JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO: 23/91

COR: THE HON. MR. JUSTICE CAREY - PRESIDENT (AG.)
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. v. LLOYD CHUCK

Richard Small & Walter Scott for Appellant

Miss Diana Harrison Deputy Director of Public Prosecutions (Ag.) for Crown

June 3, 4, 5, 6, 7, 11, 12, 13 & July 31, 1991

CAREY P. (AG.)

In the Resident Magistrate's Court for St. Andrew on 28th February, 1991 before Her Honour Miss Joyce Bennett, one of the Resident Magistrates for that parish, sitting at Half-Way-Tree, this appellant was convicted on two counts of an indictment each charging the receiving of a motor car knowing the same to be stolen. He was sentenced on each count to a term of 6 months imprisonment at hard labour to run consecutively. The appeal is both as to conviction and sentence.

The trial occupied a number of working days over a 9 month period beginning in May last year and ending with the appellant's conviction, as already stated, in February. No one could possibly suggest that this trial proceeded at other than a leisurely amble. The papers however, reached the Registry of this court in record time on 19th April. We are not advised of the reasons for the delay of some 6 weeks or so which elapsed before the appeal came on for hearing. When the trial opened before the Resident Magistrate,

she ordered a trial on indictment containing 7 counts in respect of the appellant and two other persons, Fred Robinson and Phillip Cooke as follows:

Count 1 -	Larceny of a Toyota Corolla RR 4524 on or after the 29th September 1988 etc, the property of Econocar Rentals Ltd:	**Lloyd Chuck** Fred Robinson Phillip Cooke
Count 2 -	Receiving the above:	**Lloyd Chuck** Fred Robinson Phillip Cooke
Count 3 -	Larceny of a Toyota Starlet RR 4883 on or after 2nd March 1989 etc, the property of Island Car Rentals Ltd:	**Lloyd Chuck** Phillip Cooke
Count 4 -	Receiving the above:	**Lloyd Chuck** Phillip Cooke
Count 5 -	Conspiracy to defraud the public: "Did conspire together with one person or other persons unknown to defraud members of the public by selling to the said members of the public stolen motor cars causing the loss of the said motor cars on the part of the said members of the public after genuine monies have been exchanged for the said stolen cars knowing them to have been stolen."	**Lloyd Chuck** Fred Robinson Phillip Cooke
Count 6 -	Accessory after the fact	Phillip Cooke
Count 7 -	Accessory after the fact	Phillip Cooke

For completeness, we note that Fred Robinson was acquitted, while Phillip Cooke, who had absconded bail in the course of the trial, was convicted on the two counts (6 & 7) charging him with being an accessory after the fact but acquitted of conspiracy (count 5).

No verdicts were entered on the larceny counts (counts 1 and 3).

Counsel for the appellant sought and obtained leave to argue a plethora of grounds covering with painstaking care and meticulous attention to detail every aspect of the trial. We propose to deal with them all, not however individually in the order argued, but grouped for convenience under specific headings which will appear hereafter. At the completion of submissions on the 13th June instant, we dismissed the appeal, affirmed the conviction and sentence and promised to put our reasons in writing. That promise, we now fulfil.

In broad outline the case against this appellant was as follows: Two cars a Toyota Corolla and a Toyota Starlet each owned by a car-hire firm were rented to customers from whom they were stolen. They were sold by the appellant to two innocent purchasers from whom they were eventually recovered and returned to their owners. Shortly after their loss, fraudulent applications were made to the Collector of Taxes for registration plates in respect of each, in the names of fictitious persons. The accused Cooke was used for the purpose of preparing these applications. They were made a matter of days after one car was missed and 5 weeks in respect of the other. The appellant, when interviewed, told the police that he had been given the cars by these fictitious persons for sale. He had no records and produced none in respect of these transactions although he was a broker. The Crown relied on the fact of the appellant's possession of recently stolen goods, fraudulent transfers and his lack of any reasonable explanation.

In his defence, the appellant repeated what he had told the police and denied the charges against him.

We had earlier intimated that we would group the grounds of appeal under specific headings and consider each in its group.

We have identified the headings as follows:

(i)	Procedure at trial	(Grounds 1-6, 9)
(ii)	Deficiencies of Proof and attack on findings of Resident Magistrate	(Grounds 7, 10 & 11)
(iii)	Inadmissible evidence	(Ground 8)
(iv)	Sentence	(Ground 13)

Ground 12 was abandoned.

(i) Procedure at Trial

In ground 1, the complaint was made that the Resident Magistrate was quite wrong in law in permitting the trial to continue against the accused Cooke in his absence, in that she had no power to do so. Further, that by reason of his absence, the appellant was somehow prejudiced. Counsel for the appellant conceived the prejudice to lie in the fact that the appellant was not in a position to deal with matters in which Cooke was involved.

Some background material must be given in order to appreciate Mr. Small's submissions. After the trial had been in progress for some time, the accused Cooke failed to attend Court on 25th September 1990 (indeed, neither did his counsel) and the trial was continued without objection by the defence. On the following day a warrant was ordered for his arrest. The Clerk of the Court applied that the case against him be continued in his absence. There were objections by Mr. Small who, for his part, applied for a separate trial for the appellant. The Resident Magistrate acceded to the Crown's request to continue the trial and refused Mr. Small's application.

It is plain that the Resident Magistrate could not have ordered a separate trial in respect of the appellant at that stage of the proceedings. Having regard to the nature of the charges particularly because of the existence of the count for conspiracy, the trial could properly proceed in the absence of the accused

Cooke, even if no application had been made by the prosecution. The prosecution was or would be entitled to continue to adduce all the evidence which remained, in proof of the counts against all parties charged. The position would be the same, even if, for example, Cooke had not yet been arrested, albeit charged. The evidence adduced was admissible against the appellant in respect of the charges against him. The grant of the application to continue Cooke's trial in his absence enabled the Resident Magistrate to return a verdict and, in the event, to impose sentence. That consideration could hardly affect the position of the appellant.

We do not think the submission that the appellant would not be in a position to deal with matters in which Cooke was involved, is well-founded. Counsel, if he thought that necessary, was entitled to seek instructions from counsel representing that accused. We have difficulty in appreciating how the absence of the accused from court precluded that course. We note that the attorney-at-law who had represented Cooke did not attend after his client absconded. But it has not been suggested that any application for adjournment was made by Mr. Small to obtain any information or assistance from Cooke's attorney-at-law. After Cooke absconded, two pieces of evidence were adduced at the trial. There was tendered in evidence a cautioned statement given by Cooke to the police. It is sufficient to say that, it contained no evidence which could affect the appellant in any way whatsoever.

