JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 12/92

COR: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE WOLFE, J.A. (AG.)

R. v. RICHARD KING
LEO COX

Ian Ramsay & Mrs J. Samuels-Brown for the appellant King

Mrs. J. Samuels-Brown for the appellant Cox

Miss D. Harrison Deputy Director of Public Prosecutions for the Crown

July 14, 15, 16, 17, 22 & October 5, 1992

FORTE, J.A.

The appellants were tried and convicted in the Resident Magistrate's Court for the parish of St. Andrew on the 11th day of June 1990 for breaches of section 210 of the Customs Act. The convictions were as follows:

On information 252/90, the appellant King was convicted for the offence of being concerned in the importation of a Volvo motor car, a Datsun pick-up, a quantity of used tyres and an engine.

Both appellants were convicted on information 253/90, on which they were tried with others, for the offence of knowingly being concerned with the fraudulent evasion of duties payable on the same goods which formed the subject matter of information 252/90. They were sentenced as follows:

Information 252/90 and 253/90

Richard King - At the election of the Commissioner of Customs to pay a penalty of $294,961.50 on each information. In default of payment to serve a term of two years imprison- in each case.

Information 253/90
Leo Cox - At the election of the Commissioner of Customs to pay a penalty of $294,961.50. In default of payment to serve a term of eighteen months imprisonment.

They now appeal against their convictions and sentences. On the 22nd July, 1992 at the conclusion of the arguments of counsel, we dismissed the appeals, and promised to reduce our reasons to writing. These which follow are our reasons.

The appeal turned firstly on the jurisdictional competence of the learned Resident Magistrate to try both informations together without the consent of the defendants. Mrs. Samuels-Brown for whose research we express gratitude, in developing her arguments, first maintained that at common law, there was no jurisdiction in a magistrate to try together either:

(a) two informations, charging the same person for two different offences;

(b) two or more informations, charging different persons for similar offences.

In addition, she contended that such joinder was prohibited by the provisions of sections 9 and 11 of the Justices of the Peace Jurisdiction Act, and in particular section 9 which reads as follows:

> "9. Every such complaint upon which a Justice or Justices is or are or shall be authorized by law to make an order and every information for any offence or act punishable upon summary conviction, unless some particular enactment of this Island shall otherwise require, may respectively be made or laid without any oath or affirmation being made of the truth thereof, except in cases of information where the Justice or Justices receiving the same shall thereupon issue his or their warrant in the first instance to apprehend the defendant as aforesaid; and in every such case where the Justice or Justices shall issue his or their warrant in the first instance, the matter of such informations shall be substantiated by the oath or affirmation of the informant,

> "or by some witness or witnesses on his behalf, before any such warrant shall be issued; and every such complaint shall be for one matter of complaint only, and not for two or more matters of complaint, and every such information shall be for one offence only, and not for two or more offences; and every such complaint or information may be laid or made by the complainant or informant in person, or by his counsel or solicitor, or other person authorised in that behalf." (Emphasis added)

These provisions are obviously to protect against duplicity, and in this view, we are supported by the dicta of Lord Roskill in the case of In re Clayton [1983] 2 A.C. 473 a case which was brought to our attention as a result of the industry of Miss Harrison for the Crown. In commenting on the provisions of section 10 of the English Summary Jurisdiction Act of 1848, which are in similar terms to section 9 Lord Roskill said at page 488:

> "... It seems to me clear that the relevant words of section 10 are directed to preventing duplicity in informations. They are not directed to preventing as a matter of statutory prohibition either the trial of two or more informations at the same time or the trial of two or more offenders together where the relevant facts are sufficiently clearly related. The object of the rule against duplicity has always been that there should be no uncertainty as to the offence charged. But there is no such uncertainty where two or more informations are properly laid against an alleged offender. He knows that he is charged as stated in each information."

This opinion which is consistent with our own views makes irrelevant the provisions of section 9 of the Justices of the Peace Act to the issues to be resolved in this case and disclose the invalidity of the argument of the appellants in this regard.

For her proposition that at common law, joinder of informations without the consent of the accused was prohibited, Mrs. Samuels-Brown relied on the cases of **R. v. Yee Loy** 4 J.L.R. and **R. v. Fenwick Tucker** 12 J.L.R. 359. The case of **Yee Loy** was tried before the enactment of section 22 of the Criminal Justice (Administration) Act, which will be referred to later in this judgment, and which it appears was the result of the decision made therein (Yee Loy). It was held in that case that a Resident Magistrate had no jurisdiction to try two separate informations against two defendants at one and the same time even with the consent of the defendants. It will be seen later, however, that the provisions of section 22 now empowers a resident magistrate to try two informations together in certain circumstances and the question of whether, under the terms of its provisions, consent of the defendant is now mandatory will be discussed.

