

6 of 1977

6

No. 30 of 1976.

IN THE PRIVY COUNCIL

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

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
Lincoln's Inn,
Hale Court,
London, WC2A 3UL.
Solicitors for the Appellant.

PHILIP CONWAY THOMAS & CO.,
61, CATHERINE PLACE,
LONDON, SW1E 6HB
Solicitors for the Respondent

IN THE PRIVY COUNCIL

O N A P P E A L
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

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document	Date	Page
	<u>IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF ST. ANDREW HOLDEN AT HALF WAY TREE</u>		
1.	Fiat of the Director of Public Prosecutions	12th November 1975	1.
2.	Information and backing of information No. 10977/75		2.
3.	Information and backing of information No. 10980/75		2.
4.	Indictment and backing of Indictment		3.

(ii)

No.	Description of Document	Date	Page
5.	Proceedings	5th December 1975 8th December 1975 16th February 1976	5. 7. 8.
<u>PLAINTIFF'S EVIDENCE</u>			
6.	Winston Walker	16th February 1976	8.
7.	Isadore Hibbert	16th February 1976	14.
8.	Proceedings	16th February 1976	14.
9.	Judgment	16th February 1976	17.
10.	Grounds of Appeal	24th February 1976	19.
<u>IN THE COURT OF APPEAL</u>			
11.	Judgment	30th July 1976	21.
12.	Formal Order Granting Leave to Appeal	8th October 1976	30.
13.	Formal Order Granting final Leave to Appeal	29th October 1976	32.

EXHIBITS

Exhibit Mark	Description of Document	Date	Page
A1	<u>APPELLANT'S EVIDENCE</u> Record of Entries in Respondent's Passport and accompanying tables	4th June 1976	33.

(iii)

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

No.	Description of Document	Date
	<u>IN THE COURT OF APPEAL</u>	
1.	Notice of Motion	7th September 1976
2.	Affidavit in support of applications for leave to Appeal	7th September 1976

EXHIBITS NOT TRANSMITTED TO THE PRIVY COUNCIL

Exhibit Mark	Description of Document
1.	Airline ticket (Lufthansa)
2.	Passport (D46768 Republic de Columbia)
3.	Purse containing money
4.	Folder with three luggage tickets and transit card marked for identity

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appellant

- and -

NANCY MARGARITTA SANCHEZ-BURKE

Respondent

RECORD OF PROCEEDINGS

No. 1

FIAT OF DIRECTOR OF PUBLIC PROSECUTIONS
THE EXCHANGE CONTROL ACT

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

I hereby order that proceedings be instituted
against Nancy Margaritta Sanchez-Burke for
offences contrary to Part II of the Fifth
Schedule of the Exchange Control Act.

Dated at Kingston this 12th day of November
1975.

No. 1

10

(sgd) J.S. KERR

Director of Public Prosecutions.

Fiat of
Director of
Public
Prosecutions
12th November
1975

No. 2

INFORMATION AND BACKING OF INFORMATION
No. 10977/75

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

Inf. 10977/75,

During the month of August, 1975, Nancy Margarita Sanchez Burke, Dias, Hanover Patrick Colymore, 29 Bogus Heights, Montego Bay within the jurisdiction of this Court, conspired with other persons unknown to make payments amounting to U.S. \$10,907 outside the Island without the permission of the Minister and thereby contravened Section 8 (1) of the Exchange Control Act.

10

No. 2

Information
and Backing
of Informa-
tion No.
10977/75

Contrary to Part 11 Subsection (1) of the Exchange Control Act.

BACKING OF INFORMATION

Regina vs, Burke, Nancy Magarita* Sanchez,
Colymore, Patrick - Br. Exchange Control Act -
Exporting.

*(sic)

On 23/2/76

Withdrawn against Collymore.

20

/Sgd/Marjory E. Morgan,
R.M. St. Andrew.

No. 3

No. 3

INFORMATION AND BACKING OF INFORMATION
No. 10980/75

Information
and Backing
of Informa-
tion No.
10980/75

Inf. 10980/75.

During the month of August, 1975, Nancy Magarita* Sanchez Burke, Dias, Hanover Patrick Colymore - 29 Bogus Heights, Montego Bay, within the jurisdiction of this Court, without the permission of the Minister, and not being an authorised dealer

*(sic)

30

bought foreign currency amounting to \$10,907 U.S. w
which was in contravention of Section 3 (1) of the
Exchange Control Act.

Contrary to Part 1 Section 1 (1) of the Fifth
Schedule of the Exchange Control Act.

BACKING OF INFORMATION

Regina vs. Burke, Nancy Margarita Sanchez, Colymore,
Patrick - Br. Exchange Control Act - Trading.

On 23/2/76 - Withdrawn against Collymore.

10 /Sgd/Marjory E. Morgan,
R.M. St. Andrew.

Indict the accused Sanchez before me this day for
Br. Exchange Control Act, Contrary to Section
8 (1) and Contrary to paragraphs 1 (1) and 3 (b)
of Part 11 of the Fifth Schedule

Add a second Count - Sanchez for Br. Exchange
Control Act Contrary to Section 8 (1) and Contrary
paragraphs 1 (1) and 3 (b) of Part 11 of the Fifth
Schedule as per Inf. 10977/75.

20 /Sgd/Marjory Morgan,
R.M. St. Andrew.

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

No. 3

Information
and Backing
of Informa-
tion No.
10980/75
(continued)

No. 4

INDICTMENT AND BACKING OF INDICTMENT

INDICTMENT

The Queen vs. Nancy Margarita Sanchez-Burke

In the Resident Magistrate's Court for the parish
of Saint Andrew.

STATEMENT OF OFFENCE - FIRST COUNT

Act preparatory to the making of a payment outside
the Island in contravention of section 8 (1) and

No. 4

Indictment
and Backing
of Indictment

In the Resident Magistrates Court for the Parish of St. Andrew holden at Half Way Tree

contrary to paragraphs 1 (1) and 3 (b) of Part 11 of the fifth Schedule of the Exchange Control Act.

PARTICULARS OF OFFENCE

Except with the permission of the Minister, Nancy Margarita Sanchez-Burke, a person ~~resident~~ in Jamaica, in the Island on the 24th day of August, 1975, had in her possession US\$8,807 for the purpose of making a payment outside the Island.

Amended by deleting word 'resident'

10

No. 4

Indictment and Backing of Indictment (continued)

/Sgd/ M.E. Morgan, Resident Magistrate, Saint Andrew.

Plea:- Not Guilty.

Nancy Margarita Sanchez-Burke is further charged with the following offence -

STATEMENT OF OFFENCE

Act preparatory to the making of a payment outside the Island in contravention of Section 8 (1) and Contrary to paragraphs 1 (1) and 3(b) of Part 11 of the fifth Schedule of the Exchange Control Act.

20

PARTICULARS OF OFFENCE

Except with the permission of the Minister, Nancy Margarita Sanchez-Burke, a person ~~resident~~ in Jamaica, in the Island on the 24th day of August, 1975, had in her possession Ca. \$4,000 for the purpose of making a payment outside the Island.

