

JAMAICAIN THE COURT OF APPEALSUPREME COURT CRIMINAL APPEAL NOS. 93 - 95/88

BEFORE: THE HON. MR. JUSTICE KERR, J.A.  
THE HON. MR. JUSTICE CAMPBELL, J.A.  
THE HON. MR. JUSTICE FORTE, J.A.

REGINA

VS.

CECIL DINNAL  
ERNEST STONE  
JOSEPH STONE

Mr. D. McKoy for the applicantsMr. C. Brown and Miss C. Williams for the CrownJuly 25, 1988KERR, J.A.:

In the Clarendon Circuit Court on July 14, 1987 before Patterson J and a jury the applicants were jointly charged on indictment and convicted on two counts of a four-count indictment with Ismay Smith and Michael Lindsay for Burglary and Robbery with Aggravation.

On February 23, 1988 this Court, Rowe P, Campbell and Wright JJA, by a majority allowed the appeals of Ismay Smith and Michael Lindsay (S.C.C.A. 122/87 & 124/87), quashed the convictions and entered a verdict of acquittal.

The reasoning and conclusion in that judgment are applicable to the applications before us today. Accordingly, we treat the applications as the hearing of the appeals and for the reasons set out in the judgment of Smith and Lindsay, the appeals of the applicants are allowed, the convictions quashed and verdicts of acquittal entered.

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4. The defendant admitted liability to the Company at the meeting held on the 5th April 1982. He offered to pay \$23,000.00 in full settlement but this offer was rejected by the other Directors and that the defendant paid \$5,200.00 in respect of his liability;
5. The articles of furniture claimed by the Company viz:  
One white pine conference table;  
Six conference room chairs;  
Six pieces of white pine reception area furniture; and  
One stationery locker - are the property of the Company.

I accept the evidence of Mr. Ramsay that he purchased the lumber and that some items of furniture were made by Moses o/c Mr. Manning an employee of the defendant.

I find that the defendant wrongfully refused to allow the Company to remove these items of furniture.

I accept the value of \$20,000.00 placed thereon.

6. The Company is not indebted to the defendant for the airconditioning unit, one door and window as claimed in the Counter-claim;
7. The defendant is indebted to the Company as indicated hereunder.

The way in which the case was conducted did not make for easy calculation of this sum.

Mr. Ramsay presented a statement of account, Exhibit 2 which had been compiled in this manner: As Director, he made several notations of various amounts that were given to the defendant. These were presented to the Auditor who consulted with the secretary, Miss Leslie to extract the full details for the records. One large cheque was drawn for disbursement of cash which disbursement was done by Miss Leslie.

Miss Leslie did not give evidence nor were vouchers produced to support payments by cash or cheque.

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Cross-examination of Mr. Ramsay on this statement was confined to certain entries for January 1982. He opined that they related to refurbishing of the premises and wages for the defendant's workmen.

The defendant admitted having signed certain cheques in his capacity of Director but denied that they were for amounts expended on his behalf except for three (3) cheques, Exhibit 9, in favour of Hopkins Block Factory which he said could have been for blocks supplied in refurbishing the premises. He denied that cash payments were expended on his behalf.

I will now deal with the statement of account Exhibit 2:

November 1981 - Cash

Allowed	\$ 966.00
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December 1981 - Cash

Allowed	1,765.02
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December 1981 - Cheques

G. McBean disallowed less \$250	3,250.00
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January 1982 - Cash

A. Finn - \$200 disallowed

Kingston Industrial Garage \$100 - disallowed	8,822.86
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January 1982 - Cheques

Following are disallowed

J. W. Thankis or Thawkur \$1,152.00

United Gasoline Retailers \$457.50	
" " " 96.50	4,217.50

February 1982 - Cash

Disallowed

Jamaica Public Service tender \$268.22. Defendant contends not on his behalf - not controverted.	8,965.53
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February 1982 - Cheques

Disallowed

Both items for Collector of Taxes:  
no evidence adduced in respect of  
taxes \$102.40 and \$10.00

J. W. Thankis - \$1000.00	2,559.23
	\$30,546.14

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B/Forward

\$30,546.14

March 1982 - Cash

All items allowed

1,147.42

March 1982 - Cheques

Disallowed

L. Finn - \$190.00

L. Finn - 125.00

$$\begin{array}{r} 2,628.00 \\ \hline \$34,321.56 \end{array}$$

Less paid \$5,200.00

TOTAL = \$29,121.56

There will therefore be judgment for the plaintiff on the claim for \$29,121.56 and for the return of the items or their value assessed at \$20,000.00. There will be judgment for the plaintiff on the Counter-claim. Costs on Claim and Counter-claim to be agreed or taxed.