5 of 1975

IN THE PRIVY COUNCIL

No. 15 of 1974.

ON APPEAL FROM

THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

EDWARD FRANCIS NAKHLA — Appellant

A N D

HER MAJESTY THE QUEEN — Respondent

CASE OF APPELLANT PURSUANT TO RULE 25.

"THE CIRCUMSTANCES OUT OF WHICH THE APPEAL ARISES"

RECORD

1. This is an appeal from the Judgment of the Court of Appeal of New Zealand delivered on the 12th day of October 1973, which dismissed the appeal by the Appellant against his conviction in the Supreme Court of New Zealand on a charge laid under Section 52 (1) (j) of the Police Offences Act 1927. Upon conviction he was sentenced to imprisonment for nine months.

p.21, line 31 to p.39, line 10

p.40, line 17 to p.43, line 9.

2. The facts are not in dispute. On August 7, 1973 the appellant pleaded not guilty to an indictment alleging that, on or about May 2 1973, the appellant was deemed to have been a rogue and vagabond, in that being a suspected person he did frequent a public place, namely Oriental Terrace, with a felonious intent.

p.1, line 3.

3. There was evidence called by the prosecution to show that on May 2 1973, the Appellant and one Spartalis entered a motorcar in a public place, Oriental Terrace. In that motor car there was already one occupant. The appellant was in that place and at that particular

RECORD

p.45, line 6 to p.53, line 7.

time as a result of arrangements the Police had made with Spartalis. While in that motorcar, there was discussed the possibility of the Appellant's receiving stolen property. He declined to accept stolen property offered to him during the conversation. On alighting from the motorcar, he was arrested; and he was charged with the offence of which he was later convicted.

4. The Appellant submitted at his trial, and again during the hearing of his appeal, that because he was in the public place on one occasion only, and there at the request of Spartalis, he was not "frequenting" a public place within the meaning properly to be ascribed to that word in the section under which he was charged. His submission on this point was rejected upon the grounds that the word "frequents" in the section includes being in a place, or being in a place long enough in time for the person in question to form a felonious intent.

p.42, line 9 to p.43, line 9.

"CONTENTIONS TO BE URGED BY THE APPELLANT"

5. The appellant submits that because he went to the public place by arrangement on one occasion only and there had a conversation within a motorcar, that he was not "frequenting" that public place within the meaning of Section 52 (1) (j) of the Police Offences Act 1927.

6. The appellant further submits that the section does not proscribe "loitering", as does a corresponding section in the United Kingdom legislation; and that, even if it could be held that he was, on that particular occasion, "loitering" in the public place in question, he was not "frequenting" it within the meaning of the statute.

p.42, lines 16-41.

7. The Court of Appeal of New Zealand felt itself bound by its earlier decision of The King v. Child, [1935] N.Z.L.R. 186. The appellant submits that this case was wrongly decided; that the authorities which follow the case of Clark v. The Queen, (1884) 14 Q.B.D. 92 are correct; and that those which follow Airton v. Scott, [1909] L.T. 393 have no direct application to the interpretation of the word "frequents" as it appears in Section 52 (1) (j) of the Police Offences Act 1927.

8. The appellant therefore submits that the judgment of the Court of Appeal was wrong for the following, amongst other, reasons :

REASONS

(1) BECAUSE the facts of the case do not amount to a frequenting of the public place in question.

(2) BECAUSE the Court of Appeal was wrong in deciding the case of The King v. Child [1935] N.Z.L.R. 186.

(3) BECAUSE the Court of Appeal was wrong in deciding to follow its earlier decision of The King v. Child.

(4) BECAUSE the word "frequents" in the Police Offences Act 1927, when correctly interpreted in the context in which it is used, does not mean a single visit to a particular public place on one occasion only.

P.B. Temm, Q.C.

A.H. Brown

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B E T W E E N :

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Appellant

-and-

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Respondent

CASE FOR THE APPELLANT

BLYTH DUTTON ROBINS HAY,
9 Lincoln's Inn Fields,
London, W.C.2

Solicitors for the Appellant.