Amended by deleting 'resident'

30

/Sgd/M.E. Morgan, Resident Magistrate, Saint Andrew.

/Sgd./ G.A. McBean, Ag. Dept Clerk of Courts, St. Andrew.

Plea :- Not Guilty

BACKING OF INDICTMENT

Before Her Honour Miss M.E. Morgan, Resident

Magistrate Saint Andrew.

Arraigned :- 5/12/75

Plea :- Not Guilty

Tried :- 8/12/75, 16/2/76

Veriict : Guilty on each Counts.

Sentence :- Fined \$500.00 or 3 months on each
Count and ordered that money
\$8,807 U.S. and \$4,000 (Canadian)
be forfeited.
Verbal Notice of Appeal Given -
Bail \$2,000 W/s to report to
Matildas Corner Station from
23/2/76 and on every Monday there-
after pending hearing of Appeal.

10

/Sgd/M.E. Morgan,
Resident Magistrate,
St. Andrew.

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

No. 4

Indictment
and Backing
of Indictment
(continued)

No. 5

PROCEEDINGS

No. 5

Proceedings
5th December
1975

20

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH
OF SAINT ANDREW HOLDEN AT HALF WAY TREE ON THE 5TH
DAY OF DECEMBER 1975, BEFORE HER HONOUR MISS M.E.
MORGAN, RESIDENT MAGISTRATE FOR THE SAID PARISH.

REGINA)
VS.) BR. EXCHANGE CONTROL ACT
NANCY SHANCHEZ BURKE

Mr. F. Phipps Q.C. Attorney-at-Law for accused.

Mr. Henderson Downer Crown Counsel for Crown.

Mr. Downer opens.

30

Case has 3 facets.

On 24th August, 1975, defendant was at

In the Resident Magistrates Court for the Parish of St. Andrew holden at Half Way Tree

Palisadoes Airport about to depart. In her possession was \$8,807 U.S. and Canadian \$4,000. Arrested she co-operated with the police.

Asks for Order on two Counts.

Count I. Act preparatory to making a payment outside Island \$8,807.00 U.S.

Count II. Act preparatory to making a payment outside Island \$4,000.00 Canadian

Mr. Phipps opposes grant.

No. 5

Proceedings 5th December 1975 (continued)

No Jurisdiction - Territorial. Although Resident Magistrate has jurisdiction to try defendant - Similarly, if on Indictment it must be tried by a Jury.

10

Resident Magistrate Court creature of statute and statute must specifically give Court jurisdiction. Power to try cases on Indictment contained in Section 268 of Resident Magistrates Court Act. Offence before court triable summarily or on Indictment. Refers to Paragraph 2 (2) of 2nd Part of 5th Schedule of Exchange Control Act. No other statutory jurisdiction giving Resident Magistrate jurisdiction stands. Resident Magistrate jurisdiction limited to paragraph 1 (3) (a) of said Act. Analogy - Road Traffic Law - Dangerous driving on Indictment can only be tried before High Court on Indictment. Proper place for trial-summary in Resident Magistrate Court. Indictment only in Circuit Court.

20

(2) Court ought not to grant order in terms of proposed draft. Statement of offence accurately describes what the offence is but particulars of offence does not support the alleged offence. No allegation of any act in particulars.

30

(3) Documents taken from her at Airport indicate she was in transit at the time and not resident.

(4) Section contemplate in the structure of Section 8 that there must be some proof as to schedule territories and that the Island is Jamaica. Where both schedule territories and "Island" are used two different things contemplated (1) Schedule territory (2) Jamaica. Crown

40

purports to make the two (2) distinct things the same. For purposes of Law Jamaica is a schedule territory. Subsection deals with Island for some purposes and schedule territories. Proposed Indictment defective on a fair meaning of Section 8.

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

10 (5) As to submission (1) adds there is a great margin of difference between punishment on Summary matter as against Indictable matter as contained in paragraph 1 (3) part 2 of 5th Schedule submits it signifies intention of jurisdiction opposes application for Indictment.

—
No. 5

Mr. Downer :

Proceedings
5th December
1975
(continued)

1. Prevention of Corruption Act tried before Resident Magistrate Analogous to this. There is a special statutory jurisdiction not contained in Resident Magistrate (Judication Act) where Resident Magistrate can try Indictable matters.

20 Sec. 2 (2) part 2 Fifth Schedule of Act gives Resident Magistrate jurisdiction and Section 3 allows Summary or Indictable proceedings. Where something expressed nothing else required.

Section 3 (1) of Prevention of Corruption Act referred. Only count mentioned in Breach Exchange Control Act is Resident Magistrate Court, word "appropriate" count means count with jurisdiction. In Resident Magistrate Court matter is tried by virtue of the special statute.

30 Section 2 (2) of the Exchange Control Law gives the Resident Magistrate Court both Indictable and Summary jurisdiction.

2. Particulars of offence should only relate to the facts to bring it clear to accused. Scheduled Territories now "Jamaica" only. Amended in Gazette. All embracing Section with one restriction. Matter of being "residential" provable by evidence.

Adjourned to 8/12/75

On 8/12/75.

8th December
1975

40 Court: Jurisdiction to try on Indictment or Summary contained in Section (2) Part 2 Fifth

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

Schedule as extended by Section (1) of said
Schedule of Act.

Finds Particulars of Offence - all embracing and
supporting Statement of Offence.

Order of Indictment granted.

T 16/2/76 B/E.

No. 5

Proceedings
8th December
1975
(continued)

16th February
1976

REGINA)
VS.) FOR BR. EXCHANGE CONTROL
NANCY SANCHEZ BURKE) ACT

CONTINUED

10

Mr. Henderson Downer and Mr. D. Hugh Crown
Counsel for Crown.

Mr. F. Phipps Q.C. and Mr. Dabdoub Attorney-at-
Law for accused.

Plea Not Guilty on each Count.

Plaintiff's
Evidence

PLAINTIFF'S EVIDENCE

No. 6

Winston
Walker

No. 6

WINSTON WALKER

WINSTON WALKER (SWORN)

Detective Inspector of Police stationed at
Elleston Road, Kingston.

20

In August 1975, I was attached to the

Financial Intelligence Unit in Saint Andrew.

On Sunday 24th August, 1975, I went to Sangster International Airport, St. James, at about 12 mid-day I saw defendant enter the intransit lounge of the airport. I did not know her before she came off an Eastern Flight which arrived from America. She spent some time in the in-transit Section of the Airport I was with Detective Inspector Hibbert and was acting on information when flight was called to Kingston. Defendant Burke went to an In Bond Shop, picked up a small package and boarded Eastern Aircraft for Kingston. Detective Hibbert also boarded the aircraft with defendant.

In the Resident Magistrates Court for the Parish of St. Andrew holden at Half Way Tree

—
No. 6

Winston Walker
(continued)

I flew to Kingston on a separate Aircraft. At the Norman Manley International Airport at about 2.40 p.m. same day I saw the defendant on the public side of the ticket counter and by the "AJAS" ticket counter. I identified myself to defendant by telling her that I am Detective Inspector Walker of Financial Intelligence Unit and was making investigation into the illegal removal of foreign currency from Jamaica and that she was a suspect.

