

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

CAROL MORIN

Appellant

- AND -

THE QUEEN

Respondent

CASE FOR THE APPELLANT

RECORD

10 1. This is an appeal, by leave of the Court of Appeal of Jamaica, from the Judgment of that Court (Leacroft Robinson, P., Henry, J.A., and Melville, J.A.) dated 2nd May, 1980, which dismissed the Appellant's appeal against conviction and sentence by the Resident Magistrates Court (His Hon. Mr. U.D. Cordon) for the Parish of St. Andrew on the 17th January, 1979. p.30 p.26 p.24 p.24

2. The Appellant was tried before the Resident Magistrate on the following charges: p.2

20 (a) Acts calculated by a resident in the Island to result in the transfer of a house to a person resident outside the island, contrary to section 33(1)(a) and contrary to paragraph 1(1) and 4(b) of Part III of the Fifth Schedule of the Exchange Control Act,

and

30 (b) Making a payment to the credit of a person resident outside the Island, contrary to section 7(c) and contrary to paragraph 1(1) and 4(b) of Part II of the Fifth Schedule of the Exchange Control Act. The Particulars of the Offence alleged that on the 26th July, 1978 the Appellant placed the sum of \$10,000 (JA) in the First National City Bank to the credit of Norman Mossesson, a person resident outside Jamaica.

The Appellant was acquitted of the first mentioned charge by the Resident Magistrate, and convicted on the latter, and was fined \$30,000 (alternatively 3 months imprisonment at hard labour). p.22

RECORD

3. The principal issues raised by this appeal are:
- p.31 (i) whether a demand for information contained in a letter dated 27th July, 1978, and purporting to be a letter of Directions issued in accordance with Part 1 of the Fifth Schedule of the Exchange Control Act, was made in a proper manner, in accordance with the Act,
- (ii) whether persons authorised by a Letter of Directions issued in accordance with Part I of the Fifth Schedule of the Act are entitled to interrogate a person to whom such a letter is directed; 10
- p.40 (iii) whether answers given by the Appellant in the course of interrogation were admissible in evidence against the Appellant;
- (iv) whether the evidence before the Resident Magistrate with or without the Appellant's answers under interrogation, proved that the Appellant made a payment and or that Norman Mosesson was a person resident outside Jamaica.
- p.29 Further by an Order granting leave to appeal dated 24th July, 1980 the Court of Appeal certified the following points of law for consideration by the Privy Council: 20
1. Does paragraph 1(1) of Part 1 of the Fifth Schedule to the Exchange Control Act authorise the Bank of Jamaica as "delegatee" of the Ministry to give directions for information to be furnished to, and as required by, designated persons, class or description of persons?
  2. Is the person designated by the exercise of powers in the said paragraph 1(1) obliged to identify the specific information to be furnished as distinct from conducting an Interrogation? 30
  3. Must directions under the said paragraph 1(1) allow time within which the information required is to be furnished?
  4. Is evidence obtained in breach of any or all of questions 1, 2 and 3 (above) admissible?
  5. Can information furnished by an accused as a result of the exercise of the powers contained in paragraph 1(1) of Part 1 of the Fifth Schedule of the Exchange Control Act ever be proof of the truth of such information? 40
  6. If the answer to questions 4 or 5 is in the negative would this be a substantial miscarriage of justice?

