

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL NO. 59/90

BEFORE: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

REGINA vs. LAN VINCENT

Frank Phipps, Q.C. and Earl DeLisser
for the appellant

Miss Marcia Hughes for the Crown

January 14, 15 and March 13, 1991

WRIGHT, J.A.:

At approximately 9:00 a.m. on February 16, 1988, a Cessna 411 aircraft piloted by Timothy Williams, a Drug Enforcement Agent based in Georgia, United States of America (U.S.A.), took off from an illegal airstrip at Sweet River in Westmoreland with 983 pounds of ganja, compressed and packaged in twenty-five parcels, leaving on the ground two parcels which Williams had deliberately refused to take under the guise that the plane was over-loaded. Within minutes of the departure of the plane, two helicopters with Senior Superintendent Strong and about sixteen other security officers, with whom Williams had kept in contact, landed at the airstrip. They took possession of the remaining two parcels and took into custody one Cecil Ramsamugh, who had slept on the load of ganja and was unable to elude the pursuing officers. The police also later took into custody Michael Lamb, John Babcock

and Albert Hylton. These three were charged with possession of ganja. After further investigations the police arrested as well Ruby Ramsamugh (wife of Cecil Ramsamugh), Edwin Bailey and the appellant Ian Vincent. The appellant, along with Cecil Ramsamugh, Ruby Ramsamugh and Edwin Bailey were charged and, after a trial lasting seven days between April 11, 1989 and May 19, 1989, were convicted and sentenced. The appellant fared as follows:

1. Possession of Ganja - Inf. 2274/89

Fined \$15,000 or 6 months imprisonment at hard labour. Sentence to run consecutively with custodial sentence if fine is not paid.

2. Dealing in ganja - Inf. 2275/89

Fined \$50,000 or 6 months imprisonment at hard labour in addition 12 months imprisonment at hard labour.

3. Trafficking - Inf. 2276/89

Not Guilty.

4. Exporting - Inf. 2277/89

Fined \$50,000 or 6 months imprisonment at hard labour. Sentence to run consecutively with that on Inf. 2274-76/89.

Two Grounds of Appeal were argued before us contesting these convictions and sentences but before considering them it is necessary to set out the facts of the case. The trial, which was held at Savanna-la-mar, was conducted by His Honour Mr. Glen Brown, Resident Magistrate for St. James exercising jurisdiction in Westmoreland, who at the commencement of the trial on April 1, 1989, was to hear Mr. Glen Andrade, Q.C., Director of Public Prosecutions, who led evidence for the Crown, announce that the charge of possession of ganja against Michael Lamb, John Babcock and Albert Hylton was being withdrawn so that they could be used as witnesses for the

prosecution. Both Lamb and Babcock, who are Americans, disclosed that each had two previous convictions for ganja.

This case traces its origin to a meeting between John Babcock, Michael Lamb, Ken Valchec and Ray Hawkins in the U.S.A. at which a decision was taken to secure a load of ganja to be flown to Georgia, U.S.A. Lamb contacted Robert Gamon in Jamaica, who gave him a telephone number viz., 966-2233, which, as events would show, is the appellant's telephone number. Lamb made several calls to that number and had discussions with a man. But it was not until he had visited Jamaica and was taken by Gamon to the appellant's office in Santa Cruz that Lamb would discover the identity of the person to whom he had been speaking. On introducing him to the appellant, Gamon said "this is Sister". Lamb realised then that "Sister" was a man and they said to each other that it was good that they had finally met.

Gamon left to visit his mother leaving Lamb and the appellant alone. Lamb told the appellant that he was trying to organise a load of marijuana to which the appellant responded that he had hoped that Gamon would have been able to facilitate his needs. He further said that he had just lost 1,200 pounds in a deal with someone from the Bahamas and that because of that it would take him sometime to put a load together. He said, too, that many of his patients cultivated marijuana and he was sure he could get some from them. Lamb said he needed a full load, 1,300 pounds, as well as a landing strip. The appellant named a strip at Cashew. They decided to use Gamon who had not by then returned. They had talked for about twenty-five minutes during which the appellant had promised to assist Gamon in securing the load. The appellant returned to his practice and Lamb went outside. Gamon returned and after he spoke with the appellant he left with

