

CH. 10. P. 10. Larceny as a Servant — Larceny based on a deficiency —
No evidence of opening balance — whether R.M. erred in calling upon
accused to answer at end of Crown's case.
Conviction and sentence set aside.

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 8/87

BEFORE: The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Wright, J.A.
The Hon. Mr. Justice Downer, J.A. (Ag.)

R. v. AUDREY GAYLE

Berthan Macaulay, Q.C., & Pamela Benka-Coker instructed
by Mrs. Margarette Macaulay for the Appellant
Winston Douglas for the Crown

April 8, 9, & December 18, 1987

DOWNER, J.A. (Ag.):

This is an appeal by Audrey Gayle from conviction and sentence imposed by Her Honour Mrs. L. Vanderpump in the Halfway Tree Resident Magistrate Court on 19th February, 1986. The indictment contained a single count for larceny as a servant, the particulars of which was that she, between 1st February and 13th April, 1983, being employed in the public service of Her Majesty, stole approximately \$86,000.00 received by her by virtue of her employment. At the end of her trial she was found guilty and sentenced to 3 years imprisonment with hard labour. On 19th April we set aside the conviction and sentence and now put our reasons in writing.

The effective ground of appeal was that the learned Resident Magistrate, erred when she called on the appellant to answer at the end of the Crown's case. Halfway Tree is a busy post office and the appellant was Postmaster since 1979. As Postmaster she was in charge

and her principal function was to see that the accounts were properly kept and to render returns to the head office. Surprisingly, in spite of the fact that the turn-over is in the region of \$1 million dollars per annum apart from an ordinary note book used as a cash book, there does not seem to be any systematic books of account to record the manifold transaction which took place.

It turned out that the monthly accounts were not rendered from June 1982. The head office decided to institute a check to ascertain whether there were irregularities. In testifying as regards this audit in February 1983, it is important to quote directly from the evidence of Dorothy Llewellyn who was one of the Regional Inspectors and was the accounting officer immediately in charge of the appellant. Under cross-examination by Mrs. Macaulay she said at page 26 of the record:

"The check revealed a shortage of \$83,541.40. Before February 1983 our records shown that the last check before that was in 1968. The accused took over in May 1979. There is a requirement that checks should be made each year."

Mrs. Macaulay continued to question the witness and her revelation was as follows:

"I became Regional Inspector on the 1.5.79. From that date I was responsible to see that the stock of Half Way tree Post Office be checked yearly. This was not done at the Half Way Tree Post Office."

Bearing in mind that the accused is being charged for larceny based on a deficiency it was essential that the crown establish with accuracy the starting balances which were entrusted to the appellant. This must be so in law, for it is from the deficiency if established, that a prima facie case of stealing is to be inferred, and if there was no accurate evidence about the initial balance there could be no charge of larceny to which the accused ought to be called upon to

answer. Yet here is how the evidence from Dorothy Llewellyn emerged on page 27 of the record on this aspect of the case:

"Q. Can you as Regional Inspector say that the accounting was correct during the period 1979 to 1983?

A. That again would have to be the responsibility of the Postmaster.

It was my responsibility to check to see if stock and cash are in order during period 1979-1983 and report to Head Office. I didn't check during that period. I checked from 1.2.83 - 13.4.83. I cannot say whether balance of \$92,000.00 odd was a correct carry forward balance. What I've given evidence about is book figures and vouchers. I checked whatever vouchers that went along with the figures."

To put the matter in perspective it is also necessary to cite the witness' answer in re-examination by Crown Counsel. At page 36 of the record the learned Resident Magistrate reported her as follows:

"I also said in cross-examination as Regional Inspector I didn't check the Half Way Tree Post Office in the period before 1983. Mrs. Gayle being one of our Senior Postmaster we didn't think it necessary to check her and she didn't (sic) that she was having any problems that would warrant us checking her.

In cross-examination also said that the balance of \$92,000 odd I didn't check the actual raw cash. The money we would assume has already been checked and correct because this is what she reflected in her cash account as cash on hand in the end of January."

The only other witness on whom the Crown relied was Errol Williams, the Financial Auditor, who assumed his position in 1982. On the vital issue of the deficiency, which is the basis of the charge, here is his answer to counsel who cross-examined on page 42 of the record:

"I refer to the account of April 1983 that is showed a shortage. The shortage was up to Mid-April. Can't recall the date in April the cash account statement was up to. The statement was from the 1st April to that part in April, that is mid-April. It was the only account that showed a shortage. The account that showed the shortage were the figures submitted in the monthly accounts. I cannot swear on oath that that were no mistakes in the balances carried forward on previous monthly reports."

In the light of this evidence it is difficult to understand on what basis the accused was called upon to answer the charge in the indictment. As the crown did not call a witness to establish what was the opening balance, there was never a chance, that it was capable of presenting a credible case. We find that the learned Resident Magistrate should have acceded to the submission of no case to answer and because she failed^{so} to do, she recorded a conviction and sentence which we set aside as indicated previously.