RECORD

- 10 4. The prosecution called witnesses from the First National City Bank to prove that an account had been opened at the Knutsford Boulevard Branch in the name of Norman Mosesson and that a bank statement had been sent to Norman Mosesson. At the time of settling this written case the documents (Exhibits 6 and 7) are not available and do not form part of the Record. The prosecution attempted to put in evidence a cheque alleged to have been deposited to the account of Norman Mosesson but the objection of the defence to its admission in evidence was sustained and the cheque was merely marked Exhibit 8 for identity. Save for evidence to the effect that the copy of the cheque was taken from micro-film, no further evidence was given material to the fact of payment. p.6-10  
p.7  
p.7-8  
p.8 1.20  
p.11 1.1-15
5. The evidence disclosed that on 27th July, 1978 the following events occurred:
- 20 (i) Sylvester Hemmings, a corporal attached to the Financial Investigative Unit (F.I.U.) accosted the Appellant at 3 a.m. at Norman Manley International Airport. He was taken to an immigration office and his person and briefcase were searched. He was questioned but not cautioned. A cheque drawn in favour of the accused by Norman Mosesson for \$12,000 was found in his briefcase. p.14
- 30 (ii) At about 9 a.m. Mr. Hemmings took the Appellant to Superintendent Thompson, the officer in charge of the F.I.U. who sent to the Bank of Jamaica for a letter under the Exchange Control Act. The Appellant was then taken by Mr. Hemmings to various places including his home, his store and to the offices of lawyers (Livingston, Alexander & Levy) and at about 2 p.m. he was handed by Superintendent Thompson a copy of a letter dated 27th July, 1978 from the Bank of Jamaica (Exhibit 12). He was allowed to read it and was asked whether he understood the letter. He replied that he did. He was then questioned by Superintendent Thompson in company with other officers for about 1½ hours. The questions and answers were recorded and signed by the Appellant. (Exhibit 15). He was not cautioned. p.15 1.25  
p.15 1.10-20  
p.17 1.5  
p.31 - 33  
p.15 1.30  
p.16 1.22  
p.33-40
- 40 (iii) At about 6 p.m. Rupert Campbell (acting Corporal of Police attached to F.I.U.) went to the Appellant's home, arrested him for breaches of the Exchange Control Act, cautioned him but no statement was made by the Appellant. p.18 1.1-5
- 50 6. Counsel for the defence made a submission that there was no case to answer on either count against the Appellant. In response to the ruling of a case to answer on the second count the Appellant made a statement from the dock as follows: p.22 1.17

RECORD

"I do not know as a fact where Mr. Mosesson lives".

p.23-4 7. The Resident Magistrate found that Mr. Mosesson resided in the United States of America, and that a lodgment was made by the Appellant to the credit of Mr. Mosesson's account on 26th July, 1978. The finding as to residence was on the basis of the documents from the bank (Exhibits 6 and 7) and the Appellant's answer to Question 58. The basis for finding that a lodgment had been made is not apparent and although the Appellant's answer to Question 56 admitted the payment, there was no other evidence upon which such a conclusion could have been reached. It is acknowledged that the defence do not appear to have raised any issue as to whether the lodgment by the Appellant had been proved. 10

p.40 8. The Appellant appealed to the Court of Appeal, the main ground being that the directions contained in the letter dated 27th July, 1978 were ultra vires, being too widely drawn and apparently authorising interrogation by a large number of persons over 6 months. The Court of Appeal held that the directions were intra vires, and proper. 20

p.27 1.40 9. Section 37(1) of the Act provides:

"The provisions of the Fifth Schedule shall have effect for the purpose of the enforcement of this Act."

The Fifth Schedule to the Act is entitled "Enforcement" and part 1 of that Schedule "General Provision as to Evidence and Information" Section 1 of Part 1 in its material part provides:-

1 - (1) Without prejudice to any other provisions of this Act, the Minister may give to any person in or resident in the Island directions requiring him, within such time and in such manner as may be specified in the directions, to furnish to him, or to any person designated in the directions as a person authorised to require it, any information in his possession or control which the Minister or the person so authorised, as the case may be, may require for the purpose of securing compliance with or detecting evasion of this Act. 30

(2) A person required by any such directions as aforesaid to furnish information shall also produce such books, accounts or other documents (hereafter in this Part referred to as "documents") in his possession or control as may be required for the said purpose by the Minister or by the person authorised to require the information as the case may be. 40

(3) Nothing in the preceding provisions of this

paragraph shall be taken to require any person who has acted as counsel or solicitor for any person to disclose any privileged communication made to him in that capacity.

