

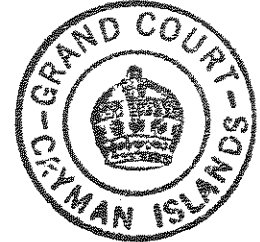
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
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5 INDICTMENT NO: 0064/2013  
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7  
8 THE QUEEN  
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10 V

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12 ~~ODAIN LLOYD EBANKS~~  
13 ~~COURTNEY MASON BRYAN~~  
14 ~~IAN FERNANDO ELLINGTON~~  
15



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17 **Appearances:**

**Ms. Candia James for the Crown**

18  
19 **Mr. Guy Dilliway-Parry of Priestleys for**  
20 **Defendant Ellington**  
21

22 **Before:**

**The Hon. Mr. Justice Charles Quin**

23 **Submissions heard:**

**11<sup>th</sup> February and 24<sup>th</sup> March 2014**  
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25 **SENTENCE RULING**  
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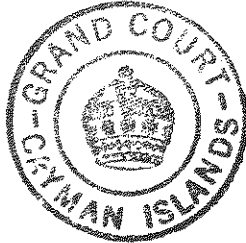
27 1. On the 18<sup>th</sup> October 2013 the Defendant, Ian Ellington was arraigned along with his  
28 co-accused - Courtney Bryan and Odain Ebanks – on this Indictment which, at that  
29 time contained only two counts which are as follows:

- 30 i. One count of Robbery contrary to s.242(1) of the Penal Code (2010 Revision),  
31 for which the particulars of the offence were that, on the 23<sup>rd</sup> day of September  
32 2013, at Chisholms' Supermarket at #1240 North Side Road, North Side, Grand  
33 Cayman, Odain Ebanks, Courtney Bryan and Ian Ellington, together with  
34 [REDACTED] (A Young Person) stole 11 packets of Benson and  
35 Hedges cigarettes, one 14 carat gold chain, one blue topaz pendant, one silver

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stainless steel ESQ watch, one black Nokia mobile telephone and CI\$300.00, all-together valued at CI\$1,495.00, from Rhoda and Sheena Ebanks, and at the time of doing so, and in order to do so, put or sought to put Rhoda Ebanks and Sheena Ebanks in fear of being then and there subjected to force; and

ii. One count of Possession of An Imitation Firearm with Intent to Commit An Offence contrary to s.18(6) of the Firearms Law (2008 Revision) for which the particulars of the offence were that, on the 23<sup>rd</sup> day of September 2013, at the Chisholms' Supermarket at #1240 North Side Road, North Side, Grand Cayman, Odain Ebanks, Courtney Bryan and Ian Ellington, together with [REDACTED] (A Young Person) had in their possession an imitation firearm with intent to commit and offence, namely robbery.



*COURTNEY BRYAN SENTENCED*

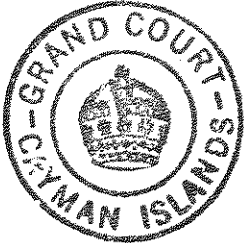
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2. On that date (18<sup>th</sup> October 2013) the co-Defendant, Courtney Bryan, pleaded guilty to both counts and the co-Defendants, Odain Ebanks and Ian Ellington, pleaded not guilty.

3. For the sake of completeness I note that there is a fourth co-accused not named on this Indictment – the Young Person – who is charged with the same counts 1 and 2 on a separate Indictment. The Young Person pleaded guilty to Count 1 on the 1<sup>st</sup> November 2013. Arraignment on Count 2 was delayed for further discussions with the Crown and on the 7<sup>th</sup> February 2014 this Young Person pleaded not guilty to Count 2. A trial date has been set for the 28<sup>th</sup> April 2014.

4. On the 20<sup>th</sup> December 2013 the Court set down a five-day trial for the Defendants Ebanks and Ellington to commence on the 3<sup>rd</sup> February 2014, and a Plea and Directions Hearing (“PDH”) was set for the 13<sup>th</sup> December 2013.

