JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO: 93/81

BEFORE: The Hon. Mr. Justice Zacca - President
The Hon. Mr. Justice Rowe, J.A.
The Hon. Mr. Justice White, J.A.

R. v. RUPERTO HART-SMITH

Mr. Richard Small & Mr. Roy Fairclough for Appellant

Mr. Glen Andrade & Miss Diane Harrison for Crown

October 26 - 30 December 18, 1981

ROWE J.A.

Moonex International Establishment had offices at Knutsford Boulevard, in fashionable New Kingston, had a Managing Director, Ruperto Hart-Smith the appellant herein, but was not a registered company under the laws of Jamaica. To this unregistered entity was consigned a container loaded with 204,500 live shotgun cartridges each with a lethal range of 20-25 yards. Their description on the bill of lading has had the effect of adding to the Jamaican language the unforgettable term "hunting boolets and these "boolets" were discharged from the M.V. Tango Express at Kingston Wharves on May 5, 1980. Maritime Transport Services the agents for Tango Express sent their clerk Herbert Chen aboard and he received from the Captain two sealed envelopes. One envelope marked "customs" was opened by Mr. Chen and from it he took the manifest which he used to report the ship to customs on May 6, 1980. The other sealed envelope he placed unopened on the desk of the firm's sale representative, Miss DeSouza, and this she opened on the morning of May 6, 1980. She found a manifest with cargo stated on it as Hunting Boolets, and an original and copy Bill

of Lading written in Spanish. With the aid of a dictionary she did her own translation. The information gleaned was so important that she reported first to the manager of her firm, then to someone at Kingston Wharves, and finally to Captain Hall of the Jamaica Defence Force at Up Park Camp, that the cargo contained ammunition.

Maritime Transport Services, had become aware at 8. a.m. on May 5, 1980 that the Tango Express would be arriving in port on that day and that its cargo included ammunition. The message which Mr. Chen then took from the Telex machine advised of a bill of lading in respect of Moonex International and continued:-

> "contents of hunting ammuntion - Please exercise proper security."

The ship arrived at 4 p.m. discharged its cargo and sailed away that same day. It was too late in the day for its arrival to be reported to customs on May 5 but this was done the following day. At the time of the reporting of the Tango Express the customs officer, unfamiliar with the term "Hunting Booklets" overlooked its significance as he thought that there was a misdiscription and that the goods were in reality some harmless "hunting booklets".

The appellant attended at the offices of Maritime Transport Services on the morning of May 6, 1980. Mrs. DeSouza saw him with the operations manager sometime before mid-day (but after she had made her contact with Up Park Camp) and he presented to Mr. Hugh Donaldson the original bill of lading for validation. Mr. Donaldson in pursuance of normal company routine validated the bill of lading by comparing the original with the non-negotiable copies in his office and with the manifest, and having satisfied himself that all charges due to his company had been prepaid, affixed his company stamp to the copy, signed it, handed it over to the appellant. This exercise he completed before mid-day. When the appellant presented the original bill of lading it carried a signature in the place provided for the consignee's signature but Mr. Donaldson could not say who signed it, nor said he,

was he in a position to recognize the handwriting of the appellant.

In the early afternoon of May 6, 1980, the Director of the Enforcement Division of Customs received information that the ammunition was on the wharf. With the co-operation of the Police the container was removed to Up Park Camp for safe-keeping and investigations were commenced into the circumstances in which this cargo arrived in Jamaica.

By virtue of Section 4 of the Firearms Act, no person can import into, export from or tranship in Jamaica any firearm or ammunition except under and in accordance with the terms of a Permit. The administrative rules which govern the grant of such permits are that the application is submitted to the Commissioner of Police, who through a Deputy Commissioner processes the application. If the application is approved, the actual permit is issued by the Collector General or his nominee. A special procedure is to be followed when the firearm or ammunition is brought into the Island. The agents of the vessel, usually about one week before the arrival of the vessel, advises the Harbour Master that ammunition or such dangerous cargo is aboard. If the Harbour Master approves that the vessel may come alongside the berth, he will in turn by letter advise the Enforcement Division of Customs, the Collector of Customs, the Police, the Army and the Coast Guard. The security forces will then put in place proper security arrangements for the reception, protection and safe-guarding of such cargo.

