

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL No. 41/1976

BEFORE: The Hon. Mr. Justice Luckhoo, P. (Ag.) Presiding
The Hon. Mr. Justice Swaby, J.A.
The Hon. Mr. Justice Watkins, J.A. (Ag.)

:
R. v. PEARL LOPEZ

Ian Ramsay for the appellant.

N.L. Sang for the Crown.

March, 10, 11, 24, 25, 26; April 9, 1976

Luckhoo, P.(Ag.): .

The appellant Pearl Lopez was on November 24, 1975 convicted by the resident magistrate for the parish of St. James, Mr. K.S. Atterbury, on twelve counts of an indictment each charging embezzlement, contrary to s. 22(1) (b) of the Larceny Act. In each count the allegation was that the appellant on February 2, 1975 in the parish of St. James, being a clerk or servant to Air Jamaica (1968) Limited, fraudulently embezzled the sum of \$2 in money received by her as Travel Tax in respect of a specified Travel Tax Ticket stub for or in the name, or on the account of Air Jamaica (1968) Limited, her employer.

The appellant was fined the sum of \$50 and ordered to pay the sum of \$2 as costs in default to be imprisoned for 30 days in respect of each of nine counts of the indictment, and was admonished and discharged in respect of the remaining three counts.

The appellant has appealed against her convictions.

For some years prior to February 2, 1975, the appellant was employed to an airline organisation referred to in the evidence as Air Jamaica. In April 1969 she was promoted to the position of Customers' Service Supervisor. On February 2, 1975 and at all material times she occupied that position in the Air Jamaica ticket office at the Sangster International Airport in the parish of St. James. As a supervisor she was responsible for the day to day supervision of the airline's "check-in" functions relating to passengers travelling by aircraft from Sangster International Airport. She supervised the clerks employed at that office in the performance of their duties. Part of the duties of the airline's clerks performing "check-in" functions and indeed of customers' service supervisors whenever the latter assisted in performing "check-in" functions was the collection of travel tax from passengers who proposed to travel on air tickets sold them by Air Jamaica or by Air Jamaica aircraft from Jamaica to any place outside Jamaica other than those who, in the latter case, had already paid travel tax to travel organisations from which they may have purchased their air tickets.

Travel tax is a tax in a prescribed sum required by the Travel Tax Act to be paid by such passengers (referred to in that Act as "travellers") (other than travellers exempted by law from payment of travel tax) on each occasion on which they leave Jamaica for any place **outside** Jamaica and by s.4 of that Act any person (whether incorporated or not) who issues to a traveller a ticket or other document authorising that traveller to be transported by another person by aircraft from Jamaica to any place outside Jamaica (designated in the Act as a "carrier") is required to collect the travel tax payable by a traveller and to pay it over to a Collector if not the person so transporting the traveller by aircraft (also designated in the Act as a "carrier") is required so to do. The system employed by Air Jamaica at all relevant times in relation to the collection of travel tax from travellers was as follows. Travel tax tickets would be requisitioned by the cashier of Air Jamaica from the Collector of Customs. Travel

tax tickets would be issued by the Collector of Customs in booklets of 50 tickets. Each ticket had two sections - the ticket proper and the stub relating thereto. Tickets booklets received from the Collector of Customs would be recorded by the cashier in numerical sequence. On demand the cashier would issue a supervisor with a number of travel tax booklets. The supervisor would sign for the receipt of booklets so issued and would make an entry in a Travel Tax Register of the booklets received. The Supervisor's stock would be kept in a locked compartment of the office safe. Supervisors would issue clerks with travel tax booklets and the issue would be indicated in the Travel Tax Register. The clerk in turn would sign that Register acknowledging receipt of the booklets. The Travel Tax Register would show the date of receipt of booklets by a supervisor from the cashier, a list of the booklets in numerical sequence, date on which a clerk received a booklet and the signature of the receiving clerk. Each booklet had tickets as well as stubs numbered in numerical sequence. Tickets proper bore the words "Travel Tax Ticket" and "Valid for one departure from Jamaica. Please retain and show on demand."

