

42/82

IN THE PRIVY COUNCIL

No. 3 of 1981

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

CAROL MORIN

Appellant

and

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

Record

1. This is an appeal from the decision of the Court of Appeal which was heard before (Robinson (P), Henry and Melville (JJA)), on the 18th and 23rd of January, 1980, while the reserved judgement was delivered on the 2nd May, 1980.

2. The Appellant Carol Morin, was tried on an indictment containing three (3) counts. The submissions that there was no case to answer in respect of Counts 1 and 2 of the indictment were successful before the Resident Magistrate, His Honour, Mr. U.D. Gordon. In the event Morin was convicted on Count 3 of the indictment for making a payment of ten thousand dollars (J\$10,000.00), to the credit of a person resident outside the Island. The sentence imposed was thirty thousand Jamaican dollars (J\$30,000.00) or three (3) months imprisonment.

3. The facts which pertain to this Count concern the lodgement of ten thousand dollars (\$10,000.00) by the Appellant into the account of one Norman B Mossesson at the First National City Bank in the parish of Saint Andrew. These facts may be elicited from the evidence of the Crown witnesses in the Court of first instance and it is necessary to advert to them in summary form, so as to appreciate the points of law identified for consideration by Your Lordship's Board

4. Merlene Brammer the operations officer of the First National City Bank, testified that she secured from the records of the Bank, a photocopy of the original deposit slip and further that she had seen the original deposit slip and that it was the same as the photocopy. She further testified that the lodgement was by a Bank of Nova Scotia cheque which was put on microfilm and that it was credited to the account of Norman Mossesson. It is appropriate to point out that neither the lodgement slip nor the cheque referred to in the records, as Exhibit 7 and 8, was included in the record before the Board, but it will be submitted that useful though they might have been, it is not strictly necessary to have recourse to them for the decisions on the points of law certified.

p.6 L.31

p.10 L.16

5. The operations office also told the Court that Miss O'Tensia Williams the control clerk was the employee responsible for microfilming the cheque, Exhibit 8, on the

26th July, 1978, and she confirmed that. It is also a fact that the records of the Bank, namely, Exhibit 6 - the copy of the account opening form, Exhibit 9 - the interview sheet and Exhibit 10 - the Bank statement, all referred to in Crown Counsel's submission in reply to Defence Counsel's no case submission, recorded Mossesson's address as New York, United States of America. These exhibits also do not form part of the records.

It is appropriate at this stage to state that these records were admitted pursuant to Section 33 of the Evidence Act which reads:

"Subject to the provisions of this Part, a copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of such entry and of the matters, transactions and accounts therein recorded".

6. Notwithstanding these records, your Respondent must contend that the important evidence which establishes that Mossesson was resident in New York and that Morin, the accused, paid ten thousand dollars (\$10,000.00) on the 26th July, 1978, into this account, was contained in the answer given by the accused to specific questions put to him on the 27th July, 1978, by Superintendent I.L. Thompson, acting pursuant to powers accorded him by virtue of Paragraph 1 of Part 1 of the Fifth Schedule of the Exchange Control Act.

That paragraph reads:

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

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11. 10-15

p.21
11. 12-22

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.

Record

To the question "where does Mr Norman B Mossesson live?" the answer was "25 Broad Street, New York". Equally frank was the admission that Morin placed ten thousand dollars (\$10,000.00) on the 26th July, 1978, to the Jamaican account of Mr Mossesson.

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p.40 L.8

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11. 38-41

7. The points of law which arise from these circumstances have been certified under six (6) headings by the Court of Appeal and we venture to summarise them thus:

p.29 L.22

p.30 L. 2

- (a) Whether on the true construction of paragraph 1 (1) of Part I of the Fifth Schedule of the Exchange Control Act the Minister of Finance or his Agent, the Bank of Jamaica, was empowered to designate persons to require from suspects, specific information which when elicited could be evidence capable of sustaining a conviction.
- (b) Whether in paragraph 1 (1) of Part I of the Fifth Schedule of the Exchange Control Act there are mandatory stipulations including a time limit for answer to be given when there is an interrogation to detect evasion of or to secure compliance with the Act.