Nevertheless, having considered and examined the cited authorities on the subject including the case of Yee Loy, Smith, J.A. in delivering the judgment of the Court in **R. v. Fenwick Tucker** (supra) came to the conclusion that there was no common law rule which prohibited the joint trial of two informations if there is consent. He stated thus at page 360:

> "If there is a common law rule, it is strange that no reference is made to it in any of the cases. If there is such a rule it is not clear what precisely are its terms. Learned counsel for the appellant was unable to point to a statement of the rule anywhere. If the rule exists it certainly is not as wide as stated by counsel. It is quite clear from the passages in the judgments of Lord Goddard and Lord Parker quoted above, that there is no legal objection to a joint trial with the consent of the defendant."

He however recognized that:

> "Even implied consent is sufficient. (See R. v. Ashbourne, JJ., exparte Naden [1950] 94 Sol. Jo. 454, 40 Cr. App. R. 95, and **R. v. Dunmow, JJ, exparte Anderson** [1964] 2 All E.R. 943)."

In all of the cases examined by Smith, J.A. and followed to the extent outlined in his judgment in **Fenwick Tucker** (supra), it was presumed without any detailed consideration, that consent either expressed or implied was necessary in order to justify the joint trial of two informations. Later, however in 1983, the whole question was analytically considered by the House of Lords in the case of **In re Clayton** (supra), and in our view, the dicta of Lord Roskill therein, is not only in keeping with our own opinions, but should be considered as settling all the controversy that surrounded this question not only in the English jurisdiction, but in our own. After analysing the dicta in various cases in England, which concluded that informations could only be tried together with the consent of the accused, Lord Roskill declared the opinion of the House in the following words (p. 491), which are found to be appropriate in our own situation:

> "Commonsense today dictates that in the interests of justice as a whole magistrates should have a discretion in what manner they deal with these problems. ... Today I see no compelling reason why your Lordships should not say that the practice in magistrates' courts in these matters should henceforth be analogous to the practice proscribed in **R. v. Assim** (1966) 2 Q.B. 249 in relation to trials on indictment. Where a defendant is charged on several informations and the facts are connected, for example motoring offences or several charges of shoplifting, I can see no reason why those informations should not, if the justices think fit, be heard together. Similarly, if two or more defendants are charged on separate informations but the facts are connected, I can see no reason why they should not, if the justices think fit, be heard together." [Emphasis added]

He, however, thereafter continued:

> "Of course, when this question arises, as from time to time it will arise, justices will be well advised to inquire both of the prosecution and of the defence whether either side has any objection to all the informations being heard together. If consent is forthcoming on both sides there is no problem. If such consent is not forthcoming, the justices should then consider the rival submissions and, under any, necessary advice from their clerk, rule as they think right in the overall interests of justice. If the defendant is absent or not represented, the justices, of course, should seek the views of the prosecution and again if necessary the advice of their clerk and then rule as they think fit in the over-all interest of justice."

At common law, therefore, the important considerations in determining whether informations can be tried together are - (i) are the facts closely connected, and (ii) does the overall interests of justice require that they be tried together. In determining those factors, it is desirable that the magistrate before doing so, allow the parties to state any objection they have to this course, as such objections may have an effect on whether in the interests of justice the informations should be tried together; the overriding principle however, being whether in the magistrate's opinion the overall interests of justice requires a joint trial.

Before dealing with the application of these principles to the facts of the instant case, we now turn to the statutory provisions, which the Crown at the trial of these offences, relied on to justify the joint trial of both informations.

Section 22 of the Criminal Justice (Administration) Act provides as set out hereunder for joint trial in summary cases:

> "22. (1) Where, in relation to offences triable summarily -

" (a) persons are accused of similar offences committed in the course of the same transaction; or

(b) persons are accused of an offence and persons are accused of aiding and abetting the commission of such offence, or of an attempt to commit such offence; or

(c) persons are accused of different offences committed in the course of the same transaction, or arising out of the same, or closely connected, facts, they may be tried at the same time unless the Court is of the opinion that they, or any one of them, are likely to be prejudiced or embarrassed in their, or his defence by reason of such joint trial.

