

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 29/97

BEFORE: THE HON. MR. JUSTICE FORTE, J A
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

BETWEEN THE ATTORNEY GENERAL APPELLANT
AND D'SENT NICHOLAS RESPONDENT
AND THE SPECIAL CONSTABULARY RESPONDENT
FORCE ASSOCIATION

Douglas Levs Snr. Asst. Attorney General with Avlana Johnson Crown Counsel
instructed by the Director of State Proceedings for the Appellant.

Dr. Lloyd Barnett with Don Foote instructed by Don Foote & Co for the Respondents

9th March and 3rd April, 1998

FORTE, J.A.

This matter came before Ellis J, on an Originating Summons in which the following declarations were prayed and ordered on a consideration of the affidavits filed in support and the legal arguments presented :

1. 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 (sic) (Special) Act the members of the Island Special Constabulary Force, while on duty are also entitled to enjoy said accommodation or housing allowance.

2. A declaration that, since the members of the Jamaica Constabulary Force receive accommodation or housing allowance that 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 (sic) (Special) Act.
3. A declaration that, the provision of the accommodation or housing allowance is a privilege enjoyed by the members of the Jamaica Constabulary Force to which members of the Island Special Constabulary (sic) Force are also entitled to enjoy while on duty, pursuant to Section 22 (6) of the Constabulary (sic) (Special) Act.

The declarations granted all depended on the interpretation of section 22 (1) of the Constables (Special) Act which reads as follows:

"22.--(1) Every Special Constable enrolled under this Part shall while on duty in the capacity of a Special Constable have, ex.ers.isa and enjoy all the powers, authorities, privileges and immunities and shall perform all dirties 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 may be punishable".

This issue before us is concerned with whether the section gives entitlement to Special Constables to all the privileges attached to the Jamaica Constabulary Force, and in particular accommodation or housing allowance.

Before looking in detail at the merits of the arguments raised, it is convenient to make reference to the uncontradicted affidavit evidence of D'Sent Nicholas, the plaintiff/respondent in respect of whether such a privilege is in fact enjoyed by members

of the Jamaica Constabulary Force. In paragraph 6 of his supplemental affidavit he states as follows:-

"That since the 1st day of April, 1996 all members of the Jamaica Constabulary Force with service of three (3) years and over are entitled to accommodation or housing allowance; a privilege which members of the I.S.C.F are yet to enjoy".

This evidence, not being challenged, it is presumed that it describes a factual situation.

Great emphasis was placed in the Court below, and again before us as to whether the word "privilege" as used in sec. 22(1) had a sufficiently wide meaning so as to include financial benefits and in particular that of housing. Section 7 of the Jamaica Constabulary Force Act, which enables provision of housing for the Jamaica Constabulary Force member did not however contemplate that accommodation, would necessarily mean the granting of an housing allowance, as much as it aimed to ensure that all Constables would be housed, given their particular type of assignment. It reads:

"The Minister may set apart for the use of the Force any barracks or other building of or belonging to the Government of this Island and may make such further provision for the accommodation of the Officers, Sub Officers and men of the Force at the several posts to be assigned to them as may be necessary".

Housing allowance it seems, would only arise if no accommodation was available, necessitating the Minister making "further provision for accommodation etc."

In my view, it is against that background, that section 22 has to be examined. It must be noted also that section 22 (1) arose out of the establishment of the Island Special Constabulary Force, as a permanent Force, and was part of several provisions aimed at bringing it as close as possible to the already established Jamaica Constabulary Force. Part 11 of the Act deals exclusively with the setting up of the Island Special Constabulary Force: firstly per section 16 declaring that the Force is constituted as a permanent Force;

thereafter enacting for the composition of the Force (sec 17); the mode of enrolment (sec 18); the period of service (sec 20); and the swearing in and form of oath (sec. 21).