When a traveller paid travel tax in the prescribed sum to a clerk or to a supervisor (where the supervisor assisted in processing a traveller) the traveller would be issued a travel tax ticket from a booklet in acknowledgement of the payment by him of travel tax. The travel tax ticket would be stapled on to the ticket folder containing the traveller's air ticket by the person processing the traveller. The stubs relating to the travel tax tickets issued travellers would remain in the booklet and when the booklet was completed the stubs would be retained for a period of three months and would then be discarded by dumping in a rubbish bin.

A clerk was required to keep a booklet until it was completely used. On completion the clerk was required to report the proceeds relating to the issue of travel tax tickets from a booklet and to hand over the stubs in the booklet to the

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cashier. Where supervisors assisted agents in processing travellers they would normally use a travel tax booklet from their stock. On completing the booklet the supervisor would hand the stubs and cash collected as travel tax to a clerk who would include the same in his returns to the cashier. The clerk would sign besides the supervisor's name in the Travel Tax Register in respect of the booklet. At all material times where Air Jamaica had no remaining stocks of travel tax tickets a purchase of such tickets might be made from other airlines. Clerks were permitted to purchase travel tax tickets from other clerks of Air Jamaica for the purpose of processing travellers. Once per month the cashier would make a return (as required by the provisions of the Travel Tax Act) to the Collector of Customs indicating the number and series of travel tax tickets issued travellers. The amount of the tax collected would be lodged to Air Jamaica's bank account and later paid to a Collector as required by s. 4 of the Act. From time to time the accounts relating to the issue of Travel Tax tickets would be audited.

Upon a traveller liable to pay travel tax proceeding to depart the Island he would be required to exhibit to the Immigration Officer at the airport a travel tax ticket issued him in payment of the specified travel tax. If the immigration Officer is satisfied that the traveller has in his possession a valid travel tax ticket he would stamp that ticket and allow the traveller to proceed for the purpose of embarkation.

The case for the prosecution was to the following effect. On February 2, 1975, Constable Errol Campbell an Immigration Officer at the Sangster International Airport Montego Bay in the parish of St. James was on duty at that Airport. He was checking departing passengers. At about 3.15 p.m. that day a passenger presented to him a ticket folder with what then appeared to him to be a valid travel tax ticket affixed to it. Constable Campbell placed his Immigration Stamp on it and the passenger was permitted to proceed for embarkation.

Constable Campbell thereafter observed that what purported to be a valid travel tax ticket was instead a travel tax ticket stub. He had been deceived by the similarity in appearance and size of travel tax ticket and stub. Observing from the stub that it had been obtained from Air Jamaica he went to the Air Jamaica counter at the Airport and there spoke to the appellant. He told her that he had discovered that a passenger had presented a ticket folder with a stub. He showed her the stub. He did not show her the passenger nor the passenger's ticket or folder. The passenger had already gone on. The appellant told him that the stub could have been pinned on by any of the clerks and that she was sorry about it. He told her that he wanted to see the manager Mr. Lyn. The appellant told him that the manager was not then in office. She said she would substitute a valid travel tax ticket as she was the person who processed that passenger. The appellant gave him a genuine travel tax ticket. He then returned to his post. About 8-- 10 minutes later two passengers - husband and wife - presented to him two similar stubs (affixed to one folder) purporting to be travel tax tickets. He went with those passengers to the Air Jamaica counter and there the passengers pointed out the appellant from among other employees as the person who had affixed the stubs to their folder. The appellant agreed that she had done so and gave him two valid travel tax tickets. These like the one given him earlier by the appellant were taken by the appellant from under the counter. She told him that earlier that day a woman had come to her and told her that she had 12 passengers going out. The woman had asked her to prepare 12 tickets for them. She said that she did as the woman requested and attached 12 tax receipts with the intention of collecting the money for the tax receipts when the woman returned. The woman returned that day and gave her 12 tax receipts instead of money and she (appellant) decided to sell those tax receipts "to recover the money". Const. Campbell said that he attached the two valid travel tax tickets that the appellant gave him to the folder and retained the two stubs. The two passengers boarded their flight and he

returned to his post.