(c) Whether in the instant case, if there are mandatory stipulations, they were breached thereby rendering the answers inadmissible evidence.

8. As to 1 (a) whether specific answers can be elicited

It is respectfully submitted that the purpose of according these inquisitorial powers to the investigator, was to secure compliance with or detect evasion of the Act. Further, the legislature recognised that the information so elicited would be used to institute criminal proceedings. See Commissioners of Customs and Excise v Harz 1967 1 All E.R.

177 at 181, or 1967 1 A.C. 760 at 816 where Lord Reid puts

it thus:-

"The right of the commissioners to require information is quite different. If a demand for information is made in the proper manner, the trader is bound to answer the demand within the time and in the form required, whether or not the answer may tend to incriminate him, and, if he fails to comply with the demand, he can be prosecuted. If he answers falsely he can be prosecuted for that and if he answers in such a manner as to incriminate himself I can see no reasons why his answer should not be used against him. Some statutes expressly provide that incriminating answers may be used against the person who gives them and some statutes expressly provide that they may not. Where, as here, there is no such express provision the question whether such answers are admissible evidence must depend on the proper construction of the particular statute. Although I need not decide the point, it seems to me to be reasonably clear that incriminating answers to a proper demand under this section must be admissible if the statutory provision is to achieve its obvious purpose".

Furthermore, it is submitted that specific questions were approved in D.P.P. v. Ellis (1973) 1 W.I.R. 722.

As for the Minister's power to delegate the inquisitorial power, this is permissible on the plain reading of Section 40 (4) of the Act.

9. The judgment of the Court of Appeal stated that the Minister's power to delegate was never seriously contested, what was challenged was that in the instant case, the Bank as agent of the Minister acted ultra vires paragraph 1 (1) of Part I of the Fifth Schedule and that it was not within the intendment of those provisions that questions could be put by as many as 25 persons over a period of 6 months.

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11.34-45

It is submitted that the Court of Appeal's decision that there was no merit in this contention was correct as the delegation in this case was to a class of persons and in any event, the accused was only questioned once by one officer.

10. As to 1 (b) Mandatory stipulations

It is respectfully submitted that paragraph 1 (1) of Part I of the Fifth Schedule, empowers the Minister to stipulate that the information required be submitted 'within such time and in such manner as may be specified in the directions'. The question as to whether there was a compliance with this stipulation or any implied one must depend on the facts or circumstances of each case. In this instance, as the Court of Appeal found, the lodgment was made on the 26th July and the questioning was on the 27th July.

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11.27-29

Moreover, the answers revealed that not only was

there admissions of the lodgment but that it was to the credit of Mr Norman Mossesson who lived at 25 Broad Street, New York. It was against this background that the learned Resident Magistrate found that at the time of making the lodgment the accused knew that Mossesson was a resident of the United States of America.

11. As to 1 (c) whether answers were admissible as evidence

It is respectfully submitted that there were no breaches of any express or implied term of the provision of paragraph 1 (1) of Part I of the Fifth Schedule of the Exchange Control Act and that the answers were correctly received in evidence.

12. Accordingly, it is submitted that the Court of Appeal's decision that this appeal was devoid of merit was correct and your Respondent contends that the order of the Court of Appeal, dismissing the appeal from the conviction and sentence by the Resident Magistrate, should be affirmed with costs for the following among other.

REASONS

1. Because the questions put by the executive authority were in conformity with the Act.
2. Because the time given to answer the questions was reasonable.
3. Because the answers given by the accused incriminated him and justified a verdict of guilty.

IAN X FORTE, Q.C.

F ALGERNON SMITH

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and

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CASE FOR THE RESPONDENT

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