Part IV of the Act is dedicated to thorough provisions for a pension scheme for the Special Constables. Section 32 (1) recognises that Special Constables could be under regular employment. It states:

"Subject to subsection (3), this Part applies to every Special Constable who is employed in the Force, whether before or after the 29th day of January, 1988, on such terms and conditions as constitute regular employment".

Section 31 defines "regular employment" as meaning "employment in the Force on a continuous basis for a period of not less than five days in each week". This definition of course must be viewed also on the background of Section 20 which requires that a Special Constable shall be engaged for a period of three years from the date of his enrolment. Also, of relevance is the following unchallenged evidence of D'Sent Nicholas which is stated in paragraph 3 of his supplemental affidavit:

"That all members of the Island Special Constabulary Force (I.S.C.F) are transferrable within any Parish of their assignment in like manner as members of the Jamaica Constabulary Force",

and in paragraph 4

"that all members of the Island Special Constabulary Force are detailed and are obliged to work on specific duties in accordance with details posted on a Roster as to date, time and place for duty in like manner as members of the JC.F."

All the above, in my view clearly demonstrate that the Island Special Constabulary Force though a separate Force is nevertheless intended to be cast almost in the same mould as the Jamaica Constabulary Force, and consequently, section 22 ought to be interpreted against that background in determining the question in issue.

Before us, Mr. Leys for the appellant argued inter alia that:

- i. the words 'power' and 'authority' preceding as they do the word 'privilege' in the section merely confer on the special constable a kind of protection which would enable him to effectively and fearlessly discharge his public duties in the same manner as a regular constable and;
- ii. that section 23 (2) of the Act specifically empowers the Minister to make provisions for accommodation for special constables evidencing an intention on the part of Parliament that the word 'privilege' in Section 22 (1) is to be construed narrowly and that provision for accommodation is to be done by regulation.

Though on the face of it, Mr. Leys' first submission is attractive, a closer examination reveals that the argument is flawed. The effect for which he contends, would certainly relate to the Special Constables' exercise of the same power and authority, as that exercised by the regular constable, as these words are undeniably connected with the public duties to be performed by both groups of men.

The question then is whether 'privilege' would extend beyond the scope of the actual performance of the duties and responsibilities of the Special Constable into the area of the conditions of service to which the regular constable is entitled. The difficulty arises because in the case of the regular constables, he is by virtue of section 13 of the Constabulary Force Act, deemed to be always on duty - that section enacting that his duty "shall be to keep watch by day and by night etc". Any privilege which the regular constable enjoys is not dependent on when he is actually performing his duties, because even at times when he is not in fact, so doing for example in periods when he is not rostered for duty, he still maintains the power and authority to perform these functions if the circumstances demand it. Section 22(1), however, extend the privileges of the regular Constable to the Special Constable, only "while the Special Constable is on duty".

Section 22(2) describes when the Special Constable is deemed to be on duty as follows:

- "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 or of the Island Special 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 section 23."

This subsection per se indicates the possibility of a Special Constable being constantly on duty depending on when he is "required" so to be para (b); or when he is called out for service, para (c). That the general practice is that Special Constables are usually always on duty is confirmed by the evidence in the affidavit of D'Sent Nicholas that "they are detailed and are obliged to work on specific duties in accordance with details posted on a roster as to date, time and place of duty in like manner as members of the Jamaica Constabulary Force.

In addition the Act speaks of a Special Constable as being in regular employment which it defines as being continuously employed for a period of not less than five (5) days per week - a condition precedent for pension.

It follows then, that in the case of a Special Constable who is regularly employed, he is in the same state of employment as the regular constable, given the fact that a five day work week is the nationally accepted term of employment. It appears, however, that a Special Constable, cannot be said to be on duty outside of the periods for which he is rostered, except in circumstances as in section 22(2)(a) where an offence, indictable, or summary is committed in his presence.