(2) Where, in relation to offences triable summarily -

(a) a person is charged with two or more offences arising out of acts so connected as to form the same transaction; or

(b) a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, and a person is charged with each or any of such offences,

such charges may be tried at the same time unless the Court is of the opinion that such person is likely to be prejudiced or embarrassed in his defence by reason of such joinder."

It is obvious from the record, that the Crown relied on section 22 (1) (c) and section 22 (2) (a) in order to justify the joint trial of informations 252 and 253/90. The facts relied on by the Crown in respect of each information appear to be eminently qualified to be considered as the same transaction one with the other, and in relation to the joint trial of both appellants, certainly the facts appear to be, at the least, closely connected facts. Were it not for the ingenuity of Mrs. Samuels-Brown, the Court would think it highly unnecessary to give any serious consideration to any contrary conclusion. Counsel, however, argued

very strongly that the facts presented in proof of the offences charged in the informations, do not disclose that they were of the same transaction, nor did the offences arise "out of the same or closely connected facts." In order to determine whether there is any validity in this contention, it is necessary to examine the evidence advanced in relation to each offence.

Information 252/90 charged the appellant King for being concerned in importing into Jamaica certain restricted goods. This charge arose out of the following evidence.

On the 30th June, 1988 a vessel of the Zim Shipping Lines off-loaded, at the Newport Boulevard Wharf in St. Andrew, a container numbered ZCSU 2001052 consigned to "Richard King in care of Keith Richards of Fruit Belt District Fruit Belt P.O. Portland." In the container were the Volvo motor car and other items already referred to in detail. In keeping with normal procedure Mr. Dwight Tracey, validating officer of Carib Star Shipping Ltd. (then International Shipping) the Jamaican agents for the Zim Line, sent a telegram to "Mr. Richard King" to the stated address, but received no reply. The system required, that on receipt of notification of the arrival of the goods, the consignee should go to the shipping office, present his original bill of lading endorsed by the agents of the Shipping Company, and then a delivery order would be issued to the consignee to enable him to commence the process of clearing the goods. In this case, the consignee, "Mr. Richard King" never attended the office, nor was the original bill of lading presented for validation i.e. no delivery order was ever issued.

Ms. Genevieve Dean, the senior surveyor at the Manifest Branch of the Commissioner of Customs and Excise had the responsibility of checking all manifest for shipment on vessels docking at the relevant wharf. She related a system which required the delivery order to be presented to her department, in

order to pursue the process of clearance of the goods. In relation to the relevant container No. ZCSU 2061052, no clearance documents were ever presented to her department for that consignment. In fact, neither the stripping station, nor the customs warehouse had any record of that container, and as far as customs were concerned, the container should have been still on the wharf. This was not so however, because on the 10th July, 1988 the container, and its contents were found by Detective Sergeant Winston Lawrence at the house of the appellant Richard King at Lumsden in the parish of St. Ann. On seeing the appellant King, and having cautioned him, the sergeant asked him if he was the importer of the container whereupon he replied "Yes Mr. Lawrence but you nuh know already sah, you nuh haffi badda ask mi again." Asked if he was the importer of each item he again replied in the positive, but when he was asked whether he had the required licence for these importations, he said no. The appellant King then produced the original bill of lading which, as we have seen, should first have been presented to the Shipping Company before a delivery order could have been issued.

At the trial, the appellant did not contend that he had a licence for the importation of these items and so on the facts there was really no other verdict that could have been entered in respect of this information but that of guilty. It is not surprising therefore, that in respect to this information, no complaint as to the findings of fact has been made in this appeal.

It is important to note at this point that the container was found at the premises of the appellant King without having gone through the proper processes of customs for the clearance of the goods, a process which of course, would involve the payment of the required duties before their release. The second information 253/90 related to the evasion of customs duties in respect of the very goods, the subject matter of the charge on information

252/90, on which the appellant King was charged alone. The whole picture of the Crown's case therefore, was that King illegally imported the goods into the island and in doing so, deliberately gave a fictitious address, as the address of the consignee, and thereafter in order to remove the goods from the wharf, he joined with others in a plan to remove them illegally and in so doing evade the payment of the necessary customs duty. The evidence in relation to information 253/90 therefore, concentrated on proving that the container was illegally removed and by whom. The evidence in respect of this information against King is exactly the same as the evidence against him in respect of information 252/90. In order to prove information 252/90, it was important that it be proved that he was found in possession of the goods and at an address, different to the fictitious address to which he had consigned the goods. In order to prove his involvement in the offence of information 253/90 i.e. evading the duties, it was important to prove that the goods were consigned to him, that they were illegally taken from the wharf and were found in his possession.