The other piece of evidence related to certain documents, viz, applications for new registration plates in respect of the Corolla and Starlet motor cars (Exhibits 12 and 13). These documents, according to the evidence were in the handwriting of the absent accused - Cooke. One of the purposes of this evidence was to show firstly, that Cooke had prepared fraudulent applications

in order to facilitate the transfer of the stolen cars to future innocent purchasers. The other purpose was to show that the appellant must have been in possession of both cars at the date of these applications. This evidence was admissible against the appellant irrespective of the presence of the co-accused before the court. If Mr. Small wished to challenge witnesses who spoke to Cooke's handwriting on the documents, he was at liberty to take instructions in that respect. He plainly did not.

It seems to us that he cannot therefore complain if the evidence given about Cooke's handwriting on the exhibits remained unchallenged. Since the Resident Magistrate had power to continue the trial in the absence of Cooke, as we will show hereafter, it was to be expected that evidence implicating Cooke might not be challenged. No fault can be imputed to the Resident Magistrate because the evidence remained unchallenged.

In our view, that is enough to dispose of that ground but as it was argued quite strongly that the Resident Magistrate, at all events, has no jurisdiction to try an accused in his absence, we think we should say something on the matter.

The authorities show that the presence of an accused on trial for a misdemeanour is not indispensably necessary. **R. v. Carlile** (1834) 6 C. & P. 636. With respect to felonies, however, the rule is that the accused must in general, be present at his trial. But the rule is not absolute; the trial judge has a discretion. Roskill L.J. in **R. v. Jones** (No. 2) [1972] 2 All E.R. 731 made this abundantly clear. He said at page 734:

> "...The cases show, as this court ventures to think without a shadow of doubt, that whatever the case might be in a trial for felony, in a trial for misdemeanour the position was different and that it was a matter for the discretion of the presiding judge whether or not the trial should proceed in the absence of the prisoner.

> "Therefore this court is clearly of the view that there was in this case a discretion vested in the trial judge. Counsel for the applicant sought to rely on a passage in the seventh report of the Criminal Law Revision Committee dealing with felonies and misdemeanours where the distinguished members of that committee said: Cmnd 2659, p 17, para 61 -
> 'In felony the accused must in general be in court throughout the trial, but this is not necessary in misdemeanour. Although each accused is nearly always present even in misdemeanour, it is occasionally convenient that the trial should continue in the absence of one or more of them, especially if it is a long trial and there are several accused. We recommend that the misdemeanour rule should apply to all trials on indictment. Obviously the power to continue a trial in the absence of the accused would be used sparingly and only when this would not prejudice the defence.'
> That, as one would expect, if I may respectfully say so, is an impeccable statement of the law, but it is difficult to think that those who formulated that paragraph had in mind a case such as the present where the question arose because the prisoner concerned had deliberately jumped his bail."

In **R. v. Lee Kun** [1914-15] All E.R. Rep. 603 at page 605 Lord Reading C.J. made the point in definitive terms -

> "No trial for felony can be had except in the presence of the accused, unless he creates a disturbance preventing a continuance of the trial: **R. v. Berry** (1897) 104 L.T. Jo. 110 per Wills J. Even in a charge of misdemeanour there must be very exceptional circumstances to justify proceeding with the trial in the absence of the accused."

It seems to us that nothing is more likely to prevent "a continuance of a trial" than an accused person absconding his bail. We would think it constitutes an exceptional circumstance which would rightly justify a court in proceeding in his absence.

Mr. Small did not, we think, dissent to the validity of this statement of principle but argued that the Resident Magistrate, a creature of statute had no power to hear any case in the absence of an accused.

That, we think to be fallacious. The procedure in respect of trials on indictment in the Resident Magistrate's Court is the same as before Justices of the Peace. Section 282 of the Judicature (Resident Magistrates) Act provides as follows:

> "282. Save as is herein expressly provided, the procedure before any Court at the trial of any indictable offence shall be the same, as near as may be, as in the case of offences punishable summarily."

The Justices of the Peace Jurisdiction Act which governs the trial of offences punished summarily allows trial in the absence of the accused in the discretion of the justices. See Section 12 of the Act. In our judgment, for this reason, the Resident Magistrate did have the power to continue the case against the accused Cooke in his absence.

Granted she had that power, then she had a discretion to exercise. Mr. Small next submitted that the Resident Magistrate did not exercise her discretion, that she was pre-occupied with whether she had the necessary power, a fact borne out by her note - "Court states that authorities are quite clear that case can continue in the absence of an accused who has absconded."

We were treated to a deal of argument as to factors to which the Resident Magistrate was obliged to address her mind in the exercise of that discretion. It is in our view, wholly unnecessary to deal with these factors. At the trial before the Resident Magistrate, these factors were addressed by Mr. Small in his objection to the continuation of the trial. The Resident Magistrate did not allow the objection. Unless it can be shown that the

Resident Magistrate applied some wrong principle or took into consideration matters which she should not have done, this court is not entitled to interfere. We have already shown that the Crown was entitled to adduce all evidence relevant to support the charges. We have not been shown that any wrong principle was invoked or in what respect, the Resident Magistrate erred.

The next area of challenge was the jurisdiction of the court to try the matters alleged in the indictment (ground 2). Mr. Small said that the larceny was not proved to have taken place in St. Andrew and that was a pre-condition for a conviction on the count charging receiving. He relied on Section 268 (1) of the Judicature (Resident Magistrates) Act which states, so far as is material, as follows:

> "268. (1) It shall be lawful for the Courts to hear and determine the offences hereafter mentioned, that is to say -
>
> (a) ...
>
> (b) the offences specified in the following sections of the Larceny Act, sections 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 18 paragraph (1), 19, 20, 21, 22, 24 subsection (1) paragraph (iii), 29, 35, 36, 37, 40, 41, 42 and 46 where the stealing or obtaining of the property the subject of the charge is within the jurisdiction of such Courts;".

In our judgment, this provision on which reliance is placed is not concerned with venue but with the power or jurisdiction of a Resident Magistrate to hear and determine the offences under the Larceny Act therein listed. A Resident Magistrate is thereby empowered to try all those offences prescribed in the provision as they would ordinarily be triable in the Circuit Court. In the case of receiving stolen goods, that offence is only triable by the Resident Magistrate if the offence of larceny from which it arises,

is itself triable by the Resident Magistrate. See the observations of Rowe P., in **R. v. Smith** (unreported) R.M.C.A. 38/90 delivered 21st November 1990.

