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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
SUIT NO.115 OF 1996

IN THE MATTER OF THE CONSTABLES
(SPECIAL) ACT

A N D

IN THE MATTER OF S.220 OF THE
CONSTABLES (SPECIAL) ACT

A N D

IN THE MATTER OF THE PRIVILEGES
ENJOYED BY SPECIAL CONSTABLES
UNDER THE PROVISIONS OF THE SAID
ACT.

BETWEEN	D'SENT NICHOLAS	FIRST PLAINTIFF
A N D	THE SPECIAL CONSTABULARY FORCE ASSOCIATION	SECOND PLAINTIFF
A N D	THE MINISTER OF FINANCE	FIRST DEFENDANT
A N D	THE ATTORNEY GENERAL	SECOND DEFENDANT

IN CHAMBERS

Dr. L. Barnett and D. Foot for Plaintiffs.

Mr. L. Robinson for Defendants.

Heard: 3rd March, 1997

ELLIS, J:

By an Originating Summons dated the 25th November, 1996 the plaintiffs sought the following declarations.

- (i) A declaration that if the members of the Jamaica Constabulary Force are entitled to accommodation or housing allowance, then in accordance with S.22(1) of the Constabulary (Special) Act the members of the Island Constabulary Force, while on duty, are also entitled to enjoy said accommodation or housing allowance.
- (ii) A declaration that, since the members of the Jamaica Constabulary Force receive accommodation or housing allowance then same is a privilege equally enjoyable by members of the Island Special Constabulary Force, while on duty, pursuant to Section 22(1) of the Constabulary (Special) Act.

- (iii) A declaration that, the provision of accommodation or housing allowance is a privilege enjoyed by the members of the Jamaica Constabulary Force to which the members of the Island Special Constabulary Force are also entitled to enjoy, while on duty, pursuant to Section 22(1) of the Constabulary (Special) Act.

Counsel for the plaintiffs invited attention to Section 22(1&2) of The Constables (Special) Act which is in these terms:

22(1) "Every Special Constable enrolled under this part shall while on duty in the capacity of a Special Constable have exercise and enjoy all the powers, authorities, privileges and immunities and shall perform all the duties and have all the responsibilities of a Constable of the Jamaica Constabulary Force constituted under the Constabulary Force Act; and assaulting or obstructing a Special Constable in the execution of his duty as a Special Constable shall be punishable as assaulting or obstructing a Constable in the execution of his duty is or maybe punishable.

22(2) A Special Constable shall be deemed to be on duty in the capacity of Special Constable -

- (a) when what is, or appears to him to be an offence punishable on indictment or summary conviction is committed in his presence;
- (b) while he is required by the Commissioner or an officer or Sub-officer of the Jamaica Constabulary Force not below the rank of Sergeant to be on duty;
- (c) when he is called out for service and while he is required to be on duty in accordance with any regulations made under S.23"

Dr. Barnett submitted that the word privilege at S.22(1) of the Act is to be construed widely unless the context require otherwise.

The S.S.(1) he said is framed in generous and general terms evincing the clear intention of placing the Special Constable while on duty in a similar frame work of service and attendant conditions of service, as regular constables.

The tenor and scheme of the act he submitted, is to achieve a similarity between the two forces in all material respects. The act

envisages that that similarity arises when the Special Constable is on duty and provides for it vide S.22 of The Constables (Special) Act.

A fortiori, S.23(2) of the act provides for making of regulations to give effect to the entitlement at S.22 and particularly S.S.(2)(m).

Dr. Barnett made the following submission - where a class of persons is entitled to a privilege, a general power or duty to grant a similar privilege to another class of persons is not to be restrictively construed, unless the grant to the other class would adversely affect the enjoyment of that privilege by the first class.

In addition he said that in the employment of a person a privilege is to be construed as a financial or economic advantage or benefit attached to that person's office.

He relied on several cases in support of his submissions.

Mr. Robinson for the defendants argued that the words in section 22 of the Constables (Special) Act must be interpreted in the light of the common law powers afforded to regular members of the Jamaica Constabulary Force. He said the word "privilege" as appears in the section is not concerned with salary or other economic advantage. It is concerned only with the exercise of a constable's duty.

He referred to S.S.13, 15, 17, 18 and 33 of the Jamaica Constabulary Force Act which expressly set out the duties of Constables. In contrast he said the Constables (Special) Act does not set out duties and privileges as is done in the Jamaica Constabulary Force Act. It follows therefore that the Special Constable enjoys them under S.22 of the Constables (Special) Act.

