

**JAMAICA**

**IN THE COURT OF APPEAL**

**RESIDENT MAGISTRATES' CRIMINAL APPEAL NO 19/2013**

**BEFORE: THE HON MR JUSTICE PANTON P  
THE HON MR JUSTICE BROOKS JA  
THE HON MISS JUSTICE MANGATAL JA (Ag)**

**CAVERN RICHARDS v R**

**Anthony Pearson for the appellant**

**Miss Claudette Thompson for the Crown**

**26 February, 28 March and 11 April 2014**

**MANGATAL JA (Ag)**

[1] On 28 March 2014, after considering arguments in respect of this appeal by Mr Cavern Richards ("the appellant"), we made the following orders:

The appeal is allowed in part. In relation to count one, the appeal is dismissed. The conviction and sentence are affirmed. In relation to count three, the appeal is allowed. The conviction is quashed and the sentence is set aside. Judgment and verdict of acquittal is entered in respect of count three.

At that time we promised to put our reasons in writing at a later date. These are our reasons.

[2] The appellant was charged on an indictment containing three counts, in the Resident Magistrate's Court for the Corporate Area, holden at Half Way Tree. Count one charged the appellant with the offence of forgery, contrary to section 7 of the Forgery Act, the particulars being that he on 18 January 2010, did forge a document, to wit: immigration landing stamps numbered 1001 and 1031 impression in appellant's Jamaican passport number A3088617 purporting same to be issued by the Jamaican Immigration authority. Count two charged him with the offence of uttering forged documents, contrary to section 9(1) of the Forgery Act, the particulars being that he, with intent to deceive, uttered a Jamaican passport in the name Cavern Richards with forged immigration stamps numbered 1001 and 1031 to the French Embassy. Count three charged him with the offence of conspiracy to commit forgery, contrary to common law, the particulars being that he did conspire with person or persons unknown to forge Jamaican landing stamps in Jamaican passport number A3088617.

[3] He was tried before Her Honour Mrs Lorna Shelly-Williams on diverse dates between 13 October 2011 and 2 February 2012. On 12 April 2012, the learned Resident Magistrate found the accused guilty on counts one and three and not guilty on count two. On count one the appellant was fined the sum of \$70,000.00 or three months imprisonment at hard labour, with one week to pay, with surety. On count three, he was admonished and discharged.

### **The prosecution's case**

[4] The allegations, which were accepted by the tribunal of fact, were that on 11 January 2010, the appellant, an entertainer, took his Jamaican passport to the Ajang Music Productions office ("Ajang"). Ajang is engaged in the music business and produces, co-ordinates and manages entertainers. Amongst its activities is the making of applications for visas enabling entertainers to travel and to perform abroad. The appellant met with Mrs Marcia Williams-Simpson, Entertainment Manager of Ajang who introduced him to her secretary Charlene Bennett. Ms. Bennett was instructed to assist the appellant with filling out his Shenghen visa application form in order for him to travel to Europe. Ms Bennett filled in the information from the passport as well as by interviewing the appellant. The passport and application were left on Ms Bennett's desk overnight and on the following day she retrieved them and accompanied the appellant to the French embassy. While the appellant stood beside her, Ms Bennett handed over his passport to the embassy personnel and remained in the room while the appellant was being interviewed. She heard him tell the visa officer that he is a musician and that he had travelled overseas before. They left the embassy expecting the application to be processed.

[5] Subsequent to that visit Mrs Marcia Williams-Simpson was called and asked to take the appellant to the French Embassy. On arrival at the embassy, they were told that something was wrong with the passports or stamps in the passport. The appellant was transported to the Immigration Investigation Unit where Detective Corporal Rayon Smith interviewed the appellant. The appellant identified his passport and Detective

Corporal Smith inspected the immigration landing stamp impressions, numbered 1001 and 1031 contained in it. He formed the view that they were not genuine.