No officer of the Collector General's Department was advised of or had any knowledge that the Tango Express was carrying ammunition before May 6, 1980 and then only after the cargo had been discharged. No permit had been applied for through the Commissioner of Police and no permit had been issued by the Collector General or his nominee. The cargo consequently had been illegally imported into Jamaica in breach of Section 4 of the Firearms Act and in breach of Section 210 of the Customs Act.

Ruperto Hart-Smith, the appellant, was charged on four informations charging that he:

(a) unlawfully imported into Jamaica a quantity of Ammunition without a permit contrary to Section 4 (1) of the Firearms Act - Information 4027/80

(b) unlawfully attempted to tranship in Jamaica a quantity of ammunition, without a permit contrary to Section 4 (1) of the Firearms Act - Information 4028/80

(c) unlawfully imported into the Island a container containing 412 cases of Remington and Winchester cartridges the importation of which is prohibited by Section 40 (V) of the Customs Act and contrary to Section 210 of the Customs Act. Information 4029/80

As an alternative charge to the one at (c) above:-

(d) unlawfully was concerned in the importation into the Island of a container containing 412 cases of Remington and Winshester shot-gun cartridges the importation of which is prohibited by virtue of Section 40 (V) of the Customs Act and contrary to Section 210 of the Customs Act - Information 4030/80

He was convicted on:

(i) Information 4027/80 and fined $400. or 4 months hard labour.

(ii) Information 4029/80 and fined $536,284.36 or 4 months hard labour and the cargo of ammunition was forfeited.

(iii) No verdict was handed down on the alternative charge contained in Information 4030/80

and

(iv) He was acquitted on Information 4028/80

From these convictions he has appealed and on his behalf his attorneys argued four grounds of appeal. Ground 1 complained that the learned resident magistrate erred in law in holding that the appellant had imported exhibit 13, that is to say, the cargo of ammunition.

Although not a company registered under the Companies Act of Jamaica Moonex International Establishment had obtained Exchange

Control permission from the Bank of Jamaica to conduct business in the Free Zone Area of the port of Kingston. Moonex is a multi-national corporation. One of its companies is Moonex Panama. There existed according to the appellant an arrangement between Moonex Panama and Moonex Jamaica whereby Moonex Panama, because it had insufficient warehousing space in Panama, would ship goods to Moonex Jamaica and such goods would be accepted by Moonex Jamaica, and held in the Free Zone until instructions were received from Panama as to how the goods were to be disposed of. It appears that a part of the business strategy of Moonex Panama was to purchase goods in the U.S.A. pass them through Jamaica and into Cuba. The appellant told the police in a caution statement that the arrangement between the two companies further provided that Moonex Jamaica should be notified in advance of any goods being consigned to it by Moonex Panama so that Moonex Jamaica, through the appellant, could take appropriate steps to clear the goods into the Free Zone.

After the ammunition which arrived on the Tango Express was removed to Up Park Camp the Collector General was informed and he invited the appellant to his office for a discussion. On May 7, 1980 about mid-day the appellant attended upon the Collector General and handed him 5 documents in connection with the shipment. They did not include a Permit form the Commissioner of Police or the Collector General to import the ammunition. Without specifying what documents, the Collector General requested the appellant to attend upon him on the following morning and to produce further customs documents to facilitate clearance of the goods. The appointment was set for 9. a.m. but the appellant turned up at 10.30 a.m. He had with him Transhipment Shipping Bills Form 36. Incidentally, Mr. Grant the acting Senior Surveyor of Customs, gave evidence that the appellant had come to him on the morning of May 8 with the relevant number of copies of the Transhipment Shipping Bills and requested that he process them. He

refused as he then knew of the appellant's appointment with the Collector General. When Hart-Smith gave evidence he specifically denied this clandestine approach to Mr. Grant.

At his second meeting with the Collector General, the discussion revolved around the true contents of the container and at the suggestion of the Collector General the appellant typed and signed a request that the container be opened and examined. The container was opened in the presence of the appellant officers of Customs and of the Security Forces and was found to contain ammunition of the quantity earlier described.