In so far as the question of the venue of a trial is concerned, that is governed by Section 267 of the Judicature (Resident Magistrates) Act. It is only necessary to quote the following part of that provision -

> "267. For the purposes of the criminal law, the jurisdiction of every Court shall extend to the parish for which the Court is appointed, and one mile beyond the boundary line of the said parish:"

By virtue of this provision, a Resident Magistrate has jurisdiction to hear for example cases of larceny which occur within his parish boundary and one mile beyond its boundary line. In the instant case, there was no evidence showing that the larceny of the cars from which the charge of receiving arose occurred within her jurisdiction. But Section 9 of the Criminal Justice (Administration) Act can be prayed in aid. It provides as follows:

> "9. (1) Every person who commits any indictable offence may be proceeded against, indicted, tried, and punished in any parish or place in which such person may be apprehended, or may be in custody for such offence, or may appear in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that parish or place, and the offence shall for all purposes incidental to or consequential upon the prosecution, trial, or punishment thereof, be deemed to have been committed in that parish or place.
> (2) Every person who commits two or more indictable offences may be proceeded against, indicted, tried and punished in respect of all those offences in any parish or place in which such person could be proceeded against, indicted, tried or punished in respect of any one of those offences, and all the offences with which that person is charged shall, for all purposes incidental to or consequential upon,

> "the prosecution, trial or punishment thereof, be deemed to have been committed in that parish or place."

In our opinion, the words "... the offence shall for all purposes incidental to or consequential upon the prosecution, trial or punishment thereof, be deemed to have been committed in that parish or place" expressly confers a jurisdiction on the Resident Magistrate to adjudicate in the matter. The evidence was that this appellant was apprehended in the parish of St. Andrew, and the Resident Magistrate had jurisdiction to hear all the matters alleged in the indictment.

Error in joinder of conspiracy with other substantive counts (Ground 3)

This ground was argued by Mr. Scott but we do no disrespect to his argument if we say that he did concede that the extent of the Crown's case was wide enough in scope to embrace not only the stealing of motor cars, but illegal documentation of these vehicles and their disposition by sale to unsuspecting members of the public. The burden of his submission was that the inclusion of the count for conspiracy to defraud the public resulted in an unfair trial because it added nothing to the substantive charges. We were told that it would have been preferable for the prosecution to add a count against this appellant of obtaining money by false pretences, that is, the proceeds of the sale of the stolen cars.

This hardly strengthened his argument against the joinder. Plainly a count for conspiracy is very essential where it is intended to demonstrate the scope and criminality of the illegal enterprise. In **R. v. McDonald & Chung** (unreported) 9th December 1985, this Court made comments on the propriety of joining a count of conspiracy with some substantive charge. Among other things we said at page 15:

> "We can see no unfairness or prejudice in such joinder if the entire scheme of criminality will not emerge in a prosecution of the substantive offence alone. We are supported in this by the opinion of James, L.J. in **R. v. Jones & Ors**. 59 Cr. App. R. 120 at page 124 where he observed:
> 'In our view, the judge was right in his refusal to quash this count. The question whether a conspiracy charge is properly included in an indictment cannot be answered by the application of any rigid rules. Each case must be considered on its own facts. There are, however, certain guiding principles. The offences charged on the indictment should not only be supported by the evidence on the depositions or witness statements but they should also represent the criminality disclosed by that evidence. It is not desirable to include a charge of conspiracy which adds nothing to an effective charge of a substantive offence. But where charges of substantive offences do not adequately represent the overall criminality, it may be appropriate and right to include a charge of conspiracy'."

We are satisfied therefore that having regard to the scope of the prosecution case, there was no unfairness or prejudice to the appellant and accordingly the joinder was proper.

Error in allowing Crown to deny defence particulars of conspiracy and defrauding the public. (Ground 4)

This is not a point of substance in light of the fact that the appellant was acquitted on this count. We do not think any useful purpose will be served by dealing with this matter which is thus only of academic interest. We are content to call attention to **R. v. Addis** [1965] 49 Cr. App. R. 95 which in our view is conclusive of the matter.

Error in refusing particulars of all oral statements - Grounds 5 & 9

In a trial in the Resident Magistrate's Court, there is no legal requirement for the Crown to show its hand by providing copies

of its statements to the defence. We have already noted that consistent with Section 282 of the Judicature (Resident Magistrates) Act, trial of indictable matters is "as near as may be, as in the case of offences punishable summarily". There is no provision in the Justices of the Peace Jurisdiction Act which allows such a course as the furnishing of oral statements to a defendant. We were referred to legislation in the United Kingdom which permits this course. It seems unnecessary to point out that if changes in procedure are to have legal effect, then legislation is essential.

Our attention was called to a practice direction issued by the Director of Public Prosecutions on 29th July 1982, which states as follows:

> "It was agreed that where the prosecution intends to lead evidence of verbal admissions or confessions the defence should always be alerted before the start of the case of such intention and the terms of the admission/confession so as to give the defence an opportunity to determine whether or not to challenge the admissibility of the evidence."

It does not appear to us that this practice direction is well-known. Certainly the Clerk of the Courts in the trial did not appear to be aware of it, nor was it brought to his attention by defence counsel. We would expect Clerks of the Court and Crown Counsels to comply with directions of the Director of Public Prosecutions. Nevertheless having said that, the failure of a prosecutor to comply with the direction is not such an irregularity as would prompt us to hold a trial unfair. The modern practice in the United Kingdom is governed by statute. This court is not at liberty to legislate: that is the province of Parliament.

At all events, the Resident Magistrate was not in error in refusing to give the directions sought. She had no power to do so and therefore was not called upon to exercise any discretion.

Law Reform in this area is we venture to think, necessary. We do not think counsel is entitled to complain if he failed to bring the contents of the Practice Direction either to the attention of the Clerk of the Courts or the Resident Magistrate at the trial.

Failure to return verdict on counts charging larceny - (Ground 6)

Where larceny and receiving are charged in an indictment, it is trite law that only one verdict should be returned. The counts are truly alternative. If he is guilty of one, he cannot be guilty of the other. It is the law that if the jury convict on one of alternative counts, they should be discharged from returning a verdict on the other. The reason for that is to be found in the power of the Court of Appeal to substitute verdicts. Lord Goddard C.J. in **R. v. Roma** [1956] Crim. L.R. 47 said:

> "As a matter of practice, where there are alternative counts of stealing and receiving, it is desirable that the jury should be discharged from giving a verdict on the count on which the prisoner is not convicted."