Thereafter nine other passengers presented to him stubs attached to their folders. He went to the appellant and told her that he was still getting stubs and that the passengers had said that she had given them the stubs. The appellant then said that she could not refund anymore tax receipts as they (stubs) had been given to her by the woman with the 12 passengers. Later that day he handed over to a superior officer the 12 stubs so presented to him by the passengers.

It was proved that the 12 stubs presented to Const. Campbell came from booklets containing travel tax tickets issued in July and August, 1974 to three different customers' service agents of Air Jamaica. The travel tax tickets to which those stubs related had been issued to travellers during those months.

Later on February 2, 1975, Const. Campbell made a report to one Mrs. Nassif a supervisor of Air Jamaica. Mrs. Nassif sent for the appellant and told her that Const. Campbell had complained that tax receipts stubs were being presented to passengers and the latter had all said that the appellant had given them the stubs. According to Mrs. Nassif Const. Campbell cautioned the appellant and told her that he was going to ask her certain questions about a travel tax ticket stub (which he showed her) which she did not have to answer. The appellant said she did not know how she had come by it but she remembered checking in some people earlier that morning and after doing so she asked for departure tax money and was given 12 tax receipts instead. These she had placed in her envelope. She said she could have used them during that day. According to Const. Campbell and Customs Officer Weatherly the appellant admitted that she had given the ticket stubs to the outgoing passengers.

Keith Thelwell, Customers' Service Manager employed to Air Jamaica at Sangster International Airport went to the Airport at about 5 p.m. on February 2, 1975. He received certain information and tried to find the appellant but she had already left the Airport. He checked the Airline's safe to see if he could

find the envelope which was being used by the appellant but it was not there. A check of the Travel Tax Register disclosed that the appellant had taken two travel tax booklets. On the following day he saw the appellant at the Airport shortly before 8.30 a.m. He told her that serious allegations had been made against her the day before regarding the sale of travel tax stubs and that he would like to hear from her what happened. She said that a passenger had been there early in the morning and had handed her 12 ticket folders for processing. She had processed them and when the person returned to collect the documents she asked for payment for travel tax tickets she had affixed. The person handed her what she thought were tickets instead of cash. She placed the 12 tickets in her envelope which she was using for cash. Thelwell asked the appellant why she had taken the envelope with the money and travel tax booklets. She said that she was embarrassed by the behaviour of the Immigration and Customs Officers and had lost her head and put the envelope in her bag. Thelwell told the appellant that he had done some checks on February 2, 1975 and that his information was that the booklets in respect of which her signature appeared had been signed for in the afternoon and that in the course of discussion with the members of the staff who were on duty they had told him that they did not have any travel tax transaction with her that day. He also questioned her regarding the number of persons she had processed as against the number of travel tax tickets sold by her. The appellant handed him on unsold travel tax ticket and the cash for 49 tickets. He questioned her as to the whereabouts of the other booklet and she said she had signed for it but had in fact handed it to a customers' service agent. Asked by Thelwell to identify the agent to whom she had handed the booklet the appellant said she did not remember. A search for the missing booklet that day was made in vain in the compartments of agents (clerks) who were at work on February 2 but it was discovered in an envelope which was being used by Mrs. Nassif on that day.

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Mrs. Nassif said that she had taken that booklet from the safe and had issued travel tax tickets from it to passengers while assisting agents in processing passengers for departure.

Of nine employees who were on duty in the Airline's Office on February 2, 1975, five testified that they had no transaction with the appellant on that day in respect of travel tax tickets. The remaining four employees were either abroad or unavailable to be called at the time of the trial.