The question then is whether the privilege of accommodation which is given to the regular constable is given as a direct result of his actual performance of his duty in preventing crimes, or making arrests etc, as opposed to being a Constable per se. In order to determine this, another look at section 7 of the Jamaica Constabulary Force Act is necessary. The tenor of the section suggests that the Minister may make provision for accommodating officers when assigned to their posts whether by providing the use of barracks or other building, or by making other provision for accommodation, which suggests the payment of an allowance in lieu thereof. This privilege is therefore not in anyway connected to giving protection to the Constables while performing their public duties, nor is it aimed at enabling "them" to perform those duties fearlessly. It is merely a privilege given to house the Constable when assigned to a post.

Section 22(1) in my opinion seeks to do exactly the same for Special Constables when it gives to them the same privileges to which the regular Constable is entitled.

Section 23 of the Constables (Special) Act.

Mr. Leys maintains that this section supports his contention in (i) i.e. that privilege as used in Section 22(1) does not relate to accommodation. Section 23 so far as is relevant states:

"23.--(1) The Minister may make regulations for giving effect to the provisions of this part.

(2) Without prejudice to the generality of the power conferred by subsection (1) regulations made under that subsection may provide for ---

(m) supplies, accommodation and uniform of Special Constables;

He contends that if the word privilege as used in section 22(1) was intended to include a provision for accommodation then there would be no necessity to give the Minister the power to provide for accommodation by Regulations.

In response Dr. Barnett for the respondent contends that section 23 (1) gives the Minister power to make regulations "for giving effect to the provisions of this Part" a provision which he submitted confirms that "privilege" as used in the section envisages "accommodation" and so in order to give effect to that privilege, the Minister is empowered to make such Regulations.

The contention of the respondent is supported by an overall view of section 23 (2) which empowers the Minister to make regulations which would effectively speak to and provide all that is necessary for the proper establishment of the Special Constabulary Force eg. he is empowered to make regulations for inter alia:

- i) the organisation of the Force
- ii) conditions of service emoluments, promotion etc
- iii) training
- iv) discipline and guidance of the Force
- v) payment of wages and subsistence allowance and travelling expenses; and
- vi) the establishment of a permanent special constable staff.

The power given to the Minister therefore to make regulations providing for accommodation is only one of the areas which would be an integral part of the establishment of a Special Constabulary Force, and in my view is so contemplated by the provisions of section 22 (1).

These provisions, however, make it clear that the Special Constable would only be entitled to this privilege, when he is on duty, and if the privilege has been conferred on

the Constable of the regular Force. That the members of the Jamaica Constabulary Force do get such a privilege is evidenced by the unchallenged testimony of the First Respondent in which he states as follows:

"[That] each member of the regular Jamaica Constabulary Force enjoy the privilege of accommodation or housing allowance".

To this end he exhibited Force Order dated October 31, 1996 which confirms his testimony. In addition he attests that each member of the Island Special Constabulary Force from the ranks of Special Inspector and above are also in receipt of this privilege.

There was sufficient evidence, therefore for a certain determination that accommodation or housing allowance is a privilege enjoyed by members of the Jamaica Constabulary Force, and consequently there is no need to grant the declaration in the terms of paragraph (1) granted by the court below. It would be adequate in my view to grant a declaration in keeping with paragraph (2) of the Order of the Court below i.e as follows:

"Since the members of the Jamaica Constabulary Force receive accommodation or housing allowance that same is a privilege equally enjoyable by members of the Island Special Constabulary Force, while on duty, pursuant to Section 22(1) of the Constables (Special) Act."

I would vacate the order in so far as the granting of declarations in para (1) and (3) are concerned and affirm the declaration granted in paragraph (2) as now amended.

In coming to my decision I am not unmindful of the arguments raised in respect to the ejusdem generis rule, but, in my view a short answer is that the words used in the section do not relate to the same category and consequently the rule would not apply.

As for the many cases cited to determine whether the word privilege should be given a wide meaning, it is sufficient to say that the interpretation of section 22(1) which is

adumbrated heretofore, indicates that it is to be given its ordinary meaning, and applied as earlier stated.