I cautioned her and asked her for her luggage she said "they are around here" pointing to the back of the AJAS office. I was now alone. She then handed me an airline ticket and said I am going to Columbia on the Lufthansa flight this afternoon.

This is the ticket she handed me. I have seen many airline tickets and in the course of my official duties I fly a lot I examined it and immediately after I made enquiries from a clerk in the AJAS Office in presence of accused.

This is the ticket tendered in evidence and marked Exhibit 1. I recovered as a result of the enquiry her baggages which was among some luggage to be placed on the Lufthansa flight same day. I also took from accused her passport.

This is the passport shown me I examined it. I am familiar with the system used by Immigration Officers in relation to passport in Jamaica. I examined it with regard to that system and was satisfied with relation to the passenger.

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

This is the passport D 46768 Republica de
Columbia passport tendered in evidence and marked
Exhibit 2.

I started a search of accused's baggage in her
presence and that of a Custom Officer. We were
now at the back of the A.J.S. Office they are free
lance agents for airlines who do not have offices
in Jamaica and this includes Lufthansa.

While searching the baggage accused said
"Officer whats this about who told you anything".
She started to cry. I cautioned her and told her
I was searching for foreign currency she said
"You don't have to dig up it all, I have money in
my bag see it here". She handed me her pocket
book she was carrying a large one. I opened it
and took from it a green purse.

10

—
No. 6

Winston
Walker
(continued)

This is it I have. I opened it and found a
quantity of foreign currencies which I counted.

On the first count I got \$9,000.00 plus
U.S. and \$1,000.00 plus Canadian. I cautioned
her again and asked her where she got these moneys
and she said Collymore gave me \$9,000.00 in
Montego Bay to give Mr. Wan in Columbia. I had
\$2,000.00 for myself. Officer I don't want this
published because they will kill me. It's a
drug business and they will kill me. She then
said I want to make a statement about it which
she did.

20

After the statement she was arrested by me
and charged with a Breach of the Exchange Control
Act to wit hoarding and attempt to export foreign
currencyk She called a clerk in the A.J.S.
Office and asked her to cancel her booking for
the 6 o'clock flight that day.

30

After saying she wanted to make a statement
I sent to call Detective Inspector Hibbert who
come and was with me.

After asking to cancel her flight the clerk
took her ticket, took particulars from it Exhibit
1 and said "Yes". It was handed back to me.
The statement was taken then. Yes statement was
taken before. After cancelling flight she was
taken to Matildas Corner Police Station and was
placed in custody and in her presence gave

40

instructions in regard bail which was not opposed but as regards a condition.

I got a call from Inspector Everett and went to Matildas Corner Police Station and spoke to him and he told me something. She was subsequently bailed.

At my office I made a second count of the money and it revealed some \$2,000.00 plus more to the total making it \$12,800.00 plus I discovered that I had counted two \$1000.00 Canadian bills as two \$100.00 Canadian bills. In fact when I discovered it I was alarmed as this was the first time I was seeing a \$1,000.00 (Canadian Bill).

This is the money (witness counts it) Canadian \$4,000 U.S. \$8,807 Purse and contents together tendered and marked Exhibit 3. A number of documents were taken from defendant I did act on the caution statement in further investigation.

On the 25th the following Monday about 1.00 p.m. at the Matildas Corner Police Station I cautioned accused and showed her Ralph Patrick Collymore and asked her if that was the person she said gave her \$9,000 at the Miranda Hill Hotel, Montego Bay. She covered her face with both hands and wept. She said nothing while he was there.

I went to Saint James and made further enquiries.

XXd:- Phipps: Not to my knowledge did accused sign at Matilda's Corner a book in which the currency taken was recorded. At no time during this investigation did I ask her to sign any police record in relation to this matter. Not usual when currency taken to have person sign a record of the amount taken. Depending on how equipped you are. I had no book at Airport. Did not think it important at Matildas Corner Police Station. When I have my investigating diary I would record and invite offender to sign. I was out investigating in Montego Bay. My diary was in my office. This was a special investigation because of the approach did not take the diary as it would be conspicuous - a 3 Quire book. I wrote it down on a bit of paper when I checked.

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

—
No. 6

Winston
Walker
(continued)

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

—
No. 6

Winston
Walker
(continued)

Did not check it at Matildas Corner Police Station. Do not know if accused enquired about money. Some days after when I was about to enter and record it with woman/Corporal Neyers I checked and discovered the error. She was before court once before discovering error. Crown Counsel was told last year. I brought it to the attention of Superintendent Thompson who is in charge and gave him a further report. Do not know when Crown Counsel was told. No enquiry was made of true amount taken from her. On first check it was \$9,000 plus total, I mean \$8,000 plus U.S. and \$1,000 plus Canadian.

10

On the first check I did not differentiate the currency. I agree the explanation I have given does not make the amount tally.

When I found the money accused was present Custom Officer Hylton was around a table. Accused and I checked the money and this was the total we got. Not true at Matildas Corner Police Station she protested it was not that amount and she was told to sign saying "It is prison for you sign it". Generally at Police Station it is usual to sign Prisoners property book. That is not how we operate at the Financial Intelligence Unit. It was not done to my knowledge in this case.

20

Inspector Hibbert accompanied me to Matildas Corner Police Station and was there with me we were a short time together at Station.

30

She took the same Aircraft to Kingston from Montego Bay. I saw her at A.J.A* ticket office her luggage was checked in. I think she had three (3) pieces of luggage. She could have had a travel folder.

*(sic)

Folder shown witness with three (3) luggage tickets. It could be possible I saw her with this.

Witness shown ticket Exhibit 1.

Q. Is the folder not bear the duplicate of Exhibit 1 tendered in evidence.

40

A. It bears the same information as ticket I took from her.

Q. Does the folder have Lufthansa Intransit card?

A. Yes.

Folder with three (3) luggage tickets and intransit card marked for identity 4

Accused handed me her passport and in it was Exhibit 1. She took it to make alterations in office and returned it to me. She could have given me Exhibit 1 as a part of Lufthansa folder marked 4. Can't recall if it was in booklet or torn out as it appears now.

10

I am familiar with certain travelling systems. Sometimes the booklet has more than one ticket. Can't recall if she gave me ticket or folder. Airlines usually give ticket in a folder.

Q. You know intransit passengers are usually handed a card.

A. That is correct.

20

When I got ticket Exhibit 1 I had it along with passport till the clerk asked for it to be cancelled I gave it to clerk.

Accused was crying at Norman Manley Airport.

During search she said "Officer what is this about". I cautioned her and told her I was searching for currency. She did not look frightened but calm and pitiful.

Rexn:- I was not dealing with Intransit as I examined her passport, and found

30

Mr. Phipps objects: Witness is drawing conclusions from entry in the document and giving an opinion.

An entry in diary proves nothing per se unless there is a law that entry in it is prima facie evidence. Entry not competent to prove anything, witness is drawing personal conclusion from document.

Witness opinion formed on basis of entry not evidence.

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

—
No. 6

Winston
Walker
(continued)

Re-Examination

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

Answer not allowed on basis that it opens new
matters.

