

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

- AND -

NANCY SANCHEZ-BURKE

Respondent

CASE FOR THE APPELLANT

RECORD

- 10 1. This is an appeal from a judgment dated 30th July, 1976, of the Court of Appeal of Jamaica (Graham-Perkins, Zacca JJ.A. and Watkins Actg. J.A.) declaring the trial on indictment of Nancy Sanchez-Burke in the Resident Magistrate's Court for Saint Andrew (Her Honour Miss Marjorie Morgan) to be a nullity. pages 21-30
- 20 2. The respondent was tried on an indictment containing two counts for doing acts preparatory to the making of payment outside of the Island without the permission of the Minister. page 30
- 30 3. The Resident Magistrate found the Respondent guilty on both counts in the indictment and imposed a sentence of \$500 or 3 months on each count and further ordered the amount of U.S.\$8,807 and Ca. \$4,000 forfeited. page 5
- 4. In the Resident Magistrate's Court the respondent took a number of points in limine among which was that on trial on indictment for a breach of the Exchange Control Act the trial must be heard and determined by the Supreme Court. pages 6-7
- 5. The Crown's reply was that the words of paragraphs 1(1) and 1(3)(a)(b) and paragraph 2(2) of pages 7-8

RECORD

Part II of the Fifth Schedule of the Exchange Control Act which paragraphs read as follows:

- 1.(1) Any person in or resident in the Island who contravenes any restriction or requirement imposed by or under this Act, and any such person who conspires or attempts, or aids, abets, counsels or procure any other person, to contravene any such restriction or requirement as aforesaid, shall be guilty of an offence punishable under this Part: 10

Provided that an offence punishable by virtue of Part III shall not be punishable under this Part.

- 1.(3) Any person who commits an offence punishable under this Part shall be liable -
- (a) on summary conviction, to imprisonment for not more than three months or to a fine or to both;
 - (b) on conviction on indictment, to imprisonment for not more than one year or to a fine or to both. 20

- 2.(2) Proceedings against any person in respect of an offence punishable under this Part may be taken before the appropriate Resident Magistrate's Court in the Island having jurisdiction in the place where that person is for the time being, expressly provided for trial on indictment or on information in the Resident Magistrate's Court.

- pages 19-21 5. The Respondent appealed to the Court of Appeal on the ground, among others that the Resident Magistrate had no jurisdiction to try the matter on indictment. The Court of Appeal on three days heard arguments on three points and in a unanimous decision dated July 30th, 1976, decided that the Resident Magistrate erred and as that Court was not vested with jurisdiction the trial was declared a nullity, the appeal allowed, the conviction quashed and the conviction and sentence set aside. The Court of Appeal held that it was unnecessary to deal with the other points debated or indeed with the facts in view of their decision on jurisdiction. 30 40

- pages 23-24 6. The Court of Appeal found that the Interpretation Law, Law 17 of 1943 section 3(a)(b) which reads:
- "court of summary jurisdiction" means:

- (a) any justice or justices of the peace to whom

jurisdiction is given by any Law for the time being in force, or any Resident Magistrate sitting either alone or with other justices in a Court of Petty Sessions;

- (b) a Resident Magistrate exercising special statutory summary jurisdiction;

10 as explained in the decision of Hart v. Black 7 J.L.R. page 56 when correctly interpreted conferred on the Court of Petty Sessions the jurisdiction to try offences summarily for breaches of 1(3)(a) of Part II of the Fifth Schedule of the Exchange Control Act to the exclusion of a Resident Magistrate exercising his special statutory summary jurisdiction.

7. The Court of Appeal further decided that there was page 24 no jurisdiction for the Resident Magistrate to try on indictment by virtue of the Section 268(1)(f) Judicature (Resident Magistrate) Act which reads:

20 the offence of forcible entry and detainer of land, whether at common law or by statute, and all common law offences (not being felonies) unspecified in this section, whether the punishment of such common law offences has or has not been provided for by any statute or law;

30 because the indictment did not charge a misdemeanour at common law but an offence contrary to the provisions of Part II of the Fifth Schedule of the Act and that this decision was in accordance with R.v. Hendricks (1962) 4 W.I.R. - 537.

8. The Court of Appeal also decided that paragraph page 25-26 2(2) of the Fifth Schedule did not confer a jurisdiction on the Resident Magistrate's Court and that the unreported case of Queen v. Resident Magistrate for the parish of Saint Andrew and the Director of Public Prosecutions - Ex parte Black et al M.42 of 1975 afforded no guidance to the Court of Appeal.

