

J A M A I C A

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 122/77

BEFORE:

THE HON. MR. JUSTICE KERR J.A. - Presiding
THE HON. MR. JUSTICE ROBOTHAM J.A.
THE HON. MR. JUSTICE CARBERRY J.A.

REGINA

v

NORMA KEANE

Mr. B. McCaulay Q.C. and Mr. Earl Witter for the Applicant

Mr. A. Smith for the Crown

March 17, 1978

KERR J.A.

This is an application for leave to Her Majesty in Council from a judgment of the Court of Appeal, The President, Mr. Justice Henry J.A., Mr. Justice Rowe J.A. (Ag.), dismissing an appeal by the applicant from a conviction in the Resident Magistrate's Court on an indictment charging her with conspiracy to defraud, for that along with others named in the indictment, she, on diverse days between the 6th day of June, 1974, and the 26th day of November, 1974, in the parish of Kingston, conspired together with other persons unknown to defraud the Government of Jamaica by using false documents and fraudulent devices to secure the unlawful importation into the island of restricted goods.

The facts of the case were concisely summarised by the learned President in delivering his judgment. They revealed a chain-like conspiracy with each participant in playing his role forging a link in that chain; the defendant's link being at the end of the chain. Notwithstanding, it seems clear that her role was essential to the success of such a venture. It was contended, however, on her behalf that what she did, having regard to the precise wording of the indictment, was not within the ambit of the offence as described in the indictment; the contention being that on a strict interpretation of the word 'importation' what she did

was not concerned with the importation of the goods. In support reference was made to section 2 of the Customs Act and the following cases were cited:-

R v Borbir (1973) 2 W.I. Reports p. 343.

Wilson v Chambers & Co. (1925) Commonwealth L.R. p. 131.

In giving judgment, the Court was concerned with the phrase, 'to secure the unlawful importation' and expressly considered the meaning of the word 'secure'. No express definition or interpretation was given to the word 'importation'. In giving an interpretation of the charge in the indictment, the court was of the view that anyone concerned with the importation of the goods must have had in contemplation the clearance of the goods which was essential to the success of the enterprise.

The points of Law for which a further appeal is desired are as formulated in the application:-

- " 1. Whether or not, in a charge of conspiracy to defraud, the particulars of which alleged a conspiracy to secure the unlawful importation of restricted goods, the words unlawful importation should be given a meaning according to the provisions of Law, to wit, the Trade Act and the Customs Act.
2. If the answer to 1 above is negative, whether or not, the ordinary meaning of the word 'importation' includes the clearance of imported goods."

To determine whether or not the applicant's conduct fell within the ambit of the offence by an interpretation of the word 'importation' only would be, in our view, no more than a dictionary drill - a type of pedantic refinement which would obscure the realities which in this case are that this applicant with others conspired together to defraud the Government by using false documents and fraudulent devices.

We are, therefore, of the view that the questions sought to be determined do not arise. Insofar as the judgment interprets the nature of the offence as set out in the indictment, there is no conflict with any of the cited cases in which the meaning of 'importation' was considered, and does not per se extend the meaning of that word beyond its normal meaning or the definitions in The Customs and Trade Acts. In the circumstances, the application is refused.