parts of their clothing for their own safety?

In *LEIGH v. COLE* (1853) 6 Cox C.C. 329, 332, Vaughan Williams J. directed the jury as follows: "With respect to searching a prisoner, there is no doubt that a man when in custody may so conduct himself, by reason of violence of language or conduct, that a police officer may reasonably think it prudent and right to search him, in order to ascertain whether he has any weapon with which he might do mischief to the person or commit a breach of the peace; but at the same time it is quite wrong to suppose that any general rule can be applied to such a case. Even when a man is confined for being drunk and disorderly, it is not correct to say that he must submit to the degradation of being searched, as the search of such a person must depend upon all the circumstances of the case."

In the same year in *BESSELL v. WILSON* (1853) 17 J.P. 52, Lord Campbell C.J. was trying a case in which the plaintiff was suing an alderman of the City of London for trespass and false imprisonment. It appears that the alderman had exceeded his authority by issuing a warrant for the arrest of the plaintiff in circumstances in which the alderman was not entitled to require his personal attendance at court and the plaintiff had in fact been represented by counsel. In the course of the proceedings the Chief Justice made some remarks which were misunderstood and he sought to correct this, saying (*ibid.*): "At the conclusion of the trial of this case, I expressed my disapprobation of the manner in which the plaintiff had been searched when taken to the station house. I repeat the disapprobation which I then expressed, for there is no right in a case of this kind to inflict the indignity to which the plaintiff had been subjected. But I have been informed that an erroneous impression of what I said has gone abroad. It was supposed that I had said that there was no right in anyone to search a prisoner at any time. I have not said so. It is often the duty of an officer to search a prisoner. If, for instance, a man is taken in the commission of a felony, he may be searched to see whether the stolen articles are in his possession, or whether he has any instruments of violence about him, and, in like manner, if he be taken on a charge of arson, he may be searched to see whether he has any fire-boxes or matches about his person. I take this opportunity of correcting the error, because I have received from that most useful officer Sir Richard Mayne, to whom the country is much indebted for a most excellent discharge of his public duties, a communication stating that an idea has gone abroad that to search any person charged with an offence is forbidden by law. No such doctrine has been stated by me, nor would it be stated by anyone who has