5. With a trial date then set for Defendants Ebanks and Ellington, counsel for the Defendant Bryan – who had pleaded guilty to both counts on the 18<sup>th</sup> October 2013 – requested the 5<sup>th</sup> December 2013 for a Sentence hearing for Bryan. On the 5<sup>th</sup> December 2013 that Sentence hearing did not take place due to the absence of the Crown counsel with conduct of the case and, counsel for Defendant Bryan stated that she would only agree to the adjournment if the hearing was re-set to take place within a few days. Thus, the sentence hearing for the Defendant Bryan was re-set for, and heard, on the 12<sup>th</sup> December 2013.



*AMENDED INDICTMENT*

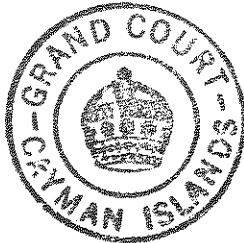
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6. At the PDH hearing on the 13<sup>th</sup> December 2013 for the Defendants Ebanks and Ellington the Crown advised that a Crown counsel had not yet been assigned to this case. The Court advised Crown counsel that, as the trial was set for the 3<sup>rd</sup> February 2014 a Crown counsel should be assigned as a matter of urgency. The 5-day jury trial for Defendants Ebanks and Ellington was still set for the 3<sup>rd</sup> February 2014 and the Defendants were remanded in custody.

7. On the 20<sup>th</sup> December 2013 Samson & McGrath came off the record for Defendant Ellington and the Court was informed that Priestleys would be coming on record for Defendant Ellington. The 5-day trial was still set to commence on the 3<sup>rd</sup> February 2014 for Defendants Ebanks and Ellington.

8. On the 17<sup>th</sup> January 2014 the PDH in relation to Defendants Ebanks and Ellington was continued. The Crown advised that a number of statements were outstanding from the police and these statements were needed to “tighten” the Crown’s case. The Court advised Crown counsel that the police officers involved should be pressed for the statements needed as, without these statements the length of the trial and other details of the case could not be ascertained.

9. On the 29<sup>th</sup> January 2014 the Court delivered its Sentence Ruling for Defendant Bryan. Defendant Bryan was sentenced to four years’ imprisonment on Count 1 (Robbery) and three years’ imprisonment on Count 2 (Possession of an Imitation Firearm) to run concurrent with the 4 years.

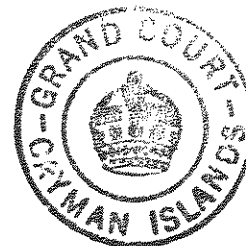


1 10. On the 31<sup>st</sup> January 2014 another PDH was held in relation to the case against  
2 Defendants Ellington and Ebanks and at that hearing Defence counsel advised the  
3 Court that the Jury trial was still to commence on the 3<sup>rd</sup> February 2014. At this  
4 hearing the Court was advised that there were discussions which indicated that the  
5 Crown may accept certain pleas to be offered by the Defendants Ebanks and  
6 Ellington, which may result in the case being resolved without the need for a trial.

7 11. On the 3<sup>rd</sup> February 2014 – the morning of the trial – the Crown laid a new  
8 Indictment 64A/2013. This new Indictment added two new counts against  
9 Defendants Ebanks and Ellington to the original 2-count Indictment – making a  
10 total of four counts. The new counts – Count 3 and Count 4 – were Handling Stolen  
11 Goods and Accessory After the Fact. The Defence pointed out that a new  
12 Indictment was not required and all that was required was for the original  
13 Indictment to become an Amended Indictment 64/2013 – with counts 3 and 4  
14 added.

15 12. The Crown then asked that the Defendants Ebanks and Ellington, who had  
16 previously pleaded not guilty to Counts 1 and 2, now be arraigned, respectively, on  
17 Counts 3 and 4.