Lamb for the Wyndham Rose Hall Hotel, Montego Bay. After a time he lost contact with Gamon so he telephoned the appellant several times in his search for Gamon. The appellant said he had not seen him but if he did, he would advise him of Lamb's enquiry for him. Lamb left the Island leaving John Babcock behind. He returned late November or early December together with Babcock, taking along four VHS radios for communication with planes. They contacted Gamon and gave him the radios as well as US\$3,000. Gamon defaulted on the arrangement to take them to an airstrip and again resort was made to the appellant, who said he, too, was trying without success to find Gamon. Lamb told the appellant that they needed the radios which Gamon had. About three days later Gamon surfaced and produced two of the radios. In an effort to recover the radios, they went to Bluefields and then Santa Cruz. The appellant arrived and was told by Lamb that Gamon was unable to acquire the load. The appellant replied that he realised that Gamon was not performing. Gamon left and the appellant said he knew some people who could help.

The appellant stated that the radios were with Gamon's girlfriend, who needed money to return to the U.S.A. Lamb gave J\$1,000 to Gamon to secure the return of the radios but when he failed to produce them, Lamb contacted the appellant who undertook to have the radios returned. He took them to Lamb at his hotel in Montego Bay at 10:30 p.m. and told Lamb and his company that he wanted them to set up a meeting to meet some people who could provide the load. Lamb repeated the need for a run-way and the appellant said he thought the people whom he was bringing to the meeting would have access to one. That was on January 25, 1989. The meeting was decided on for 5:00 p.m. next day at the Caribblue Hotel. Lamb advised the appellant by telephone and at the

appointed time the appellant arrived with Cecil Ramsamugh and his wife, Ruby. Slightly ahead of them came two pilots, Timothy Williams and one Jerry, who were to fly the plane. Williams gave Lamb US\$10,000 which John Babcock locked away.

The appellant introduced Mr. & Mrs. Ramsamugh and said they would be able to help. Ruby was the dominant figure at that meeting and as a result of persistent phone calls by her, Edwin Bailey (Eddie) arrived about 9:00 p.m. and was introduced to Lamb. Eddie said that with the help of Ruby, Cecil and the appellant the load could be provided. The appellant promised his help. Told that the price was US\$100 per pound (which the appellant had, at their first meeting, accepted) Eddie said it would work. Eddie said he knew several airstrips. The meeting ended with the four of them i.e. the appellant, Mr. & Mrs. Ramsamugh and Eddie shaking hands and agreeing that they had a deal.

According to Lamb, the pilots Williams and Jerry were at the inside bar while the meeting was at the outside bar but Babcock would make frequent trips to Williams while the latter would walk around coming within fifteen feet of the meeting. Next day, Eddie introduced C.B., who was to identify the airstrip. Many airstrips were visited before the one at Sweet River was selected. On the day C.B. was introduced, Eddie initiated discussion which led to the price being increased to US\$120 per pound. Ruby said she wanted the appellant to be in charge of her share of the money and when Lamb so advised the appellant he agreed. Eddie had also undertaken to be responsible for the packaging of the ganja. At the meeting, where Eddie was introduced, Ruby had, in the appellant's presence and hearing, recommended Eddie as capable as shown by previous deals in which they had arranged loads at half million dollars per load.

Admitted in evidence as Exhibit 1 is a prescription dated 10/2/89 issued by Dr. Ian Vincent for Michael Lamb which the appellant had himself taken to Montego Bay and handed to Lamb who had made the request by telephone for a prescription.

After Lamb was taken to the office of Senior Superintendent Strong in Kingston, he learnt from Strong that the pilot Williams was a Drug Enforcement Agent and thereupon decided to co-operate with the police. He telephoned and spoke to the appellant telling him that he was calling from the U.S.A. The appellant asked what had happened and Lamb told him the plane had circled too long and that he had some money. The appellant said that Cecil was still in custody. Lamb promised to bring some money for Cecil's defence. Lamb said he told the appellant to allay his apprehensions, that he was in the U.S.A. and that his encounter with the police was only a matter related to immigration. Senior Superintendent Strong listened to the conversation on an extension.

John Babcock, a commercial fisherman, testified about the meeting at Sheraton Hotel in Georgia, U.S.A. at which he introduced Lamb to Ray Hawkins and Valchec, of the plan to secure the ganja (money to be provided by Hawkins and Valchec), of the trip by himself and Lamb to Jamaica, of the Caribblue meeting with the appellant and the other co-accused, of his receipt of the US\$10,000 to secure the airstrip, of the meeting with the appellant in Santa Cruz, of the radios brought in and delivered to Robert Gamon, of the return of two of the radios by the appellant, of their presence at the airstrip, of the landing of the plane flown by Williams (Bill), of Williams stopping him from placing the last two packages on the plane, of the arrival of the police and finally of his flight and capture.