[6] Mr Steve Vernon, Deputy Director of Immigration, examined the two landing stamp impressions and compared them against impressions he made with the actual stamps and found that they were dissimilar. Additionally, the stamp numbered 1031 purportedly used to make the impressions in the passport was retired in March 2010, and in respect of stamp numbered 1001, that stamp had not yet been commissioned into use. The date on the impression for stamp 1031 in the appellant's passport was 13 October 2009.

[7] The appellant initially told the investigator that he had travelled overseas, but after checks were made on the immigration border control computer system he admitted that he had not.

### **The defence**

[8] The appellant gave sworn evidence at his trial. He indicated that he was a singer and he left his passport at Ajang's office after he had had discussions with Mrs Williams-Simpson about a music tour in Europe. He returned the following day and went with Ms Bennett to the French Embassy where his passport was handed in. He denied placing the stamps in his passport, making arrangements for them to be placed there, or knowing that they were there. He further denied that the stamps were there when he left his passport at Ajang's office. The first time he saw the stamps was when he was arrested and the police officer pointed them out to him. He admits that a

representative of the French Embassy did ask him whether he had ever travelled before and that he told her that he had. However, he claims that he was never asked where he had travelled to before. He further claimed that he had travelled to the Heathrow Airport in England in 2001. Having arrived at the airport, he was not given permission to enter the country and was sent back on the next available flight. The appellant said that the passport which he had used when he travelled to England was not the present passport. He had used his previous passport, which had since expired. He had needed a new passport and so he obtained the present one.

### **The statutory framework**

[9] Sections 3(1) and (2) of the Forgery Act ("the Act"), so far as material, provide as follows:

#### ***Definition of "forgery" and "false documents"***

"3-(1) For the purposes of this Act, "forgery" is the making of a false document in order that it may be used as genuine, and, in the case of the seals and dies mentioned in this Act, the counterfeiting of a seal or die; and forgery with intent to defraud or deceive, as the case may be, is punishable as in this Act provided.

(2) A document is false within the meaning of this Act if the whole or any material part thereof purports to be made by, or on behalf or on account of a person who did not make it nor authorize its making; or if, though made by, or on behalf or on account of, the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein... "

[10] Section 7 of the Act provides:

***Forgery of other documents with intent to defraud or deceive***

"7. Forgery of any document which is not made felony under this or any other enactment for the time being in force, if committed with intent to defraud or deceive, shall be a misdemeanour, and punishable with imprisonment with hard labour for any term not exceeding two years."

[11] Section 9 of the Act reads as follows:

***Uttering***

"9. - (1) Every person who utters any forged document, seal, or die, shall be guilty of an offence of the like degree (whether felony or misdemeanor), and on conviction thereof shall be liable to the same punishment, as if he himself had forged the document, seal, or die.

(2) A person utters a forged document, seal, or die, who, knowing it to be forged, and with either of the intents necessary to constitute the offence of forging the document, seal, or die, uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence, or puts off such forged document, seal, or die."

**The grounds of appeal**

[12] The appellant advanced the following three grounds of appeal:

1. The learned Resident Magistrate erred in coming to a verdict of guilty on the charge of forgery and also on the charge of conspiracy.
2. The verdict of guilty on the charge of forgery and on the charge of conspiracy is against the weight of the evidence.
3. The verdict of guilty on the charge of forgery and on the charge of conspiracy is inconsistent with the verdict of acquittal on the charge of uttering a forged document.

## **The appellant's arguments**

[13] Mr Anthony Pearson, who appeared for the appellant, made outline written submissions which may be summarized as follows:

1. The learned Resident Magistrate erred in holding in paragraph 7 (c) of her findings that the appellant had the requisite *mens rea* in relation to forgery. In particular:
  - (a) The evidence from Ms Bennett that the appellant told the interviewer at the French embassy that he had travelled before must be seen not as an admission that he had knowledge of the stamps at pages five and six of his passport, but rather in light of the appellant's evidence that he had travelled to England, but was denied entry and was sent back to Jamaica.
  - (b) The learned Resident Magistrate accepted evidence from Detective Corporal Smith that the appellant told him he had travelled before to St Martin and the Bahamas. However, a proper examination of the evidence of Detective Corporal Smith will show that the Magistrate fell into error by accepting that evidence.
  - (c) The finding of the learned Resident Magistrate at paragraph four of her findings that stamp numbered 1031 had been removed from the system on 30 March 2010, in no way affects that stamp having been put in the appellant's passport on 13 October 2009. It therefore cannot be held that "from this evidence it shows that the stamps could not have been legitimately placed in the passport".
2. The learned Resident Magistrate also fell into error in treating both stamps in the like manner.
3. The evidence of Mr Vernon makes it quite clear that he is no expert and could not properly give the evidence he gave and on which the learned Resident Magistrate relied.
4. The verdict of guilty on the charge of forgery and on the charge of conspiracy is inconsistent with the learned Resident Magistrate having found that the charge of uttering a forged document had not been made out.

5. The prosecution having proceeded on the substantive count charging forgery, they ought not to have proceeded upon the conspiracy charge. In support of this proposition, reliance was placed upon the Practice Note set out at [1977] 2 All ER 540 by Lord Widgery CJ which states as follows:
  1. In any case where an indictment contains substantive counts and a related conspiracy count, the judge should require the prosecution to justify the joinder, or, failing justification, to elect whether to proceed on the substantive or on the conspiracy counts.
  2. A joinder is justified for this purpose if the judge considers that the interests of justice demands it.

[14] In expanding upon his submissions orally, in relation to ground one, Mr Pearson highlighted the fact that it was only in cross-examination that Detective Corporal Smith revealed that he had asked the appellant how he got the stamps in his passport and that the appellant stated that he had given the passport to Mrs Williams-Simpson. Further, that the appellant told the officer that that was how the passport was given back to him to go to the embassy. In examination-in-chief, Detective Corporal Smith had said that he had asked the accused man twice whether he had travelled before. The first time, the appellant is alleged to have said that he had travelled before to the Bahamas and Saint Martin. After Detective Corporal Smith made checks using the computerized immigration border central system, he cautioned the appellant and again asked the appellant if he had ever travelled outside of Jamaica. The appellant is alleged to have then said "me [sic] never travel before [sic] I was only seeking to go on a tour to Europe". It was Mr Pearson's submission that the answer which Detective Corporal Smith only revealed in cross-examination, about giving the passport to Mrs



Williams-Simpson and that that was how he got it back, would be inconsistent with what he was purported to have said before. It would therefore give credence to the appellant's evidence that his answers were only given as to wanting to go on tour to Europe and saying that he did not know how the stamps got there. It followed, according to counsel, that the learned Resident Magistrate erred when she found that the appellant had the requisite *mens rea* for the charge of forgery.

### **The prosecution's arguments**

[15] Miss Thompson on behalf of the prosecution submitted that the appellant sought to gain an advantage by having the landing stamp impressions in his passport. He sought to show the visa officer(s) that he had travelled overseas before and returned. Further, that he told the visa officer that he had travelled overseas before and that the landing stamp impressions were supposed to evidence those trips overseas. It was argued that it was the appellant's intention to deceive the visa officer in terms of his travel history. In addition, although he failed to pass off the landing stamp impressions as genuine, his intention was clear and the evidence of this was overwhelming.

[16] Miss Thompson submitted that the learned Resident Magistrate then addressed her mind to the *actus reus* for the offence of forgery and found the appellant to be a secondary participant. In written submissions, reference was made by counsel to **Archbold's Pleadings, Evidence and Practice in Criminal Cases**, 36<sup>th</sup> Edition for the proposition that a secondary participant is an accessory before the fact; he is one who, though absent at the time the felony was committed, procured, counselled,

commanded or abetted another to commit felony. It was argued that the learned Resident Magistrate correctly applied the law in support of her findings on count one. Although the submissions did not state precisely to what paragraph reference was to be made, it would seem to be paragraph 4140 of the **Archbold** that is relevant, and which appears under the sub-headings "Accessories before the fact to felony" and "Common law".