18 Count 3 – Handling Stolen Goods contrary to s.260(1) of the Penal Code (2010  
19 Revision) – related only to Odain Ebanks and stated that Defendant Ebanks, on the  
20 23<sup>rd</sup> September 2013, at Sea View Road, East End, Grand Cayman, dishonestly  
21 assisted in the disposal of stolen goods for the benefit of another person, knowing  
22 or believing the said goods to be stolen.



1 The Defendant, Ebanks, pleaded guilty to this Count on the 3<sup>rd</sup> February 2014.

2 Count 4 – Accessory After the Fact to Robbery contrary to s.323(1) of the Penal  
3 Code (2010 Revision) – related only to Ian Ellington and stated that Defendant  
4 Ellington on the 23<sup>rd</sup> day of September 2013, in Grand Cayman, well knowing that  
5 Courtney Bryan and [REDACTED] (a Young Person) did, on the 23<sup>rd</sup> September  
6 2013, in Northside, Grand Cayman, rob Chisholms’ Grocery at 1240 Northside  
7 Road, did, without lawful authority or reasonable excuse, an act with intent to  
8 impede their apprehension or prosecution namely drive them in the getaway vehicle  
9 from the scene of the robbery.

10 The Defendant, Ellington, pleaded guilty to this Count on the 3<sup>rd</sup> February 2014.

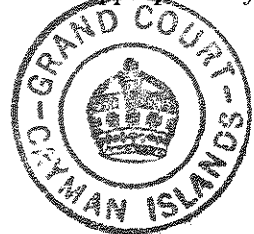
11 13. As a result of the guilty pleas the Crown advised the Court that Counts 1 and 2 in  
12 relation to both Defendants (Ebanks and Ellington) are to be left on the file.

13 14. Letting counts lie on the file is an alternative to the Crown offering no evidence –  
14 the file being marked:

15 “Not to be proceeded with without leave of the Court or the Court of Appeal.”

16 As the learned authors in *Blackstone’s Criminal Practice and Proceedings 2014*  
17 state at paragraph D12/83:

18 “Such a course is particularly appropriate where the accused pleads guilty to  
19 the bulk of the charges against him (whether contained in one Indictment or  
20 several) but not guilty to some subsidiary charges. Leaving the latter on the file  
21 avoids the necessity of a trial, but also avoids the accused actually being  
22 acquitted on the “not guilty” counts, which might seem appropriate if the  
23 evidence against him is in fact strong.”

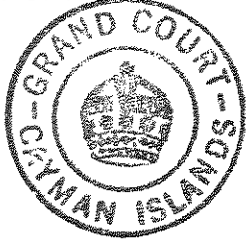


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*CROWN'S SENTENCING SUBMISSIONS FOR  
DEFENDANTS EBANKS AND ELLINGTON*

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15. For the sake of clarity I now re-state the facts as presented by the Crown.
16. The Crown's case is that in the middle of the afternoon on the 23<sup>rd</sup> September 2013 two young men entered Chisholm's store and one of them (who we know was the Defendant Ebanks) purchased a patty. There has been no positive identification as to who the other man was with Defendant Ebanks. Ms. Rhoda Ebanks thought they seemed suspicious and made a note of the license number 111 109 of the vehicle in which the Defendant Ebanks and his unidentified companion entered after they left the supermarket.
17. Approximately 15 minutes later two masked men entered the store and demanded money, placing both Ms. Sheena Ebanks and Ms. Rhoda Ebanks in great fear. The Defendant Bryan had a gun and approached Ms. Sheena Ebanks saying "give me your jewelry." The Defendant Bryan pulled a necklace from Ms. Sheena Ebanks' neck and the men proceeded to steal cash, jewelry, a watch, a cell phone and a carton of cigarettes.
18. As soon as the robbers left the store Ms. Sheena Ebanks rang 911 and provided them with the licence number and description of the vehicle that she had seen earlier. The said vehicle was observed shortly thereafter on Frank Sound Road speeding towards East End. Uniformed police were dispatched from Bodden Town Police Station and, together with the Air (helicopter) Support Unit located and pursued the suspected getaway vehicle.



