

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 137/1974

BEFORE: The Hon. President (Ag.)
The Hon. Mr. Justice Hercules, J.A.
The Hon. Mr. Justice Zacca, J.A. (Ag.)

R. v. BERNARD PIANKA & TERRY HILTON

R. Taylor for both appellants.

Chester Orr, Q.C. Deputy Director of Public Prosecutions,
Mrs. R. Walcott and N. Sang for the Crown.

February 20, 21, May 1, &
June 12, 1975

LUCKHOO, P. (Ag.):

The appellants Bernard Pianka and Terry Hilton were convicted by the Resident Magistrate for the parish of St. Mary in the Resident Magistrate's Court for that parish upon two informations charging that on Saturday May 10, 1974 at Rio Neuvo and within the jurisdiction of that court they (1) unlawfully had ganja in their possession, contrary to s. 7(c) of the Dangerous Drugs Law, Cap. 90; (2) unlawfully used a certain conveyance, to wit, the motor boat named "Star Baby" to convey ganja, contrary to s. 22(1)(e) of the Dangerous Drugs Law, Cap. 90 as inserted by s.3 of the Dangerous Drugs Law (Amendment) Act, 1964 (No.10). They were each sentenced to imprisonment for a term of 2 years at hard labour and in addition ordered to pay a fine of \$1,000 in default 12 months at hard labour in respect of the charge for

possession of ganja and were each sentenced to a term of imprisonment for 12 months at hard labour in respect of the charge for using a conveyance for carrying ganja. The sentence on the latter charge was ordered to run concurrently with that on the former charge.

The appellants have appealed on the ground that the learned Resident Magistrate in virtue of s.4(1) of the Territorial Sea Act, 1971 (No. 14 of 1971) had no jurisdiction to try them on the charges laid against them, those charges not being matters "punishable on indictment". They have also appealed against their sentences on the ground that the sentences were individually and cumulatively harsh, severe and excessive.

The evidence for the prosecution was to the following effect. The appellants are foreigners. On August 8, 1974, they were seen aboard the "Star Baby" a motor boat registered at Miami, U.S.A. The boat of 25 tons burthen was lying at anchor in Port Antonio harbour and was boarded by Cpl. of Police Gayle, the Chief Immigration Officer for the parish of Portland. The appellant Hilton who was the captain of the boat informed Cpl. Gayle that the boat had come from Miami and that he planned to cruise around the Island but had not yet made up his mind where he was going. Cpl. Gayle observed no sign of bags on board the boat and he had no difficulty moving about when on board. On August 9, 1974, F. Gordon Customs Officer at Port Antonio gave Hilton a coastwise clearance to Montego Bay. That very night Richard Harvey, Captain of the Jamaica Defence Force Coast Guard was on duty at sea in command of H.M.S. Manatee Bay operating off the coast of Jamaica between Galina Point and Discovery Bay. That vessel was equipped with radar. At about 11.47 p.m. Capt. Harvey picked up a radar transmission on his radar set. The transmission was coming from the direction of 260° from Rio Neuvo. Harvey's vessel was then 2 miles off shore off Galina point. Harvey decided to investigate by going down the line of

transmission. In doing so he, ten minutes later, saw a small contact on his radar screen when he was approximately 4 miles from it. The contact was then approximately 3 miles north of the outer edge of Rio Neuvo and heading in a north easterly direction out to sea. Rio Neuvo is a bay. The contact displayed no lights even though boats travelling by night are required to have navigational lights. The contact was eventually intercepted at 12.32 p.m. when it was 3.8 miles from Rio Neuvo Bay that is within the limits of the territorial sea of Jamaica, and turned out to be the "Star Baby" of which Hilton was in command. Pianka the co-pilot was also on board. When intercepted there was no name displayed on the boat. Lieutenant Lewin and Sgt. Butler were put on board the "Star Baby" from the H.M.S. Manatee Bay and the Ocho Rios police contacted. When the Star Baby was taken to Ocho Rios in the parish of St. Mary Harvey went aboard and found that the interior was laden with 60 bags of vegetable matter 59 bags of which on analysis turned out to be ganja weighing 3,277 lbs. The presence of so many bags of ganja did not allow easy access about the vessel. In fact the only clear space was beside the lower wheel and this was in contrast to the easy access experienced on August 8, 1975 by Cpl. Gayle when he boarded the "Star Baby" at Port Antonio. At Ocho Rios the appellants were cautioned by Det. Constable Scott. Hilton said "We got caught" while Pianka said nothing.