In the event I would dismiss the appeal but affirm only the declaration in paragraph (2), paragraphs 1 and 3 being in my view surplusage.

DOWNER, J.A.

The issue for determination in this appeal is whether Ellis, J. was correct in acceding to the prayer of the respondents Inspector D' Sent Nicholas and the Special Constabulary Force Association that constables of the Special Constabulary Force while on duty are entitled to the privilege of a housing allowance comparable to that enjoyed by constables of the Constabulary Force. The resolution of this issue depends on the true construction of the Constables (Special) Act and Force Orders in the gazette for the Constabulary Force.

What are the origins of this dispute

The affidavit of Inspector Nicholas tells the story. In recounting his special responsibilities he states:

"3. That I am presently the Chairman of the Special Constabulary Force Association and I am authorized to give this Affidavit on behalf of the Island Special Constabulary Force.

4. That it is the responsibility of the Island Special Constabulary Force Association to make representation with respect to matters affecting the general welfare and efficiency of the members of the Island Special Constabulary Force."

Turning to the current negotiations on emoluments the Inspector reports:

"5. That the Executive of the Island Special Constabulary Force is presently in negotiation with the First Defendant to finalize the term of a new pay package for the members of the Island Special Constabulary Force.

6. That agreement has been reached with respect to all other terms of the new pay package save and except that which concern accommodation or housing allowance for the members of the Island Special Constabulary Force.

7. That the Association is presently seeking accommodation or housing allowance for every Special Constable whilst on duty."

That the claim for housing allowance is based on statutory provisions was put thus:

"8 That the basis upon which the Association is making its claim is a legal one pursuant to Section 22 (1) of the Constabulary (Special) Act which asserts inter alia that every Special Constable while on duty shall enjoy all the privileges and shall perform all the duties and have all the responsibilities of a Constable of the Jamaica Constabulary Force under the Constabulary Force Act."

Force Orders govern the operations and conditions of service of the Constabulary Force and that for October 1996, exhibited, was introduced thus:

"9. That each member of the regular Jamaica Constabulary Force enjoys the privilege of accommodation or housing allowance and I exhibit herewith **a copy of THE JAMAICA CONSTABULARY FORCE ORDERS dated, 31st October, 1996-Serial No. 2578 marked Exhibit "D.N.1" for the scrutiny of the Court particularly APPENDIX A, THEREOF.**"

The relevant paragraph is Sub. No. 3 which reads:

**" INCREASED SALARIES AND ALLOWANCES
- JAMAICA CONSTABULARY FORCE**

Attached to these Orders as Appendices 'A', and 'C' are the Heads of Agreement concluded between the Ministry of the Public Service and the Jamaica Police Federation for contract period 1996/98."

Turning to the Appendix from the Compensation Unit of the Ministry of Finance it reads:

"Permanent Secretary
Ministry of National Security
and Justice

Arising from the agreement reached with the Executive of the Jamaica Police Federation on behalf of the Federated Ranks of the Jamaica Constabulary Force for the 1996-98 contract

period, approval is given for the payment of increased salaries and allowances effective April 1, 1996, and April 1, 1997, respectively. A schedule is attached setting out the increased salaries and special allowances.

The other allowances are increased as follows:

	Existing \$	Revised w.e.f 1/4/96 \$	Revised w.e.f. 1/4/97 \$
<u>Housing</u>			
Inspector	46,062 p.a.	73,704 p.a.	82,648 p.a.
Sergeant	42,211 p.a.	67,539 p.a.	76,645 p.a.
Corporals	39,300 p.a.	62,880 p.a.	70,428 p.a.
Constables	27,710 p.a.	44,340 p.a.	49,662 p.a."

Anomalies pertaining to salaries are always resented especially when the law ordains fair treatment. The grievance of the special constables was highlighted thus by the Inspector:

" That it is an anomaly to allow accommodation only to one portion of the membership to wit; Inspectors of the Island Special Constabulary Force when Section 22(1) expressly states that every Special Constable should enjoy such privilege."