See also **R. v. Seymour** [1954] 1 W.L.R. 678 and **R. v. Lewis** [1965] 9 W.I.R. 333 (rape and carnal abuse). The power of this court to substitute verdicts is contained in Section 24 (2) of the Judicature (Appellate Jurisdiction) Act, in these terms -

> "Where an appellant has been convicted of an offence and the Resident Magistrate or jury could on the indictment have found him guilty of some other offence, and on the finding of the Resident Magistrate or jury it appears to the Court that the Resident Magistrate or jury must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the judgment passed or verdict found by the Resident Magistrate or jury a judgment or verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity."

The rule as to entering a formal verdict in the case of alternative counts is a rule of practice which governs indictments and not courts. The rule as to joinder of counts for example is the same whatever the court. For this reason, we cannot agree with Mr. Small that having regard to Section 280 (3) of the Judicature (Resident Magistrates) Act, the rule is inapplicable in the Resident Magistrate's Courts. That provision states:

> "280. (3) At the conclusion of any such trial, the Magistrate shall declare the accused person guilty or not guilty, and shall thereupon on demand, give such accused person a certificate of conviction or acquittal, as the case may be."

That, he argued, meant that in the Resident Magistrate's Court a verdict was necessary on each count of an indictment.

This court in **R. v. Wright** [1963] 6 W.I.R. 165 invoked its powers under the Judicature (Appellate Jurisdiction) Act when it substituted a verdict of guilty of Burglary and Larceny for that of guilty of Receiving which the jury had returned. That provision i.e. Section 24 (2) Judicature (Appellate Jurisdiction) Act clearly applies to any situation where alternative counts are charged. We cannot think Mr. Small was suggesting that this provision has no effect. It is plainly concerned with alternative counts and expressly includes Resident Magistrates within its purview. We do not therefore agree with Mr. Small, when he said that a verdict must first be returned on the count of larceny before going on to consider the alternative count of receiving. He sought some support for this submission in **R. v. Christ** [1951] 2 All E.R. 254. There Devlin J., took the view that where these alternative counts were charged, then, when it was plain which offence it was, the other charge should be withdrawn from the jury's consideration. He stated as follows:

> "... But, once it becomes apparent at the end of the evidence and after counsel have addressed the jury, as plainly it did in this case, that it is a case of larceny or nothing, we think that in his summing up the judge should put simply to the jury the count of larceny and remove from their consideration the alternative count for receiving."

But that dictum is far and away from saying that a verdict on the count of larceny must first be had. The jury in those circumstances would be discharged from returning a verdict on that count. That learned judge, who eventually became a distinguished Law Lord did not say that a verdict had to be returned. Indeed, the jury in that case had returned a verdict of guilty of receiving and not guilty of larceny but the Court of Criminal Appeal allowed the appeal, holding that the verdict must have been perverse because the evidence in support of either count was the same. The jury could not therefore have accepted the evidence to convict and reject it to acquit. That case does not support the point contended for and accordingly this ground fails.

(ii) <u>Failure in Proof</u>

We turn now to deal with those grounds 7, 10 and 11 which can be subsumed under this head.

Essentially in these grounds Mr. Small criticised the ruling of the Resident Magistrate that there was no case to answer, and also her findings of facts on which the verdict was based.

We propose first to deal with the ruling. There was evidence that the cars, the subject of the charge, each belonged to a car hire firm and were hired to customers from whose custody they were removed. These persons had of course no authority to part with the cars. Indeed, in each case, the particular car was never returned, and when next an agent of the company saw their property, the colour had been changed, in the case of the Toyota Corolla, from a

dark maroon to red and with respect to the Starlet, from white to silver. That constituted circumstantial evidence that the cars had been stolen. These cars were each sold by the appellant to innocent purchasers from whom the cars were recovered. Fraudulent applications were made for new registration plates in respect of the Corolla within 5 weeks of its loss and in respect of the Starlet within 15 days. This was to enable transfers to be made to fictitious persons, and from these persons to the innocent purchasers to whom the appellant sold the cars.

When the police interviewed the appellant, he admitted selling the cars but said he had been asked to do so by persons whose identity or whereabouts he never vouchsafed. He produced no record of these transactions.

On that evidence which is not exhaustive of the Crown's case, the Resident Magistrate, in our view, was entitled to call upon the appellant for his defence. All the ingredients in proof of the charges of receiving were present. The cars were stolen property. They were in the possession of the appellant, in the case of the Corolla within 5 weeks of its loss and as to the Starlet within 15 days of its loss. That constituted evidence of recency, sufficient to be considered by the Resident Magistrate in her jury capacity. The "explanation" to the police was entirely unsatisfactory. The inevitable conclusion was that he knew the cars were stolen. The case did not depend wholly on evidence that the appellant was in possession of recently stolen property. The requirements of the Road Traffic Act in the transfer of motor vehicles were not followed and there was evidence that fraudulent documents were prepared to the knowledge of the appellant to effect the transfer of these vehicles. We will say something further in this regard at a later stage in this judgment.

We can now consider the attack on the findings of the Resident Magistrate. We begin by calling attention to the terms of Section 291 of the Judicature (Resident Magistrates) Act, which so far as relevant are as follows:

> "291. ...
> Where any person charged before a Court with any offence specified by the Minister, by order, to be an offence to which this paragraph shall apply, is found guilty of such an offence, the Magistrate shall record or cause to be recorded in the notes of evidence, a statement in summary form of his findings of fact on which the verdict of guilty is founded."

We emphasize the words "findings of fact". This is to be contrasted with the terms of section 256 of the Act which relates to civil appeals, so far as material, they are -

> "On the appellant complying with the foregoing requirements, the Magistrate shall draw up, for the information of the Court of Appeal, a statement of his reasons for the judgment, decree, or order appealed against."

