J A M A I C A

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO. 86 of 1971

Before: The Hon. Mr. Justice Fox, Presiding
The Hon. Mr. Justice Smith, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.

R E G I N A v. UZANDU JIBUIKE

Messrs. C. Rattray, Q.C. and W.K. Chin See for the Appellant
Mr. P. Harrison for the Crown.

18th and 19th November, 1971

GRAHAM-PERKINS, J.A.:

The appellant was convicted by Mr. V. O. Malcolm, Resident Magistrate for St. Andrew, on six counts of an indictment involving the offences of causing his name to be affixed upon three cheque leaves by false pretences, and of receiving.

The first count read:

STATEMENT OF OFFENCE

False Pretences contrary to Section 33(2) of the Larceny Law Cap. 212.

Particulars of Offence

Uzandu Jibuike on the 3rd October, 1969, in the parish of Saint Andrew with intent to defraud, fraudulently induced one Cynthia Polack to affix his name upon a cheque leaf numbered 088591 for Four Hundred Dollars ($400.00) in order that it might be afterwards used as a valuable security by falsely pretending that the said Uzandu Jibuike was then authorised to have the said valuable security made payable to himself and receive the proceeds.

The second count which charged receiving contrary to Section 43(1)(b) of Cap. 212 alleged, by way of particulars, that

> "Uzandu Jibuike between the 3rd of October, 1969, and the 3rd of February, 1970, did receive Four Hundred Dollars ($400.oo) the property of the University College Hospital knowing the same to have been obtained by false pretences."

The third and fifth counts, like the first count, charged offences against Section 33(2) of the Larceny Law. The particulars in these counts did not, however, allege a fraudulent inducement by the appellant of anyone to affix his name to the relevant cheque. What they did allege was that he "fraudulently caused his name to be affixed upon a cheque" etc. The fourth and sixth counts were in terms similar to the second count and respectively charged the offence of receiving the amounts mentioned in the third and fifth counts.

At the conclusion yesterday of the hearing of the appeal against the appellent's convictions we allowed the appeal in respect of the second, third, fourth, fifth and sixth counts, and set aside the convictions and sentences thereon. We dismissed the appeal in respect of the first count and affirmed the conviction and sentence. We now give our reasons therefor.

Very briefly the evidence adduced by the prosecution disclosed that the appellant was appointed chief accountant at the University Hospital in July 1969. Very shortly thereafter he approached the Hospital Manager, a Mr. Allison, and requested an advance of one month's salary. Allison refused this request. On the third of October, 1969, the appellant handed a payment voucher to Cynthia Polack, a machine supervisor in the Hospital's accounting department, and directed her to draw a cheque for Four Hundred Dollars in his favour representing an advance on his salary. This voucher appeared to be incomplete, as it did not indicate the purpose for which the cheque was to be drawn. After successfully insisting that the appellant complete the voucher so that it might reflect the precise nature of the transaction, Polack complied with his direction. This she did by using a cheque signing machine by means of which, inter alia, the appellant's signature was affixed to the cheque. The appellant lodged this cheque to his current account at the Matilda's Corner Branch

of Barclays Bank where the University Hospital also kept its account. The amount for which the cheque was drawn was credited to the appellant's account. The Hospital's account was debited in a like sum. Similar transactions were effected by Barclays Bank in respect of the cheques mentioned in the third and fifth counts. Mr. Allison was quite emphatic that the appellant had no authority to make any advances by way of salary to himself. Any such advance would require the sanction of the Hospital's Finance Board. Allison also said that when these matters came to light the appellant told him that he was afraid he had let the hospital down as he had drawn two cheques in his favour and that he could only throw himself at "the mercy of us all."

For some reason or other the prosecution was quite unable to lead any evidence in support of the third and fifth counts to establish that the appellant "by any false pretence ... with intent to defraud fraudulently caused ... any other person ... to affix his name ... upon" either of the cheques therein mentioned as they were required to do having regard to the clear language of Section 33(2) of Cap. 212. There was clearly no evidence of any false pretence made by the appellant to anyone. Nor was there any evidence that the appellant had caused any other person to affix his name to these cheques. Indeed, on Allison's evidence the appellant had drawn these cheques himself. In these circumstances, this court had not the least doubt that the convictions on the third and fifth counts could not be sustained.

With regard to the second, fourth and sixth counts this court is at a complete loss to understand why the appellant was charged with the offence of receiving the respective sums therein named and described as the property of the hospital. In the view of this court these counts as formulated reflect a grave and fundamental misunderstanding of one of the elementary principles of the law of banking. That they should have attracted convictions in each case is even more astonishing. In R. v. Davenport 38 C.A.R. 37, to which we directed attention during the argument yesterday, Goddard, L.C.J. said, at p. 41,

> "But, although one talks about a person having money in a bank, it is just as well that it should be understood that the only person who has money in a bank

"is a banker. If I pay money into my bank either by paying cash or a cheque, that money at once becomes the money of the banker. The relationship between banker and customer is that of debtor and creditor. He does not hold my money as an agent or trustee; the leading case of Hill v. Foley (1848) 2 H.L.C. 28, exploded that idea. Directly the money is paid into the bank, it becomes the banker's money, and the contract between the banker and the customer is that the banker receives a loan of money from the customer as against his promise to honour the customer's cheque on demand. When the banker is paying out, whether in cash over the counter or by crediting the account of somebody else, he is paying out his own money, not the customer's money, but he is debiting the customer in account. The customer has a chose in action, that is to say, a right to expect that the banker will honour his cheque but the banker does it out of his own money. Therefore, the money paid on these cheques was the banker's money but it led to the customer's account being debited. "

We respectfully adopt the foregoing as an accurate statement of the principle involved. In the application of this principle to the circumstances of this case certain obvious questions pose themselves. For example, by whom were the sums of money (as distinct from the cheques), the subject matter of the receiving counts, obtained? Again, by whom were they received with knowledge that they were obtained by false pretences? The answers to these and other equally obvious questions compelled us to the conclusion that the counts charging receiving were utterly misconceived. Accordingly we were obliged to allow the appeal on these counts.

We come now to the first count. Mr. Rattray sought to challenge the conviction on this count on the ground, inter alia, that nowhere in Cynthia Polack's evidence is there to be found a false pretence made by the appellant which induced her to affix his name to the cheque. Polack had said in evidence "As chief accountant the accused was head of the accounting section. If I or anyone else in that section wanted a loan or an advance on salary the accused would have to approve it." In view of Allison's evidence we do not interpret Polack's evidence as involving an acknowledgment of any authority in the appellant to award

advances of salary to himself. Mr. Rattray argued that any reluctance demonstrated by Polack in preparing the relevant cheque on the appellant's direction was rather due to a formal defect in the voucher than to any uncertainty as to the appellant's authority. We were quite unable to share this view. When the appellant, as head of the accounting department, handed Polack a payment voucher with a direction to have a cheque drawn in his favour it was clearly open to the learned Resident Magistrate to find that the appellant was thereby impliedly asserting as a presently existing fact that there was vested in him an authority to have that cheque drawn in his favour as and for an advance on his salary. The falsity or otherwise of this assertion was essentially a question of fact to be determined by the Resident Magistrate. That he determined it adversely to the appellant reflects his acceptance of the very clear evidence adduced by the prosecution. This court could not, in these circumstances, say that the conviction on this count was not fully warranted.