Reference was also made to S.7 of the Jamaica Constabulary Force Act which empowers the minister to provide barracks or other accommodation for members of the force.

Finally, Mr. Robinson submitted that S.22 should be interpreted by applying the ejusdem generis rule. The word 'privilege' he argued takes on a restrictive meaning having regard to the meaning attached to the words before it. The cases cited by Dr. Barnett he said are irrelevant as they were concerned with the word 'privilege' within the

documents in which it was found.

On my reading of the cases cited by Dr. Barnett, with reference to his advocacy of a wide meaning of "privilege," I find that they gave a very wide meaning to the word privilege.

In Birch v. Depeyser, English Reports Vol. CLXXI 449 the admission of evidence to establish the meaning of the word privilege in an agreement between the parties was sought. The admission was resisted.

Chief Justice Gibbs in allowing the admission stated - "But I think that the word privilege is of so indeterminate a signification that I must receive this evidence." The learned Chief Justice there clearly ascribed a wide meaning to the word privilege.

So too was a wide meaning given to the word privilege in Harrison v. Mexican Rly. Company 1874-75 L.R. Vol. XIX at p. 366 by Lord Jessel M.R.

The Master of The Rolls said "I can find no limit either in the terms "privilege" or in the term "condition" as has been suggested. It seems to me that they are words of extensive meaning....."

Ten years later in Re: South Durham Brewery Company 1885 L.R. 31 Ch. p.261 at p.272 Lord Lindley accepted the decision in the Harrison case thus "It appears to me that the present case comes within the principles and Authority of Harrison v. Mexican Rly. Company which is sound authority."

The wide meaning, to my mind, extends 'privilege' to include benefit. It would not in the light of the wide meaning, be proper to confine its meaning to the narrow limits submitted by Mr. Robinson.

In any event, the Section 22 contains a limitation to an entitlement to the privilege in its wide meaning since the Special Constable is only entitled while he is on duty.

Mr. Robinson's submission as to the applicability of the ejusdem generis rule bears examination. One of the earliest statements of the rule was made by Lord Bramwell in Great Western Rly. v. Swindon Rly. (1884) 9 App. Cases 787, 808.

In that case he said "as a matter of ordinary construction, where

several words are followed by a general expression which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but apply to all. For example horses, oxen, pigs and sheep from whatever country they come, the latter words would apply to horses as much as to sheep." The example given by Lord Bramwell is a simple one which clearly admitted the applicability of the ejusdem generis rule.

The rule however, does not apply automatically. This is clearly borne out by the dictum of Lord Justice Fullwell in Tillmans and Co. v. S.S. Knutsford [1908] A.C. 207 and I quote the dictum: "Unless you can find a category, there is no room for the application of the ejusdem generis doctrine." Also in Glasgow v. Glasgow Tramway Co. [1898] A.C. 634 Lord Chancellor Halsbury refused the application of the rule where a word was clearly wide in its meaning so as to take it out of the association with other words.

In the light of the cited cases, I am constrained to hold that Mr. Robinson's contention for the application of the ejusdem generis rule is not well founded.

I so hold for another reason. The S.22(1) says 'the Special Constable while on duty shall have, exercise, and enjoy all the powers; authorities, privileges and immunities.....' The underlining of the verbs are mine.

To my mind, a person may have a power which he may exercise. He may also have authority which he may exercise. So too a person may have privilege and immunity. But I am nor prepared to say that privilege and immunity are exercisable. They are enjoyable. The structure of the section itself fractures any presumed category of words which is necessary for the application of the ejusdem generis rule.

I therefore find:

1. That the word privilege admits a wide meaning to include financial benefits such as housing allowance.
2. The ejusdem generis rule is not applicable to confine the meaning of privilege in this case.

3. The wording of the section itself does not create any category of words on which to hang the ejusdem generis rule.
4. The special constable is only entitled to the privilege while he is on duty.

In passing, I am reminded of Lord Atkin's dictum in Liversidge v. Anderson [1942] App. Cas. p. 206 at p.244, Lord Atkin viewed with apprehension the attitude of judges who show themselves more executive minded than the executive in claims involving the liberty of the subject. I agree with Lord Atkin.

I in all deference to Lord Atkin, would not confine the apprehension to claims involving the liberty of the subject. I would say, and do say, that where there **is on** a clear and natural construction a statute grants an entitlement, that entitlement should not be curtailed by a judge being more executive minded than the executive.

It is on the above reasoning and findings that I granted the declarations sought and awarded costs to the applicants.