The appellants were later charged on the informations in respect of which they were eventually convicted and in addition on an information for unlawfully exporting ganja. No verdict was returned in respect of the last named information. The appellants adduced no evidence in their defence and relied on submissions made on their behalf to the effect that the learned Resident Magistrate was without jurisdiction to try them on the informations laid against them. These submissions were overruled by the learned Resident Magistrate.

The submissions made to the Resident Magistrate were repeated and amplified before us. Mr. Taylor's submissions may be put in the following way. It would appear that at common law there is no jurisdiction to try offences committed on board a foreign ship by a foreigner in our territorial waters. That was the effect of the decision arrived at by the majority of the Court in Reg. v. Keyn (1876-77) 2 Exch. D. 63. In the following year the Territorial Waters Jurisdiction Act, 1878 was passed in England and was made applicable to dependent territories including Jamaica. By that Act it was enacted that offences committed on the open sea within the boundaries of the territorial waters, defined in the Act as any part of the open sea within one marine league of the coast measured at low water mark, were within the jurisdiction of the Admiral and were punishable accordingly. By that Act such offences related only to acts, neglects or defaults of such a description as would, if committed within the body of a county in England, be punishable on indictment according to the laws of England being in force. That being so no jurisdiction in respect of summary conviction offences committed within the 3 mile limit was conferred upon the Courts here or in England. The Territorial Sea Act, 1971 of Jamaica was enacted in Jamaica to give effect to the 1958 Convention on the Territorial Sea and the Contiguous Zone to which Jamaica was a party. The text of that Convention is set out in the 1st Schedule to the Act and Article 19 of the Convention sets out the principles which should guide and govern the making of laws relative to the exercise of jurisdiction in respect of foreign vessels within the territorial waters of signatory states. Section 3 of that Act provides that the territorial sea shall be 12 miles in breadth measured from the low water line along the coast. Section 4(3) of the 1971 Act provides that the Territorial Waters Jurisdiction Act, 1878 shall cease to have effect in so far as the same forms part of the laws of Jamaica and by s. 4(1) it is specifically provided that indictable

offences committed in or on the territorial sea are punishable by our courts on indictment. No jurisdiction is given by the 1971 Act to our courts to try summary conviction offences committed by foreigners on board foreign vessels within the limits of the territorial sea, a jurisdiction which our courts never enjoyed and still do not have.

It was further submitted by Mr. Taylor that even if the minority judgment in Keyn's case were correct, that the sea within 3 miles of the coast is part of the territory of England, that the English Criminal Law extends over those limits and the Admiral formerly had, and the Central Criminal Court at the time of Keyn's case had, jurisdiction to try offences there committed although on board foreign ships, there still was no jurisdiction in our courts to try the two appellants in the instant case since the general principles of immunity from jurisdiction which attaches to foreign vessels passing through the territorial sea still applies with the limits of the exceptions set out in Article 19 of the Conventions which provides as follows:

"1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:

- (a) If the consequences of the crime extend to the coastal State; or
 - (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or
 - (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or
 - (d) If it is necessary for the suppression of illicit traffic in narcotic drugs.
2. The above provisions do not affect the right of the coastal State to take any steps authorised by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

"3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.

5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters."