In **Fearon v. Wright** R.M.C.A. 40/90 (unreported) dated 18th February 1991, we thought it right to stress the distinction. Parliament recognizes that having regard to the volume of appeals in criminal cases from the Resident Magistrate's Courts, the preparation of a written reasoned judgment in each would be unrealistic. Not only would it be time-consuming but such a requirement would inevitably create unacceptable delays in the criminal justice system. We have no reason to doubt that Resident Magistrates up and down the country, at the end of any criminal trial before them, do explain the reasons for their decision. That exercise is an essential characteristic of a fair trial and a Resident Magistrate who neglected to give a judgment, would not be acting consistent with his judicial oath. In **R. v. Vince Stewart** R.M.C.A. 73/89, (unreported) dated 14th February, 1990 the court indicated that

in his written findings, the Resident Magistrate would do well to note that he has warned himself in those cases where evidence calls for especially careful scrutiny and treatment. Sexual cases, cases involving children and identification evidence cases readily come to mind. We understand that from a passage where Gordon J.A. (Ag.) speaking for the court said at pages 5 - 6:

> "Section 291 of the Judicature Resident Magistrates Act requires that the Resident Magistrate gives a brief summary of the facts found. It does not require otherwise, but the authorities indicate that where the decision of the tribunal is governed by the application of settled legal principles e.g., the desirability of corroboration, it must appear that the tribunal's mind was adverted to it - **R. v. Donaldson** (supra). Even if there is a presumption that the judge knows the law, there is no presumption as to its application; 'he must demonstrate in language that does not require to be construed that in coming to the conclusion adverse to the accused person he acted with the requisite caution in mind', per Wright J.A., in **R. v. George Cameron** S.C.C.A. 77/88 (unreported) dated November 30, 1989."

Our firm conclusion is that a Resident Magistrate satisfies the provisions of Section 291 by recording in a summary form, findings of fact which go to prove the guilt of the accused. Where there is conflicting evidence between Crown witnesses, he should state whose evidence he accepts and whose he rejects. In that case, it is expected that some reason or explanation for the choice, will be shortly stated. If a conclusion is derived from inferences, then the primary facts from which the inference or inferences are drawn should be stated. Findings in a summary form is not a licence for laconic statements, and we would think that clarity in expression is an advantage. The language therefore in which the findings are couched should demonstrate an awareness of the legal principles which are involved in the case. If he must warn himself, the findings should show he has done so.

With these guidelines in mind, we are enabled to deal with Mr. Small's many criticisms of the findings of the Resident Magistrate. He argued first that she was wrong to hold that the appellant was in possession of goods recently stolen, and had failed adequately to consider and direct herself as to the proof of guilty knowledge.

The learned Resident Magistrate found that the appellant was in recent possession of both cars which were stolen from their owners, and that he failed to give any explanation of his possession. She concluded therefore that the appellant received both cars knowing them to have been stolen. She also found from the documentary evidence that the transfers of the vehicles were fraudulent.

In considering the question of recency of possession, one starts with the length of time between loss of the goods by their owner i.e. the larceny, and the time the accused gets possession of them. See **R. v. Marcus** 17 Cr. App. R. 101. Next, one looks at the nature of the goods and considers the length of time which such goods often take to be sold on the open market. Next, one considers the explanation which is put forward by the accused. The shorter the period after the larceny, the more likely is the inference that the accused is the thief rather than the guilty receiver. It has been well said that what constitutes recent possession depends upon the nature of the property and the circumstances of the case: **R. v. Adams** 3 C. & P. 600.

We have previously referred to the respective periods after the larceny of each motor car in respect to which each came into the possession of the appellant. In our view, these periods, by any interpretation, can only be characterised as recent. Indeed the appellant was in such recent possession that we find it incomprehensible that a verdict of guilty of larceny was not

returned. From what we have shown above, we must disagree with Mr. Small that the period for determining recency is from the point in time when each vehicle was rented to the date when the vehicle was sold by the appellant. By counsel's calculation in respect of the Corolla, that period would be 5 months and in respect of the Starlet, it would be 4 months. This calculation ignores the evidence of the fraudulent transfers and the switch of licence plates between vehicles which would show that both vehicles were in the possession of the appellant. The names of the applicants for these plates were fictitious but the appellant said these fictitious persons had entrusted the cars to him for sale. The particulars contained on the application forms did relate as a matter of fact, to the stolen vehicles, and were in Cooke's handwriting.

An important element in the Crown's case, was the transfer of the stolen cars to innocent purchasers. The transfer of motor vehicles from one owner to another is governed by the Road Traffic Act. We believe there was some argument that no evidence was led with respect to the scheme of transfers, but it was not necessary to do so. The Resident Magistrate was obliged to take judicial notice of the laws of the country and for purposes of this case, of the Road Traffic Act and Regulations. Section 107 (4) of the Act is in these terms:

> "107. (4) Regulations made under any Part of this Act shall be of the same force and effect as if they were contained in and formed part of this Act and shall be judicially noticed."

The relevant regulation regarding transfers is regulation 25A (4) of the Road Traffic Regulations which stipulates that -

> " ...the registered owner of that vehicle shall deliver the certificate of title to the transferee who shall proceed in accordance with regulation 33."
>
> "33. (1) Where the registered owner of any motor vehicle desires to transfer the ownership in such vehicle, he shall make application to a Licensing Authority on Form S2 in the First Schedule and shall surrender the existing certificate of title and registration certificate in respect of the vehicle and the transferee shall signify on the said form his acceptance of the transfer and present an application for certificate of title on Form S1 to the Licensing Authority. Provided that where a lien has been noted on the certificate of title, the registered owner shall produce a copy of the discharge of lien to the Licensing Authority."

Seeing that both motor vehicles were stolen property, it is obvious that any transfer to an innocent purchaser must inevitably be fraudulent, for the requirements of the regulations could not be complied with.

Before dealing with the actual manner of the transfers which occurred in the instant case, it is opportune to comment that sales of second-hand cars by dealers should be controlled by legislation in the same way as obtains for second-hand bicycles. We suspect that nowadays sales of second-hand bicycles have decreased to such an extent that the whole procedure has fallen into desuetude. The relevant legislation is the Bicycles (Control of Second-hand) Act. The Act requires (inter alia) the licensing of dealers and repairers of second-hand bicycles and the keeping of records which are open to the police for inspection. Bicycle ownership could thereby be traced. The same is not true of motor vehicles. Amendments to the Road Traffic Act may have garnered increased revenue but it cannot be said, with any degree of

accuracy that motor vehicle ownership can be traced in the records of the Collector of Taxes. We have said enough to call attention to the present confused state of affairs which Parliament might well wish to redress.

Take the stolen cars in the present case. No revenue officer was or could be called to trace the ownership of these cars. When registration plates were referable to a motor vehicle and not to a person, then tracing ownership was feasible.

Howsoever that might be, let us return to the matter at issue. In respect of the Corolla, although there was some talk about a title, Sister Mary Pascall to whom the car was sold by Robinson (who purchased it from the appellant) never received a title therefor. That of course is not fraud, even if it may be illegal. The only document produced in respect of this vehicle is an application by the purported owner of the Corolla, Lacelles Thomas who, the appellant said, had asked him to sell the car on his behalf. This document was in the handwriting of the co-accused Cooke.