In those circumstances, it is clear as clear can be that the facts in relation to the two offences charged in the separate informations, are so closely connected, that they form part of the same transaction, that is to say, the illegal importation of the specified goods into the island, and in furtherance thereof to remove them illegally from the wharf without the knowledge of those responsible for assessing and collecting the duties payable thereon, thereby evading the payment of the said duties.

Mrs. Samuels-Brown, however, contended that assuming that her submissions that the consent of the accused is necessary at common law for the joint trial of informations, is unacceptable, nevertheless, even under the statutory provisions, the consent of the accused is mandatory and in any event, the learned Resident Magistrate did not advert her mind to a consideration of whether

in the circumstances of the case, the informations ought to have been jointly tried.

Section 22 empowers the court to try the informations together in certain circumstances unless the court is of the opinion that they, or any **one of them, (i.e. persons to be tried** together) are likely to be prejudiced or embarrassed in their, or his defence by reason of such joint trial. This provision does not require the consent of the defendant, but rather requires the magistrate to determine whether in his opinion, any embarrassment or prejudice will accrue to the defendant if the informations are jointly tried. It follows, that any such conclusion can only be arrived at where the prejudice or embarrassment appears on the face of the record, or where an objection is taken by the defendant or his counsel, showing that such is the circumstances that exist in a particular case.

In the instant case, the appellant King was represented by counsel, but not so the appellant Cox. At the commencement, counsel for the Crown informed the court that she intended to proceed on information 252 & 253/90 and asked that other informations remain on file. Crown Counsel opened extensively as to the facts upon which the Crown would rely in respect of both informations and in respect of the appellants and their co-accused. After the facts were outlined, the accused were pleaded on the respective informations on which they were charged, and all entered pleas of not guilty. Neither counsel who appeared for the appellant King nor the appellant Cox made any objection to the joint trial. Nothing was therefore advanced by the defence to indicate any prejudice or embarrassment which might be caused to them if the court embarked on a joint trial. Before the learned Resident Magistrate, were the informations and the proposed evidence upon which the Crown intended to prove its case. In those

circumstances, the learned Resident Magistrate implicitly acquiesced in the joint trial, there being nothing either on the record, or coming by way of objection to suggest any reason why the powers under section 22 should not be exercised.

After the case for the Crown was closed however, Mr. Ramsay, counsel then appearing for the appellant King, by way of a no case submission, contended firstly, that there was no common law power in the court to try the informations together and secondly, that if there was jurisdiction by virtue of the statute, nevertheless the joint trial was prejudicial and embarrassing to the appellant, and consequently section 22 could not be applied. In support of this contention, he advanced the following:

> "Whether or not it is correct to say that two charges can be tried together it could only be done if there is no prejudice. Obvious that Mr. King must be embarrassed if called upon to answer a charge of importing goods into the island and also at the time answering to the charge of fraudulently evading customs duties. If he should say yes he imported without licence it would tend to support other charge. Also once he is charged with other people this increases ambit of prejudicial material which may be introduced. Test is whether the situation is inherently prejudicial not whether it is."

Counsel for the Crown in reply, relied on the provisions of section 22, and contended that "it was for the court to decide at the outset whether there would be prejudice or embarrassment. The prosecution's case she said could only be conveniently dealt with together being based on common design." Mr. Ramsay thereafter, at that stage of the trial, applied to the Court to order a separate trial for the appellant King on the informations before the Court, and to proceed against the other accused. The application was refused.

It is correct as is contended for by the appellants, that there was no express adjudication by the learned Resident Magistrate at the commencement of the case, as to whether or not in the circumstances of the case as disclosed in the opening of the Crown, any prejudice or embarrassment could in her opinion, be caused to the defendants. That is not to say, however, that the decision to embark on a joint trial, was not the result of an adherence to the provisions of section 22, as nothing disclosed in the opening of the Crown could be said to indicate any prejudice or embarrassment to the defendants and there was in fact no objection offered by the defence. The cases cited by Smith, J.A., in the case of **Fenwick Tucker** (supra) as did Smith, J.A., himself, recognised that even where it was thought that consent was necessary, implied consent was sufficient.