The evidence of Albert Hylton related to his being contacted by Edwin Bailey on February 15, 1989, and being driven to a little house where they loaded several parcels of ganja on a van which then travelled to the airstrip accompanied by Bailey in a car. At the airstrip, he saw Cecil Ramsamugh, Lamb and Babcock as well as others. The plane arrived, was loaded and took off. Shortly afterwards, the helicopter with the police arrived and he ran off into the bushes where he was captured about six days later.

Timothy Williams, in the course of his duty relating to smuggling of narcotics by aircraft, met John Babcock, Ray Hawkins and Clarence Edmonson at the Sheriton Hotel, Vasconta, Georgia, U.S.A. on November 3, 1988. Discussions followed, dealing with the acquisition and transportation of a plane-load of ganja from Jamaica to Georgia. He was to be their pilot. He notified his Agency and the Jamaican police. On November 24, 1988, he met Lamb, Babcock and Vichio at the same venue and further discussions resulted. Pursuant to these discussions, he visited Jamaica on January 25, 1989, and booked into the Wyndham Rose Hall Hotel. He met Babcock and Lamb and they took him to the Caribblue Hotel the next day. He was there at the dinner hour, 5:00 to 6:00 p.m. Dinner was on the patio. He observed persons arrive at that table until there were five in all. He had not seen any of them before but said he subsequently saw them up to a dozen times. Of these he identified the appellant, Cecil and Ruby Ramsamugh as the ones who arrived first. They had discussions at the table lasting for about three hours. Then Lamb and Babcock accompanied him back to his hotel. He had given them US\$10,000 before attending at Caribblue. He left Jamaica on January 28 and advised his agency and the Jamaican police of developments. He received from Lamb, by telephone, the co-ordinates of the airstrip at Sweet River and on February 16, in company with a confidential informer, he flew

the Cessna 411 to this airstrip and took delivery of twenty-five parcels of the ganja, refusing the last two on the ground that the plane was over-loaded. He had kept in touch with Lamb by Marine Radio using Channel 16 in being directed to the airstrip. In the meantime, his companion kept in communication with the police helicopter.

He flew the load of ganja to Georgia where a portion was delivered to Larry Darling and Roy Baker. Both were then arrested, the ganja collected and the full consignment of twenty-five parcels flown to the Georgia Bureau of Investigation, where they were marked and locked away.

James Conrad Robinson, a research chemist, examined the parcels and testified that they all contained ganja. So, too, did Fitzmore Coates, Government Analyst, who, along with two Jamaican police officers, visited the Georgia Bureau of Investigation where he inspected and weighed the parcels and took samples from each. He had also received from the police the two parcels recovered on the airstrip at Sweet River. They, too, contained ganja. The weight of these two parcels was eighty pounds.

Senior Superintendent Strong testified of the police arrival at the airstrip, of the recovery of the two parcels, the arrest of Cecil Ramsamugh in flight, the taking into custody of Lamb, Babcock and Hylton and corroborated with details the telephone call by Lamb to # 966-2233. Then on February 22 he took Ruby Ramsamugh into custody and shortly thereafter he encountered the appellant at the Mandeville Hotel. He did not know him before. He identified himself to the appellant and told him he was taking him into custody in connection with the shipment of ganja from Sweet River. After caution, the appellant said, "I don't ship any ganja, I only put some people together". Further cautioned and asked who were the people he replied, "You know them". This witness also testified that

Williams had given him the co-ordinates of the Sweet River airstrip when he was trying to assist Williams with some co-ordinates on February 15.

The four defendants made unsworn statements and since the appellant set their involvement in the case in motion, it is relevant to his appeal to look, even briefly, at their contentions.

Cecil Ramsamugh:

He was present with his wife at the Cariblue Hotel where -

"Mr. Lamb, during the course of talking said he was in a jam and badly needed a break and that he just got out of prison and had lost money previously and was begging for help to get a plane load of ganja without paying for it before."

And what was his reaction?

"I was sorry about this misfortune but only listen and was willing as I thought it quite impossible even if I had ganja which I did not."