With respect to the other car, the Starlet, documents were tendered in evidence. These were motor vehicle certificate of title (exhibit 5) in respect of the ownership by Jennifer Brownell, another such certificate (exhibit 6) in respect of the ownership by Patricia Thompson, an application for registration plates by Patricia Thompson (exhibit 12) and an application to register motor vehicle (the Starlet) by Jennifer Brownell (exhibit 4).

If we might begin with the last document (exhibit 4), this application form shows that the new registration plates on the Starlet were those allegedly applied for by and issued to Lascelles Thomas, the alleged vendor of the Corolla motor car. As plates are personal to drivers, it was not possible for the same plates to be held by two different persons. This results

from Regulation 25 (4)(as amended) of the Road Traffic (Amendment) Regulation 1986 which provides, so far as is material, as follows:

> "(4) Registration plates shall be issued to and remain in the name of the owner of each vehicle registered upon payment by that owner of a fee of two hundred and fifty dollars, and -
>
> (a) if the owner acquires another vehicle (hereinafter referred to as a replacement vehicle) within the same classification and use, the registration plates may be transferred by the owner from the vehicle for which the plates were issued to such replacement vehicle; or
>
> (b) if the owner acquires another vehicle not within the same classification and use or changes the classification or use of the vehicle, the registration plates may, subject to paragraph (5), be surrendered to the Licensing Authority in exchange for registration plates appropriate to the classification and use of the replacement vehicle or, as the case may be, the new classification and use of the original vehicle."

When Mrs. Brownell purchased the Starlet from the appellant, the car had registration plates affixed thereto and it is reasonable to assume those were plates bearing number 7885 AN. She therefore applied for her own plates. The appellant assured her that he would assume responsibility for the transfer arrangements. She was required to complete part D of the application, but parts A and B were completed by the appellant or his agent. The effect of what has so far been said is to link the appellant with the fraudulent documentation of the co-accused Cooke.

The application for title (exhibit 4) and the application for plates (exhibit 12) were in the handwriting of Cooke. The particulars in respect of the car being correct, it is a necessary

inference that the appellant must have supplied those particulars. In order to do so, he must have had possession or access to the vehicle. Since Thompson did not exist, the exercise of applying for plates and preparing a certificate of title, was no more than a hollow charade, in an endeavour to clothe the transaction with a veneer of legality. Even the most superficial comparison of the alleged signature of Patricia Thompson, the alleged owner, as appears on exhibit 6 and exhibit 12 are markedly dissimilar.

There are some remaining complaints which we must consider. These postulate the view that the Resident Magistrate failed to make findings in critical areas or to direct herself as to the treatment of critical areas of the evidence. We have already set out the duties of a Resident Magistrate in fulfilling the requirements of section 291 of the Judicature (Resident Magistrates) Act as to findings of fact and will not repeat them. We will however express our views on a matter of some interest.

It was said there was no direction, review or finding as to the evidence of good character called on behalf of the appellant. The value of such evidence goes to the credibility of an accused person in that, it may demonstrate that such a person could not have committed the offence charged. The appellant in this case did not give sworn evidence. He claimed the protection of the dock to deny the charge. He could not deny the fact that he sold cars which were shown to be stolen on behalf of persons in respect of whom he had no records and whose addresses he never chose to divulge to the police. This was a classical illustration of the doctrine of recent possession. The irresistible inference in the circumstances was that he was either the thief or the guilty receiver. We pose the rhetorical question - what value could the evidence of the appellant's good character have on the

plain inference to be drawn on the facts of his implication in either of the crimes charged. He was either the thief or the guilty receiver.

The Resident Magistrate pursuant to section 291 of the Judicature (Resident Magistrates) Act was not obliged to refer to the character evidence in her findings. No finding of fact based on that evidence was called for. The explanation which the appellant chose to vouchsafe to the Court was not one which in our judgment could reasonably be true for reasons which we will mention in a moment. It is not ordained either at law or by practice that a Resident Magistrate must direct herself or himself on the effect of the evidence of an accused's good character.

It was also forcefully contended that the Resident Magistrate had misdirected herself in finding that there was no evidence of an explanation by the appellant. That finding, he said, was clear proof that she came to her decision on the footing that no explanation had been given and therefore she never considered how the principles of burden and standard of proof relate to an explanation.

We think this argument is patently unsound. The Resident Magistrate noted - "Accused has failed to give any explanation of his possession of either car." As the appellant had made an unsworn statement in which he sought to exculpate himself, the finding could bear one interpretation and one interpretation only to all reasonable minds. This was an elliptical method of saying that the appellant had failed to give a reasonable explanation.

In yet another criticism of the judgment of the Resident Magistrate, Mr. Small maintained that she was in error in considering and comparing handwriting without the benefit of either the testimony of a handwriting expert or a person who was familiar with the writing in question.

The basis of his complaint was a finding by the Resident Magistrate which she stated as follows:

> "Court notes signature of name Patricia Thompson on Exhibit 12 and on Exhibit 6 are completely different."

It is perfectly true that handwriting may be proved either by the evidence of an expert witness or by someone familiar with the person's handwriting. It is also perfectly true that disputed writing whose genuiness is to be proved, ought not to be left to a jury to draw their own unaided conclusion from a comparison but should be assisted by a person who in the ordinary course of business has come to know the handwriting in question. See Fitzwalker Peerage Claim (1043) 10 Cl. & F. 193. But there was no question in the instant case of proving genuiness of any signature. Patricia Thompson, the person whom the appellant stated, had authorised him to sell the car was a fictitious person. Signatures purporting to be hers, appeared on these two exhibits. Even on the most superficial examination, the signatures were wholly dissimilar. No expert is required to prove that two handwritings are obviously different. We are not persuaded that this point has any merit.

We had indicated earlier that we thought the appellant's statement unsatisfactory. It was remarkable rather for what it failed to address, rather than for its actual content. The appellant, we note, did not give evidence on oath. He was not subject to cross-examination on that statement. The Resident Magistrate, as an intelligent juror, was entitled to raise a querulous eye-brow and to ask the question: What had he to fear? In commenting on the guidance given by Lord Salmon in **D.P.P. v. Walker** [1974] 21 W.I.R. 406 we said in **R. V. Gordon** (unreported) S.C.C.A. 109/89 delivered 15th November, 1990 at page 14:

> "... In our view, the whole thrust of these guidelines is to satisfy the natural curiosity an intelligent juror would have where an unsworn statement is being made. Lord Salmon suggests that a possible thought which would arise in such a juror's mind - What had he to fear? In Jamaican terms, from what was there to hide? Was he hiding from taking the oath, from cross-examination or from unfair questions?"

