

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 201/76

R.M. CRIMINAL APPEAL NO. 67/77

BEFORE: THE HON. MR. JUSTICE ROBINSON (P)
THE HON. MR. JUSTICE MACCA J.A.
THE HON. MR. JUSTICE HENRY J.A.
THE HON. MR. JUSTICE ROBOTHELM J.A.
THE HON. MR. JUSTICE ROWE J.A. (Ag.)

REGINA

v.

ROGER YORK - APPELLANT

REGINA

v.

KARL WYNTER - APPELLANT

Messrs. Frank Phipps, Q.C., & Gresford Jones
for Appellant York

Mr. R.N.A. Henriques for Appellant Wynter

Messrs. Henderson Downer and Derrick Hugh for Crown

December 5, 6, 7, 1977, January 27, 1978

HENRY J.A.

These appeals came before us for consideration of the question of jurisdiction under the Exchange Control Act which is common to both. The appeal by the second named appellant had already been fully argued before three members of the present bench of judges and judgment reserved. In the case of the first named appellant the ground of appeal relating to jurisdiction extended beyond the ambit of the Exchange Control Act and has been argued before us, the other grounds of appeal raised being reserved for consideration at a future date in the ordinary way.

On April 12, 1976 the appellant York was convicted in the Resident Magistrate Court for St. Andrew on both counts of an indictment which charged him respectively with obtaining currency by false pretences (in breach of Section 35 (1) of the Larceny Act) and attempting to export foreign currency (in breach of Section 24 (1) (a) of the Exchange Control

Act). The prosecution led evidence to show that, having on a passport obtained foreign currency in 1974 for travel purposes, he proceeded, on the basis of a new passport and on the strength of representations to a bank that he had received no foreign currency allocation in 1974, to obtain in 1975 foreign currency to which he was not entitled. He was apprehended at the Norman Manley Airport, subsequently arrested in Kingston and ultimately tried in Half-Way-Tree in St. Andrew.

On September 26, 1975 the appellant Wynter was convicted on six counts of an indictment containing eight counts all but one of which related to offences under the Exchange Control Act. For the purpose of the jurisdictional question common to both these appeals it is sufficient to say that the alleged offences by Wynter under the Exchange Control Act were all committed in the parish of Kingston. The appellant was arrested in the parish of Kingston and was eventually bailed in Kingston to appear before the Half-Way-Tree Resident Magistrate's Court in St. Andrew. During the course of investigation he accompanied the Police to his home in St. Andrew but this was prior to his arrest.

We propose first to deal with the question of jurisdiction under the Exchange Control Act which is common to both appeals. Part II of the Fifth Schedule to the Exchange Control Act contains inter alia the following provisions:-

- 1 (1) "Any person in or resident in the Island who contravenes any restriction or requirement imposed by or under this Act, and any such person who conspires or attempts, or aids, abets, counsels or procures any other person, to contravene any such restriction or requirement as aforesaid, shall be guilty of an offence punishable under this Part:

Provided that an offence punishable by virtue of Part III shall not be punishable under this Part.

- (3) Any person who commits an offence punishable under this Part shall be liable:-

- (a) on summary conviction, to imprisonment for not more than three months or to a fine or to both;
- (b) on conviction on indictment, to imprisonment for not more than one year or to a fine or to both,

and where the offence is concerned with any currency, any security, any gold, any goods or any other property, the court may, if they think fit so to do, order the currency, security, gold, goods or property to be forfeited.

- 2 (1) No proceedings for an offence punishable under this Part shall be instituted, except by or with the consent of the Director or Public Prosecutions:

Provided that this sub-paragraph shall not prevent the issue or execution of a warrant for the arrest of any person in respect of such an offence, or the remanding in custody or on bail of any person charged with such an offence.

- (2) Proceedings against any person in respect of an offence punishable under this Part may be taken before the appropriate Resident Magistrate's Court in the Island having jurisdiction in the place where that person is for the time being."