He denied the handshake mentioned by Lamb, then continued:

I accidentally met him up and he told me that he got a plane load of ganja for nothing and he did not pay any money for it. I said you are crazy that couldn't be true. He said if I did not believe then I should come see him send off the ganja by plane at Sweet River, Westmoreland on 16th February. Still not believing what Mr. Lamb told me I went by Sweet River to see Mr. Lamb and others loading a plane in a matter of couple seconds."

Next followed his flight and capture and the discovery by the police of the two parcels on the airstrip.

Ruby Ramsamugh:

She was present at the Caribblue meeting and heard Lamb talking about getting a plane load of ganja. She left the table many times and did not in fact play the dominant role alleged. She did not enter into any deal with Lamb nor did she, as Lamb had testified, threaten to send the Haitian hit gang after him if he defaulted on the payment.

Edwin Bailey:

"I met Mr. Lamb and Mr. Babcock. They told me they want ganja but they have no money. I recommend C.B. and Blue to them. Hylton is a friend of Blue. I said to Babcock and Lamb that they are not serious to want ganja without money."

Then, after denying having taken part in the Sweet River enterprise, he said he had seen Babcock, Mike Lamb, C.B. and Blue "several times in MoBay".

Ian Vincent:

District Medical Officer for Santa Cruz. Introduced to Michael Lamb by Robert Gamon, one of his patients.

"Mr. Lamb told me that he wished to secure a load of ganja for export to U.S.A. in the presence of Mr. Gamon. I told him that I was not able to help him as Mr. Gamon was the man who could help him".

He denied telling Lamb that he had patients who grow ganja or that he could assist in securing a load. He admitted attending at Pommell's Lounge, Santa Cruz at Lamb's invitation where Lamb asked his help in securing the recovery of radios from Gamon who was demanding a large payment for their return.

Lamb said Gamon was unreliable and he promised to see what he could do for Lamb. He did recover two of the radios from

Gamon's girlfriend and hand them over to Lamb at the Wyndham Rose Hall Hotel. He did not either at the Wyndham or at Caribblue discuss ganja or airstrip or any related matter with Lamb or anyone. The return of the radio was done as a favour. Lamb did not speak to him by phone about the increased price of the ganja nor about his collecting Ruby's share of the money.

After the Caribblue meeting he did not hear from Lamb until Lamb telephoned him from Strong's office telling him he was in Florida. He admitted that Strong cautioned him at the Mandeville Hotel but denied the words attributed to him after caution. In fact he had never entered into any agreement with anyone to deal with, procure or export ganja from Jamaica.

The learned Resident Magistrate did not write a judgment but, as he is required to do by section 291 of the Judicature (Resident Magistrates) Act, made findings of fact which he numbered 1 - 23. But before doing so he delivered himself as follows:

"The prosecution's case against them was based mainly on the evidence of Michael Lamb. He was the architect and promoter of the illegal enterprise. He knew the nature and scope of the part played by each accused. It was his statement to police that caused Ruby Ramsamugh, Ian Vincent and Edwin Bailey to be arrested. He also implicated Cecil Ramsamugh.

Lamb, John Babcock and Albert Hylton were crown witnesses. They were arrested for Possession of Ganja. The case against them was discontinued at the request of the Director of Public Prosecutions. They admitted their involvement with the crime and were quite correctly termed accomplices. They corroborated each other. However, I could not act on that as accomplices cannot corroborate each other. Lamb's

"testimony was corroborated in parts by Timothy Williams and Senior Superintendent of Police Strong.

I accepted the witnesses for the crown as truthful. They were never materially discredited. I warned myself of the dangers of acting on the uncorroborated evidence of an accomplice. Where there are any contradictions between the accomplices I preferred the testimony of Lamb. I rejected the unsworn testimony of each in so far as it conflicts with the crown's case."

After the numbered findings of fact, he recorded the following:

"The accused Bailey had the 27 parcels of ganja compressed, packaged and transported to Sweet River.

Both he and Cecil Ramsamugh were present at the illegal airstrip.

I was, therefore, satisfied that the two Accused were acting pursuant to the agreement made at the Caribblue hotel, that is, to sell ganja to Michael Lamb and were guilty as the principal offenders.

Dr. Ian Vincent was not present at the illegal airstrip when the offences were committed. Although he had agreed with others to provide the ganja, there was no evidence that he did so.