Here is how the anomaly is spelt out in the heads of agreement between the Ministry of Public Service and the Special Constabulary Force Association dated 18th October, 1990:

"18. HOUSING ALLOWANCE (NEW)

An allowance of \$3,956 with effect from 1st April, 1990 to Inspectors only."

Further in a supplementary affidavit Inspector Nicholas stated:

"4. That all members of the Island Special Constabulary Force are detailed and are obliged to work on specific duties in accordance with details posted on a Roster as to date, time and place for duty in like manner as members of the J. C. F.

5. That prior to the 1st day of April 1996 no member of the J. C. F. was entitled to accommodation or housing allowance save and except those permitted as a result of the Government not being able to provide Barracks for those members of the J.C.F. that were married; a privilege which members of the J. S.C.F. have to date, being denied.

6. That since the 1st day of April, 1996, all members of the J.C.F. with service of three (3) years and over are entitled to accommodation or housing allowance; a privilege which members of the I.S.C.F. are yet to enjoy."

How the dispute was resolved in the court below pursuant to the Constables (Special) Act.

Section 22 (1) of the Constables (Special) Act ("The Act") appears in Part II of The Act and is captioned Island Special Constabulary Force. Section 22(1) reads:

"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 may be punishable."

Since there is a legislative reference to the Constabulary Force Act it is pertinent to cite Sections 7 and 13 of that Act. Firstly Section 7 reads:

"7. The Minister may set apart for the use of the Force any barracks or other building of or belonging to the Government of this Island and may make such further provision for the accommodation of the Officers, Sub-Officers and men of the Force at the several posts to be assigned to them as may be necessary."

Then Section 13 reads:

"13. The duties of the Police under this Act shall be to keep watch by day and by night, to preserve the peace, to detect crime, apprehend or summon before a Justice, persons found committing any offence or whom they may reasonably suspect of having committed any offence, or who may be charged with having committed any offence, to serve and to execute all summonses, warrants, subpoenas, notices, and criminal processes issued from any Court of Criminal Justice or by any Justice in a criminal matter and to do and perform all the duties appertaining to the office of a Constable, but it shall not be lawful to employ any member of the Force in the service of any civil process, or in the levying of rents, rates or taxes for or on behalf of any private person or incorporated company."

Further section 22 (2) of The Act states:

A Special Constable shall be deemed to be on duty in the capacity of a 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 or of the Island Special 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 section 23."

In the light of those provisions the question must be posed when is a Special Constable on duty? The first matter to be considered is who is a special constable under the Act. Section 18 in Part II provides the answer and it reads:

"18. A Special Constable under this part shall be enrolled in the form contained in the Second Schedule by the Commissioner or any officer of the

Jamaica Constabulary Force not below the rank of Assistant Superintendent."

The Second Schedule is instructive. It is as follows:

SECOND SCHEDULE

FORM OF APPOINTMENT OF SPECIAL CONSTABLE

JAMAICA

To _____ of

I, the undersigned

(rank)

for the parish of _____, do under the power and authority

in me vested by Part II of the Constables (Special) Act, hereby appoint

you to be a Special Constable in the Island Special Constabulary Force.

Dated the _____ day of _____, 19

(Name).....

(Rank).....

To ascertain how the details of a special constable's duties are promulgated one must have recourse again to the evidence of Inspector D'Sent Nicholas. Here again are the relevant passages:

"3. That all members of the Island Special Constabulary Force (I.S.C.F.) are Transferable within any Parish of their assignment in like manner as members of the Jamaica Constabulary Force (J.C.F.).

4. That all members of the Island Special Constabulary Force are detailed and are obliged to work on specific duties in accordance with details posted on a Roster as to date, time and place for duty in like manner as members of the J.C.F."