The case for the prosecution stated shortly was that the appellant being a clerk or servant to Air Jamaica had collected from each of 12 travellers a sum of \$2 as travel tax for or in the name of or on account of her employer Air Jamaica and had failed to pay over those sums to Air Jamaica with intent to defraud Air Jamaica. By issuing to each traveller a discarded travel tax ticket stub relating to a travel tax ticket which already had been issued to a traveller in the previous year the failure to pay over those sums to Air Jamaica would not be reflected in the sale of valid travel tax tickets from travel tax booklets in use on February 2, 1975 and the similarity in size and appearance of the stubs with travel tax tickets proper readily facilitated deception of the Immigration authority.

The appellant in her defence made a statement from the dock which after setting out the appellant's name and address the learned resident magistrate recorded as follows -

"Up to 2nd February I was employed as a Customers' Service Supervisor with Air Jamaica at the Donald Sangster International Airport.

On morning of 2nd February, 1975, I was asked by a lady to prepare ticket folders and travel tax for 12 passengers returning to the United States. These 12 tax I purchased from one of 9 agents on duty that day. I cannot remember which agent.

When she returned to collect the tickets instead of handing me \$24.00 as payment for the travel tax, she handed me 12 travel tax tickets which I collected from her and later resold to reimburse my cash envelope float. Later that day I subsequently signed for another tax book and also signed for one which I handed to Mrs. Nassif.

All moneys collected by me for travel tax for on or behalf of Air Jamaica have been handed in. If the 12 tickets which are stubs that I am charged for in Court were sold by me they could only have come from the tickets which I collected from the

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lady earlier that day.

That is all."

In convicting the appellant the learned resident magistrate rejected the appellant's story that she had purchased tickets from an agent on the morning of February 2, 1975. He found that she had deliberately given stubs to passengers liable to pay travel tax and had acted fraudulently in appropriating the moneys collected as travel tax to her own use and benefit. He also found that she told different stories at different times in an effort to conceal her fraudulent design.

A number of grounds of appeal were argued before us. As we indicated during the course of the argument there was no substance in the first two grounds set out in the grounds of appeal filed and no further mention need be made of those grounds.

The first part of the third ground was as follows -

"Upon the foundation of the Travel Tax Act, the relationship between Air Jamaica and its employees was that of co-agents for the purpose of the collection of Travel Tax for the Government: Accordingly, there could be no embezzlement as between them, as upon the hypothesis the relationship is one of agency and not of master to clerk or servant for the particular purpose."

The provisions of the Travel Tax Act required the carrier, in this case Air Jamaica, to collect travel tax from travellers (as defined in the Act) and to pay over the tax so collected to the Collector. There was no statutory obligation imposed on the members of the staff of Air Jamaica as such to make the collection or to make payment to the Collector. It was solely by virtue of their contractual terms of employment that certain members of the staff of Air Jamaica, including the appellant, were required by Air Jamaica to collect and account to Air Jamaica for travel tax paid by travellers to Air Jamaica. The appellant received the moneys paid by travellers as Travel Tax on account of her master Air Jamaica and not on account of the Government. Thus the relationship between the appellant and Air Jamaica for the particular purpose was one of servant and master. This part of the third ground of appeal therefore fails.

The second part of the third ground of appeal is framed in the alternative to the first part of the ground as follows -

"The elements of the offence of embezzlement were not made out as regards the scope of employment, in that there was in fact no receipt of monies by the servant within the scope of employment for and on behalf of Air Jamaica on the Crown's case.

And it is submitted that where by means of a crime anterior to a taking, a servant becomes possessed of money, such money cannot be the subject of embezzlement as the essence of that offence is the misappropriation of money (or a 'res') lawfully and regularly received for and on account of a master: And there cannot be a dishonest misappropriation of money already dishonestly come by: Or, to put it another way, the crime breaks the nexus of the scope of employment."