His primary function was to procure others to sell ganja to Lamb to export to the U.S.A. He procured Ruby and Cecil Ramsamugh who provided some of the ganja. With the help of Edwin Bailey, they ensured that the offences were committed.

Dr. Vincent had agreed to assist Lamb and was always in communication with him. He was Lamb's confidant and contact man. He had knowledge that the crime was being carried out.

"I found him to be an accessory before the fact in respect of possession of ganja, dealing in ganja and exporting ganja.

With regards to the offence of Trafficking in Ganja, I found him not guilty. Lamb, Babcock and Williams made all the arrangements. They were assisted by Cecil Ramsamugh and Edwin Bailey. He didn't procure them to do this.

I was of the view that a custodial sentence should be imposed to act as a deterrent. These crimes are prevalent."

The two Grounds of Appeal, which were argued with the leave of the Court, are as follows:

- "1. The verdict was unreasonable and cannot be supported having regard to the evidence, in particular, there was no evidence adduced at the trial proving that the Appellant procured the commission of any offence.
2. The Appellant was charged as a principal offender and not as an accessory (sic) to the commission of a summary offence, it was therefore incompetent for the Court to have convicted him for procuring the commission of any offence."

The informations on which the several accused persons, including the appellant Ian Vincent, were charged, read as follows:

1. Unlawfully had ganja in their possession.
2. Did deal in ganja.
3. Did use a conveyance, to wit, an aircraft for the purpose of carrying ganja, for the purpose of dealing in ganja.
4. Exported ganja.

The relevant sections of the Dangerous Drugs Act were cited and all accused persons were on those informations charged as principals.

Mr. Phipps took issue with the charging of the appellant as a principal although he was not physically at the point of acquiring or shipping the ganja. It was his contention that section 34 of the Criminal Justice (Administration) Act, which deals with the indictment of accessories before the fact to a felony as though they were principals, is inappropriate. That section reads:

"Whosoever shall become an accessory before the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or law passed or to be passed, may be indicted, tried, convicted, and punished in all respects as if he were a principal felon."

Indeed, there need be no agonising to conclude that that section, which deals with felonies and which is identical with section 8 of The Accessories and Abettors Act, 1861, does not contemplate the instant charges which are misdemeanours, triable summarily.

Consonant with the principle that there are no categories of misdemeanants, aiders, abettors etc. have historically been proceeded against as principals [See R. v. Burton (1875) 13 Cox 71; R. v. Greenwood (1852) Den Cr. C. 453]. Such proceeding includes the information in which the charge is preferred and in such information the aider, abettor etc. was jointly charged with the principal. Section 5 of the Summary Jurisdiction Act, 1848 (Jervis' Act) provided the authority. That section reads:

"Every person who shall aid, abet, counsel, or procure the commission of any offence, which is or hereafter shall be punishable on summary

"conviction, shall be liable to be proceeded against and convicted for the same, either together with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the county, riding, division, liberty, city, borough or place where such principal offender may be convicted, or that in which such offence of aiding, abetting, counselling, or procuring may have been committed."

In Benford v. Sims (1898) 2 QB 641 it was held:

"A person who has counselled the commission of an offence punishable on summary conviction may, under section 5 of the Summary Jurisdiction Act, 1848, be convicted upon an information which charges him with having committed such offence as a principal offender."

There the defendant, a veterinary surgeon, who had certified as quite fit for work a mare which was found to be very lame, in great pain and suffering from long-standing disease of the feet, was charged with "unlawfully cruelly ill-treating a horse by causing it to be worked while in an unfit state". The Stipendiary Magistrate for the Borough of Cardiff found that the defendant had, in fact, certified the horse as fit when it was not, but dismissed the information and among his reasons was that the defendant was charged with the offence committed by the owner and not with the offence disclosed by the facts, namely, knowingly counselling an act of cruelty to be caused. In the Divisional Court of Queen's Bench, it was held that he was properly charged as a principal and, in keeping with the findings of the Magistrate, the case was remitted with a direction to convict. The Court thought it

strange that, in the fifty years since the passing of the Act in 1848, there appears to have been no case on the point. At least none was brought to the attention of the Court. Just two years after the passing of the Summary Jurisdiction Act, 1848, in 1850 Parts I & II of the Justice of the Peace Jurisdiction Act was passed in Jamaica but what is now section 6 and in terms identical with the Act of 1848 did not appear in the Act. Du Cros v. Lambourne (1907) 1 KB 40 followed Benford v. Sims (supra). The headnote to that case reads:

"A person who has aided and abetted the commission of an offence punishable on summary conviction may, under s. 5 of the Summary Jurisdiction Act, 1848 be convicted upon an information which charges him with having committed the offence as principal offender.