40 9. The Court of Appeal in arriving at their decision also sought the assistance of external guides from the United Kingdom Exchange Control Act and internal guides from R.v. Alexander (1961) 4 W.I.R., and Hart v. Black and R.v. Hendricks referred to above. pages 26-28

10. It is respectfully submitted that the Court of

RECORD

page 24

Appeal erred in ruling that the Resident Magistrate had no jurisdiction to try offences under Part II of the Fifth Schedule of the Exchange Control Act on information by virtue of his special statutory summary jurisdiction.

11. The Jamaica Defence (Finance) Regulations 1940 which preceded the Exchange Control Act published in the Jamaica Gazette dated December 19th, 1940 paragraph 6(c) reads as follows:

6C(1) Subject to any exemptions which may be granted by order of the Board, no person shall, except with permission granted by or on behalf of the Board - 10

(a) draw, issue or negotiate any bill of exchange or promissory note, or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment in Jamaica is created or transferred in favour of a person who is resident outside the sterling area; or 20

(b) make any payment to any such person;

creates an offence which was re-enacted with modifications in 8(1) of The Exchange Control Act. That section reads:

Except with the permission of the Minister no person resident in the scheduled territories shall, subject to the provisions of this section, in the Island do any act which involves is in association with, or is preparatory to, the making of any payment outside the Island to or for the credit of a person resident outside the scheduled territories. 30

12. Further paragraph 15 of the aforesaid Gazette reads:

Any person committing any breach of these Regulations or failing to comply with any order or direction given or requirement imposed pursuant to these Regulations, or making any false return or giving any false information in relation to any matter as to which any return or information is required pursuant to any order or directions made under these Regulations shall be guilty of an offence against these Regulations and shall 40

(i) on summary conviction, before a Resident Magistrate be liable to imprisonment for a term not exceeding six months, or to a fine not exceeding five hundred pounds or to both such imprisonment and such fine, or

- (ii) on conviction before a Circuit Court be liable to imprisonment for a term not exceeding two years with or without hard labour or to a fine not exceeding five thousand pounds, or to both such imprisonment and such fine;

10 prescribes the punishment and confers jurisdiction on the Resident Magistrate and was so treated, it is respectfully submitted by the Court of Appeal in R. v. John Crook Limited 4 J.L.R. page 129. It is further respectfully submitted that paragraphs 1(3)(a) and 2(2) of the Fifth Schedule confer jurisdiction on the Resident Magistrate's Court by virtue of a special statutory summary jurisdiction in accordance with section 3(b) of the Interpretation Act.

20 13. It is respectfully submitted that the ratio in Hart v. Black is to be found at page 60 and reads:

30 "In our opinion in order to confer a special statutory summary jurisdiction on a Resident Magistrate the statute must clearly and distinctly say so. When the jurisdiction to try an offence summarily is given only to a Resident Magistrate's Court no difficulty arises; but when the law confers jurisdiction on a Resident Magistrate or Justices whether or not "Petty Sessions" is mentioned, the jurisdiction of the Resident Magistrate is only exercisable in Petty Sessions";

support the contention of the Appellant.

14. It is respectfully submitted that all offences specified in paragraph 1(1) of Part II of the Fifth Schedule are common law misdemeanours and by virtue of section 268 (1)(f) Judicature (Resident Magistrate) Act which reads:

40 the offences of forcible entry and detainer of land, whether at common law or by statute and all common law offences (not being felonies) unspecified in this section, whether the punishment of such common law offences has or has not been provided for by any statute or law;

confers jurisdiction on the Resident Magistrate's Court to try these offences on indictment.

page 25

RECORD

page 3

15. It is respectfully submitted that Statement of Offence in the indictment which reads:

contrary to paragraphs 1(1) and 3(b) of Part II of the Fifth Schedule of the Exchange Control Act adverts to the only sentence open to the Court to impose and did not alter the common law characteristic of the offences. See R. v. Garland and Another Cox's Criminal Law Cases Volume xxii-292.

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16. It is respectfully submitted also that the express mention of Resident Magistrate's Court in paragraph 2(2) of Part II of the Fifth Schedule refers both to paragraphs 1(3)(a) and 1(3)(b) and that there need be no external or internal guides to assist in interpretation of the statute.

page 29

17. It is respectfully submitted that R. v. Hendricks (1962) 4 W.I.R. at page 538 paragraph E has no application to the instant case as section 38 of the Road Traffic Law, Chapter 346 before amendment, expressly refers to indictment before a jury. Similarly paragraph 15(ii) of the Jamaica Defence (Finance) Regulation of 1940 which previously governed exchange control refers to conviction before a Circuit Court. Furthermore R. v. Alexander affords no guidance as the words which were construed was 'upon summary conviction before a Resident Magistrate or two justices of the peace' which demonstrates that the jurisdiction was that of Petty Sessions.