[17] As regards ground two, the prosecution relied upon the response and submissions in relation to ground one. In relation to the charge of conspiracy, and Mr Pearson's reliance on the English Practice Note, Miss Thompson, in the true and proper traditions of prosecutors at the public bar, conceded that the verdict could not stand for the following two reasons:

- (1) She agreed that this charge could not be justified, in light of the substantive charge for forgery, as outlined in the English Practice Note referred to above.
- (2) The findings upon which the learned Resident Magistrate based the conviction for conspiracy are flawed.

[18] As regards ground three, counsel alluded to the fact that the learned Resident Magistrate appeared to have found, that in order for the prosecution to prove the offence of uttering, there would have to be evidence that when Ms Bennett handed over the passport to the visa officer, she was an innocent agent for the appellant. Since there was no issue whether Ms Bennett was an agent for the appellant, the remaining issue as far as the learned magistrate was concerned was whether Ms Bennett was innocent of the act of forgery. The learned Resident Magistrate had a

doubt as to whether Ms Bennett was an innocent agent. This was on the premise that the appellant had told the investigator that he left the passport at Ajang and on his return the following day he saw the stamps in it. Counsel submitted that even if Mrs Williams-Simpson or Ms Bennett's behaviour is highly suspicious, it is the behaviour and intention of the appellant that should be examined. She further conceded that if it is that he knew that the stamps were in the passport and knew that they were not genuine then he would have been in constructive possession of the passport and while standing next to Ms Bennett he would have been aiding and abetting the uttering of the passport.

[19] Miss Thompson further submitted that this is a curious situation in which the learned Resident Magistrate found that the appellant had knowledge of the forgery of the landing impressions, but found that because she had a doubt as to whether Ms Bennett was an innocent agent, she acquitted the appellant of uttering. At the end of the day, however, it was counsel for the prosecution's submission that the verdict is reasonable in respect of count one.

## **Analysis**

### **Count three - conspiracy**

[20] It is convenient to deal firstly with the submission that the conspiracy charge ought not to have been pursued in the circumstances. We agree with both counsel that there was no justification for the prosecution proceeding with both the charge of forgery and the charge of conspiracy to commit forgery and only the substantive charge

of forgery ought to have been proceeded with. At the trial before the learned Resident Magistrate, Mr Pearson had in fact raised this argument during the course of a multifaceted no case submission, but without success.

[21] Additionally, we agree with Miss Thompson that the findings upon which the learned Resident Magistrate based the conviction for conspiracy were flawed, for the reasons advanced by the prosecution. At paragraph 11 of her findings, this is what the learned Resident Magistrate stated in relation to the count of conspiracy:

"11...The Crown would need to prove that there was an agreement with the requisite intent to defraud. In relation [to] this count the agreement would be gleaned from the evidence of Mr. Vernon in relation to the fact that one stamp was not in circulation at the time the stamps were placed in the passport whilst one stamp was not dispersed to an immigration officer at all. The Accused was one of three persons who left their passports at the Ajang Music Company so they could go to the same music tour in Europe. All three persons were arrested for the same offences concerning forged stamps in their passports. When the Accused is asked if he travelled to the two locations in his passport, i.e. the Bahamas and St Martin the Accused told the investigating officer yes. Based on all these facts I find the Accused guilty of the offence of Conspiracy."

[22] The overall effect of Mr Vernon's evidence, which the learned Resident Magistrate accepted, is that the impressions in the appellant's passport were not made by either of the genuine stamps. However, as Miss Thompson pointed out in her written submissions, there was no evidence that the three visa applicants that travelled from Ajang to the French Embassy were going, as the learned Resident Magistrate found, on "the same music tour in Europe". Nor is there evidence that "all three

persons were arrested for the same offences concerning forged stamps in their passports". In fact, although Detective Corporal Smith's evidence was, that "one also had problems in his passport", no details as to those "problems" were forthcoming. It is thus quite plain that the conviction on the conspiracy count cannot be allowed to stand.

