

CA. CRIMINAL LAW — larceny of citrus plants — whether identification  
of plants of "such a nature" that accused should have  
been called upon to answer.  
Appeal dismissed.

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL 33/87

BEFORE: The Hon. Mr. Justice Carey, J.A.  
The Hon. Mr. Justice White, J.A.  
The Hon. Mr. Justice Downer, J.A. (Ag.)

REGINA V. VINCENT STERLING &  
ELIZABETH STERLING

Mr. Horace Edwards, Q.C., for Appellants

Mr. Canute Brown for Crown

May 19, 1987

DOWNER J.A. (AG.)

This is an appeal from one of the Resident Magistrates of Saint Catherine whose findings of facts concerning larceny of citrus plants was challenged by Mr. Edwards for the appellants. These plants were put in evidence and they were identified by paint which United Estate generally used to mark their property. The main thrust of Mr. Horace Edward's submission was that the identification was not of such a nature that the accused, i.e., the husband and wife, the Sterlings, should have been called upon to answer.

In order to examine whether this allegation has any merit, one should examine the Resident Magistrate's findings and what she said, was that on the 8th of January some of the plants missing from the United Estates were found on the premises occupied by the defendants, on their property adjoining Enfield Farms. These eight orange plants with yellow paints on their trunks were pointed out by Dallas an employee of the United Estates.

The great point, we understand being made is where these paint marks were found, and what emerged from the evidence is that the marks went right to the roots. But counsel submitted that there was a great difference between marks on the roots and on the trunks. The Resident Magistrate resolved that conflict by finding that the plants had yellow marks on the trunks and there was nothing in the evidence pointed out to us that would satisfy us that such a finding was unreasonable. As indicated at the outset, the plants being exhibits, the Resident Magistrate had the chance to examine them herself, and this was real evidence. These plants were found on the defendants land which adjoins United Estates but the explanation given was that they were found in a gully. The important issue of identification of the plants has already been dealt with.

The Resident Magistrate went on to say that she found the citrus plants growing on the land adjoining Enfield Farms from which over two hundred plants were missing. And she found that on that basis, that the plants were stolen by the ~~accused~~. Since these findings were made on the basis of the Crown's case there is no merit in the submission that the ~~accused~~ should have been called on to answer. Nothing that has been said by the defendants had been sufficiently cogent to disturb these findings. Consequently, we dismiss the appeal and the conviction and sentence of \$500.00 or 3 months hard labour imposed on each ~~appellant~~ is affirmed.

not??