The appellant appealed to quarter sessions against a conviction for unlawfully driving his motor car at a speed dangerous to the public. At the hearing of the appeal there was a conflict of evidence as to whether the car was being driven by the appellant or by a lady seated by his side in the car. The quarter sessions, without deciding whether the appellant was himself driving the car, dismissed the appeal, finding as facts that if the lady was driving she was doing so with the consent and approval of the appellant, who must have known that the speed was dangerous, and who, being in control of the car, could, and ought to, have prevented it:-

Held, affirming the decision of quarter sessions, that there was evidence on which the appellant could be convicted of aiding and abetting the commission of the offence."

When the case went on appeal before the King's Bench (Lord Alverstone C.J., Ridley J. and Darling J.) the Bar was better represented than in Benford v. Sims (supra). Lord Alverstone, C.J. said at page 43:

This appeal raises two important points, one of law and the other as to the proper conclusion to be drawn from the facts stated in the case. The main argument addressed to us on behalf of the appellant on the first point was based on the ground that the appellant was not charged in respect of that which he was really doing, viz., aiding and abetting the driving of the car at a speed dangerous to the public, but was charged with having himself driven the car, and it is contended that having been charged as a principal he cannot be convicted on this information as an aider and abettor. It is important in dealing with this point to bear in mind that in the case of crimes other than felonies there is no distinction between a principal offender and aiders and abettors; as was pointed out by Blackburn J. in Reg. v. Burton (1875) 13 Cox, C. C. 71, there is no such person as an accessory in point of law in a misdemeanour."

Then later at page 45 he said:

"The question which we have to decide has, however, already come before this Court in the case of Benford v. Sims [1898] 2 Q.B. 641. It is quite true that no counsel appeared for the respondent in that case, and that the Court therefore had not the assistance of hearing an argument on both sides, but is a mistake to suppose that this question was not present to the minds of the learned judges who decided that case. Ridley J. said *Ibid.* at p. 644:

" In my opinion, however, s. 5 of Jervis's Act may properly be read as meaning that a person who knowingly counsels such offences to be committed is to be proceeded against and convicted for the same either together with the principal offender or before or after his conviction, and may be treated throughout as the principal offender;"

and Channell J. said *Ibid.* at p. 646:

'It seems to me that the true construction of s. 5 is to make anybody who aids, abets, counsels, or procures, liable to be proceeded against in every respect as if he were a principal offender.'

That is both excellent common sense and good law, and bearing in mind that in respect of crimes less than felony the law does not draw any distinction between principals and others, I have come to the conclusion that the appellant could on this information be convicted of aiding and abetting, assuming that there was evidence that the appellant did aid and abet the commission of the offence."

What is now section 6 in the Justices of the Peace Jurisdiction Act, and which but for geographical locations named, repeats section 5 of the Summary Jurisdiction Act, 1848, is first encountered as section 5 in the Justices of the Peace Jurisdiction Law, 1927, by which time it had already been judicially interpreted in Benford v. Sims (supra) and Du Cros v. Lambourne (supra). The legislators are presumed to have known and intended the section to carry its judicial interpretation into our law and be so understood and applied. Consequently, we hold that the appellant was properly charged as a principal and so lay to rest the submissions based on

the capacity in which he was charged.

Both grounds of appeal attracted arguments centered around procuring, which arose out of the finding by the Resident Magistrate that the appellant's "primary function was to procure others to sell ganja to Lamb to export to the U.S.A.". It was Mr. Phipps' contention that, on the evidence, there was no procuring and further that there is a distinction between "procuring a person to commit an offence" and "procuring the commission of the offence".