### **Count one – forgery**

#### **Grounds one and two**

[23] It was posited by Mr Pearson in his outline submissions that the evidence of Mr Vernon shows that he was not an expert and therefore he was not qualified to give the evidence which he did, and upon which evidence the learned Resident Magistrate relied. In oral submissions, counsel did not elaborate or argue the point in any detail. Nevertheless, we have addressed our minds to the issue as raised. In her findings, the learned Resident Magistrate accurately summarized Mr Vernon's evidence and dealt with the matter at paragraph 7b as follows:

"Mr. Vernon in cross examination stated that he has no expert training in assessment of seals, stamps and engravables and that the assessment he made was with the naked eye. He stated in re-examination that he had experience with the stamps since they were introduced in 2004 and had done around ten (10) such cases where he had to do comparisons. In this case Mr. Vernon pointed out six (6) areas where he found difference [sic] between the stamp impressed in the passport and the immigration stamps that led him to conclude that the stamps in the passport were not genuine. These differences included: [sic]

- f. The distance between the month and the day on the stamp in the passport and the one issued by [the] immigration department.

- g. Distance between the day and the year was different in the stamp in the passport and the one issued by the immigration department.
- h. The distance between the space in the number where the date is ie the 16<sup>th</sup> November. The distance between the numbers 1 and 6 is different on stamp 1001 from the one impressed in the passport of the Accused.
- i. The date on the stamps in the passport is not level as compared to the one on the stamps issued by the immigration office.
- j. The font size of the stamps in the passport of the Accused is broader than the original stamps issued by the immigration department.
- k. On the stamp issued to immigration officers there is an area where the immigration officer is to insert the time given to the passenger when they land in Jamaica. In the stamp issued to the immigration there are two dashes in the area designated for time. On the dashes on the stamps issued by the immigration department the dashes are below the letters O and E in the word officer. In the stamp impressed in the accused man's passport the dashes are under the letters O and R in the word officer. This distinction applies to both impressions.

I accept the evidence of Mr. Vernon and find the stamps impressed in the passport of the Accused were forged."

[24] Whilst the learned Resident Magistrate did not expressly so state, it is clear that she accepted Mr Vernon as having expertise on the issues concerning the stamps and their genuineness. This is so since she accepted his evidence as to his opinions on these matters. In our view, there was a sufficient basis upon which the learned Resident Magistrate could so act. It is well-known that expertise may be accomplished not only from the application of specific training, but that expertise may be acquired as

a matter of experience, practice, exposure and familiarity in a particular field or in respect of a particular matter. Most experts have acquired their expertise professionally after academic study, but expertise can be acquired otherwise than through academic study (see the dictum of Lord Russell of Killowen CJ in ***R v Silverlock*** [1894] 2 QB 766). It is for the judge to determine whether or not a proposed witness is an expert in a particular subject (see Cross on Evidence, 6<sup>th</sup> Edition, London, Butterworths, 1985 p. 442). In any event, the notes of evidence disclose that there was an objection to one aspect of Mr Vernon's evidence which was upheld in relation to hearsay. However, the notes also disclose that there was no recorded objection by counsel for the appellant as to the expertise of Mr Vernon when the witness was giving his evidence as to his findings, inference and opinions in relation to the stamps. In our judgment, given Mr Vernon's evidence of the years of familiarity with the stamps and the number and type of comparisons previously made by him, there was a sound foundation for the giving of his evidence and the learned Resident Magistrate quite properly accepted his evidence in this regard.

[25] Additionally, the appellant's passport and the relevant pages showing the stamps were admitted in evidence as were the impressions made from the original stamps by Mr Vernon which he had certified to be true copy impressions. This court has had the opportunity of viewing these exhibits, as did the court below. Some of the differences outlined by Mr Vernon, which really constitute factual observations in relation to the stamps in the appellant's passport and the original stamp impressions, can be readily seen and observed with the naked eye. It was open to the learned Resident Magistrate

to have herself made such observations. This would also reinforce the correctness of her acceptance of Mr Vernon as a reliable witness and of his factual observations and his opinions. In this regard, we rely upon the recent decision of this court in ***ASE Metals NV v Exclusive Holiday of Elegance Ltd*** [2013] JMCA Civ 37, per Brooks JA at paragraphs [52]-[55] and the cases therein cited.