1 The vehicle attempted to evade capture and ignored police sirens and lights. The  
2 Air Support Unit saw several items being thrown from the vehicle. The vehicle was  
3 eventually stopped in the vicinity of High Rock New Testament Church and the  
4 occupants apprehended.

5 19. The Defendant Ian Ellington was the driver.

6 20. The Defendant Odain Ebanks was the front seat passenger.

7 21. The two Defendants who have already admitted to the robbery – Courtney Bryan  
8 and [REDACTED] (A Young Person) – were seated in the rear of the vehicle.

9 22. The Complainants' stolen watch and phone were recovered from the vehicle. A  
10 discarded box of cigarettes was recovered nearby which was found to have the  
11 Defendant Ebanks' fingerprints on it.

12 23. All of the men were arrested and interviewed under caution.

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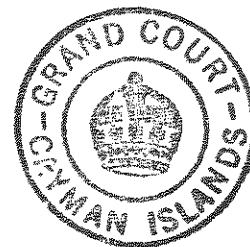
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1 *DEFENDANT ELLINGTON*

2 24. Section 323(1) of the Penal Code sets out the definition of Accessory after the Fact  
3 and reads:

4 *“Where a person has a committed an arrestable offence, a person who,*  
5 *knowing or believing him to be guilty of the offence or of some other arrestable*  
6 *offence, does without lawful authority or reasonable excuse any act with intent*  
7 *to impede his apprehension or prosecution is said to become an accessory after*  
8 *the fact.”*

9  
10 25. As the learned authors of *Blackstone’s Criminal Practice* 2014 stated at A4.1:

11 *“A principal offender is the actual perpetrator of the offence. The person whose*  
12 *individual contact satisfies the definition of the particular offence in question,*  
13 *whilst an accessory is one who aids, abets, counsels, or procures the*  
14 *commission of the offence.”*

15  
16 At paragraph A4.2 the learned authors continue and state:

17 *“The phrase ‘aid, abet, counsel and procure’ may be, and generally is, used a*  
18 *whole even though the accused’s conduct may be properly described only by*  
19 *one of the four constituent words. Partly for this reason, the precise meaning of*  
20 *each constituent word has not been authoritatively determined, but putting*  
21 *procuring on one side for a moment, the modern approach is to say that*  
22 *assistance or encouragement is what is required to bring a person within the*  
23 *meaning of the ancient formula.”*

24  
25 26. The classic statement for the *mens rea* of an accessory is that of Lord Goddard CJ  
26 in *Johnson v. Youden*<sup>1</sup> that:

27 *“Before a person can be convicted of aiding and abetting the commission of an*  
28 *offence he must at least know the essential matters which constitute that*  
29 *offence.”*

<sup>1</sup>*Johnson v. Youden* [1950] 1 KB 544 at page 546

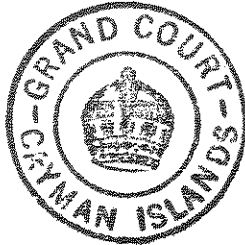


1           27.     The penalties for being an Accessory After the Fact are set out in s.324 of the Penal  
2                   Code (2010 Revision):

3                   “324.   *A person who his convicted of being an accessory after the fact is liable*  
4                   *to imprisonment –*  
5                   (i) *If the offence is one for which the sentence is fixed by law, for ten*  
6                   *years;*  
7                   (ii) *If the offence is one for which a person (not previously convicted) may*  
8                   *be sentenced to imprisonment for fourteen years or more, for seven*  
9                   *years;*  
10                  (iii) *If the offence is not included in paragraph (a) or (b) but is one for*  
11                  *which a person (not previously convicted) may be sentenced to*  
12                  *imprisonment for ten year, for five years; and*  
13                  (iv) *In any other case, for three years.”*  
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16           28.     The maximum penalty for robbery is life imprisonment, and for being an accessory  
17                   by aiding and abetting, in relation to the Defendant Ellington, the maximum is  
18                   seven years imprisonment.