A brief but comprehensive analysis of the role played by the appellant given by Miss Hughes earned Mr. Phipps' commendation as brilliant. She submitted that in the evidence accepted by the Court there was ample proof of the appellant's role as a facilitator:

1. The familiarity between Lamb and the appellant with whom he had communicated as "sister";
2. The appellant's direct responsibility for finding persons who could supply ganja and putting them in contact with Lamb and others who required the ganja;
3. The discussion with Lamb of Gamon's unreliability in his role of securing the ganja. The appellant saying he was aware Gamon not performing and offering to assist;
4. The appellant taking Ruby and Cecil Ramsamugh to the meeting at Cariblue. He took part in the meeting held at his request where arrangements were made for the acquiring and transporting of the ganja;
5. The appellant suggested several airstrips which was a vital aspect of the enterprise of exporting the ganja;

6. Without the appellant there was no certainty the parties would be in contact.

We agree that a very vivid picture is here presented of the very active and essential role played by the appellant. Add to this picture, the very important role of securing the return of the radios which were essential to making contact with the plane to take delivery of the ganja and the very significant role played by him in ensuring the success of the evil enterprise becomes even more apparent.

But Mr. Phipps contends that the bulk of this evidence is provided by Lamb, an undoubted accomplice, concerning whose evidence no corroboration was forthcoming.

It must be borne in mind that the learned Resident Magistrate, in his recorded remarks, was dealing with four accused persons insofar as any questions of law were dealt with. In this regard, we call attention to the relevant statement concerning corroboration:

"Lamb's testimony was corroborated in parts by Timothy Williams and Senior Superintendent of Police Strong.

I accepted the witnesses for the crown as truthful. They were never materially discredited. I warned myself of the dangers of acting on the uncorroborated evidence of an accomplice."

In our opinion, what is meant to be conveyed by these remarks is the fact that, "while there are areas in Lamb's evidence which have been corroborated, there are also areas in which such corroboration is lacking but I have warned myself of the dangers of acting upon those uncorroborated areas". And that is so whichever of the accused persons may be affected. With such an approach we can find no fault. We need only state that corroborative evidence is not a facsimile of the evidence sought to be corroborated but independent evidence

in some material particular tending to implicate the accused in the commission of the crime.

The meeting at Cariblue was of crucial importance to the whole endeavour. Lamb gave specifics of the meeting and Timothy Williams identified the appellant at that meeting at which there were discussions lasting for some three hours with other co-accused. The fact that he took along with him a prescription for Lamb, which he only wrote on request over the telephone and not after an examination of the patient, tends rather to condemn him than to present an innocent explanation for his presence. Further, the telephone conversation overheard by Senior Superintendent Strong and the remark by the appellant under caution after arrest, viz., "that he did not ship any ganja. He only put some people together" are very consistent with the facts presented by the prosecution.

We entertain no doubt that there was some corroboration of Lamb's evidence affecting the appellant and that he played the part which the evidence assigns him. But even if it could be objected that the supporting evidence does not amount to corroboration then it should be noted that the learned Resident Magistrate has duly warned himself.

The final question must be, therefore, what legal tag should be put on the appellant's role? Even without the benefit of the statement attributed to him after arrest, it is clear that the burden of the case against him is that he played the central role of getting together the team which was to secure the load of ganja for the specific purpose of it being shipped out of Jamaica. Accordingly, the finding that he was not an accessory to the charge of trafficking is unwarranted since it was never in the contemplation of the parties that the destination of the load of ganja was anywhere but the U.S.A. from where they expected to receive

payment which was quoted in U.S.A. dollars. Furthermore, it was known that an aircraft would be used to convey the ganja abroad. However, that inconsistency does not affect the credit of any witness or the reasonableness of any inference on which the other charges depend.

The finding that the appellant was an accessory before the fact to possession of ganja, dealing in ganja and exporting ganja are eminently consistent with the evidence. Such a finding confirms that the appellant did not himself perform the actus reus but by his performance or scheming, if you like, as indicated in the evidence, he brought about the acts which are the subject-matter of the offences charged. Among the meanings assigned to "procure" in the Webster's Third International Dictionary are:

1. Obtain by some effort or means.
2. Bring about by scheming or plotting.
3. To cause to happen or done.
4. To prevail upon to do something indicated.

We are in no doubt that the appellant's conduct can find a comfortable resting place among those meanings. Accordingly, the purported distinction between procuring a person and procuring the commission of a crime is making dalliance with semantics.

The submission by Mr. Mel Brown, who joined the appellant's team of attorneys, that the sentence of imprisonment was excessive had no more to commend it than the unmeritorious submissions on the conviction.

These, then, are our reasons for dismissing the appeal and affirming the convictions and sentences on January 15.