His statement from the dock was entitled to such weight as the Resident Magistrate thought it deserved.

The appellant said he was a dealer in used cars. He sold cars at a commission. He was a broker, but he kept no records. At all events one would expect him to keep records which he would have for inspection, if necessary. He did not produce any records nor was any reason given by him for their non-production. The prosecution case was that he produced records of gas sales. He was content to deny that he had done so. It is true that there is no burden on an accused to prove his innocence, but there was an evidential burden cast upon him to rebut by his explanation if he could, the inference of guilt to which the presumption based on recent possession necessarily led.

The appellant did not at any time give to the police nor state in court, the addresses of his clients, the prospective vendors of either car. Were the transactions legitimate? An honest broker by his records or otherwise, would naturally have the address of his clients. How would the appellant render an account to these clients? In our view the unsworn statement left many more questions unanswered than answered. In other words, it was unsatisfactory and untrue. We conclude that the Resident Magistrate was correct when she found that the appellant had given no explanation which is but another way of saying, he had given an explanation that was entirely worthless.

(iii) Documentary and other Inadmissible Evidence (Ground 8)

Nearly a dozen illustrations of inadmissible evidence were particularized. We deal with them seriatim.

> "(a) The Learned Resident Magistrate erred in admitting exhibit I and II into evidence, there being no foundation to bring the document within any of the rules as to the admissibility of documentary evidence."

Exhibits I and II were contracts of hireage with respect to the Corolla owned by Econocar Rentals and Leasing Ltd, and the Starlet owned by Island Car Rentals Ltd. Not being public documents, they could not be admitted in proof of the truth of their contents. That would breach the hearsay rules. They could however properly be used to refresh the memory of the witness who produced them. But neither witness sought the Court's permission to refresh his memory.

At the trial Mr. Small objected to their admission on the ground that neither document had any relevance to any issue in the case. The objection was overruled.

It is our view that the documents were properly admitted to show that on a particular day, a particular kind of contract was entered into in relation to the cars which were the subject of the charges, viz, a contract of bailment. The bailee was thereby required to return the car by a particular date. He was not at liberty to give possession to anyone other than the bailor. There was an onus on the prosecution to trace possession of these vehicles from their owners to hirers, to possession in the appellant. We cannot therefore agree that the objection was well-founded.

> "(b) The Learned Resident Magistrate erred in admitting exhibit 12 into evidence in circumstances where it had not been shown to have any nexus to the matters being tried by the Court."

Exhibit 12 was an application form for new registration plates in respect of the stolen Starlet. It was tendered through an official in the Inland Revenue Department who was acquainted with Phillip Cooke one of the accused, and his supervisor. At trial there were objections by counsel for all the accused, but before us, it seemed Mr. Small took another tack. He said the document was "possibly admissible."

We think the document was properly admissible to prove how the Starlet came into the possession of the appellant. It proves also that the document was prepared in the handwriting of the co-accused Cooke and formed part of the circumstantial evidence tending to show that Patricia Thompson was a fictitious person. Further it was relevant to the question of the "recency" of the appellant's possession of the said car. In order to obtain the particulars of that vehicle, Cooke and/or the appellant must necessarily have had access to the vehicle. Since the appellant derived financial benefit from the transaction, it is reasonable to conclude that the vehicle was, at that time in his possession. For these reasons, we conclude that the nexus is most assuredly demonstrated.

> "(c) The Learned Resident Magistrate erred in permitting the witness Leslie to testify as to what kind of car a document referred to, which document had not been tendered nor was admissible in evidence."

The witness Margaret Leslie held the post of Assistant Acting Collector of Taxes, Kingston and gave evidence of the method of transferring motor vehicles and spoke to the fact that she had checked certain records in her keep, and indeed had brought certain records for the court's scrutiny. Eventually she was asked to check a record and state what it dealt with. She did so.

There was some objection to her being allowed to do so on the ground that she was unable to say who had made the record. That objection was without merit. These were official records, produced

by an officer from the department. There was no legal requirement that she should be aware of its authorship. The documents would speak for themselves. In the event the document was not admitted, plainly because it did not further the prosecution case. It may be an example of sloppy or careless prosecution but as a ground of appeal it is the merest triviality.

> "(d) The Learned Resident Magistrate erred in permitting the witness Cpl. Coleville Ebanks to testify that another witness had compared a document with the engine number of a car and that the two entries compared with each other and were the same.
>
> (e) The Learned Resident Magistrate erred in permitting the witness Cpl. Leroy James to testify that he made a comparison between the engine and chassis number on a motor car with numbers that he had on his file and that these corresponded.
>
> (f) The Learned Resident Magistrate also erred in admitting into evidence the testimony of Cpl. Leroy James to the effect that the car he observed corresponded with a description on a list of stolen cars that he had in his possession."

We think it must be quite clear at this juncture, having already set out our views on a Resident Magistrate's obligation to make findings of fact and not to give a judgment, that we do not accept that a Resident Magistrate is required expressly to state that he or she has excluded inadmissible evidence in his or her adjudication before making findings of fact. Our approach should be, that the verdict is based on the express findings recorded by the Resident Magistrate which are based on admissible evidence which appears in the case. We do not hesitate to say that in determining whether or not there has been any substantial miscarriage of justice, the court will consider whether there are

facts and circumstances which must have been accepted by the Resident Magistrate although no express finding may have been made.

We propose in dealing with this ground to consider the question of admissibility with special regard to the hearsay rule.

Evidence of a statement made to a witness by a person who is not called as a witness is hearsay and inadmissible if its purpose is to demonstrate the truth of the statement. Subramaniam v. Public Prosecutor [1956] 1 W.L.R. 965. This rule applies equally to documentary evidence as illustrated in Myers v. D.P.P. [1964] 2 All E.R. 821 and R. v. Sealby [1965] 1 All E.R. 701.

The evidence of Cpl. Coleville Ebanks that he was present when the owner of the Corolla compared the engine and chassis number against his document and they tallied, plainly, is hearsay. However, the owner himself had, in the event, given evidence of his identification of the car and he did not state that he had used any document to aid him.

We cannot see any objection to a police officer comparing identification numbers affixed to a car against his list of identification numbers in respect of stolen cars. The owner of the car was called to prove that the particular car was stolen and this prevents that evidence from being hearsay.

> "(g) The Learned Resident Magistrate erred in permitting exhibit 13 into evidence on the basis that it coincided with the evidence of the witness Causewell as to the chassis and engine number."