If consent therefore, can be implied, the silence of the appellants, when it was stated that the informations would be tried together, must by necessity indicate that they were at that stage conceding that no prejudice or embarrassment would be caused to them.

The learned Resident Magistrate however, at the end of the Crown's case, and in spite of her decision at the commencement to proceed with the joint trial, allowed counsel for King to make his objection to that procedure, giving his reasons for the prejudice and embarrassment which he concluded would befall the appellant King, and thereafter expressly refused the application to sever the trial.

In our view, this was, on the facts, an ideal case for joint trial, given the offences charged on the informations, and we hold that the learned Resident Magistrate adopted the correct procedure in resolving the issues between the Crown and the several accused in the context of one trial. This ground of appeal therefore fails.

Mrs. Samuels-Brown next challenged the validity of the trial process, contending that the trial should be declared a nullity. Her complaint was based on the fact that the pecuniary penalties imposed on both appellants were:

> (i) not fixed by the learned Resident Magistrate in exercise of her judicial discretion but by the Commissioner of Customs in the exercise of an administrative act;
>
> (ii) the sentence was fixed, and determined outside the arena of the trial, resulting in the appellants' being denied of their right to be present throughout their trial;
>
> (iii) the Customs Act does not permit, after a trial has commenced, the fettering of the learned Resident Magistrate's exercise of her judicial discretion by the election of the Commissioner of Customs.

Section 210 of the Customs Act, under which the appellants were sentenced, and as far as is relevant to the issue reads as follows:

> "210. Every person who shall import or bring or be concerned in importing or bringing into the Island any prohibited goods or any goods the importation of which is restricted ... or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs ... shall for each such offence incur a penalty of two hundred dollars, or treble, the value of the goods, at the election of the Commissioner; and all goods in respect of which any such offence shall be committed shall be **forfeited.**"

Mrs. Samuels-Brown cited two cases in an effort to distinguish them. In both cases, the Court of Appeal, in construing certain provisions of the Excise Duty Law, which are in exact terms as section 210, held that the Resident Magistrate has no jurisdiction to mitigate the penalty and was bound to impose sentence in accordance with the election of the Collector General.

The two cases are: **R. v. Seebalack** 5 J.L.R. 245 and **R. v. Jesimia Lawrence** 4 J.L.R. 125. Counsel, however, contended that the same approach did not apply to the Customs Act, as the provisions of section 217 thereof give the Resident Magistrate some degree of discretion when dealing with offences concerning the evasion of customs duty. The section reads as follows:

> "217. Where a penalty is prescribed for the commission of an offence under this Act or any regulations made thereunder such offence shall be punishable by a penalty not exceeding the penalty so prescribed; provided that where by reason of the commission of any offence the payment of any customs duty has or might have been evaded the penalty imposed shall, unless the court for special reasons thinks fit to order otherwise, and without prejudice to the power of the court to impose a greater penalty, be not less than treble the amount of duty payable."

The cases of **Seebalack** and **Lawrence** which in our view, declare the relevant law correctly, are sufficient to dispose of the complaints categorized in (i) to (iii) of the above stated submissions of counsel. Mrs. Samuels-Brown, however, developed her submissions on section 217 of the Act, certainly in respect of the appellant Cox, to contend that the learned Resident Magistrate came to her conclusion on sentence without giving any consideration to the powers she had under the section, as special reasons existed in his case.

Section 217 clearly gives a discretion to the Resident Magistrate in cases such as this, where the payment of customs duty was evaded, to impose a sentence for an amount less than three times the value of the subject matter where special reasons exist. At the time of the sentencing, counsel for the appellants did bring to the attention of the learned Resident Magistrate, the provisions of section 217 and submitted that special reasons existed for exercising the discretion, particularly in the case of the appellant Cox. The reasons advanced at the time, and also

before us, related to what was described as the minor role Cox performed, the fact that he did not benefit in any way, and the period of incarceration he had already spent before the trial. As these submissions were made before the election of the Commissioner had been submitted, the learned Resident Magistrate adjourned the case, and on the adjourned date, being seized of the "election" proceeded to impose a sentence in keeping with it. In our view, the learned Resident Magistrate was correct in so doing as no special reasons for varying from the provisions of section 210 existed in this case. The so-called minor role was indeed a role which facilitated the removal of the container from the wharf, and therefore, contributed in a substantial manner, to the commission of the offence. For those reasons this ground also fails.