At all events the Territorial Sea Act, 1971 which repeals in so far as Jamaica is concerned the Territorial Waters Jurisdiction Act, 1878, has not removed the exemption from jurisdiction of our Courts enjoyed by a foreign vessel "passing through" the territorial sea. Article 19 of the Convention recognises that exemption and s. 4(5) of the 1971 Act makes Article 19 *suprema* in the event of conflict between its provisions and "any law having effect thereafter as part of the law of Jamaica". Consequently the words "on or in the territorial sea" in s. 4 (1)(a) of the 1971 Act cannot be interpreted as abolishing the general immunity attaching to a foreign vessel "passing through the territorial sea". Paragraphs (1) and (5) of Article 19 of the Convention make a distinction, for the purposes of the exercise of jurisdiction between a foreign ship which, though within a country's territorial waters, is not within its internal waters on the one hand and the foreign ship which is within that country's internal waters on the other hand.

The provisions of Article 14(2) and (3), which relate to the right of innocent passage applicable to all ships, are as follows -

"2. Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

"3. Passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress."

In virtue of Articles 19(1) (5), 14(2) (3) a foreign ship which, though within the territorial sea, is outside the internal waters is exempt from the jurisdiction of our courts unless it falls within the category of exceptions set out in Article 19(1) and the coastal state has made punishable the offences encompassed by those exemptions.

Mr. Taylor has urged that as the Star Baby was outside internal waters when detected it follows that our courts do not have jurisdiction to try the appellants since -

(a) the Crown has not proved that the offences - including the taking of ganja on board - were committed in our internal waters; and

(b) even if the offences fell within the excepted categories under Article 19, they are not indictable offences and therefore are not encompassed by the jurisdiction given by s. 4(1) of the Territorial Sea Act, 1971.

For these reasons Mr. Taylor contended the appellants' appeals should succeed.

Mr. Chester Orr for the Crown has submitted that the Resident Magistrate does not derive her jurisdiction to try the charges against the appellants from the Territorial Sea Act, 1971 but rather from the provisions of s. 267 of the Judicature (Resident Magistrates) Law, Cap. 179 as amended by s.8 and the Second Schedule to the 1971 Act. Mr. Orr contends that the circumstances of the case lead to the conclusion that the ganja found on the "Star Baby" was loaded on to the vessel in Jamaica. Possession being a continuing offence no question of the territorial sea really arises in that regard. Mr. Orr pointed to the fact that the provisions of s. 267 of Cap. 179 were first enacted in 1891 as s.7 of the Resident Magistrates Law. 1891 some years after the Territorial Jurisdiction Act, 1878

had been passed. The magistrate's jurisdiction in this regard has been preserved by virtue of s. 4(4) of the 1971 Act. Mr. Orr further contended that s. 4(1) of the 1971 Act deals solely with indictable offences and is intended to cover ships "passing through" the territorial sea.

Mr. Orr also referred to the provisions of the Colonial Courts of Admiralty Act, 1890 and to the passage appearing at paragraph 346 on pp. 139-140 of Volume 1 of Halsbury's Laws of England (3rd Edition) dealing with Colonial Courts of Admiralty and submitted that these provide a complete answer to Mr. Taylor's submissions. The passage referred to at pp. 139-140 of 1 Halsbury's Laws (3rd Edition) is as follows -

"346. Jurisdiction. Within the limitations, if any, laid down by the Colonial Legislatures, or the orders conferring jurisdiction, the Colonial Courts of Admiralty have the same jurisdiction and powers as were exercised in Admiralty by the High Court in England at the passing of the Colonial Courts of Admiralty Act, 1890. Any enactment contained in any statute of the Imperial Parliament which refers to a Vice-Admiralty Court applies to a Colonial Court of Admiralty, as if the expression Colonial Court of Admiralty were used instead of Vice-Admiralty Court, and the Colonial Court of Admiralty has jurisdiction accordingly. The jurisdiction of Colonial Courts of Admiralty is thus strictly prescribed by statute, and they have no power to hear cases which arise outside that jurisdiction. Thus, in a case where the plaintiff's claim was within the Admiralty jurisdiction of the Court, but the defendants brought a cross-claim which was not within that jurisdiction, the Privy Council decided that a Colonial Court of Admiralty had no jurisdiction to entertain the cross-claim.