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page 29

18. That the appellant respectfully submits that the statement of Melville J. in Ex parte Black at page 17 which reads:

"When exercising his criminal jurisdiction whether on indictment or his special statutory summary jurisdiction, a Resident Magistrate apart from the jurisdiction derived from any particular Act, derives his jurisdiction from the Judicature (Resident Magistrates) Act. The offences which it is lawful for a Resident Magistrate's Court to hear and determine are set out in Section 268 of that Act".
Robotham J. at page 20 states:

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".....and that a new information 12618/75 for conspiracy to contravene section 8(1) of the Exchange Control Act,

contrary to Part II of paragraph 1(i) and 3(b) of the Fifth Schedule of the Exchange Control Act was before the Court, on which he was asking for an order for trial on indictment as provided by 3(b) above".

10 coupled with the statement of Smith C.J. at page 1 in the first paragraph of the said judgment shows it was always understood that conspiracy to contravene a statute is an indictable misdemeanour at common law for which the Resident Magistrate's Court had jurisdiction.

19. It is respectfully submitted that the Court of Appeal erred when they held that Ex parte Black et al was of no guidance in the instant case.

page 26

20 To summarise, it is respectfully submitted that with regard to the Resident Magistrates' Jurisdictions the cases and statutory provisions establish the following propositions:

- 30 (1) Where the statute enacts that an offence be tried summarily or in a summary manner or before a Court of Summary Jurisdiction but does not expressly name or describe the Judicial personnel to preside, the Court is a Court of Petty Sessions to be presided over by a Resident Magistrate.
- 40 (2) Where the statute enacts that an offence be tried summarily, etc. and expressly state before two or more Justices of the Peace, the Court is a Court of Petty Sessions to be presided over by two or more Justices of the Peace or a Resident Magistrate who by virtue of Section 63 of the Judicature (Resident Magistrate) Act has "all the powers and authority which are now, or which may hereafter, be, by law committed to and exercisable by two or more Justices associated and sitting together" -
- (3) Where the statute enacts that an offence be tried summarily etc and

expressly states before a Resident Magistrate or in a Resident Magistrate's Court then the Court is a Resident Magistrate's Court with the Resident Magistrate exercising special statutory jurisdiction.

(4) Where an indictable offence whether felony or misdemeanour is created by statute and there are statutory provisions conferring jurisdiction on a Resident Magistrate then such an offence is triable in a Resident Magistrate's Court on indictment in the manner provided by the Judicature (Resident Magistrates) Act. 10

(5) Where the offence is an indictable misdemeanour at common law then whether the punishment of such common law offencehas or has not been provided for by any statute or Law then unless expressly excluded by statute the offence is triable on indictment by a Resident Magistrate pursuant to Section 268(1)(f) of the Judicature (Resident Magistrates) Act and in the manner provided by the Act. 20

Accordingly, it is submitted that the jurisdiction exercisable by Resident Magistrates in relation to Breaches of the Exchange Control Act specified in paragraph 1(1) of Part II of the Fifth Schedule to the Exchange Control Act, fall under the positions described at (3), (4), and (5) above. 30

21. The Appellant therefore respectfully submits that this appeal should be allowed that the trial be declared valid and the conviction and sentence of the Respondent be restored or such other relief as the Judicial Committee of the Privy Council may order for the following among other

R E A S O N S

1. BECAUSE the Court of Appeal was wrong in holding that there was no jurisdiction in the Resident Magistrate to try by virtue of a special statutory summary jurisdiction. 40
2. BECAUSE the Court of Appeal failed to find that a breach of a statutory provision is cognisable by the Resident Magistrate on indictment where the offence is punishable under Part II of the

Fifth Schedule of the Exchange Control Act.

3. BECAUSE the Court of Appeal was wrong to hold that conspiracy to contravene the provisions of the Exchange Control Act for offences punishable under Part II of that Act were not cognisable on indictment in the Resident Magistrate's Court.
4. BECAUSE the Court of Appeal was wrong in holding the provisions of the Exchange Control Act conferred an exclusive jurisdiction on the Circuit Court to try on indictment.

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JAMES S. KERR, Q.C.

HENDERSON DOWNER

IN THE PRIVY COUNCIL

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Charles Russell & Co.
Hale Court
Lincolns Inn
London
WC2A 3UL

Solicitors for the Appellant