As to the first part of this alternative ground it is not doubted that where a servant has appropriated to his own use money received as a result of the unauthorised and wrongful use of his master's implements of trade from a person who contracted with the servant only and knew nothing of the master in the transaction the servant is not guilty of embezzlement. The cases of R. v. Snowley (1830) 4 C. & P. 390, R. v. Wilson (1839) 9 C. & P. 27, R. v. Aston (1842) 2 C. & K. 43, R. v. Harris (1854) 1 Dears 344 and R. v. Cullum (1873) L.R. 2 C.C.R. 28 are examples of the application of that principle.

The position in the instant case is quite different. Here a traveller is obliged by law to pay the appropriate carrier the amount of the travel tax and the carrier is bound by law to demand and collect the same. There was clearly in this case a receipt of moneys by the appellant within the scope of employment for and on behalf of her master Air Jamaica, Air Jamaica being bound to collect the money as travel tax from travellers and the appellant being required by the terms of her employment with Air Jamaica to receive for Air Jamaica the moneys in every such case.

As to the second part of the alternative ground it is to be observed that by virtue of reg. 7 of the Travel Tax Regulations, made by the Minister under the powers conferred on him by s. 10 of the Act where travel tax is paid to a carrier by a traveller the carrier shall issue to the traveller a receipt for

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such tax and where a ticket or other document is issued to or held by a traveller authorising him to be transported by air by a carrier, the carrier may instead of issuing a receipt, denote on such ticket or other document that the travel tax has been paid. A Travel Tax ticket is thus a receipt issued by a carrier acknowledging payment of Travel Tax by a traveller. There is thus no commission of a crime anterior to a taking for a traveller is bound by law to make the payment of tax. It was submitted that the payment of tax proceeds upon a representation that the traveller will get a genuine travel tax ticket. We do not agree with this submission. The traveller does not make the payment as a result of any representation that he will get a genuine travel tax ticket. He makes it because he is required by law to do so. The travel tax ticket he gets is a mere receipt evidencing such payment as required by reg. 7 of the Travel Tax Regulations. There is thus no substance in this part of the alternative ground.

It was next submitted that the offence of embezzlement was not made out as regards loss in that it was not proved by the Crown that Air Jamaica suffered any loss so as to indicate that any moneys due as travel tax were not handed in and that indeed it was positively proved that there was no loss. This submission proceeds upon certain statements made by Mr. Thelwell in the course of his testimony. Mr. Thelwell said "Air Jamaica is not short on its travel tax accounts. Air Jamaica is only entitled to collect travel tax on valid travel tax tickets sold by them." And again "Bogus sale of stubs would not reflect a shortage in my accounts but it would result in loss of revenue to Government."

However, it may be that the Accounts kept by Air Jamaica would not reflect a loss in such circumstances it is patent that where moneys are paid by travellers to servants of Air Jamaica on account of Air Jamaica and are retained by those servants for their own use there must necessarily result a loss to Air Jamaica as that carrier is bound by the provisions of the Travel Tax Act to pay over to the Collector the moneys so collected. The submission

in this regard is therefore without merit and it likewise follows in relation to the final part of this ground that upon the evidence adduced by the prosecution there was shown to be a loss occasioned to Air Jamaica by reason of the retention by the appellant of the moneys received by her from the respective travellers.

It was submitted in relation to the fourth ground of appeal that the Crown failed to prove "that any passengers who allegedly bought ticket stubs by way of travel tax was a 'traveller' within the meaning of the Act, and that therefore there was any liability to pay tax, or, conversely, any entitlement to recover it on behalf of Air Jamaica." We are of the view that the evidence adduced by the prosecution was sufficient to lead to clear inference that the passengers who each paid the sum of \$2 to the appellant as travel tax were persons intending to depart Jamaica by air for places outside of Jamaica and were thus travellers within the meaning of that term in the Act and liable by law to pay travel tax. That apart, the appellant in her statement from the dock affirmed this fact and this Court sees no reason why her statement in this regard is not to be given full force and effect. See R. v. Power (1919) 14 Cr. App. R. 17.