Exhibit 13 was an application for new registration plates in respect of the Corolla motor car allegedly owned by Lascelles Thomas. It was this car which the appellant sold to

Robinson who sold it to the Sisters of Mercy. It was tendered in evidence because it was in the handwriting of Cooke a co-accused. The footing on which counsel argued the document was admitted is therefore contrary to the facts. It is true that the details on the form coincide with the evidence of the owner as to its chassis and engine numbers. But then, the form relates to that stolen vehicle.

> "(h) The Learned Resident Magistrate erred in admitting inadmissible hearsay evidence as to the identity of exhibit 8.
>
> (i) The Learned Resident Magistrate erred in permitting Road Licence Form 'A' into evidence on the basis that it was the document that the witness Gutzmore used to identify the car."

This complaint relates to the same exhibit No. 8 which is a Form A under the Road Traffic Act: it is commonly called a Certificate of Fitness. It was used by the owner of the Starlet to identify his vehicle at the Flying Squad offices. Objection was taken by Mr. Small to its admission on the ground that it had no probative value.

A Certificate of Fitness is one of the documents which it is essential for an owner of a motor vehicle to have, if he intends to use that vehicle on a road. See Section 10 (1) Road Traffic Act. This document is prepared by a certifying officer in triplicate. See Regulation 24 (as amended) of the Road Traffic Regulations. The Traffic Authority retains one copy and gives the original and one copy to the owner of the vehicle. After the certifying officer has examined the vehicle, he would obtain the details required on Form A, by making a physical check of the serial number and other details necessary from the vehicle concerned. This Certificate of Fitness forms the basis of the record of the vehicle and these details are transcribed on to the application for registration plates (Form TA) the application for Certificate of Title (Form S1) and the

Title (Form S2) and the Motor Vehicle Registration Certificate (Form S3). These documents are retained by the Motor Vehicle Central Registry which is the unit that issues the Certificate of Title. This document is issued within 30 days of the application thereof. Pending its issue, Regulation 25A (1) provides (so far as is material) that -

> "... the first copy of Form A1 and the registration certificate shall, during the statutory period, be regarded as evidence of ownership, and official registration of the vehicle."

This document is therefore one made by a public officer for the purpose of the public making use of it. As the Regulations expressly provide, "it is evidence of ownership." It is evidence to the public, at all events to all persons who may be interested in that particular vehicle. Any member of the public is perfectly entitled to attend at the Motor Vehicle Registry and have access to it. The two essential ingredients of a public document were pointed out in **R. v. Sealby** [1965] 1 All E.R. 701 at 703:

> "The requirements thus involve in particular two essential ingredients. First, there must be a public duty to inquire and record the results of the inquiry. This aspect was considered by Erle, J., in the previous decision of Doe d. France v. Andrews (1850), 15 Q.B. 756, where it was stressed that the duty of every public official responsible for compiling a register was to satisfy himself of the truth of the statements he is proceeding to register. I do not suppose that any steps are, in practice, taken by a county council to verify that the details supplied to them in relation to cars sought to be registered are correct, but they are, presumably, entitled to accept as reliable information given to them by someone presumed to be responsible. The second main ingredient is that the document should be open to public inspection, albeit only a limited section of the public may be interested in it, as in manorial rolls Heath v. Deane (1905) 2 Ch. 86, or corporation books ...".

In our view, the Form A (exhibit 8) is a public document and is admissible as to the truth of its contents. We do not, for these reasons, agree that the document was inadmissible hearsay.

> "(j) The Learned Resident Magistrate erred in admitting into evidence the testimony of the witness Dennis Williams, concerning a report made to him by a person who was never called as a witness. The Learned Resident Magistrate also erred in admitting evidence of acts done by the said Williams as a result of the above report.
>
> (k) The Learned Resident Magistrate erred in law in admitting into evidence in breach of the Hearsay Rule, the testimony of the witness Gutzmore in answer to the question. 'As a result, did you do anything?' answer, 'I phoned the Police at 119.' "

Lord Devlin in **Glinski v. McIver** [1962] 1 All E.R. 696 at page 723 drew attention to the devices used by counsel to evade objections to admissibility based on hearsay. He said:

> "So the customary devices, were employed which are popularly supposed, though I do not understand why, to evade objections of inadmissibility based on hearsay or privilege or the like. The first consists in not asking what was said in a conversation or written in a document but in asking what the conversation or document was about; it is apparently thought that what would be objectionable if fully exposed is permissible if decently veiled. So Mr. Melville was not asked to produce his written instructions to counsel but was asked without objection whether they did not include a request for advice 'on the Glinski aspect of the matter'. The other device is to ask by means of 'Yes' or 'No' questions what was done. (Just answer 'Yes' or 'No': Did you go to see counsel? Do not tell us what he said but as a result of it did you do something? What did you do?) This device is commonly defended on the ground that counsel is asking only about

> "what was done and not about what was said. But in truth what was done is relevant only because from it there can be inferred something about what was said. Such evidence seems to me to be clearly objectionable. If there is nothing in it, it is irrelevant, if there is something in it, what there is in it is inadmissible."

See also R. v. Saunders [1899] 1 Q.B. 490. In our view, the rule against hearsay was infringed because the Resident Magistrate was being asked to act on assertions made to the witness by third parties who were not called to testify. The evidence was therefore inadmissible.

We desire to say however that the inadmissible hearsay could not affect the eventual outcome of the trial because there was an abundance of other evidence with respect to the identification of the vehicles.

Finally, we come to sentence which was argued by Mr. Scott. He said he was not challenging the length of sentence because it could not be said that it was manifestly excessive. He put forward the novel notion that the Resident Magistrate had no power to impose consecutive sentences. That submission may be summarily disposed of. Section 14 Criminal Justice (Administration) Act provides as follows:

> "Whenever sentence shall be passed for any offence on a person already imprisoned under sentence for another crime, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced."

We agree entirely that the sentence was not manifestly excessive: it bordered on being derisory. A scheme devised as this was, to steal and sell stolen vehicles required condign treatment.

Before parting with this appeal, we desire to make one further comment. An unsatisfactory feature of the trial is the fact

that on the findings of the Resident Magistrate, the appellant should have been convicted on the counts charging both larceny and conspiracy. It cannot be said however, that there was any inconsistency in the verdict which was ultimately returned by her and indeed this point which formed a ground of appeal was not pursued.

It was for these reasons that we on the 13th day of June, 1991 dismissed the appeal, and affirmed the conviction and sentence.