Mr. Orr also referred to s. 6 of the 1971 Act which empowers the Minister to make regulations regulating the use of the territorial sea and to make it a breach of the regulations for a person to fish by means of a foreign vessel in the territorial sea without lawful authority and in contravention of any law which imposes in the case of summary conviction thereof, or on conviction on indictment therefor, liability irrespective of the nationality of any vessel involved therein and making any such breach of the regulations as aforesaid an offence punishable in like case. Mr. Orr contended that the terms of this power show that the exercise of a summary jurisdiction in Resident Magistrates is

contemplated by the 1971 Act in the case of a foreigner on a foreign ship fishing in or on the territorial sea.

Mr. Orr also referred to the case of R. v. Kent JJ. 2 ex. P. Lyle et al (1967) 1 All E.R. 562 a case of implied jurisdiction in justices from an enactment creating an offence committed more than 3 nautical miles from low water mark off the Kent coast. Mr. Orr pointed to paragraph 1(d) of Article 19 of the Convention set out in the First Schedule to the 1971 Act permitting the exercise on board a foreign ship passing through the territorial sea of the criminal jurisdiction of the coastal state if it is necessary for the suppression of illicit traffic in narcotic drugs and observed that there was no provision in that Article limiting the exercise of the criminal jurisdiction of the coastal state to indictable offences.

In reply Mr. Taylor submitted that the Colonial Courts of Admiralty Act, 1890 transferred to the Jamaican High Court jurisdiction in respect of indictable offence only. The Court of Admiralty in England in 1890 did not exercise jurisdiction in respect of summary conviction offences committed on board foreign vessels within the territorial sea so no such jurisdiction could have been conferred on the Jamaican High Court by the Colonial Court of Admiralty Act, 1890. The Territorial Sea Act, 1971 which repealed and replaced the Territorial Jurisdiction Act, 1878 in so far as the latter applied to Jamaica retained the limitation of jurisdiction to offences punishable on indictment according to the laws of Jamaica and conferred no jurisdiction in respect of offences punishable on summary conviction.

These were the arguments addressed to us.

Section 4(1) of the Territorial Sea Act, 1971 provides that where an act is committed by a person, whether a Jamaican or not, on or in the territorial sea and is of such a description as would, if committed on land within a parish in Jamaica, be punishable on indictment according to the laws of Jamaica for the time being in

force, it is an offence punishable on indictment in like manner even if it is committed on board or by means of a foreign vessel. That subsection, however, does not fully define the criminal jurisdiction exercisable by the courts of Jamaica in respect of acts committed on the territorial sea of Jamaica in respect of (b) of sub-s. (4) of that section preserves any criminal jurisdiction conferred on any court inter alia by virtue of any provisions contained immediately before the commencement of the 1971 Act in any law having effect thereafter as part of the law of Jamaica. Any such jurisdiction thereby preserved is however not exercisable if a breach of Article 19 of the 1958 Convention would be occasioned thereby (s.4 (5)). We must therefore seek to discover if there was contained in any law in force immediately before the commencement of the 1971 Act and having effect thereafter as part of the laws of Jamaica criminal jurisdiction in relation to an act triable solely as a summary conviction offence where that act was committed by a foreigner on board a foreign vessel on or in the territorial sea of Jamaica.

