

J A M A I C AIN THE COURT OF APPEALCAYMAN ISLANDS GRAND COURT APPEAL No. 7 /71

B E F O R E: The Hon. Mr. Justice Luckhoo, Ag. President  
 The Hon. Mr. Justice Edun  
 The Hon. Mr. Justice Hercules (Ag.)

ORMOND PANTON V. REGINA

Norman Hill, Q.C. and P. Rickards for the Crown.  
 Dudley Thompson, Q.C., C. Rattray Q.C. and  
 W.K. Chinsue for the Applicant.

15th, 16th December, 1971 and 14th January, 1972.

HERCULES, J.A. (Ag.)

The trial of this Applicant took place from the 18th to the 21st January, 1971. He was charged with fraudulently converting to his own use and benefit on 9th February, 1968, the sum of £500 received by him for and on account of three brothers, viz: Melbourne Watler, Stacey Watler and Keithbourne Watler contrary to Section 23(1)(iii)(b) of the Larceny Law Chapter 82. The jury by a majority verdict found him guilty and he was sentenced to imprisonment for two years.

Melbourne Watler gave evidence that the Cayman Islands Government had destroyed 900 feet of road frontage of certain lands at Frank Sound, Grand Cayman, owned by the three Watler brothers. Melbourne Watler authorised Applicant to negotiate with the Government for compensation for the damage done to those lands. In consideration thereof he paid Applicant 20 guineas.

Some days later, Applicant reported that he had seen the Administrator and that the Administrator would not agree to pay more than £500 as damages. Applicant advised Melbourne Watler to accept the £500 in view of the possibility of losing the case in the Grand Court.

Next .../

Next day, on Applicant's invitation, Melbourne Watler went to Applicant's office and signed a document purporting to be a quit claim, whereupon Applicant wrote out a cheque for £500 and handed it over. Melbourne Watler then gave Applicant £5 and Applicant told him not to let anyone know how much was paid by the Government. This witness testified that he first knew that Applicant was really paid £1,000 when he went to the Administrator's office some time in the month of March and he never authorised Applicant to retain £500.

In cross-examination, however, the same Melbourne Watler stated: "He (referring to Applicant) used the word 'bonus'. I took it that if he could get more from Government than what he told me Government had paid, he could keep it." This was clearly repeated in re-examination as follows: "I understood that Government could pay £500 and that anything Panton could get over was his. I received £500, I gave him £5. It had nothing to do with bonus." This evidence in cross-examination and re-examination was a complete volte face from the evidence given in chief. As part of the crown's case, the witness admitted quite unequivocally, that he expected Applicant to keep whatever he got in excess of £500.

Moreover, apart from this verbal evidence, Melbourne Watler admitted signing two documents both of which were received in evidence as Exhibits 'A' and 'B'. Exhibit 'A' reads as follows:

"  
 GEORGE TOWN,  
 GRAND CAYMAN,  
 CAYMAN ISLANDS  
 8th FEBRUARY, 1968.

R E C E I P T

RECEIVED FROM O.L. PANTON (LAW AGENT) ACTING IN MY BEHALF  
 IN NEGOTIATIONS WITH THE GOVERNMENT OF THE CAYMAN ISLANDS, FOR  
 SETTLEMENT OF A CLAIM FOR ALLEGED DAMAGES DONE TO MY PROPERTY AT  
 FRANK SOUND, DISTRICT OF GRAND CAYMAN, CAYMAN ISLANDS, DURING THE  
 ROAD CONSTRUCTION IN GRAND CAYMAN IN 1958 to 1960. THE SUM OF  
 FIVE HUNDRED POUNDS (£500). STG.

HAVING .../

" HAVING HERETO ACCEPTED AND HEREBY SET MY HAND AND SEAL HERETO I MELBOURNE WATLER, DO HEREBY FULLY AND FOREVER RELINQUISH ANY FURTHER CLAIMS AGAINST THE GOVERNMENT OF THE CAYMAN ISLANDS AND ANY OTHER PARTY IN THIS CONNECTION.

IT IS FURTHER AGREED THAT ANY COMMISSIONS OR OTHER EXPENSES INCURRED IN SETTling THIS MATTER MUTUALLY OUT OF COURT IS NOT MY RESPONSIBILITY, AND THAT MY LAW AGENT CAN CLAIM SUCH FURTHER EXPENSES AND/OR COSTS FROM THE GOVERNMENT.

SIGNED, SEALED AND DELIVERED THIS 8th DAY OF FEBRUARY IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND SIXTY EIGHT.

SGD. MELBOURNE WATLER  
MELBOURNE WATLER, et al.

WITNESS (to the above signature)

Sgd. NAOMI PANTON. "

Exhibit 'B' reads as follows:

"

George Town,  
Grand Cayman,  
Cayman Islands,  
7th January, 1968.

GRAND CAYMAN,  
CAYMAN ISLANDS S.S.

TO WHOM IT MAY CONCERN:-

THIS AGREEMENT MADE THIS DAY ABOVE WRITTEN BETWEEN ORMOND L. PANTON ACTING AS MY 'LAW AGENT' AUTHORIZES MR. PANTON ACTING IN MY BEHALF TO NEGOTIATE WITH THE GOVERNMENT OF THE CAYMAN ISLANDS IN SETTLEMENT FOR DAMAGES DONE TO MY PROPERTY AT FRANK SOUND DISTRICT, ISLAND AFORESAID, FOR A SUM OF NOT LESS THAN £500. 0. 0. FIVE HUNDRED POUNDS STG.

UPON RECEIPT OF SUCH SUM I MELBOURNE WATLER, ACTING ON BEHALF OF MYSELF, AND MY BROTHERS STACEY WATLER AND KEITHBOURNE WATLER ALL BEING LEGAL OWNERS OF SAID PROPERTY, HEREBY AND

FOREVER ...../

"FOREVER RELINQUISH ALL OR ANY FURTHER CLAIMS AGAINST THE GOVERNMENT  
of the CAYMAN ISLANDS.

SIGNED, SEALED AND  
DELIVERED.

SGD. MELBOURNE A. WATLER  
MELBOURNE A. WATLER.

SIGNATURE (?)  
WITNESS OF THE ABOVE "  
SIGNATURE. "

The signature of the witness is apparently indecipherable and does not appear on the copy filed with the bundle.

It is to be noted that in Exhibit "B", Applicant was authorised to negotiate for a sum of not less than £500. As pointed out above, the contents of the document were supplemented by the evidence of Melbourne Watler who "understood that Government could pay £500 and that anything Panton could get over was his".

Vassel Johnson, Financial Secretary of the Cayman Islands, gave evidence confirming that £1,000 was paid to the Applicant but he denied that Exhibit 'A' was the quit claim given to him. It is most unfortunate that the Crown did not produce the quit claim that ought to have been in the possession of the Financial Secretary. In any event, Exhibit 'A' as it stands does not purport to establish anything contrary to the evidence given by Melbourne Watler. The verbal evidence remains quite clear as to what must have been agreed between the parties regarding any sum in excess of £500.

At the close of the Crown's case, Mr. Thompson made a no-case submission on the basis, inter alia, that Melbourne Watler understood that bonus meant any profit over and above £500 was to go to defendant. This submission was rejected by the Learned Trial Judge who called upon the defendant and left the case with the jury.

Many grounds of appeal were filed by the Applicant but the one most laboured by Mr. Thompson and which indeed attracts the attention of this court is: "that the Learned Trial Judge was wrong in Law to have refused a no-case submission as the evidence of the crown does not

establish .../