These provisions were considered by the Privy Council in D.P.P. v. Nancy

Sanchez Burke (1977) 1 W.L.R. 908 in the course of deciding the following

question:-

"Whether or not the jurisdiction defined and conferred by the provisions of Part III of Schedule 5 of the Exchange Control Act empowers a Resident Magistrate to hear and determine the offences specified in paragraph 1 (1) thereof: (i) In his special statutory summary jurisdiction (see Interpretation Act, Section 3); and (ii) On indictment generally as well as in relation to such offences as independently of the Act are indictable misdemeanours at common law in particular conspiracy to contravene the statute."

Lord Diplock in his judgment had this to say about these provisions:-

"In their Lordships' view, these provisions give to the Resident Magistrate's Court for the parish in which a defendant is found, a jurisdiction to try, either summarily or on indictment, any of the offences created by paragraph 1 (1) or Part II of Schedule 5 of the Exchange Control Act."

It is the submission of counsel for the appellants that the Privy Council has considered and interpreted the relevant provisions of the Act, that that interpretation is both exhaustive and conclusive and upon that

interpretation the only Resident Magistrate's Court upon which the Act confers jurisdiction to hear Exchange Control offences is the court for the parish in which a defendant is "found" - that is, located either upon apprehension or service of a summons on him or upon being otherwise "found" prior to such apprehension or service.

On the other hand it is the submission of counsel for the Crown that the judgment of Lord Diplock must be considered against the background of the specific question being then considered, that the interpretation was for the purpose of that question and that it must not be regarded as either exhaustive or conclusive but merely illustrative.

In support of this proposition he cites the dictum of Lord Reid in Cassell & Co. Ltd. v. Broome (1972) 1 All E.R. 801 at p. 836:-

"It is not the function of noble and learned lords or indeed of any judges to frame definitions or to lay down hard and fast rules. It is their function to enunciate principles and much that they say is intended to be illustrative or explanatory and not to be definitive."

This dictum is, if we may say so with great respect, admirable, but the extent to which it could be applied in relation to the words of Lord Diplock would be a matter for consideration having regard to the context in which those words were used. At the same time if those words are to be construed in the manner suggested by counsel for the appellants the effect will be to render superfluous and meaningless the word "appropriate" in paragraph 2 (2) of Part II of the Fifth Schedule to the Act. It is a basic principle of construction that words in a statute ought not to be rejected as meaningless or superfluous if the statute can be so interpreted as to give effect to those words without absurdity or inconsistency. We must therefore consider the provisions of the sub-paragraph with a view to ascertaining whether some interpretation can be placed on the word "appropriate."

It has been argued before us that, the Jamaican Act being modelled on the United Kingdom Exchange Control Act, 1947, this Court ought to consider the provisions of that Act with a view to determining the correct interpretation of the Jamaican Act. We have not been referred to any cases in which the relevant provisions of the United Kingdom Act have been interpreted and in any event we do not consider that examination of the United Kingdom Act which insofar as paragraph 2 (2) is concerned, is similar to but not identical with its Jamaican counterpart will necessarily be of assistance in interpreting the Jamaican provisions. We therefore turn directly to an examination of these provisions.

It seems to us that while paragraph 2 (1) deals with the commencement of proceedings against a defendant, paragraph 2 (2) deals with the trial in court of those proceedings. Paragraph 2 (2) is clearly concerned with the jurisdiction of the Resident Magistrate's Courts to try criminal proceedings instituted under the Act. The question of jurisdiction is one which a court must consider at the outset when the trial of the proceedings is about to commence. In our view therefore the words "for the time being" are intended to refer to that point in time when the question of jurisdiction is being considered. What the statute is saying is that upon a defendant appearing for trial before a Resident Magistrate's Court, that court must determine whether it is the court having jurisdiction in the place where the defendant is for the time being and whether in consequence it has jurisdiction to try him for the offence charged. It is the submission of the Crown that the defendant being physically before the court at the time is automatically in a place in which the court has jurisdiction and the court is therefore given jurisdiction to try the offence with which the defendant is charged. It seems to us, however,

16

that this interpretation also fails to give any meaning to the word "appropriate." Counsel for the Crown submits that jurisdiction is conferred on all Resident Magistrate's Courts in the island and the word "appropriate" is used to indicate a choice between them having regard to all the circumstances of the case - the convenience of witnesses, of the accused, of counsel and the like. It seems to us that this submission overlooks the fact that the words "for the time being" must be directed to a particular point in time (vide Stone v. Wood (1917) 2 K.B. 885), and if jurisdiction is conferred by appearance before the court, at that point in time it would be that court and that court alone which would have jurisdiction. There would be no other courts with jurisdiction as between which it could be decided which was appropriate.