In respect of grounds 5 to 9 (inclusive) which relate to the defence put forward by the appellant it was submitted that the learned resident magistrate was wrong in holding in effect that the Crown had negatived the defence of the appellant which arose on the Crown's case and was substantiated by the accused's statement that she had sold travel tax tickets on the morning of February 2, 1975 which she purchased from nine agents and that his process of reasoning leading to a conclusion adverse to the appellant proceeded from a misunderstanding of the effect of the statement made by the appellant in her defence.

The learned resident magistrate in rejecting the appellant's story about a transaction with a woman in the morning of February 2, 1975, said that he wished to incorporate the text of his ruling on the no case submission (made at the close of the case for the prosecution) as to the evidence and to add certain other

findings to which reference will be made later. In respect of the text of his ruling on the no case submission the learned resident magistrate expressed himself as follows on the evidence adduced by the prosecution -

"At about 3.15 p.m. accused is confronted with Exhibit 1. She said it could have been pinned on by any of the clerks and she was sorry about it. She later said she would substitute a valid travel tax ticket as she was the person who processed that passenger. I pause here to observe that if, as a supervisor and a person of considerable experience with an airline, she had then discovered that Exhibit 1 was a stub and had been one of the 12 which she took in as genuine tickets, she ought to have been put on her inquiry as regards the other "tickets". For Exhibit 1 accused substituted a genuine ticket.

Some 10 minutes later accused was confronted with Exhibit 2 and then she told "the story of the 12". It seems this story was not available when she was confronted with Exhibit 1. Accused substituted 2 genuine tickets but her request to be handed Exhibit 2 was refused.

Eventually accused was confronted with Exhibit 3 and she said she could refund no more as she had got them under the circumstances related in "the story of the 12".

Accused told Mr. Thelwell the transactions with the lady in "the story of the 12" took place early in the morning of 2nd February, 1975.

According to Mr. Thelwell "it is quite normal for passengers who purchase tickets from or reconfirm through a travel agent, to purchase travel tax prior to arrival at the Airport" but "where tickets are purchased at the Airport it is normal to issue the departure tax at that time. The passenger would be required to make payment of the travel tax to the person who checks him in, or to the person from whom the airline ticket is purchased."

As to "the story of the 12" accused gave 2 versions - (i) to Constable Campbell that "a woman came to her and told her that she had 12 passengers going out and she should prepare 12 tickets for them." In this situation the woman would not be purchasing tickets from or reconfirming through a travel agent to make it quite normal for her to be in possession of travel tax ticket prior to arrival at Airport.

(ii) To Mr. Thelwell that "a passenger handed her 12 ticket folders for processing. She said she did this and when the person returned to collect the documents she asked for payment of the travel tax tickets she had affixed. "In this situation it could be said tickets were not being purchased at the Airport and travel tax could well have been paid to the travel agent who may have sold the tickets.

The story told to Constable Campbell certainly would not appeal to Mr. Thelwell because to him it would not be normal for a passenger purchasing tickets from Air Jamaica, at the Airport, to be already in possession of travel tax tickets.

Why then were 2 different version given, one to the layman Campbell and the other to the expert Thelwell? Why would a travel agent (a) sell travel tax tickets without airline

tickets or (b) sell airline tickets without collecting travel tax to safeguard himself and cover his liability under section 4(2) of the Act, being himself a "Carrier" within the meaning of section 2 of the Act."