No. 6

Winston
Walker
(continued)

No. 7

Isadore
Hibbert

ISADORE HIBBERT

ISADORE HIBBERT (SWORN)

Detective Inspector of Police stationed at
C.I.D. Headquarters, Kingston.

On 24th August, 1975, at about 12 mid-day
I was at Donald Sangster International Airport
and also at Norman Manley Airport and signed a
caution statement in respect of the defendant.

10

Cross-
Examination

XXd:- I did not check any money at Matildas
Corner Police Station. At no time did I check
any currency.

Rexn:- None.

No. 8

Proceedings

No. 8

PROCEEDINGS

- CASE -

Mr. Phipps moves for acquittal and will
rest on his submission.

20

1. No proof before the court that defendant is "resident in Jamaica" which is a necessary ingredient to charge. Charged with contravening Section 8(1) SS 3(b) Indictment alleged in both Courts that defendant resident in Jamaica.

In the Resident Magistrates Court for the Parish of St. Andrew holden at Half Way Tree

10 Office must be "committed in Jamaica" and "defendant resident in Jamaica". Both must be proved by Crown. Refers to Section 44 Exchange Control Act which is the only section relating to "determination of Residence". Does not apply.

2. Proceedings punishable under Part II of the Regulations in 5th Schedule can only be "instituted" by the Director of Public Prosecutions or "with his consent". A document is in existence signed by Director of Public Prosecutions which is not a consent. Came into existence after proceedings commenced.

No. 8
Proceedings
(continued)

20 Refers to Regulation 2 paragraph (1) Proceedings instituted by way of three informations dated 29/8/75. Document signed is dated 12/11/75. States he "Orders" and not "consents". Document is ratifying something which has already taken place. Authorities state time to be taken at trial. Queen vs. Laurentine Johnson unreported local Court of Appeal.

30 3. Particulars of offence has allegation of possession that alone is insufficient on charge of doing an "Act preparatory" as alleged in statement of offence. Only evidence adduced is that she had currency in her possession plus allegations of certain statements. That evidence not sufficient to raise a prima facie case that defendant committed an "Act preparatory".

If anyone committed an "Act" it would be Collymore. Statements illustrates it was his act.

40 4. As to submission (1) being resident in Jamaica not only non-proof by Crown but passport produced establishes residence of accused otherwise. Crown producing passport issued in foreign country. Came off one Airline and checked in at counter of another Airline.

5. As to submission (2) (a) R. v. Bates 1911 (Vol. I K.B. P.964) Lact of fiat - No jurisdiction (b) R vs.

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

Walker 1910 (Vol. 1 K.B. p.364) No proof
required of consent unless raised by defence
(c) R. v. Metz 2 (1916) Vol.II C.A. R. p.164).
Point taken at Court of Appeal. Held should
be taken at the trial. (d) Hill and Phoenix
National Supply Limited 1911 (Vol.II K.B.p.217.
Consent given by wrong Board (d) R. v. Dexter
Laidres and Coates. Vol 19 Cox C Law Cases
p.360. Submits Director of Public Prosecutions
must institute proceedings and this relates to
date of information.

10

—
No. 8

Proceedings
(continued)

Mr. Downer:

1. Refers to Part 2 of Exchange Control Law
5th Schedule says "any person in or resident in".
Crown can prove either. Evidence adduced to
substantiate both.

Sec. 190 of Judicature (Resident Magistrate
Act) allows Court to amend Indictment whether
request made or not. Section 278 also gives
Court power to amend. Accused at time was in
Island of Jamaica at Sangster International
Airport and again at Norman Manley.

20

Document Passport shows accused as
permanent residence of Jamaica speaks for
itself. No contrary evidence. Document speaks
for itself.

Relevant information is one on which Order
for Indictment granted. Granted 5/12/75 Fiat
dated 12/11/75.

Para. 2 (1) of Fifth Schedule Part II Fiat
states he directs prosecution or someone who
stands in his shoes. Presence alone indicates
Director Institutes proceedings. Information
on which Indictment granted disclose no offence.
Proceedings commence when trial begins.
Sec. 273 of J. (Resident Magistrates Act).
Section 274 of J. (Resident Magistrates Act).
Action commences when Order for Indictment
granted. Information merely brings person
before the Court. When Indictment preferred
is date of institution of proceedings. As
to submission 3.

30

40

Submit evidence led indicates "acts prep."
Her explanation of getting money from Collymore

to give Wan supports her own "Act prep." Accused cancelled her flight to go to Columbia. Having money in her possession, possession of ticket inference she was going and intended to go if not stopped, had custody and control and all these he submits are act preparatory.

Mr. Phipps :-

10 Cannot rely on entry in passport. Maker of document must tender it. Entry of 13th August, 1969 in passport that accused is permanent resident is hearsay evidence not evidence of a fact.

20 Puts onus on Court to amend to create different offence at time he has closed and indicated he is resting has not applied for amendment. Justice of case does not permit an amendment. "In" does not mean passing through Section 8 (1) of Act states "resident in" and only the schedule speaks of being "in the Island". Amendment would not bring it within Section 8 (1) Re Fiat. Proceedings cannot be instituted in Resident Magistrate's Court on basis of an Indictment alone. Clear that no proceedings can be "instituted". Procedural matters. Accused appearing before court on 3 occasions before Indictment came into existence and informed accused pleaded on one such occasion.

30 Up to 12 November, 1975, is a nullity. Could not succeed on those information if Order for Indictment not granted. Ask for order on an information that is a nullity. Order for Indictment is a step in proceedings not commencement of proceedings. Crown instituted Proceedings w/o Director of Public Prosecutions consent.

In the Resident Magistrates Court for the Parish of St. Andrew holden at Half Way Tree

—
No. 8

Proceedings
(continued)

No. 9

JUDGMENT
16th FEBRUARY, 1976

No. 9

Judgment
16th February
1976

Court finds

1. No sufficient proof before Court that defendant "resident in" Jamaica but on a consideration of all

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

No. 9

Judgment
16th February
1976
(continued)

the evidence together with admission made finds there is sufficient evidence to satisfy Court that defendant was "in the Island".

2. Finds paragraph (1) (1) Part II of the 5th Schedule of Act creates the offence.

3. Finds amendment does not create a new offence nor is an application required to amend. Orders amendment of Particulars of offence in Indictment on both counts by deleting word "resident" in order to read "person in Island".

10

4. Case being tried on Indictment finds proceedings "commenced" on the date of the grant of the Order and not before. Finds fiat not late and format satisfactory. In any event effect of failure is to produce a nullity.

5. Finds Crown has offered sufficient evidence to prove "acts preparatory" by defendant.

Verdict :- Guilty on both Counts.

No previous conviction

Sentence :- Fined \$500.00 or 3 months hard labour on each count and in addition order for forfeiture of \$8,807.00 U.S. and \$4,000.00 Candian

20

Verbal Notice of Appeal given.

Bail allowed \$2,000.00 with Surety Condition of bail. Accused to report every Monday between 9 - 12 a.m. at Matildas Corner Police Station.