19           29.     Defence counsel reminds the Court that the Court decided that the appropriate  
20                   sentence for the Defendant Bryan (previously sentenced in relation to this robbery)  
21                   was six years imprisonment, but because of his very early guilty plea he received  
22                   the 33 1/3 % reduction and was sentenced to four years. However, at the same time,  
23                   Defence counsel submits that Mr. Ellington is before the Court for an entirely  
24                   different offence and a considerably less serious offence. Defence counsel, Mr.  
25                   Dilliway-Parry therefore urges the Court to sentence Defendant Ellington for the  
26                   offence for which he is being convicted. Defence counsel adds that, in so doing,  
27                   there must be a reduction to reflect the difference in the offence for which  
28                   Defendant Bryan was sentenced and the one to which Defendant Ellington pleaded  
29                   guilty.

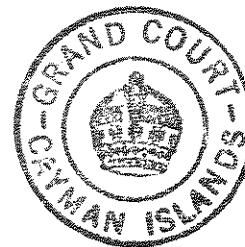


1       30.     The Defence accepts that the two men who committed the robbery ended up in the  
2             back of the vehicle in which all four men, including the Defendant Ellington, were  
3             discovered. However, it is the submission of Defence counsel that the aggravating  
4             features that are linked to Defendant Bryan in relation to the charge of robbery are  
5             conspicuously absent when it comes to Defendant Ellington. Defendant Ellington is  
6             an accessory and his criminality is that he helps the robbers to get away, knowing  
7             full well that they had committed the robbery.

8       31.     Defence counsel submits that there is no evidence that Defendant Ellington ever  
9             went into the shop. The other man who entered the store with Defendant Ebanks  
10            has not been identified.

11      32.     Defence counsel submits that there is no evidence that Defendant Ellington knew  
12             that the men used guns or how the guns were used, and there is no evidence that the  
13             Defendant Ellington knew that violence was used against Ms. Sheena Ebanks.  
14             Defence counsel also states that there is no evidence that Defendant Ellington was  
15             involved in the planning of the offence. Finally, Defence counsel submits that the  
16             Defendant Ellington was not masked, was not involved in the robbery and he did  
17             not threaten anyone.

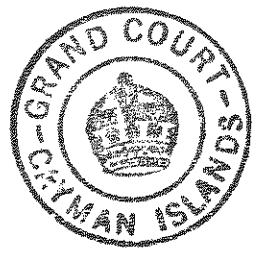
18      33.     Nevertheless, the Defence accepts that, because of the seriousness of the offence,  
19             custody is inevitable.



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34. The Defendant has provided a reference from his employer – Chrisson Construction – dated the 9<sup>th</sup> February 2014, which describes the Defendant as a “very trustworthy, honest, capable and hardworking young man” who is “very reliable and is often left unsupervised on jobs [and] has always done [the job] to perfection.” Defence counsel requests a lenient sentence on the basis that his employer stands ready to re-employ him once he is released.

35. In addition, the Court has received a letter from the Defendant’s young wife with whom he has a three year old daughter and a two month old son. She describes the Defendant as a good husband and father and the only financial support for their young family.



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*CONCLUSION*

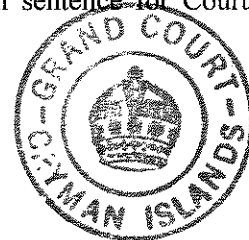
36. I have taken into account the submissions of both Crown and Defence counsel in this case and I have to say that the Defendant should have thought about his young family and his responsibility to them before engaging in criminal activity and assisting the robbers to get away from the scene of the crime. Furthermore, there is no evidence that the Defendant Ellington was a reluctant participant.

37. As I said in my Sentencing Ruling of the 29<sup>th</sup> January 2014 in relation to Defendant Bryan, the community is grateful for the courage and quick action of the victims of this robbery, Ms. Rhoda Ebanks and Ms. Sheena Ebanks, and also to the police from Bodden Town, together with the helicopter unit, who all acted quickly in apprehending the Defendant and the criminals who executed this offence.