[26] There is therefore no merit in this criticism of the learned Resident Magistrate's approach, her reliance upon the evidence of Mr Vernon, or of her findings in this regard.

[27] As regards counsel's contention that the learned Resident Magistrate erred in treating both stamps in the same manner, we disagree that there is any proper basis for such a complaint. At paragraph 11 of her findings, it is clear that the learned Resident Magistrate sought to distinguish between the nature of the issues in relation to each stamp. However, the learned Resident Magistrate correctly treated both stamps in the same way in the sense that the stamps in the appellant's passport were both alleged not to be genuine, and said to be forged. It was Mr Vernon's evidence, which the learned Resident Magistrate accepted, that the original stamps were not the stamps used in the appellant's passport. In any event, the appellant's evidence was that he had never travelled abroad except on the occasion when he went to England and was turned back. However, in respect of that occasion, his evidence was that he had used his previous passport, not the subject passport numbered A3088617. It would therefore stand to reason that there should have been no landing stamps in his



passport numbered A3088617 since such stamps would only have been occasioned on his return to the island from travel abroad. Any landing stamps would therefore clearly be forged and satisfy the constituents of the offence, that is, of the making of a false document in order to be used as genuine.

[28] As Mr Pearson argued, it could be said that the finding that the stamp 1031 had been removed from the system on 30 March 2010, did not itself show that the stamp could not have legitimately been placed in the appellant's passport on 13 October 2009. However, that is of no materiality given the weight of the totality of the evidence which amply demonstrated that the stamp could not have been genuine.

[29] As regards the main criticisms of the learned Resident Magistrate's finding and verdict in relation to count one, it is clear that this case raised questions of fact that were for the learned Resident Magistrate's determination, and the issue of credibility loomed large for her consideration. At paragraph 6 of her findings, the learned Resident Magistrate identified the issues in the case to be as follows:

- " ....
- a. How were the stamps impressed in the passport of the Accused?
  - b. Was the Accused aware that the stamps were in the passport?
  - c. Did the Accused issue or cause to be issued the passport to the French Embassy?
  - d. Did the Accused have the requisite intent in this matter?"

[30] At paragraph 7 of her findings, the learned Resident Magistrate posed the question whether the appellant had forged the stamp impressions in his passport,

indicated that she accepted the evidence of Mr Vernon and found that the impressed stamps were forged.

[31] At sub-paragraphs 7c and d, the learned Resident Magistrate considered the matter of *mens rea* in the following way:

- "c. I find that the Accused had the requisite *mens rea* in relation to the Forgery. The witness Ms Bennett who accompanied the Accused to the French embassy [sic] gave evidence that when the Accused was interviewed at the French Embassy he informed the interviewer that he had travelled before. The investigating officer Detective Corporal Smith then gave evidence that when he interviewed the Accused [sic] had asked him if he had travelled before to St. Martin and the Bahamas and he said yes. I accept that [sic] this evidence from the officer. A check was then made [sic] on the computer to see from the records if the Accused had travelled and after no such record was found, the Accused was informed of this. He told the police under caution that 'me never travel before. I was just seeking to go on a tour of Europe.' The accused also indicated that he is an entertainer.
- d. By making these statements it shows knowledge on the part of the Accused of the stamps in the passport and complicity in the pretence that he had travelled before to St. Martin and the Bahamas. There is no direct evidence that the stamps were placed there by the Accused personally but by these statements one can conclude common design or adding [sic] and abetting secondary participation by the Accused."

