

*Privy Council Appeal 7 of 1992*

**James Smith**

*Appellant*

*v.*

**The Queen**

*Respondent*

FROM

**THE COURT OF APPEAL OF JAMAICA**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE  
26TH OCTOBER 1992  
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*Present at the hearing:-*

LORD TEMPLEMAN  
LORD GRIFFITHS  
LORD ACKNER  
LORD GOFF OF CHIEVELEY  
LORD MUSTILL

*[Delivered by Lord Griffiths]*

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On 19th July 1990 the appellant was convicted by the Resident Magistrate on all counts in an indictment containing one count of conspiracy and six counts of receiving. The Court of Appeal of Jamaica dismissed the appellant's appeal against conviction, but gave leave to appeal to Her Majesty in Council on the following certified question:-

"Whether on the charge of conspiracy to defraud the offence of conspiracy was established if the agreement having been made in Jamaica, the object of the conspiracy was to defraud the Government of Jamaica of its property situated outside of Jamaica."

The appellant sought special leave to appeal from the Court of Appeal on other grounds which leave was refused by their Lordships. The sole question to be determined in this appeal is therefore that which was certified by the Court of Appeal.

The appellant was at the material time the Minister of Labour in the Jamaican Government and the conspiracy alleged in count one of the indictment was that he:-

"On divers days between 1st day of June 1981 and 11th day of August 1989 in the Parish of Kingston

conspired with Probyn Aitken, Hector's River Farms Ltd. and other persons to defraud the Government of Jamaica by fraudulently utilizing funds held by the Jamaica Liaison Service and the West Indies Central Labour Organization on behalf of the said Government of Jamaica for their own benefit or purposes."

Probyn Aitken was the Permanent Secretary in the Ministry of Labour and the case against the appellant was that he had agreed with Aitken in Jamaica fraudulently to convert large sums of money held in Toronto and Washington on behalf of the Jamaican Government to their own use. It is only necessary to give the briefest outline of the facts which are to be found fully set out in the judgment of the Court of Appeal. The funds were held in bank accounts in Washington and Toronto for the purpose of administering farm and factory workers' programmes under which Jamaican workers went to the United States and Canada respectively to carry out seasonal agricultural work. Pursuant to the agreement with the appellant, Aitken ordered the Jamaican officers in charge of the funds in Washington and Toronto from time to time to transfer funds into a bank account in his name in Miami, and at other times to draw cash from the funds and hand it to him or the appellant and on other occasions to draw cheques on the funds to purchase cars for the appellant. Aitken misled the officers in Washington and Toronto into believing that the funds were required for proper government purposes whereas in reality the money was being used for his own and the appellant's benefit. The receiving counts in the indictment were specimen charges of sums of money actually handed over to the appellant in Jamaica.

Aitken, who had already pleaded guilty and had been convicted in respect of these offences and had received a sentence of nine months' imprisonment, was the principal witness against the appellant at his trial. There were however a large number of other prosecution witnesses who gave corroborative evidence. A plea of no case to answer was rejected by the Resident Magistrate. The appellant did not thereafter give evidence and no evidence was called on his behalf. In these circumstances, unless the question referred by the Court of Appeal is answered in favour of the appellant, his conviction on the count of conspiracy was virtually inevitable.

It is submitted on behalf of the appellant that, on the authority of *Board of Trade v. Owen* [1957] A.C. 602, there was no jurisdiction to try the count of conspiracy to defraud because the crime which the appellant contemplated, namely larceny or false pretences or embezzlement, was to be committed in Washington or Toronto and would be complete when the funds were obtained from those bank accounts. Accordingly it is submitted these were offences committed in a foreign country for which an indictment would not lie in Jamaica and which cannot therefore be made the subject of a conspiracy count in Jamaica.

This argument, however, overlooks the terms of section 24(1) of the Criminal Justice (Administration) Act which provides:-

" 24.(1) Any person employed in the service of the Government of Jamaica who commits, in a country other than Jamaica, when acting or purporting to act in the course of his employment, any offence which, if committed in Jamaica, would be punishable on indictment, shall be guilty of an offence of the same nature, and subject to the same punishment, as if the offence had been committed in Jamaica; and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, including, without prejudice to the generality of the foregoing, the jurisdiction of Resident Magistrates pursuant to section 267 of the Judicature (Resident Magistrates) Act, be deemed to have been committed in any parish or place in Jamaica in which the offender is apprehended or is in custody or may appear in answer to a summons lawfully issued charging the offence."

By this section Aitken's actions in plundering the funds in Washington and Toronto are made criminal offences indictable in Jamaica. In *Board of Trade v. Owen* Lord Tucker cited at page 627 the following passage from the judgment of Lord Goddard in the Court of Appeal [1957] 1 Q.B. 174, 191:-

"In our opinion the true rule is that a conspiracy to commit a crime abroad is not indictable in this country unless the contemplated crime is one for which an indictment would lie here."

Lord Tucker concluded his speech at page 634 by saying:-

"I have reached the conclusion that the decision of the Court of Criminal Appeal that a conspiracy to commit a crime abroad is not indictable in this country unless the contemplated crime is one for which an indictment would lie here is correct. ...."

This statement of the principle covers the present case. The appellant and Aitken did conspire together to commit a crime, namely fraudulently obtaining Jamaican Government funds by the false pretence by Aitken in the purported course of his employment as a government employee that the funds were required for legitimate government purposes. This is a crime which under the provisions of section 24(1) of the Act is indictable in Jamaica and accordingly a conspiracy to commit that crime is also indictable in Jamaica.

It does not appear that the terms of section 24(1) of the Criminal Justice (Administration) Act were drawn to the attention of the Court of Appeal who decided the question against the appellant upon a broader consideration of the

circumstances in which a conspiracy at common law can be charged in Jamaica in respect of a crime committed or to be committed in a foreign country. Their Lordships do not consider it appropriate to express any opinion on this wider issue or to answer the certified question in the form it is posed. It is sufficient to say that any person who conspires in Jamaica to commit a crime indictable in Jamaica can be indicted for that conspiracy in Jamaica.

For these reasons their Lordships will humbly advise Her Majesty that this appeal ought to be dismissed. The appellant must pay the respondent's costs before their Lordships' Board.