The prosecution relied upon the following facts to prove that the appellant imported the ammunition into Jamaica. Firstly, he was the chief executive of an unregistered company to which the goods were consigned and consequently he could not shelter behind the corporate status of that entity. Secondly, that his conduct in accepting the shipping documents and in signing the bill of lading and his preparation and presentation of the Transhipment Forms was evidence "leading to a conclusion that the (appellant) presented himself as a person responsible for shipment of ammunition". Thirdly, that the definition of the term "importer" in Section 2 of the Customs Act could be prayed in aid to arrive at the true meaning of the term "import" also defined in Section 2 of the Customs Act. Fourthly, that this was a case of strict liability once the prosecution proved that the appellant "imported" or was concerned with the importation" of the goods.

Now apart from the 5 customs documents which the appellant handed to the Collector General, he also had with him a Telex message which he said he had seen for the first time at 5.15 p.m. on May 5, 1980. In this Telex message the nature of the goods arriving by Tango Express was not specifically described. He told the Collector General on the 7th and again on 8th May that he had no prior knowledge of the arrival of the consignment of ammunition. He did not order it, he did not expect it, and indeed this was the first occasion on which any such

cargo was being consigned to Moonex Jamaica. He had a letter which would confirm that the purchase of the ammunition was from Bonanza Concord Lines of Miami.

In order to place the appellant within the meaning of the term "importer" as defined in the Customs Act, the prosecution considered it necessary to prove that the appellant had signed the bill of lading and the Transhipment Forms, being documents relating to imported goods, and which are required by the customs laws to be signed by an importer. The Transhipment Forms presented no difficulty as these were tendered to the Collector General in circumstances from which it could be readily inferred that the appellant prepared and signed them. No prosecution witness gave evidence of handing the bill of lading to the appellant. No prosecution witness saw him sign that document. Mr. Lionel Lawrence, the Collector General gave evidence identifying the signature of the appellant on the bill of lading. He had previous knowledge of the signature of the appellant in that he had received a letter from Moonex International Establishment which contained a similar signature, and thereafter the appellant had come to have a discussion with him about the contents of that letter. He had also seen the appellant sign the letter requesting an examination of the contents of the container. A police officer had taken two caution statements from the appellant and had seen him sign both and he was permitted to give evidence of his opinion as to who signed the bill of lading.

Mr. Small referred us to and relied upon R. v. Crouch (1850) 4 Cox's C.C. 163 for the proposition that if a witness obtains knowledge of the handwriting of a person after that person is under suspicion for having committed a criminal offence and for the specific purpose of being able to prove the hand-writing of the earlier document, such evidence is inadmissible. In Crouch's case a threatening letter had been sent to the complainant and in order to get a specimen of Crouch's handwriting the police paid him some money and so obtained his signature on the receipt. Maule J. rejected the evidence of the police officer saying:

> "Knowledge so obtained, that is to say, for such a specific purpose and under such a bias, is not such as to make a man admissible as a quasi-expert witness."

Salter J. in giving the judgment of the Court of Criminal Appeal in R. v. Rickard (1918) 13 Cr. App. R 140 after referring to R. v. Crouch supra. made it clear that he was not saying that only an expert witness could give opinion evidence of handwriting. At page 143 of the Report he is quoted as saying:

> "In Crouch it was proposed on a question of handwriting to ask the opinion of a police officer who had no knowledge of the subject, except that acquired in the course of the case. Maule J. rejected the evidence, saying, 'Knowledge so obtained, that is to say, for such a specific purpose, and under such a bias, is not such as to make a man admissible as a quasi-expert witness. He does not come to speak as a fact, but as a witness of skill, to use his judgment upon a particular question. The only means he has had of acquiring a capability to form such a judgment are not such as to make him a competent witness in that particular.' That case does not decide what degree of preparation is necessary to constitute an expert, but it does decide that a person is not entitled to give such evidence if his only knowledge on the subject is that acquired in the course of the case. That was the position of the police officer, and the position of Busby is less satisfactory. Therefore no expert evidence at all was given in the case. This Court does not decide that expert evidence in such cases is necessary, and the observations of Blackburn J. in Harvey do not so decide, but it is clear from the nature of things that to leave a question of handwriting to a jury without assistance is a somewhat dangerous course."