I. G.A. McBean, Acting Deputy Clerk of Courts for the parish of Saint Andrew, DO HEREBY CERTIFY THAT THE FOREGOING PAGES OF TYPE-WRITTEN NOTES OF EVIDENCE TO BE a true copy of the Notes of Evidence taken before Her Honour Miss M.E. Morgan, Resident Magistrate for the said parish.

30

(signed)

Sgd. G.A. McBean,
Ag. Dep. Clerk of Courts,
Saint Andrew.

No. 10

GROUNDS OF APPEAL

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH
OF SAINT ANDREW HOLDEN AT HALWAY TREE

REGINA vs. NANCY SANCHEZ BURKE

FOR BREACH EXCHANGE CONTROL ACT

10 TAKE NOTICE that the Defendant/Appellant having
given verbal notice of appeal in the Halfway Tree
Resident Magistrate's Court on the 16th February,
1976 the following inter alia are the Grounds of
Appeal :-

1. The verdict was unreasonable and cannot be
supported having regard to the evidence, in
particular -

(a) There was no evidence that the Defendant was
resident in Jamaica which was a necessary
ingredient of the offence as alleged in the
indictment and as is required by Section 8 (1)
of the Exchange Control Act.

20 The Learned Resident Magistrate clearly
accepted this submission made on behalf of the
defendant at the conclusion of the Crown's case
when the indictment was amended.

(b) There was no evidence that the defendant
committed any act, as distinct from being in
possession of currency, which can be regarded as
an act preparatory to the exporting of currency.
In this regard the evidence of Detective
Inspector Walker was vague and unreliable.

30 2. The Learned Resident Magistrate ought not
have amended the indictment when there was no
application from the Crown for such an amendment.
At the end of the Crown's case it was clearly
indicated to the Court that the defence would be
making a submission of 'no case' and would be
calling no evidence. In these circumstances the
Court did not call on the defence to answer the
charges but instead proceeded to judgment.

It is submitted that at that stage the Learned

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

No. 10

Grounds of
Appeal
24th February
1976

In the
Resident
Magistrates
Court for
the Parish
of St.
Andrew
holden at
Half Way
Tree

—
No. 10

Grounds of
Appeal
24th February
1976
(continued)

Resident Magistrate was satisfied that there was no proof that the defendant was resident in Jamaica and in an attempt to cure the defect amended the indictment purporting thereby to bring the Crown's case within the ambit of Paragraph 1(1) of Part II of the Fifth Schedule of the Exchange Control Act.

It is submitted that this paragraph applies to all the restrictions imposed by the Act but the particular restriction allegedly breached in this case is the restriction imposed by Section 8 (1) of the said Act which restriction applies only to persons resident in Jamaica. In effect the Learned Resident Magistrate by this amendment created a charge which did not exist in law because of the absence of evidence in support of a charge which does exist in law.

10

An amendment at that stage deprived the defence of the opportunity of dealing with the new charge presented by way of plea, testing of the Crown's case and adducing evidence on this new charge.

20

3. The entire proceedings were nullified by a failure on the part of the prosecution to establish either

(a) that the proceedings had been instituted by the Director of Public Prosecutions, or

(b) instituted with the consent of the Director of Public Prosecutions as is required by paragraph 2(1) of Part II of the Fifth Schedule

It is submitted that when the accused was arrested on the 24th August, 1975 and remanded on bail such action was justified by virtue of the proviso to the said paragraph but when the informations were laid on the 29th August, 1975 it was then that the proceedings were instituted and the subsequent order from the Director of Public Prosecutions dated 12th November, 1975, could not cure the defect.

30

It is further submitted that the order of the Director of Public Prosecutions cannot be regarded as a consent of the Director of Public Prosecutions.

40

It is further submitted that the order for indictment made on the 8th December, 1975 was

not the commencement of proceedings but a step in the proceedings for the reason that there could be no order for indictment unless proceedings had been previously instituted.

4. There was no jurisdiction for a Resident Magistrate to try on indictment the offence with which the defendant was charged.

10 It is submitted that the Resident Magistrate may try the offence summarily but not on indictment and the only statutory provision relating to jurisdiction i.e. paragraph 2 (ii) of Part II of the Fifth Schedule relates to local jurisdiction as distinct from jurisdiction over the charge.

WHEREFORE THE APPELLANT PRAYS :-

1. that the appeal will be allowed
2. conviction quashed
3. sentence set aside

(signed F.H.G.Phipps)

FRANK PHIPPS, Q.C.

20 Attorney-at-Law for the Appellant.

Dated the 19th day of February, 1976.

FILED by FRANK PHIPPS, Q.C. of 18a Duke Street, Kingston, Attorney-at-Law for and on behalf of the Appellant herein.

No. 11

JUDGMENT

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No.100/76

30 BEFORE : The Hon. Mr. Justice Graham-Perks
(Presiding)

The Hon. Mr. Justice Zacca, J.A.

The Hon, Mr. Justice Watkins J.A.(Ag.)

In the Resident Magistrates Court for the Parish of St. Andrew holden at Half Way Tree

No. 10

Grounds of Appeal
24th February
1976
(continued)

In the Court of Appeal

No. 11

Judgment
30th May 1976

In the Court
of Appeal

REGINA vs. NANCY SANCHEZ-BURKE

Mr. Henderson-Downer for the Crown.

No. 11

Mr. Frank Phipps, Q.C. for the Appellant.

Judgment

30th May 1976
(continued)

May 28, June 4, 9, 11; July 12, 30, 1976

WATKINS, J.A. (Ag.):

On July 12, 1976 we allowed the appeal and set aside the convictions and sentences imposed on February 16, 1975 by Her Hon. Miss M. Morgan, a resident magistrate for the parish of St. Andrew before whom the appellant had been convicted on two counts of an indictment charging offences in contravention of section 8 (1) and contrary to paragraph 1 (1) and 3(b) of Part II of the Fifth Schedule of the Exchange Control Act. We promised to put our reasons in writing and now do so.

10

Before us, as before the court below, three issues were debated, namely (1) whether on the evidence adduced by the prosecution including entries in the passport of the applicant which was tendered in evidence, the learned resident magistrate was right in coming to the conclusion that "residence in" the island had not been proved (2) whether the trial had been rendered a nullity by reason of non-compliance with paragraph 2(1) of Part II of the Fifth Schedule to the Act which relates to obtaining the consent of the Director of Public Prosecutions as a condition precedent to the institution of criminal proceedings, and (iii) whether there was jurisdiction in the court below to hear and determine the charges on indictment. In view of the decision to which the court has arrived on (iii) it will be unnecessary either to deal with the first two issues or indeed to refer to the facts at all.

20

30

Did the resident magistrate have jurisdiction to hear and determine the charges preferred against the appellant on the indictment ordered by her? Enacted in late 1954, the Act consists of six Parts and, as its title suggests, it regulates various aspects of dealings in various forms of currency. For purposes of what is presently relevant, it may be observed that various sections of the statute, including, in

40

particular, that under which the appellant was charged, create restrictions and impose obligations and prohibitions from the observance of which one may be relieved only with Ministerial permission. No where, however, in the substantive provisions of the Act, save section 46 to which specific reference will later be made, is a breach of these restrictions, requirements, obligations or prohibitions expressed to constitute a criminal offence. Section 37 of the Act states, however, that "the provisions of the Fifth Schedule shall have effect for the purposes of the enforcement of the Act" and to this Schedule one must now turn. Of the three Parts into which it is divided, it is Part II that is presently relevant, and paragraph 1 (1) thereof under which the Appellant was charged, the offence-creating provision, is, so far as relevant, in these terms:

10

20 "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 procures any other person, to contravene any such restriction or requirement shall be guilty of an offence punishable under this Part."