10

(4) Where a person is convicted on indictment for failing to give information or produce documents when required so to do under this paragraph, the court may make an order requiring the offender, within such period as may be specified in the order, to comply with the requirement to give the information or produce the documents.

10. It is respectfully submitted that the directions contained in the letter dated 27th July, 1978, did not comply with the provisions of Part I of the Fifth Schedule of the Exchange Control Act. Section 1 requires:

20

- (1) the manner in which information is to be provided to be specified in the directions;
- (2) the nature of the information sought to be specified in the directions;
- (3) reasonable notice to be given to the recipient of directions to enable him to supply the information.

Further section 1 does not authorise:

- (4) information to be obtained by interrogation;
- (5) the directions to be in such wide terms that they are excessive and unreasonable.

30

(R v Harz & Power. 1967 1 AC 760. 816-817, R v Sec. of State for Trade ex p. Perestrello 1981 1 QB 19) The said letter did not comply with (1), (2) and (3) above. The directions were in such wide terms that they were excessive and unreasonable, and information was obtained by interrogation.

11. Further it is respectfully submitted that since the powers under the Exchange Control Act were not properly exercised any admissions made by the Appellant were not admissible in evidence against him since they were not voluntary.

40

12. Further and alternatively it is submitted that the production of documents by the bank disclosing that their records contained an address for Norman Mosesson in United States of America did not prove that Norman Mosesson was not resident in Jamaica. The mere production of the documents did not prove the truth of the contents. Similarly even if the prosecution was entitled to rely upon

RECORD

the Appellant's answer to Question 58, the Appellant's belief or understanding as to where Mr. Mosesson lived did not establish where he resided nor that he did not reside in Jamaica. Even if Mr. Mosesson did reside in the United States of America it was incumbent upon the prosecution to establish that he did not also reside in Jamaica: "a man may reside in more than one place" (Levene v IRC 1928 A.C. 217. Viscount Cave. L.C. 223) It is further respectfully submitted that unless the Appellant's answer to Question 56 was admissible against him there was no evidence that he had made the lodgment the subject matter of the charge. 10

13. As to the points of law certified by the Court of Appeal, the Appellant shortly submits as follows:

- (1) Section 40(4) of the Exchange Control Act enables the Minister to delegate his powers, including his power to issue directions for information and the production of documents, and so far as the Appellant is aware the Bank of Jamaica were duly authorised. 20
- (2) The Appellant repeats the submissions made in paragraph 10 at (1), (2) and (4) above.
- (3) The Appellant repeats the submission in paragraph 10 at (3) above.
- (4) Admissions made in response to directions not complying with (1), (2) and (3) above will not be admissible against the maker.
- (5) The probative value of evidence properly obtained under the Act will always be a matter for the tribunal of fact. 30
- (6) A conviction based upon inadmissible evidence and otherwise unsupportable will constitute a substantial miscarriage of justice.

14. The Appellant respectfully submits that this appeal should be allowed and his conviction and sentence quashed for the following, among other

R E A S O N S

1. BECAUSE the directions contained in the letter dated 27th July, 1978, from the Bank of Jamaica did not comply with the provisions of the Exchange Control Act. 40
2. BECAUSE the persons designated by the said letter had no authority under the terms of the letter to interrogate the Appellant.

RECORD

3. BECAUSE the Appellant's admissions under interrogation were not admissible in evidence against him.
4. BECAUSE the prosecution failed to prove that Norman Mosesson did not reside in Jamaica and or that the Appellant made any payment to that person's credit.

GEORGE NEWMAN

STEPHEN AULD

O N A P P E A L  
FROM THE COURT OF APPEAL OF JAMAICA

---

---

B E T W E E N :

CAROL MORIN

Appellant

- v -

THE QUEEN

Respondent

---

---

CASE FOR THE APPELLANT

---

---

PHILIP CONWAY THOMAS & CO.,  
61 Catherine Place,  
London SW1E 6AB  
Solicitors for the Appellant