Neither the Collector General nor the police officer had any intention to extract from the appellant a specimen of his signature when he was asked to sign the letter of May 8 and the two caution statements. There is absolutely no evidence that on those occasions when they saw the appellant sign his name either the Collector General or the

police officer contemplated that he would be called as a witness as to handwriting. We think that the opinion of the learned author of Cross on Evidence, 3rd Edition at p. 504 correctly circumscribes the applicability of the decision in Crouch's case when he says:

> "Perhaps this case is best regarded as turning on an analogy with those cases in which the answers to questions improperly put by policemen to prisoners in custody were rejected."

We do not consider that the decision in Crouch's case is relevant to the facts of the instant case. In our view the learned resident magistrate was quite right in admitting the evidence of the Collector General, and the police officer in proof of the signature on the bill of lading. It was then a matter of what weight should be accorded to such evidence and the learned resident magistrate himself examined the several signatures. We are of the opinion that he had before him sufficient evidence that it was the appellant who had signed that bill of lading. It seems to us, further that in the circumstances in which he presented the bill of lading to be validated, there was evidence from which the court could have inferred that the appellant had indeed signed the same.

At the end of the case for the prosecution there was prima facie evidence from which the learned resident magistrate could have inferred that the appellant had caused the ammunition to be brought into Jamaica. There was the business relationship between Moonex Panama and Moonex Jamaica. Obviously when the appellant received the bundle of documents from Maritime Transport Services, he would then and there appreciate what were the contents of the container. He had the packing list, he had the letter from Bonanza, he had the bill of lading. If these documents took him by surprise what would one reasonably expect him to do? Would he not have rushed back to his office and endeavoured to make contact with Moonex Panama and seek an explanation and instructions. Instead he presented the bill of lading to the validating clerk, had the Bill validated and then without a

word to the customs officials he went off to his own business.

But not content to leave the Court to contemplate these highly pursuasive inferential materials, the Director of Public Prosecutions launched himself on a line of argument which found favour with the learned resident magistrate and has provided Mr. Small with his most weighty arguments. The Director submitted that Parliament must have recognized that having regard to the nature and circumstances of offences created under Section 210 of the Customs Act, it would sometimes be difficult to acquire direct evidence as to persons who actually brought or caused goods to be brought into the Island, and consequently the Court could have recourse to the statutory definition of "importer" to determine the extent and true meaning of the word "import" and the statutory definition thereof. Before the learned resident magistrate Mr. Small strongly argued that this method of statutory construction adumbrated by the Director was fallacious and impermissible in law.

At the close of the arguments the learned resident magistrate ruled and in our view correctly, that there was a case for the appellant to answer. He did not then disclose his reasons for that ruling and this decision is in keeping with the decisions of this Court.

In support of his defence the appellant gave evidence on oath. He spoke of his association with Moonex International Establishment which he said began operations in Jamaica in the Free Zone on June 16, 1978 with permission from the Port Authority and with the approval of the Bank of Jamaica. He was successively Manager at the Free Zone and General Manager at its main office situated at British American Building, Knutsford Boulevard. At the outset he denied that he brought or caused the ammunition to be brought into Jamaica. It was his evidence that Moonex operates in many parts of the world. Moonex Jamaica deals regularly with Moonex Panama on an average of one to two shipments each month but with other Moonex branches only intermittently. Moonex Panama would send goods to Moonex Jamaica to be warehoused in

the Free Zone and sometimes to be transhipped to Cuba. This was done in pursuance of a general agreement between Moonex Panama and Moonex Jamaica whereby Moonex Panama would ship goods to Moonex Jamaica and Moonex Jamaica would accept those goods and deal with them according to the instructions received from Moonex Panama. This agreement he said was conditional upon Moonex Jamaica being advised in sufficient time of the proposed shipment to allow the appellant to decide whether to accept or refuse the goods. The appellant said in an ordinary case he should be advised before the goods were put on board the ship. However, even if he had not been informed that the goods had been shipped on his understanding of his functions he could not refuse to deal with them after they had been off-load from the ship in Jamaica. In reference to the instant case he said that he had been out of office visiting sugar estates in the country parts and on his return at 5.15 p.m. on May 5, 1980 he saw for the first time the Telex Message, Ex. 17, which advised that cargo was being brought in for Moonex on the Tango Express. That Telex read:

> "2385 HAVIMPEX PG
> PMA 5/5/80
> TELEX 466
>
> DEAR HART
>
> FROM BONANZA MIAMI FLA. IS ARRIVING THERE SS/TANGO WITH CARGO O YOU SOL/ Ø NØ 1 IN ONE CONTAINER STOP DOCUMENTS WITH THE APS MAIL STOP PLEASE CONFIRM URGENTLY TO VS AS SOON AS POSSIBLE EVERY THINGS BE CONTROLLED STOP BEST REGARDS.

On the following morning he went to the offices of Maritime Transport Services and there collected a bundle of documents which including the bill of lading, Invoice, Packing List and letter from Bonanza. He said, quite untruthfully, as was found by the learned resident magistrate, that he signed the original bill of lading without reading it and then had the Bill validated. He said that it was only afterwards that he read the bill of lading and having discovered that the cargo contained ammunition he rushed to his office and made frantic but unsuccessful efforts to contact Panama. He said he did nothing more of his own volition with regard to these goods. He spoke of his meeting with the

Collector General and said that he prepared the transhipment documents on the instructions of the Collector General. He denied that he approached Mr. Grant on the morning of May 8 and tried to persuade him to process the transhipment documents so that the ammunition could be sent to the Free Zone and out of Jamaica on the "Matanza" then in port. Finally he denined the suggestion that he had prior knowledge of the shipment of ammunition before its arrival in Jamaica. Some witnesses were called for the defence but nothing they said is material for the purposes of this appeal.

The learned resident magistrate having returned a verdict of guilty on two of the four informations in compliance with the duty imposed upon him by Section 291 of Judicature (Resident Magistrates) Act he recorded his findings of fact on which he founded the verdict of guilty. We set them out in extenso:

> "Conduct and demeamour of all witnesses considered. Discrepancies and inconsistencies taken into account. Court finds as fact container with 204,500 live rounds of ammunition consigned to Moonex International Establishment from Miami unloaded from Tango Express at New Port West St. Andrew 5/5/80. General agreement for Moonex Panama to ship goods Moonex International Establishment Jamaica and for Moonex International to deal with goods as instructed. No firearm permit applied for nor granted nor issued. No application for nor permission to import granted. Goods Exhibit brought into Island illegally. Defendant Manager of unregistered company Moonex International Establishment. Defendant as person in charge and as re resentative acting on behalf of and in pursuance of Moonex International Establishment business obtained from Maritime and Transport services - agents for Tango Bill of Lading in respect to goods prohibited. In furtherance of Moonex International Establishment interest signed it and had it validated. Reject evidence of defendant in relation to signing of Bill before reading (as he says) Telex message Exhibit 17 did not disclose type of goods and he did not expect container. Defendant's signature appears on Exhibit 5, 6, 12 & 12A & 17.
> Find that on validation of Exhibit 1 and on receipt of non negotiable Bill and by his conduct defendant became beneficially interested in Exhibit 13 for and on behalf of Moonex International Establishment.

> "Defendant typed English translation of Spanish words on several Exhibit and signed his name. Defendant signed Exhibit 12 & 12A on behalf of Moonex as agent or exporter having got document prepared. He was not coerced or induced or forced to sign it by anyone. Exhibit 12 & 12A with Exhibit 3 documents required by Customs Act to be signed. Defendant as representative of Moonex which was not a legal entity by his actions on and after receipt of Exhibit 3 became a person beneficially interested in Exhibit 13 and in signing Customs document Exhibit 3, 12 & 12A placed himself within ambit of a statutory definition of importer. Narrow interpretation of word importer in Section 4 (1) of Firearms Act untenable having regard to wording of Section and mischief both Firearm and Customs Act seek to prevent. Wording of Act seems to suggest resort must be had to Customs Act which regulates importation and shipping."