The use of the word "appropriate" to qualify the words which follow it in the sub-paragraph suggests a plurality of courts answering the description of "Resident Magistrate's Court in the island having jurisdiction in the place where that person is for the time being." Either there must be more than one Resident Magistrate's Court having jurisdiction in a particular place or there must be more than one place which can properly be regarded as the place where a person is for the time being. The only circumstances in which more than one Resident Magistrate's Court would have jurisdiction in a particular place are those in which the place is within one mile of the boundary between two parishes when the courts in both parishes would have jurisdiction. It seems unlikely that Parliament would set out to enact specific provisions to deal with that eventuality in respect only of offences under the Exchange/^{Control} Act. We are driven therefore to consider the other alternative. In the nature of things a person cannot be in more than one place at a given time. If there is to be more

than one place which can properly be regarded as the place where a person is for the time being therefore, either the time contemplated by the expression "for the time being" must be a variable factor, or the Act must contemplate something other than the actual physical location of that person at a given moment of time. If the time is a variable factor then the words "for the time being" would mean "from time to time" and there is the authority of Stone v. Wood against this construction. In any event such a construction would lead to the ridiculous possibility of jurisdiction in a particular case varying from time to time so that a court which had jurisdiction at the time of commencement of proceedings before it might cease to have jurisdiction before these proceedings are concluded. The other possibility is that the words "where that person is for the time being" mean "where that person is to be found for the time being" and that a court before which he appears for trial would have to determine this. In the ordinary course of things a person is to be found either at his home or at his place of work or, if he is in custody, at the place in which he is held in custody but a court would also be entitled to regard a defendant as "to be found" either in the place where he was arrested or served with a summons for the offence or at the address he gave on a bail bond if it differed from any of the above. If these places or addresses are in different parishes, the court would then have to decide ^{having regard to all the circumstances} ~~which is the appropriate parish with~~ jurisdiction. This is an interpretation which gives meaning to the word "appropriate" without either doing violence to the other provisions of the paragraph or resulting in an absurdity. It is an interpretation which is not inconsistent with the judgment of the Privy Council if the word "found" in that judgment is construed either as "found to be" or "to be found", or

as counsel for the Crown suggests, if the word is given its legal meaning of "determined to be." It is this interpretation which in our view ought to be applied in considering the question of jurisdiction under the Exchange Control Act in relation to both these appeals.

Before parting with this aspect of the appeals, we think we ought to deal with the submission of counsel for the Crown that the word "may" in the paragraph is mandatory and not permissive. In support of this submission he refers to Craies Statute Law 6th Ed. pp 229, 285, and cites re. Neath v. Brecon Railway Co. 9 Ch. App. (1873-4) p. 264 where it was stated:-

"It is urged that the Act only says it shall be lawful for the Court to order it to be paid out. That is the usual courtesy of the Legislature in dealing with the judicature. "It shall be lawful" means, in substance, that it shall not be lawful to do otherwise."

We are of the view that the paragraph is intended to supplement and not supplant the existing venue jurisdiction of Resident Magistrate's Courts conferred by the Judicature (Resident Magistrate's) Act, and by Section 9 of the Criminal Justice (Administration) Act. We are fortified in this view by the fact that Lord Diplock in D.P.P. v. Sanchez Burke indicated that (for the purpose of the question there being considered) it was not necessary to resort to Section 268 of the Judicature (Resident Magistrate's) Act to find jurisdiction, clearly implying that if the necessity arose resort could be had to that section. In our opinion "may" here is permissive and not mandatory.

We turn now to consider the other questions raised in relation to the matter of jurisdiction insofar as the appellant York is concerned. It is the submission of counsel for the appellant that at the commencement of the proceedings in court when the learned Resident Magistrate was invited to make the order for the indictment, there was no material before him to indicate that he had jurisdiction. It is the further submission of counsel

for the appellant that at the close of the prosecution's case no evidence had been adduced to found jurisdiction. The evidence disclosed that the offences, if any, had been committed at the Royal Bank, Knutsford Boulevard but there was no evidence to indicate the parish in which Knutsford Boulevard is situated.