Sub-paragraph 3 of paragraph 1 is in these terms:

30

"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."

40

The term "on summary conviction" like the cognate expressions "summarily" and "in a summary manner" is, as is well known, a term of art established in legislative drafting usage as far back as June 8, 1943, the date of enactment of Law 17 of 1943, the first modern Interpretation Law in this country. It means "a court of summary jurisdiction," another term of art itself of equal antiquity which means :

In the Court
of Appeal

—
No. 11

Judgment
30th May 1976
(continued)

In the Court
of Appeal

—
No. 11

Judgment
30th May 1976
(continued)

- (a) any justice or justices of the peace to whom jurisdiction is given by any Act 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.

Now it has been settled law for a very long time that where it is intended to confer a special statutory summary jurisdiction upon a resident magistrate the relevant statute must clearly and distinctly say so - See Hart v. Black (1956) 7 J.L.R. 56, and in section 46 of the Exchange Control Act this is precisely what the Legislature did when in rendering unauthorised disclosure of certain information a criminal offence it provided that any person who contravened the provision would be guilty of an offence "on summary conviction before a resident magistrate." It may therefore be stated as abundantly clear that the jurisdiction conferred at (a) of paragraph 1(3) to hear and determine the offences punishable under Part II of the Fifth Schedule to the Act is a jurisdiction conferred upon a Court of Petty Sessions. It is equally clear as well that (a) of paragraph 1(3) does not confer upon a resident magistrate a special statutory summary jurisdiction.

10

20

I turn now to (b) of paragraph 1 (3) to see whether the jurisdiction conferred there is conferred upon a resident magistrate as such. It was contended by Counsel for the Crown, if I understood his submissions rightly, that by virtue of and in conjunction with section 268(f) of the Judicature (Resident Magistrates) Act, this sub-paragraph 3 (b) conferred jurisdiction upon resident magistrates to hear and determine on indictment the offences punishable under Part II. Section 268 (f) of the Judicature (Resident Magistrates) Act runs thus :

30

40

"It shall be lawful for the Courts (i.e. Resident Magistrates Courts) to hear and determine the offences hereinafter mentioned, that is to say -

- (f) 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."

In the Court
of Appeal

—
No. 11

Judgment
30th May 1976
(continued)

10 and the argument of Counsel in connection there-
with was twofold. Firstly it was that the breach
of a prohibition in a statute constituted a common
law misdemeanour, and secondly that all inchoate
crimes such as attempts, conspiracies and the like
are themselves also common law misdemeanours which
as such come within the compass of the jurisdiction
of resident magistrates pursuant to section 268(f)
and the argument was taken to its logical
conclusion by stating that paragraph 1 (1) of Part
II of the Fifth Schedule referred to above was in
terms a composition both of complete and incomplete
20 or inchoate crimes and that pursuant to paragraph
1(3)(b) of Part II resident magistrates accordingly
had jurisdiction to hear and determine such common
law misdemeanours. This contention may, without
any incursion into an examination of the complex
rules relating to common law misdemeanours as they
concern breaches of prohibitions in a statute or as
they affect inchoate crimes, be dismissed in few
words. The simple fact is that the indictment in
question does not charge a misdemeanour at common
law at all but rather an offence contrary to the
30 already cited provisions of the Act and of Part II
of the Fifth Schedule thereto. As creatures of
statute the Resident Magistrates Courts have such
jurisdiction to hear and determine offences, whether
summarily or on indictment, as is conferred upon
them by or under statute. They have such jurisdic-
tion on indictment as either the provisions of
section 268 of the Judicature (Resident Magistrates)
Act or any other Act may specifically confer. The
Judicature (Resident Magistrates) Act does not
40 confer the jurisdiction on indictment now in issue,
nor does the mere expression "on conviction on
indictment" appearing in (b) of paragraph 1 (3)
confer this jurisdiction either - See R. v. Hendricks
(1962) 4 W.I.R. 537. Counsel contended further
that paragraph 2(2) of Part II of the Fifth Schedule
confers such a jurisdiction. This sub-paragraph
which is a part of a paragraph otherwise regulating
procedure is in these terms :

"Proceedings against any person in respect of an

In the Court
of Appeal

—
No. 11

Judgment
30th May 1976
(continued)

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."

Counsel for the Crown cited a decision of the Full Court of the Supreme Court of December 19, 1975 in the Queen v. Resident Magistrate for St. Andrew ex parte Black et al in support, but it is clear that the matter in issue in that case was not the same as here, and the terse observation contained in the judgment of Smith, C.J. that "Para 2(2) provides that proceedings in respect of an offence punishable under Part II may be taken before a Resident Magistrate's Court" affords no guidance, as it was not in that context expected to do, as to the process of reasoning by which it was arrived at. If this sub-paragraph was intended to confer upon resident magistrates both a special statutory summary jurisdiction as well as a jurisdiction on indictment to hear and determine offences punishable under Part II - for the argument to be internally consistent with itself must apply indifferently to both forms of jurisdiction - then, to say the least, the method employed can hardly escape the censure "unusual" "strange" or "unprecedented" inasmuch as all that the draftsman would have had to do was to have inserted the words "before a resident magistrate" at the appropriate places in (a) and (b) of paragraph 1(3) as indeed he did in section 46 of this self-same Act. Yet unprecedented legislative drafting technique, if technique it can be called, can constitute no valid objection to giving words in a statute their proper meaning and effect praying in aid the assistance of such external and internal guides to interpretation as may be warranted by the circumstances.

External Guides. This Paragraph 2(2) is, like all the rest of the Act, copied from the English Exchange Control Act of 1947. The format is identical, the substantive provisions of the Act and the Schedule thereto being also divided into Parts. Likewise, the offence-creating paragraph and the jurisdiction-creating paragraph are reserved for the Schedule. Paragraph 1 (1) of Part II of the Fifth Schedule is in all respects similar to Paragraph 1 (1) of Part II of the Fifth Schedule of the local

10

20

30

40

Act, Paragraph 1(3) of the English Act, so far as relevant, reads :

In the Court
of Appeal

"Any person who commits an offence punishable under this Part of this Schedule shall be liable

No. 11

Judgment
30th May 1976
(continued)

(a) on summary conviction, to imprisonment for not more than three months, or to a fine or to both,

10

(b) on conviction on indictment, to imprisonment for not more than two years or to a fine or to both,"

20

30

Pausing here for a moment it may be observed as every student of English Criminal Procedure knows that pursuant to the Summary Jurisdiction Act 1848 and latterly to the Magistrates Court Act, 1952 of England, the court which exercises the jurisdiction at (a) above is the Magistrate's Court and that pursuant to the Criminal Justice Act 1925 of England, the court which exercises the jurisdiction at (b) above after committal by examining justices or a Magistrate's Court, is the Court of Quarter Sessions or the Assize Court. Jurisdiction in the sense of jurisdiction to hear and determine vested in these respective courts by reason of (a) and (b) above. But jurisdiction in the above sense is not alone relevant. Local or venue jurisdiction was also important and because all the more important in the case of breaches of the Exchange Control Act in which, unlike conventional crimes such as larceny, wounding and the like, the acts constituting an offence thereunder may spread over several local or territorial jurisdictions and may even extend to extra-territorial activities. Paragraph 2(2) was intended to settle the identity of the court appropriate to (a) or (b) before which, having jurisdiction to hear and determine the matter, the offender ought to be brought for such determination, and a free rendering of paragraph 2(2) may be stated as follows :

40

"Proceedings against any person in respect of an offence punishable under this Part of this Schedule may be taken before the court relevant or appropriate to (a) or (b) above which has jurisdiction in the place where that person is for the time being."