Before us Mr. Small argued that by inference the learned resident magistrate rejected the contention of the prosecution that there was evidence that the appellant brought or caused to be brought, the ammunition into the Island so as to satisfy the statutory definition of import. He drew our attention to the finding of fact that the ammunition was brought into the Island illegally, but significantly the learned resident magistrate did not find that it was the appellant who brought them in, or caused them to be brought in. He submitted that in their totality the findings of fact made by the learned resident magistrate was on the basis that the appellant was an "importer" as defined in the Customs Act.

We must now look at the statutory definitions. By Section 2 of the Customs Act, "import" and "importer" are defined thus:

> "Import means to bring or cause to be brought within the Island or the Waters thereof."
>
> "Importer" includes the owner or any person for the time being possessed of or beneficially interested in any goods at and from the time of the importation thereof until the same are duly delivered out of the charge of the officers, and also any person who signs any document relating to any imported goods required by the customs laws to be signed by an importer.

An examination of these two definitions clearly shows that many classes of persons are classified as importers who have nothing

whatever to do with bringing or causing the goods to be brought into the country. We were referred to Sections 11, 17, 32, 33, and 36 of the Customs Act. Section 11 referes to the Minister's power to remit duty on the application of an "importer" or exporter. Section 12 makes provision for the "importer" to make a deposit of duty in certain circumstances, while Sections 32 and 33 have special reference to the "importer" being liable for duty or to produce the goods where there was a breach of the special conditions on which the goods were imported and on which less than the normal duty was paid. Section 36 too refers to importer's liability for duty where goods said to be for re-export are allowed into the Island but are not so re-exported.

The reference to "importer" in the sections cited above lends credence to the arguments of the appellant that the legislature intended that a wide catogory of persons could be made liable for duty and consequently the term "importer" was expansively defined to include not only the persons who brought or caused the goods to be brought into Jamaica but those others including customs brokers who dealt with the goods after they had been imported. "Import" on the other hand where it occurs in the Act must be given the meaning as defined in Section 2.

Counsel for the appellant found great comfort in the decision of the Court of Common pleas in Budenberg v. Roberts (1866) L.R. 1 C.P. 575. The appellant in that case was charged on an information that he had caused to be imported goods of one denomination concealed in goods of another denomination contrary to a Customs Act which provided that if any person should cause to be imported directly or indirectly such goods he would be guilty of an offence. There was in that Act a definition of "importer" which read:

> "For the removal of doubts as to the meaning and application of the word importer, as used in the Customs Acts, the words importer, in any act relating to the customs, is hereby declared to apply to and include any owner or other person for the time being possessed of, or beneficially interested in, any goods imported into the United Kingdom, from the time of the importation thereof until they shall on payment of the duties thereon, or otherwise, be duly delivered

"or discharged from the custody or control of the customs."

The appellant was convicted and requested the Magistrate to state a case to the Court of Common Pleas. In our view there is a great similarity between the facts in the case stated and those in this appeal and we demonstrate this by setting out fully the case stated.

> "The case stated that one Ehrenberg, on the 15th December, 1965, shipped at Antwerp, on board the Neva steamer for Liverpool, eight casks, which he represented as containing china clay. Ehrenberg consigned the casks to Messrs. Dunkerley & Steinmann, of Liverpool, the agents for the Neva, and took from the captain of the vessel, a bill of lading in the ordinary form, undertaking to deliver the casks to Messrs. Dunkerley & Steinmann, or their order, and by a letter dated Antwerp, 15th December, 1865, he wrote to Messrs. Dunkerley and Steinmann with the bill of lading and stated that the casks were for account of Messrs. Schaffer & Budenberg (the latter being the appellant in this case), whose directions they would have to follow. In each of the casks of clay so shipped by Ehrenberg was concealed a keg of gunpowder.
>
> On the 17th of December, Messrs. Dunkerley and Steinmann received from Messrs. Schaffer & Budenberg a letter, of which the following is a copy:
>
> "Manchester, 16 December, 1865.
> 96 George Street.
>
> Messrs. Dunkerley & Steinmann,
> Liverpool.
>
> Gentlemen,
>
> We have been informed that Mr. Ehrenberg shall forward to your address, and for our disposal, by the steamer Neva, leaving Antwerp for Liverpool on Monday, 18th inst., eight barrels oc china clay" (giving the numbers and weights).
>
> Please store the above, informing us of their safe arrival, and we shall instruct you how to forward the same to different places.
>
> (Signed)
>
> Schaffer & Budenberg."