We turn now to the last submission of Mrs. Samuels-Brown that the verdict of the learned Resident Magistrate in respect to the appellant Cox is unreasonable and cannot be supported by the evidence. For the purpose of dealing with this contention, it will not be necessary to make any detailed reference to the facts, but what is relevant is set out hereunder.

On the 5th July, prior to the recovery of the container from the home of the appellant King, it was seen at the wharf in a line of other trucks, waiting to be released by the security guards who manned the padlocked gates, and who should only release the trucks on presentation of a gate-pass, a delivery order and a trailer interchange report. The pass is issued only after the delivery order is thoroughly checked against the container number, and other documents to ascertain that all the procedures have been correctly followed, including the payment of the necessary customs duties. At the time the relevant container was in the line the appellant Cox was one of the persons responsible for unlocking the padlock and opening the gate on presentation of the pass. Before

doing so however, he is required to see that the container number on the Trailer Interchange Report, the gate-pass, and the delivery order correspond with the container. He should also ensure that the licence number of the truck and the seal number of the container are the same as recorded.

On the relevant day, Michael Edwards was the Interchange Clerk, whose duty it was to check all the documents and to issue the gate-pass. On seeing the truck with the container in the line, the driver of the truck, Paul Riley, a co-accused who was convicted, but who has not appealed, requested of him that he release the truck without the necessary papers in consideration of a certain sum of money. This he refused to do, but nevertheless, soon after, he noticed that the truck with the container which had been at the head of the line was no longer there. No documents had been presented and no delivery order or gate-pass had been issued. The container was not on the wharf and should not have been released as there were no documents in relation to it. As the appellant Cox, was, at that time one of the guards at the gate, he, obviously along with another guard who was tried and acquitted became a prime suspect.

The reasons given by the learned Resident Magistrate for her conclusion of guilt in respect of the appellant Cox, are in our view, sound and point to evidence which clearly justifies her conclusion. It is sufficient only to refer to those reasons which follow:

> "I find that the accused Leo Cox was the Security Guard who allowed the truck pulling the container to leave the compound, that he did so knowing that there were no documents authorizing the release of the container and that no duties had been paid. This finding is based on the evidence of the system employed in his work area, his behaviour on being approached by the police and lies told in his unsworn statement from the dock. He was seen with the Keys for the exit gates, between the hours

> "of 1.00 p.m. and 4.00 p.m., checking documents and allowing trucks pulling containers to go through the gates. At some point during that time the containers in question was positioned right in front of one of the exit gates. By 3.50 p.m. it was gone.
> When first questioned by Detective Sergeant Lawrence he was requested to return for further questioning but he failed to do so. Some months later when he was found by Sergeant Lawrence and was being taken to the station he tricked Sergeant Lawrence into allowing him to leave the vehicle and disappeared. I find that these actions are not consistent with innocence. I further find that Mr. Cox lied when in his unsworn statement he spoke of working on records in the guard room at the relevant time between 1.00 p.m. to 4.00 p.m. That was the first time this was mentioned. It was not mentioned to the police when he was eventually taken into custody neither was it mentioned when the witness Tulloch spoke of seeing him at the gates working during that period, nor when he spoke of the requirement for guards to record information from gate passes on log sheets. He too is found guilty as charged."

In those circumstances, we cannot say that the verdict of the learned Resident Magistrate was unreasonable, and consequently this ground also fails.

For these reasons the appeals of both appellants were dismissed, and the sentences affirmed, except for a variation in the case of the sentence in relation to Cox which will be explained hereafter.

On the application of Mrs. Samuels-Brown, we heard submissions as to the inability of the appellant King to pay the total fines immediately because of circumstances which were detailed to us. In the circumstances, particularly the fact that the forfeited goods represented his life-savings and the distinct possibility that he would, in the future, be better able to pay the fines, we felt that this was a proper case to allow the appellant time within which to pay the fine and consequently made the following order:

> Appellant King to pay the sum of $94,961.50 immediately. To pay $200,000 on or before 30th September 1992, and $50,000 on or before 31st January, 1993. Thereafter, to pay $50,000 per month until the fines are fully paid.

In respect to the appellant Cox, we were informed by Mrs. Samuels-Brown that he had been in custody for three months before the trial of the case, and that for the greater part of the time which has passed since his conviction, he has been treated as a prisoner because due to a misunderstanding, it was not known in the prisons, that he was an appellant. On that basis, we ordered that the sentence in default of payment of the fines be varied, so as to allow for his release on the 10th July, 1992.