In the Court
of Appeal

—
No. 11

Judgment
30th May 1976
(continued)

In short without regard to the place or places at which specific acts in breach of the Act may have been committed the relevant court of the place in which that person is for the time being may hear and determine the matter.

Internal Guides. The word "appropriate" in the conjunction of words "appropriate court" is used to relate back to the courts which the expression "on summary conviction" and "on conviction on indictment" respective signify, namely the Magistrates Courts on the one hand and Quarter Sessions or the Assize Courts on the other hand. It seems equally clear too that the words "in the place where that person is for the time being" aptly describe a venue or local jurisdiction.

10

Looking as a whole then at paragraph 2(2) of Part II of the Fifth Schedule to the English Act with the assistance of the external and internal aids above to interpretation there can be little hesitation in concluding that the force and intendment thereof are to empower courts having jurisdiction whether (a) summary or (b) or indictment to hear and determine Part II offences, where such offences are charged against persons who, whether they are alleged to have committed such offences within territorial jurisdiction or not, are physically within the jurisdiction for the time being.

20

Now the relevant sub-paragraph in the relevant schedule to the local Act is in all respects identical with the English provisions save that between the words "appropriate" and "court" are interposed the words "resident magistrate's" and the question arises: What resident magistrate's court is appropriate or relevant to either (a) or (b) of paragraph 1(3)? The answer is "none". (a) is relevant and relevant only to the Court of Petty Sessions, and whilst by section 285 of the Judicature (Resident Magistrates) Act it is provided that "nothing in this Act shall be deemed to prevent the Magistrate from hearing and disposing of in his Court any cases which by law might be dealt with summarily (e.g. cases under paragraph 1(3)(a)) that may be brought before him" it has been authoritatively held that "when a resident magistrate sitting in his court disposes of a case triable in Petty Sessions, he is nevertheless exercising the jurisdiction

30

40

of a Court of Petty Sessions" and not the jurisdiction of a Resident Magistrate's Court as such - See Hart v. Black (1956) 7 J.L.R. 56 at 58 and R. v. Alexander (1961) 4 W.I.R. 102 at 104.

(b) on the other hand is relevant to the Circuit Court and is most certainly not relevant to the Resident Magistrate's Court - R. v. Hendricks already referred to. Equally significant too is the consideration that all resident magistrates courts exercise and enjoy concurrent jurisdiction and accordingly are not susceptible to the distinction as to jurisdictions, whether summary or on indictment, inherent in the application of the adjective "appropriate" to (a) and (b) of paragraph 1(3). Alternatively the question may be framed thus: What resident magistrate's court appropriate or otherwise is it that has been vested with jurisdiction, whether summary or indictment to hear and determine offence punishable under Part II. The answer is equally clearly "none". Interposed then as they are between the words "appropriate" and "court" in paragraph 2(2) the words "resident magistrate's" do not and cannot make sense. Next, the mere mention of these words in paragraph 2(2) cannot on any rational basis support a contention that thereby jurisdiction to hear and determine is vested in these courts, for it has already been demonstrated that the subparagraph deals with - and deals only with - the identification of the appropriate court, already vested by paragraph 1(3) with jurisdiction to hear and determine, before which, by reference to the location of the particular offender, particular proceedings are to be brought. Finally with the words "resident magistrate's" expunged paragraph 2(2) is restored to intelligibility and fully harmonises with the rest of Part II. In short the words "resident magistrate's" interposed as they are between "appropriate" and "court" are mere surplusage to which no meaning or applicability can be attached consistently with the clear and otherwise unambiguous expression of intent in the rest of Part II. No ground whatever can be found on which, consistent either with established canons of interpretation or with long established modes of conferring jurisdiction upon Resident Magistrates Courts, to infer a legislative intention to clothe these courts as such with jurisdiction to hear and determine offences punishable under Part II of the Fifth Schedule of the Act either summarily or on indictment. If such

In the Court
of Appeal

No. 11

Judgment
30th May 1976
(continued)

In the Court
of Appeal

No. 11

Judgment
30th May 1976
(continued)

an intention existed, the legislation has failed to perfect it and it does not lie in the courts to fill the gap. "To reject words as insensible" said Erle, C.J. in R. v. St. John Westgate, Burial Board "is the ultima ratio when an absurdity would follow from giving effect to the words of an enactment as they stand". In the instant case no meaning whatever can be ascribed to the rejected words in the context in which they are used.

The irresistible conclusion to which the Court was driven, not without regret, is that the learned resident magistrate was not vested with jurisdiction to hear and determine on indictment the charges against the appellant. The trial was therefore a nullity and accordingly we allowed the appeal, quashed the conviction and set aside the sentences.

10

Before parting with this case the court expresses the earnest hope that immediate steps will be taken by the proper authorities to perfect what appears to have been the intention of the Legislature, that is, to confer upon Resident Magistrates Courts jurisdiction to hear and determine breaches of the Exchange Control Act arising under Part II of the Fifth Schedule thereto.

20

No. 12

Formal Order
Granting
Leave to
Appeal
8th October
1976

No. 12

FORMAL ORDER GRANTING LEAVE TO APPEAL

FORMAL ORDER

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL
NO: 100/76

30

BETWEEN THE DIRECTOR OF PUBLIC PROSECUTIONS APPELLANT

AND NANCY SANCHEZ-BURKE RESPONDENT

COURT OF APPEAL

Upon the Notice of Motion of the Appellant

In the Court
of Appeal

NO. 13

FORMAL ORDER GRANTING FINAL LEAVE TO APPEAL

No. 13

Formal Order
Granting
Final Leave
to Appeal
29th October
1976

ORDER GRANTING FINAL LEAVE TO APPEAL TO HER MAJESTY
IN COUNCIL

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL

NO: 100/76

BEFORE : THE HON. MR. JUSTICE LUCKHOO, J.A.
THE HON. MR. JUSTICE ROBINSON, J.A.
THE HON. MR. JUSTICE WATKINS, J.A.

10

BETWEEN THE DIRECTOR OF PUBLIC
PROSECUTIONS APPELLANT

A N D NANCY SANCHEZ-BURKE RESPONDENT

THE 29th DAY OF OCTOBER, 1976.