"On Sunday, the 17th of December, Ehrenberg, who was then in London, saw Budenberg, and informed him of the shipment to Messrs. Dunkerley & Steinmann of the eight casks and that the clay contained the kegs of gunpowder.

There was no evidence that prior to that date the appellant had any knowledge of the shipment of the clay, or of the fact of its containing the kegs of gunpowder. The Neva arrived in Liverpool on the 21st of December, and forthwith discharged her cargo.

On the 19th of December, the appellant went to Liverpool, and saw Messrs. Dunkerley and Steinmann. He then informed them of the fact that there was gunpowder contained in the clay, and requested them to take steps to get the casks passed through the custom house.

Messrs. Dunkerley and Steinmann thereupon took the usual steps to get the goods passed through the custom house, and their clerk asked the examining officer to pass them without examination, but on his refusal to do so, and after his directing a sub-officer to bore the casks, the clerk informed the custom house officer that there was gunpowder contained in the clay.

On receiving this information the custom house authorities caused the clay and the powder contained in it, to be seized, and caused the information above-mentioned to be laid against the appellant, his partner Schaffer being abroad.

Neither china clay nor gunpowder are subject to any duty on importation.

The Magistrate convicted the appellant, having regard to the meaning of the word importer as defined by the 8th section of Customs Amendment Act, 1859, 22 & 23 Vict. c. 37, and considering that the same definition must be applied to the term 'if any person shall cause to be imported' used in the 6th section of that act, and stated this case for the opinion of the Court, whether under the circumstances, his decision was right in point of law."

Chief Justice Erle and Montague Smith J. held that for a tribunal of fact merely to find that a person is an importer within the extended meaning of that section does not by itself show that he caused the goods to be imported using the ordinary meaning of those words. We set out the short judgments delivered in the case -

"Erle, C.J.: The conclusion of law stated by the magistrate has not my concurrence. That conclusion is, that "importer" in the 8th section is the same as "the person who has caused to be imported" in the 6th. I think that "importer" in the ordinary sense of the word would signify the same class of persons as are referred to in the 6th section, but that many persons come within the definition of "importer" given in the 8th section who do not "cause the goods to be imported" within the meaning of the 6th. Thus, if I bought any goods after they had been brought into this country, but before they had passed through the custom house, however innocently I might do so, I should be an importer within the meaning of the 8th section, though I certainly should not have caused them to be imported. I think that the findings of the magistrate, that the appellant caused the goods to be imported, is only a finding that he was an importer within the meaning of the 8th section; and I propose, therefore, to send the case back to him to say whether he was of opinion that the appellant had in fact caused the casks to be imported. If the appellant ordered them to be sent, or had been in communication with Ehrenberg before they were sent, and the two co-operated in the importation with a mutual knowledge that the gunpowder would be concealed in the casks, he is liable to the penalty, and the conviction ought to be affirmed; if not, the conviction must be quashed."

'Montague Smith J. I understand that the magistrate has asked us whether he was right in point of law in considering that the words "caused to be imported" in the 6th Section were to bear the meaning given to the word "importer" by the 8th section. I think that the words "has caused to be imported" are to be read in their fair and ordinary sense, and not in the arbitrary sense given to "importer" in section 8. I think, therefore, that in point of law the magistrate was wrong, and I concur in thinking that the case should be sent back to him, not that he may hear fresh evidence, but that he may state whether at the time of the conviction he was or was not satisfied that the appellant had in the ordinary sense of the words caused the goods to be imported."

In relying on the decision in Budenberg v. Roberts (supra) Mr. Small submitted that there was no direct evidence from the prosecution to show that the appellant know that the ammunition was coming to Jamaica and the evidence which was in fact tendered by the prosecution was that the appellant had been maintaining throughout that he did not know that the ammunition was coming to Jamaica. Further, the appellant gave evidence as to his total ignorance of the shipment of ammunition prior to May 6, 1980.