It is clear that a roster prepared pursuant to Section 22 (2)(b) would be the usual course for determining when a member of the Island Special Constabulary would be on duty, while Section 22(2)(a) & (c) would be special circumstances.

The matter as to when a Special Constable was on duty therefore is a matter of fact to be determined in most instances by consulting the roster. Declarations of law are granted in circumstances where there is no dispute concerning the evidence. It was therefore regrettable that Ellis, J. did not advert to the uncontroverted facts in his otherwise admirable judgment. School teachers , university lecturers and judges of the Superior Courts must consult a roster to know of their assignments while on duty. So must members of the Constabulary Force as well as those of the Island Special Constabulary Force. The provision in Part III of The Act for a Special Constabulary Force Association to represent the interests of constables holding the rank of Special Inspector and below, and the further provision for Pensions, Gratuities and other allowances in Part IV of The Act for constables in "regular employment" are significant. They indicate that special constables are in permanent employment and the issue as to when they are on duty ought to be resolved without difficulty. This was implicit in the approach of the court below. The learned trial judge gave a declaration in favour of the respondents. His reasons however were brief so that some of it has to be inferred. Therefore it is now appropriate to reiterate those reasons in a more ample manner.

Was the Minister obliged in the circumstances of this case to award a housing allowance to the Special Constables in the compensation package?

The first issue to be decided is what were the circumstances in this case. It has already been ascertained from the evidence of Inspector Nicholas that during the period 1996-1998 members of the Constabulary Force enjoyed housing allowance.

Once that was provided, the Minister's discretion was now coupled with a duty to provide comparable provisions for constables of the Special Constabulary Force. It was not to provide for Inspectors only as was done. The leading authority on this branch of law is **Julius v Bishop of Oxford** (1880) 5 App.Cas. 214, 225 and 241. The appropriate passage may be elicited from Craies on Statute Law 7th edition page 285.

It reads:

" It is, however, a well-recognised canon of construction, as Lord Cairns said in **Julius v. Bishop of Oxford**, (1880) 5 App.Cas. 214, 225, 241; that 'where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the court will require it to be exercised'."

This principle was expounded with equal clarity in the authoritative case of **Padfield v Minister of Agriculture** [1968] A.G. 997 which Dr. Barnett accepted was applicable to the circumstances of this case. The Minister was empowered by Section 23 (2)(m) of The Act to provide accommodation and the court below required that the power be exercised. The relevant section states:

"23. -(1) The Minister may make regulations generally for giving effect to the provisions of this part.

(2) Without prejudice to the generality of the power conferred by subsection (1) regulations made under that subsection may provide for -

- a) the organization of the Force;
- b) the establishment of different ranks and the precedence and command to be had or exercised by the holders of such ranks;

m) supplies, accommodation and uniform of Special Constables;

"

Once constables of the Constabulary Force enjoyed the privilege of a housing allowance then by virtue of Section 22 and Section 23 (2)(m) of the Act the Minister had a duty to accord comparable privileges to constables of the Special Constabulary Force. He could do this by regulation or by provision in a compensation package which could be published in a Force Order. The Special Constabulary Force Association is a body recognised in Section 25 of The Act and it was appropriate for it to have instituted these proceedings to claim the privilege accorded by The Act. The learned judge below rejected the restricted meaning of the privileges in Section 22 propounded by counsel for the Attorney-General. He rightly preferred the wider meaning illustrated in **Birch v Depeyster** Vol. CLXX E.R. p. 449, and **Harrison v Mexican Railway Company** 1874-75 Vol. XIX [L.R.] Equity Cases at 346. Moreover he correctly found that:

"4. The special constable is only entitled to the privilege while he is on duty."

