JAMAICA

IN THE COURT OF APPEAL

R.M.CRIMINAL APPEALS NOS. 190 & 191/66

BEFORE: The Hon. Mr. Justice Lewis, Presiding.
The Hon. Mr. Justice Moody.
The Hon. Mr. Justice Shelley.

R. v. ARTHUR SPENCER

&

R. v. GEORGE MCLEISH

Mr. N. O. Edwards for appellant Arthur Spencer.
Mr. H. G. Edwards for appellant George McLeish.
Mr. R. O. C. White for the Crown.

November 10, 1966.

LEWIS, J. A.: In these two cases the appellants were persons who came into Jamaica on different aeroplane flights; and the prosecution alleged that each of them, on being searched, was found with a gun which he had failed to declare. For the purposes of this appeal, it is not necessary to state more of the facts. They were charged on separate informations; and two other persons who had come in on a different flight were also charged with similar breaches of the Firearms Law.

The learned magistrate, with the consent of counsel for the appellants and counsel for the other two persons, began the hearing of the cases jointly. After a certain number of persons had given evidence, it was discovered that this could not properly be done. The magistrate was of opinion that their counsel having consented, the appellants and the other persons could be tried separately under Section 22 of the Criminal Justice Administration Law, Chapter 83, but he held that it would be embarrassing to continue the joint trial and that he would try them separately.

That opinion that they could be tried jointly with the consent of their counsel was probably wrong but it is unnecessary in this appeal

to give a decision on this point.

The learned magistrate did not recall the witnesses who had given evidence against Spencer, although those witnesses had been cross-examined by counsel for the other parties, but made an order by virtue of which he purported to expunge from the record all evidence given against the other defendants. He proceeded with the trial against Spencer; and at the close of the case for the prosecution certain submissions on the law and on the facts were made. No evidence was offered on behalf of the defendant Spencer.

The learned magistrate reserved judgment and fixed a date for the hearing of McLeish's case. On that day he heard the evidence against McLeish afresh and also certain other witnesses, and a similar procedure was followed at the close of the case for the prosecution. Again no evidence was tendered on behalf of McLeish.

A similar procedure was followed with respect to the two other persons, their cases being taken on subsequent days.

The learned magistrate then had before him four cases in which he had reserved judgment and in each of them similar points of law had been taken but the facts were all different.

On the 15th of October, so the court was informed - and the record indicates that this was so - the learned magistrate, having put the four defendants in the dock, proceeded to deliver one judgment and then announced that he had found each of them guilty.

The court is clearly of the opinion that this procedure was irregular. Having made up his mind quite properly that the defendants - and these appellants in particular - ought to have been tried separately, what the learned magistrate ought to have done was to hear one case, decide it, and then it would have been appropriate for him to apply his ruling on the law in that case in dealing with the other cases, dealing separately with the facts of each case. As it is, the court has no way of knowing to what extent the learned magistrate was influenced in his decision on each case by any evidence that was given in respect of any other case.

This being so, it is perfectly clear that the trial of Spencer was

a nullity; and it may very well be, having regard to what happened on the final day, that the trial of all these parties was a nullity. Certainly, the court is clearly of opinion that these appeals must be allowed and the convictions and sentences set aside and new trials ordered.