It was open to the learned resident magistrate to reject the evidence of the appellant on this aspect of the case, as he did when he came to consider whether the appellant signed the bill of lading before or after reading it, but the learned resident magistrate did not expressly so reject the appellant's evidence. Our attention was directed to two specific findings of the learned resident magistrate. He found

> "that the appellant having signed exhibit 3 the bill of lading, exhibit 12 the Transhipment Shipping Bill dated 9/5/80 and exhibit 12A the Transhipment Shipping Bill dated 7/5/80 he placed himself within ambit of statutory definition of importer"

He also hold:

> "Narrow interpretation of word "importer" in Section 4 (1) of Firearms Act untenable having regard to wording of Section and mischief both firearms and Customs Acts seek to prevent. Wording of Act seems to suggest resort must be had to Customs Act which regulates importation and shipping."

In the first place the word "importer" is not used in Section 4 (1) of the Firearms Act. If a noun is to be formed from the verb "import" as used in that section it would obviously be "importer" but in the absence of any definition of either word, they should be given their ordinary meaning. The Deputy Director of Public Prosecutions did not suggest in the course of the argument that there was any ambiguity about the meaning of the word "import" in section 4 of the Firearms Act. He did say, however, that because the word "import" was not defined in that Act its true meaning could be gathered from its use in a statute in pari materia such as the Customs Act.

In our view, if there is no ambiguity in the meaning of the word "import" in the context of the statute in which it is used, we fail to see how recourse could be had to another statute whether in pari materia or not so as to displace the plain and ordinary meaning of the word and to substitute an extra-ordinary and arbitrary meaning.

The two findings of fact of the learned resident magistrate referred to above clearly demonstrate in our view that he was pre-occupied with the meaning of the word "importer" as defined in the Customs Act, and indeed, his verdict of guilty is explicable only on the ground that he found that the appellant did act and so conducted himself after the ammunition had been imported into Jamaica which made him a person beneficially interested in them, and more amorphously, that the appellant signed customs documents which statutorily made him an importer.

The Deputy Director of Public Prosecutions was driven to the facile argumentation that in commonsense a person who imports is an importer. Consequently all that the prosecution had to prove in this case was to show who by the Customs Act was an importer and reasoning backwards conclude that such an importer must have imported. This argument was raised notwithstanding the narrow definition of "import" in the same statute which defined "importer". By this reasoning not only does the greater include the lesser but the lessor also includes the greater. Our attention was not drawn to any canon of statutory construction which would permit us to perform this mental feat.

It seems that the learned resident magistrate lost sight of the ingredients of the charges and proceeded to convict on a set of findings of fact which although relevant to determine who is an importer within the meaning of the Customs Act, were wholly irrelevant to prove that the appellant "did import" those goods into the Island. Had the learned resident magistrate found that the appellant had bought the goods amd had them shipped to Jamaica, or was the active agent of Moonex Panama to receive and handle goods of whatever nature, even

including ammunition which they would send to him from time to time without asking any questions, or that he was in communication with Moonex Panama prior to May 5, 1980 and had received information that the cargo of ammunition had been or was about to be sent to him for transhipment or any other finding as would go to show guilty knowledge in the appellant prior to May 5, 1980, then he would have had evidence to convict on the charge of "having imported" or of "being concerned in importing". He made no such finding of fact and we are therefore constrained to hold that the basis on which the learned resident magistrate convicted the appellant was erroneous and cannot be supported. We have given the most anxious consideration as to whether we could apply Section 396 (3) of the Judicature (Resident Magistrates') Act which provides that the Court may, notwithstanding it is of opinion that the point raised in the appeal might to decided in favour of the appellant, dismiss the appeal, if it considers that no substantial miscarriages of justice has actually occurred. The inferences to be drawn from the conduct of the appellant on and after May 6, 1980 were essentially matters for the tribunal of fact. Although the learned resident magistrate had been expressly invited by the Director of Public Prosecutions to draw the inference that the appellant knew of the shipment prior to May 5, 1980, the learned resident magistrate declined to draw such an inference. In the face of the sworn testimony of the appellant that he had no such prior knowledge which testimony the learned resident magistrate did not either expressly or inferentially reject there in no finding of fact from which this Court can say with confidence that no other verdict could have been truly returned other than one of guilty. In the circumstances the appeals are allowed, the convictions quashed, the sentences set aside and verdicts of acquittal entered.