[32] At paragraphs 12 and 13 the learned Resident Magistrate discussed the appellant's evidence and her findings as follows:

- "12. The Accused gave sworn evidence and I gave his evidence the same weight as the evidence given by the witnesses for the prosecution. I have reviewed the Accused man's evidence in its entirety and I reject it for the following reason [sic]:-
- a. The Accused denied that he ever told the police that he travelled to the Bahamas and St Martin. His evidence is that he took a trip to England where he was turned back. I

reviewed the evidence of the investigating officer and it was after the officer stated that the Accused told him he had travelled to these two destinations that [sic] investigating officer checked his system and told the Accused that he did not see him in the system that the Accused told him he never travelled to these locations.

b. The Accused according to Ms Bennett told the representative from the Embassy that he had travelled before.

13. Although I reject his evidence I still have to go back to the evidence of the prosecution. I find they have proven their case beyond reasonable doubt for:

1. Forgery as the accused knew the accused knew [sic] that the stamps were in his passport, the stamps were forged and the accused either personally or [sic] aided and abetted the placing of the stamp in his passport.
2. I am not satisfied beyond reasonable doubt that Ms Bennett who presented the passport at the embassy to acquire the Shengen visa was an innocent agent so I find the Accused not guilty for the offence of uttering forged document.
3. I find the Accused guilty for the offence of Conspiracy as the Accused was part of a conspiracy and at the time he had the requisite intent."

[33] The main issue which faced the learned Resident Magistrate in respect of count one was the issue of credibility. Where there is an appeal from a trial judge's verdict based upon his or her assessment of the credibility of witnesses who have been seen and heard, an appellate court, in order to reverse that verdict, must not merely entertain doubts whether the decision below is right, but be convinced that it is wrong (see *Moore v Rahman* (1993) 30 JLR 410 where this court, at page 413, accepted as correct the views of Lord Kingsdown in *Bland v Ross, The Julia* (1980) 14 Moo PCC

210 at p 235). In the instant case, the learned Resident Magistrate had the advantage of seeing and hearing the witnesses who gave evidence. The issues joined would have made her assessment of demeanour a critical and necessary operation. She appears to have properly understood her role in that regard and to have applied the relevant principles appropriately in arriving at her decision as to whom and what to believe and as to the relative trustworthiness of the witnesses.

[34] In our view, with regard to count one, the learned Resident Magistrate demonstrated that she was cognizant of the relevant law and of the issues and applied the principles correctly and in a balanced manner in arriving at her findings of fact. This court will not overturn findings of a tribunal of fact unless those findings are so against the weight of the evidence as to be “obviously and palpably wrong” (see *Joseph Lao v R* (1973) 12 JLR 1238). There was ample evidence to support the findings of the learned Resident Magistrate with regard to count one. It is our view therefore that the conviction ought not to be disturbed.

### **Ground three - Inconsistency**

[35] With regard to the inter relationship between counts one and two, with which ground three is concerned, we agree with Miss Thompson that in relation to the charge of uttering, the learned Resident Magistrate appears to have wrongly focused on the question of whether Ms Bennett was an innocent agent, rather than on examining the behaviour and intention of the appellant himself. However, we also agree with Miss Thompson that there was ample evidence to support the reasonableness of the

conviction on count one. Thus, any inconsistency or perceived inconsistency in the learned Resident Magistrate's verdict in respect of these two counts has not prejudiced the appellant in any way. Indeed, it may well be said that the appellant was fortunate to have had a not guilty verdict recorded in his favour on count two.

## **Conclusion**

[36] The Crown ought not in these circumstances to have proceeded with count three in light of the substantive charge of forgery contained in count one. In any event, the learned Resident Magistrate's findings with regard to the charge of conspiracy were flawed. In relation to count one, the issues to be resolved by the learned Resident Magistrate turned on the credibility of the witnesses that she saw and heard. The evidence, both oral and documentary, that was placed before her were sufficient to prove the offence of forgery. As the tribunal of fact, it could not justifiably be said that her findings were obviously wrong. In fact, in relation to ground one, they were, in our view, well founded and patently reasonable and we find no reason whatsoever to disagree with them.

[37] It is for these reasons that we ruled in the manner set out at paragraph [1] above.