Conclusion

The declarations sought by the respondents read as follows:

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 (sic) (Special) Act the members of the Island Special 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 the same privilege is equally enjoyable by members of the Island Special Constabulary Force, while on duty, pursuant to Section 22 (1) of the Constabulary (sic) (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(sic) (Special) Act.**"

Mr. Leys criticised the form of these declarations and requested clarification so that if the Attorney-General's appeal was dismissed the principal Law Officer of the Crown would be able to tender the proper advice to the Minister responsible for the Public Service. I will attempt a simpler formulation thus:

" Since the privilege of a housing allowance is now being accorded to constables **of the Constabulary Force** the Minister has a duty pursuant to Section 22 and 23 of The Act to provide comparable privileges to constables of the Island Special Constabulary Force while on duty."

So the appeal is dismissed. The order below would be reworded. The respondents must have the taxed or agreed costs of this appeal.

GORDON, J.A.

By Originating Summons dated 25th November, 1996 the respondent sought the following declarations:

- 1) A declaration that if the members of the Jamaica Constabulary Force are entitled to accommodation or housing allowance, then in accordance with section 22(1) of the Constabulary (sic) (Special) Act the members of the Island Special Constabulary Force, while on duty, are also entitled to enjoy said accommodation or housing allowance.
- 2) 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 (sic) (Special) Act.
- 3) A declaration that, the provision of accommodation or housing allowance is a privilege enjoyed by the members of the Jamaica Constabulary Force 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 (sic) (Special) Act.

The summons was supported by affidavits and exhibits filed by D'Sent Nicholas the 1st Plaintiff/Respondent. In the affidavits the applicant declared in paragraph 9.

"Each member of the regular Jamaica Constabulary Force enjoy the privilege of accommodation or housing allowance".

This statement he supported by exhibiting a copy of the Jamaica Constabulary Force orders dated, 31st October, 1996.

In paragraph 10 he deposed that the above privilege was extended to members of the Island Special Constabulary Force of the rank of Inspector and above. This he

asserted was an anomaly that had to be addressed by extending the "privilege" to the special constables below the rank of Inspector.

He based his claim on the provisions of section 22 (1) of the Constables (Special) Act which provides :

"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 may be punishable". (emphasis added)

Section 22 (2) defines when a special constable shall be deemed to be on duty.

Section 23 empowers the Minister to make regulations which may provide for supplies, accommodation and uniform for special constables: sub-sec. (2) (m).

It is the respondent's contention that the word "accommodation" in this subsection bears the same meaning as the word "accommodation" in section 7 of the Constabulary Force Act which reads as follows:

"The Minister may set apart for the use of the Force any barracks or other building of or belonging to the Government of this Island and may make such further provision for the accommodation of the Officers, Sub Officers and men of the Force at the several posts to be assigned to them as may be necessary".

The respondent further contends that members of the Jamaica Constabulary Force are now afforded "accommodation or housing allowance". This allowance has

been extended to members of the Special Constabulary Force above the rank of Inspector and he claims it is a privilege that should be extended to all members of the Special Constabulary Force.

The appellant's evidence on affidavit stands unchallenged. The facts establish that constables are paid an allowance in lieu of accommodation or housing. This payment ranks as a privilege afforded to constables which said privilege a special constable is entitled to enjoy by virtue of section 22 of the Constables (Special) Act.

A constable is required by section 13 of the Constabulary Force Act "to keep watch by night, to preserve the peace and to detect crime". This employment keeps him always on duty. He is subject to transfer to any part of the island of Jamaica. Section 22 (1) stipulates that a special constable's entitlement to enjoyment of the privileges attached to his employment falls due "while (he is) on duty".

The declarations granted in the court below speak to the same purpose, the first being subjunctive. I am of the view that the only meaningful one is the second one. I therefore would dismiss the appeal and grant the second declaration.

FORTE J.A.

Appeal dismissed. Order for declarations (1) and (3) vacated. Order for Declaration (2) affirmed in these terms:

"Since the members of the Jamaica Constabulary Force receive accommodation or housing allowance that same is a privilege equally enjoyable by members of the Island Special Constabulary Force, while on duty, pursuant to Section 22(1) of the Constables (Special) Act".

Costs of the appeal to the respondents to be taxed if not agreed.