38. The police noted that when the vehicle was trying to evade them, several items were thrown from the car as it sped along. The car was eventually stopped in the vicinity of High Rock New Testament Church, where the Defendant and the other occupants of the vehicle were apprehended and detained.

39. The Crown submits that the Defendant was not so far removed from the original offence to merit a significantly shorter custodial sentence than the principal offender.

40. The defence cautioned the Court to sentence only for the offence for which the Defendant is before the Court – which is an entirely different and less serious offence from that which brought about the 4-year prison sentence for Courtney Bryan.



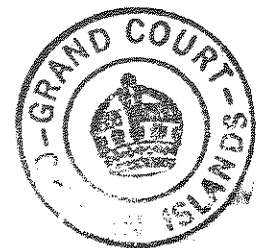
1       41.     I accept the submissions from Defence counsel that Mr. Ellington's role was limited  
2             to that of an accessory, and the criminality is that he helps the Defendants to escape  
3             from the scene – knowing that they have committed a robbery – in an effort to  
4             avoid detection and apprehension. Fortunately the escape was unsuccessful.

5       42.     I accept that Mr. Ellington has pleaded guilty at the very first opportunity to acting  
6             to assist the robbers – knowing that the robbery had occurred at Chisholm's  
7             Grocery, with intent to impede their apprehension and prosecution, namely by  
8             driving them from the scene in the getaway vehicle.

9       43.     One cannot ignore the fact that this was a serious armed robbery. The registration  
10            number of the getaway car had been noted and recorded by Mrs. Ebanks  
11            immediately after the initial entry into the shop by the Defendant Ebanks and  
12            another person. The Defendant Ellington must have been immediately aware that a  
13            robbery had taken place when the two men got into the getaway car which he drove  
14            away from the scene. If he had succeeded in making good the intended escape,  
15            these criminals might never have been apprehended. It was only because Mrs.  
16            Ebanks gave the registration number of the vehicle to the police that they were able  
17            to locate and apprehend the robbers.

18       44.     In *R v. Bailey, Baker, Smith and Richards*<sup>2</sup>, the first Defendant, Bailey, pleaded  
19            guilty to being an accessory to an armed robbery in which one person was killed. At  
20            that time the maximum sentence was three (3) years, and the Defendant received 18  
21            months imprisonment for being an accessory after the fact to robbery.

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<sup>2</sup> *R v. Bailey, Baker, Smith and Richards* [2000] CILR Note 13

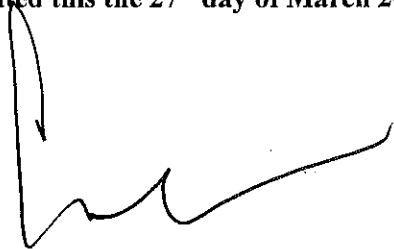
1       45.     Since *Bailey, Baker, Smith and Richards*, the maximum sentence for the  
2       Defendant Ellington's offence of being an accessory has been increased from three  
3       (3) years to seven (7) years.

4       When I review all the circumstances in this case, in my view the appropriate  
5       starting point is four (4) years.

6       46.     I accept that the aggravating features relating to Defendant Bryan do not apply to  
7       the Defendant Ellington. Defendant Ellington is a man without previous convictions  
8       and it would appear that at the age of 29 years, the Defendant's participation in this  
9       offence is out of character. There is evidence to support that the Defendant  
10      Ellington has a good work record and is a good father. In all the circumstances of  
11      this case I find that the appropriate sentence is therefore three (3) years  
12      imprisonment.

13      47.     Finally, I take into account that the Defendant Ellington has pleaded guilty at the  
14      earliest opportunity and, consequently, I apply the 33 <sup>1</sup>/<sub>3</sub>% reduction and impose a  
15      sentence of two (2) years' imprisonment – with time spent in custody to be taken  
16      into consideration.

17      Dated this the 27<sup>th</sup> day of March 2014

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20      Honourable Mr. Justice Charles Quin  
21      Judge of the Grand Court