In addition the learned resident magistrate added the following -

- "1. Supervisors are not given cash float.
2. In the morning accused was not in possession of Travel Tax Tickets nor had she sold any tickets.
3. If she purchased 12 tickets from an agent she must have had at least \$24.00 of Air Jamaica money in her possession since she said "when she returned to collect the tickets, instead of handing me \$24.00 as payment for the travel tax, she handed me 12 travel tax tickets which I collected from her and later re-sold to reimburse my cash envelope "float".
4. Having signed for and put into use a travel tax ticket booklet later in the day and having issued 49 tickets accused turned in one remaining ticket, 49 stubs and \$98.00 in cash. One would have expected accused to have turned in \$98 in addition to at least \$24.00 from the sale of the 12 "tickets" which came from the lady involved in "the story of the 12".
5. I conclude, Accused had no "Air Jamaica" money in the morning. She bought no tickets from any agent. She deliberately sold stubs to bona fide passengers liable to travel tax. She acted fraudulently by appropriating the money to her own use and benefit. She told different stories in an effort to conceal her impious design."

The third and fourth additional findings have been criticised in the sixth and seventh grounds of appeal filed as proceeding from a misappreciation and misunderstanding of the effect of the statement made by the appellant from the dock. While the appellant might have been endeavouring to convey by her statement that she had purchased 12 travel tax tickets on the morning of February 2, 1975 from one of Air Jamaica's agents with her own moneys it was most unfortunate not only that she did not explicitly so state but also that she should say she later resold 12 travel tax tickets she got from the woman "to reimburse my cash envelope float" instead of saying that she had reimbursed herself. Having regard to the fact that Air Jamaica agents are given money by the organisation for the purpose mainly of making change and the money so given is designated a "cash float" even though supervisors are not given "cash float" it is not surprising that the learned resident magistrate should have reasoned as he did in paragraph 3 of his additional findings.

It is significant that during the course of his address to the resident magistrate Mr. Ramsay is recorded by the learned resident magistrate as saying (at p. 40 of the record) -

"On accused's statement the first 12 tickets were paid for. For that, she received 12 tickets which she thought were genuine. If these "tickets" were sold then the presumption is that they were sold at \$2.00 each. Was that money turned over to Air Jamaica? Mr. Thelwell said Air Jamaica lost nothing and is not short on its' travel tax accounts.

Under the Travel Tax Regulations, 1963, records must be kept as to sale of Air Tickets and Travel Tax Tickets. The method of accounting is not in terms of travel tax tickets but in terms of passengers conveyed. If there was a shortage it must show up on the audit. Nobody has come to show where the loss was. If the money is not turned over the accounts cannot balance. If agents do not pay over to Air Jamaica then Air Jamaica would be short."
(Italics ours).

During the course of the argument before us we formed the preliminary view without reference to the above arguments that the learned resident magistrate may have misunderstood the effect of the statement the appellant made in her defence. Having examined the matter more closely, more especially in the light of the arguments set out above, we are satisfied that the process of reasoning set out in the third and fourth additional findings is sound.

Having regard to the totality of the prosecution's evidence, which was accepted by the learned resident magistrate, we are unable to say that the learned resident magistrate could not properly and reasonably conclude that "the story of the 12" told by the appellant was pure invention to cover up a fraud perpetrated by the appellant on her employer. It seems to us passing strange that if the appellant did purchase as many as 12 travel tax tickets for a single transaction from one fellow agent among nine she could fail to remember from whom she made the purchase within a matter of hours before the incidents of that afternoon and even on the following morning when Thelwell told her that his inquiries of the agents who were on duty on the previous day disclosed that none of them had any transaction with her relating to the sale of travel tax tickets.

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It was observed by Mr. Ramsay during the course of the argument that although the appellant's employer in each count of the indictment is stated to be Air Jamaica (1968) Limited, there is an absence of proof by way of evidence that the appellant's employer was a limited liability company. It is true that on each occasion reference is made in the evidence to the appellant's employer it is to "Air Jamaica" (Thelwell in this testimony said Air Jamaica was a "company"). However, it is undisputed that the organisation referred to in the evidence "Air Jamaica" is indeed the appellant's employer and having regard to the definition of the term "carrier" in the Travel Tax Act, "a person (whether incorporated or not)" it seems to us immaterial that there was no formal proof given that the employer was a limited liability company as was stated in the indictment.

For the reasons which we have set out above we dismissed the appeal affirming the appellant's convictions and sentences.