In a Resident Magistrate's Court jurisdiction in indictable offences is conferred by SS. 267 and 268 of the Judicature (Resident Magistrate's) Act. Provisions as to the venue of indictments are also contained in Section 9 of the Criminal Justice (Administration) Act. Counsel for the appellant submits that these provisions do not apply to proceedings in the Resident Magistrate's Courts because there are no express provisions in the Act or in the Judicature (Resident Magistrate's) Act applying that section to Resident Magistrate's Courts. Certain provisions in the Act are expressly confined to proceedings in a Circuit Court (e.g. Section 21), others like Section 22 to summary proceedings but in our view where there is no such limitation the Act is of general application in all criminal proceedings. Consequently the venue jurisdiction conferred by Section 267 of the Judicature (Resident Magistrate's) Act is extended by Section 9 of the Criminal Justice (Administration) Act to cover a parish in which an accused person has been apprehended, or is in custody for the offence charged, or in which he appears in answer to a summons pursuant to Section 29 of the Justice's of the Peace Jurisdiction Act.

Insofar as the first submission of counsel for the appellant is concerned, we are of the view that for the purpose of making a prima facie finding as to jurisdiction at the commencement of the trial the learned Resident Magistrate was entitled to look at the information on which the appellant was charged. That information charged "Roger York of the parish

70

of St. Andrew" and in our view, subject to evidence to the contrary during the course of the trial was sufficient to establish jurisdiction in view of ~~our~~ earlier opinion as to jurisdiction under the Exchange Control Act. St. Andrew being the parish in which the information alleges that the appellant "is for the time being," the Resident Magistrate would have jurisdiction in relation to count 2 of the indictment. That jurisdiction would enable him to deal with any other count in the same indictment by virtue of Section 9 (2) of the Criminal Justice (Administration) Act.

Insofar as the second submission of counsel for the appellant is concerned we have been referred to Deybel's Case (1821) 4 B & Ald. 243. Thorne v. Jackson 3 C.B. 661 and Brune v. Thompson (1841) 2 Q.B. 789. These cases and passages in Phipson on Evidence 11th Ed. p. 28 and Halsburys Laws of England 3rd Ed. V. 15 p. 338 suggest that while judicial notice will be taken of the extent of British jurisdiction a court will not take judicial notice of particular places situated within each county unless such situation is recognised by statute. Counsel for the Crown submits that a court is entitled to take judicial notice of prominent places as being within its jurisdiction. We have not been referred to any case in support of this proposition by counsel for the Crown. Nevertheless, we are of the view that this proposition accords with good sense, and that a Resident Magistrate is entitled to take judicial notice not only of the borders of his parish but of the location of prominent places within that parish, unless that location is in doubt. It is perhaps worthy of note that in both Thorne v. Jackson and Brune v. Thompson there was doubt as to whether the place in question was in the county claimed or in an adjoining county. In any event we agree with the further submission by counsel for the Crown that by virtue of the provisions of Section 12 of the Criminal

21

Justice (Administration) Act the conviction of the appellant York would not be quashed "for want of a proper venue" since it appears by the indictment that the court had jurisdiction.

We accordingly hold that insofar as venue jurisdiction is concerned the effect of paragraph 2 (2) of Part II of the Fifth Schedule to the Exchange Control Act is to confer that jurisdiction on the Resident Magistrate's Court having jurisdiction in the place in which a defendant is to be found at the time of commencement of the trial, that it is the function of the Court to determine where a defendant is to be found and that ordinarily this would be either at his home or at his place of work or at the place in which he is in custody at the time, but could also be at any other place where he was arrested or served with a summons in the matter or which he gave as his address when being bailed for the offence.

We therefore hold that in the case of both appellants the Resident Magistrate's Court by which they were tried had jurisdiction under the Exchange Control Act to try the offences under that Act with which they were charged, and in the case of the appellant York the ground of appeal relating to jurisdiction fails for the reasons we have set out.