Thus it is submitted that for a person to succeed on such an implied term in a contract for the sale of goods or for work done, he must either:

(a) Have knowledge of the peculiarity which will cause damage, and make that known to the seller, or

(b) he must make known to the seller every conceivable consequence which may arise, and which he has no reason to believe may exist—a seemingly impossible duty to perform.

POLICE OFFENCES ACT

Police Rights on Private Property

On the morning of Anzac Day, 1959, a plainclothes police constable out driving with his wife observed a man "slumped over the wheel" of a stationary utility. As he watched, the man staggered from the vehicle and, assisted by another, made his way into his house. The constable followed, but on disclosing his identity, was ordered aggressively to leave the premises, whereupon he arrested the man on charges of driving under the influence of liquor and using indecent language.

On appeal[1] from dismissal of a count of resisting a member of the police force in the execution of his duty, Napier C.J. was called upon to construe s.75 of the Police Offences Act, which reads,

> "(1) Any member of the police force, without any warrant other than this act, at any time of the day or night, may apprehend any person whom he finds committing or has reasonable cause to suspect of having committed, or being about to commit, any offence."

As a matter of strict literal interpretation, the answer to the question whether a constable can lawfully enter or remain on the premises of a suspected person when denied permission or requested to leave is obvious; but the result, when pronounced by a court, is nevertheless alarming. Napier C.J. held:

> "that the plain intention of the enactment is to give the constable such authority as would be given by a warrant for the apprehension of the suspected person. I am therefore, unable to accept the suggestion that this gives the member of the police force no right or authority to follow the suspected person onto private property for the purposes of effecting the arrest.
>
> I can see no reason why any such limitation should be placed upon the general words of the statute."[2]

The once prevailing common law rules provide an instructive comparison with this result.

1. A constable has a power—indeed a duty—to arrest without warrant where a felony is suspected. This power extends to private

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1. *Dinan* v. *Brereton* [1960] S.A.L.S. Judgt. Scheme, 172.
2. Ibid, p. 175.

persons if a felony has actually been committed; but "except in the case of an actual breach of the peace, no person—whether public or private—has by the common law any power of arrest for misdemeanour".3

2. In cases of actual felony or breach of the peace a policeman has always been authorised to force his way onto premises, "but mere suspicion touching the guilt of the party will not warrant a proceeding to this extremity, though a felony hath been actually committed: unless the officer cometh armed with a warrant from a magistrate grounded on such suspicion".4

3. Where a warrant is required, it is not only necessary that it should be in the possession of the officer5; it must also not be a general warrant.6

These rules were examples of the principles assuring the integrity of the individual from arbitrary interference with his freedom and property.

The present Police Offences Act is one of many statutes impinging on these common law principles, principles which previous generations have regarded as fundamental. Admittedly, it is bad to deny power merely because it may be abused, but in view of the possible —one hesitates to say probable—abuse of s.75, it is fortunate that most statutes encroaching on the common law rules of arrest have inherent or interpolated safeguards for the individual.7 The Tasmanian Criminal Code is such an enactment. S.27(b) reads

> "it is lawful for any person to arrest without warrant any person whom he sees committing a breach of the peace or whom he believes on reasonable grounds to be about to commit or renew a breach of the peace."8

This section is narrow in operation and easy of construction, yet obviously effective whilst retaining safeguards for the individual. It is limited to breaches of the peace and applies only where the offence is actually witnessed or anticipated.9 The unlimited possibilities underlying s.75 are grim in comparison.

What, then, is the justification for such a wide and indefinite administrative tool as s.75? Perhaps Scott L.J. provided the answer:

> "The ultimate object which the law has in view in authorising arrest is, of course, the protection of society; but arrest is not an end in itself. What the law grants is not a right, but only

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3. *Leachinsky* v. *Christie* [1945] 2 All E.R. 395 at 401.
4. Foster's Crown Law (3 edn. ch. viii s. 23).
5. *Galliard* v. *Daxton* (1862) 2 B. & S. 363; *R.* v. *Chapman* (1871) 12 Cox C.C. 4; *Codd* v. *McCabe* (1876) 1 Ex.D. 352.
6. *Wilkes* v. *Wood* (1763) Lofft 1; *Entick* v. *Carrington* (1765) 2 Wils 275; *Leach* v. *Money* (1765) 19 State Tr. 1001.
7. See the compilation of some sixty such enactments by Avory J. in *Halsbury*, Hailsham Edition, Vol. 9, at pp. 89-95.
8. The corresponding provisions in other States are:—
   (i) Victoria, Crimes Act ss. 457-463.
   (ii) Western Australia, Criminal Code, ss. 564-570.
   (iii) Queensland, Criminal Code, ss. 546-551.
   (iv) New South Wales Crimes Act, ss. 352-357.
   Whilst these provisions cover many of the situations embraced by s. 75 of the South Australian Police Offences Act, they do not extend as widely as s. 75.
9. *Dowling* v. *Higgins* [1944] Tas. S.R. 32. Compare also *Thomas* v. *Sawkins* [1935] 1 K.B. 218; and *Duncan* v. *Jones* [1936] 1 K.B. 218.

> a power, although it may be imposing a duty—especially on a constable.
>
> When effected, the arrest is in essence just a step in the administration of criminal justice. . . . It is by bringing him (the offender) in person before the court, whether committing magistrate or judge and jury, that he is made a party; and the whole purpose of arrest, just as much as of the initial steps of information, warrant or summons, is to give the court jurisdiction over the alleged offender, in order that justice may be done and that he, if found guilty, may be punished. The corporal presence of the offender is just as essential to trial verdict and judgment as to punishment; and if he be innocent it is equally essential to him as well as to the prosecution. English justice could not be what it is without the fundamental feature."[10]

Undoubtedly this is very true; but what is more fundamental—the right to acquittal, or the right to personal freedom?

10. *Leachinsky* v. *Christie* [1945] 2 All E.R. 395 at 404.

STATUTORY INTERPRETATION

"Shop"—"Offered or exposed for sale."

The case of *Goodwin's of Newtown Pty. Ltd.* v. *Gurry*[1] is of importance in determining what premises are "shops" within the meaning of the Early Closing Act 1926-1954. "Shop" is defined by s.4 of the Act to mean "the whole or any portion of a building . . . in which goods are offered or exposed for sale by retail or by auction".

The appellant company displayed television sets in premises open to the public. These sets were not for sale, but their counterparts could be ordered on the premises and would be supplied by another firm. The company was convicted, under s.34 of the Early Closing Act 1926-1954, of occupying premises not registered in accordance with the requirements of s.31, and appealed on the ground that their premises were not a "shop" within the meaning of the Act. It was contended[2] that the appellant company were not offering goods for sale but were merely inviting members of the public to make an offer to buy.

Brazel J., rejecting this contention, found from an examination of the Act that the words "offered for sale" should not be given any such "legal meaning", but should be construed "in the sense in which these words are understood in ordinary, everyday use, and particularly in commerce".[3] His Honour then construed the words "offer for sale" to mean "present for sale", or display goods for sale in a way calculated to "influence or induce the public to buy their counterparts" from the other firm.[4]

1. [1959] S.A.S.R. 295.
2. On the authority of *Pharmaceutical Society of Great Britain* v. *Boots Cash Chemists* [1953] 1 Q.B. 401.
3. [1959] S.A.S.R. 295 at 299.
4. Ibid. at 300.