UPON THIS MOTION for Final Leave to Appeal
from the Judgment of the Court of Appeal dated
30th day of July, 1976, coming on for hearing
this day before the Court of Appeal and upon
hearing MR. HENDERSON DOWNER on behalf of the
Appellant and MR. EARL DELISSER for the Respondent.

20

IT IS HEREBY ORDERED as follows:

That Final leave be granted to the
Appellant herein to appeal to Her Majesty in
Council from the decision of the Court of
Appeal handed down on the 30th day of July,
1976.

BY THE COURT

(signed)

W.W. COKE,
Actg. Registrar,
Court of Appeal,
Jamaica, West Indies.

30



coming on for hearing on the 8th day of October, 1976, for leave to Appeal to the Privy Council.

In the Court
of Appeal

—
No. 12

AND UPON hearing JAMES KERR, Q.C., with HENDERSON DOWNER for the Appellant and EARL DELISSER appearing with FRANK PHIPPS, Q.C. for the Respondent it is ordered that leave be granted to the Appellant to Appeal to Her Majesty in Council against the judgment of this Honourable Court in that :-

Formal Order
Granting
Leave to
Appeal
8th October
1976
(continued)

10 (1) That the instant criminal proceedings are of exceptional public importance and that it is desirable that there be a further appeal pursuant to Section 110 (2)(b) of the Constitution of Jamaica and Section 35 of the Judicature (Appellate Jurisdiction) Act.

20 (a) Whether or not the jurisdiction defined and conferred by the provisions of Part II of the Fifth Schedule of the Exchange Control Act empowers a Resident Magistrate to hear and determine the Offences specified in paragraph 1(1) thereof :-

(i) In his Special Statutory Summary Jurisdiction - (see Interpretation Act Section 3); and

30 (ii) On indictment generally as well as in relation to such Offences as independently of the Act are indictable misdemeanours at Common Law in particular Conspiracy to contravene the Statute.

Further the Court orders that the Appellant take the necessary steps for the purpose of procuring the preparation of the record and despatch thereof to England within thirty days hereof.

Dated this 21st day of October, 1976.

(signed)

40 W.W. Coke, Acting Registrar of the Court of Appeal for Jamaica West Indies.

FILED by the CROWN SOLICITOR of 79 Barry Street, Kingston, Attorney-at-Law for and on behalf of the APPELLANT.

EXHIBITSNo. A1RECORD OF ENTRIES IN RESPONDENT'S PASSPORT
AND ACCOMPANYING TABLESPassport D 46768 Issued in Favour of Nancy
Sanchez-Burke by the Republic of Columbia
Valid Until August 1971Exhibits

A1

Record of
Entries in
Respondent's
Passport and
accompanying
tables
4th June,
1976

- 10 Page 2 On 12th August 1969, her daughter Margaret was added to her passport by Columbian Consul in Kingston
- Page 3 Photo of Sanchez-Burke and child stamped with Colombian Consul Kingston
- Page 4 Personal particulars
- Page 5 Revalidacion on 11th August 1971 to 11th August 1972
- Then renewed for 2 years to August 1974
- by Colombian Consul Kingston dated 7th December, 1972
- 20 Page 6 Stamp shows passport renewed by Colombian Consul in Kingston until 11th August 1976
- Page 8 Photo of daughter stamped by Colombian Consul Kingston dated 12th August, 1969
- Page 10 Stamp states permanent residence of Jamaica dated 13th August, 1969 by Chief Immigration Officer. Entry into Colombia 22nd August, 1971
- Page 11 Seen at the Passport Office Jamaica Visa No. 14526 issued 13th August 1969 - paid 22/6 - valid six months
- 30 Page 12 Stamp Embarcation Jamaica 23rd August, 1969
- Page 13 Stamps show landed Colombia 23rd August, 1969, left 7th December, 1969. Embarked Jamaica 20th July, 1975. Also resident tourist in transit

<u>Exhibits</u>			
A1			
Record of Entries in Respondent's Passport and accompanying tables 4th June, 1976 (continued)	Page 14	Visa No. 1556 issued 17th August 1971; Fee 2.25. Valid for six months	
	Page 15	Stamps show 3 Embarcations and 3 Landings	
	Page 16	Visa cancelled 12th December, 1972	
	Page 17	Visa 2029 issued 12th December, 1972 - valid six months fee 2.25	
	Page 18	Stamps show:- arrived Colombia 16th December, 1972, admitted Miami (U.S.A.) 6th December, 1974 until 18th. December 1974 (There is U.S.A.'S stamp showing admission for 3 on a date in 1972). Landed in Jamaica 24th August, 1975	10
	Page 19	Visa No. 013948 issued by U.S.A. 12th December 1972 - valid until 12th December, 1976.	
	Page 20	Left Colombia on 10th February, 1973	
	Page 21	Stamps show 2 Landings and 2 Embarcations, in addition to admission to Baltimore, U.S.A. 22nd August, 1975	20
	Page 22	Visa No. 1414 issued 20th August, 1973 - valid for 6 months - fee 2.25	
	Page 23	Stamps show 2 entries into, and 2 departures from Colombia	
	Page 24	Visa No. 1022 issued 22nd August, 1975 - valid for 2 years - fee 2.25	
	Page 26	Barclays Bank DCO Lucca, Jamaica (Stamp) - Entry 22nd August, 1969 US 230 dollars	30
		Bank of Nova Scotia Jamaica Limited (Stamp) - Entry 6th December, 1974 US 280 dollars	

JAMAICACOLOMBIA

LANDED	EMBARKED	LANDED	EMBARKED	JA.	COL.
P15 - Stamp 46	P12 - 23.8.69	P13 - 23.8.69	P13 - 7.12.69	8 mths.	4 mths.
P15 - Stamp 37 27.11.71	P15 - Stamp 49 22.8.71	P10 - 22.8.71	P15 - 27.11.71	9 mths	3 mths.
P21 - Stamp 40 10.2.73	P21 - Stamp 19 15.12.72	P18 - 16.12.72	P20 - 10.2.73	10 mths.	2 mths.
P15 - Stamp 81 19.12.74	P21 - Stamp 67 6.12.74	P23 - 6.12.74	P23 - 18.12.74	21 mths.	12 days
P21 - Stamp 81 21.8.75	P13 - Stamp 9 20.7.75	P23 - Stamp 14 20.7.75	numero 7 P23 20.8.75	11 mths.	1 day
P18 - Stamp 46 24.8.75	P15 - Stamp 92 22.8.75				

6.12.74 P 18 admitted Miami 060

Miami 24 P21 admitted U.S. 22.8.75 050 BAL

Exhibits
A1
Record of
Entries in
Respondent's
Passport and
accompanying
tables
4th June,
1976
(continued)

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN :

THE DIRECTOR OF PUBLIC PROSECUTIONS Appellant

- and -

NANCY SANCHEZ-BURKE Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
Lincoln's Inn,
Hale Court,
London, WC2A 3UL.

Solicitors for the Appellant.

PHILIP CONNOR THOMAS & CO.,
61, CATHERINE PLACE,
LONDON, SW1E 6HB
Solicitors for the Respondent