It is not necessary to refer to any enactment earlier than an Act of the Imperial Parliament which applied to the colonies including Jamaica - The Admiralty Offences (Colonial) Act, 1849 (12 & 13 Vict. c. 96). Section 1 of the Act provides as follows -

"That if any person within any colony shall be charged with the commission of any treason, piracy, felony, robbery, murder, conspiracy, or other offence, of what nature or kind soever, committed upon the Sea, or in any Haven, River, Creek, or place where the Admiral or Admirals have power, authority, or jurisdiction, or if any person charged with the commission of any such offence upon the Sea, or in any such Haven, River, Creek, or place shall be brought for trial to any Colony, then and in every such case all Magistrates, Justices of the Peace, Public Prosecutors, Juries, Judges, Courts, public Officers, and other Persons in such Colony shall have and exercise the same Jurisdiction and Authorities for inquiring of, trying, hearing, determining, and adjudging such Offences, and they are hereby respectively authorized, empowered, and required to institute and carry on all such Proceedings for the bringing of such Person so charged as aforesaid to trial, and for and auxiliary to and consequent upon the trial of any such person for any such offence where--

with he may be charged as aforesaid, as by the Law of such Colony would and ought to have been had and exercised or instituted and carried on by them respectively if such offence had been committed, and such person had been charged with having committed the same, upon any Waters situate within the limits of any such Colony, and within the limits of the local jurisdiction of the Courts of Criminal Justice of such Colony."

Section 2 provides for the punishment of persons convicted of such offences -

"II. Provided always, and be it enacted, that if any person shall be convicted before any such Courts of any such offence, such person so convicted shall be subject and liable to and shall suffer all such and the same pains, penalties, and forfeitures as by any Law or Laws now in force persons convicted of the same respectively would be subject and liable to in case such offence had been committed, and were inquired of, tried, heard, determined, and adjudged, in England, any Law, Statute, or Usage to the contrary notwithstanding."

Section 3 confers similar jurisdiction for the trial of an offence in respect of the death of a person who dies in the Colony from injury inflicted outside the territorial limits. The Admiralty Offences (Colonial) Act, 1860 empowers the legislature of a Colony to provide for the trial in the Colony of a person charged with inflicting an injury in the Colony when the death occurs elsewhere.

In 1877, the majority of judges in R. v. Keyn (the Franconia case) held that the jurisdiction of the courts of England did not extend to the commission of an offence by a foreigner on board a foreign ship on the territorial sea. However, the decision of the majority of the Court was overruled by the Territorial Waters Jurisdiction Act, 1878 the preamble of which asserted that the "rightful jurisdiction of Her Majesty, her heirs and successors, extends and has always extended over the open seas adjacent to the coasts of the United Kingdom and all other parts of Her Majesty's dominions to such an extent as is necessary for the defence of such dominions." As is stated at p. 59 of Craies on Statute Law (7th Edition) the opinion of the

minority in the Franconia case has been therefore not merely enacted, but is declared to have been always the Law. However, by the Territorial Waters Jurisdiction Act, 1878, Parliament declared to be within the jurisdiction of the Admiral the trial on indictment of offences which would be triable on indictment if committed on land in England. As Mr. Taylor has pointed out Parliament conferred no jurisdiction to try any offence which, if committed on land in England, would have been triable in a court of summary jurisdiction. The provisions of the Territorial Waters Jurisdiction Act, 1878 were by the Act extended to the colonies and thus was also applicable to Jamaica. Section 5 of that Act provided that nothing in this Act contained shall be construed to be in derogation of any rightful jurisdiction of Her Majesty, her heirs or successors, under the law of nations or to affect or prejudice any jurisdiction conferred by Act of Parliament or now by law existing in relation to foreign ships or in relation to persons on board such ships.

The Colonial Courts of Admiralty Act, 1890, an Act of the Imperial Parliament which applied to Jamaica among other dependent territories established Colonial Courts of Admiralty to supersede the previously existing Vice Admiralty Courts in British possession. The jurisdiction of these Courts, subject to any limitations imposed by the Colonial legislature, is coterminus with the Admiralty Jurisdiction of the High Court of England as it existed at the time of the passing of the Act (s.2). However, it is provided by s. 2(3)(c) that "A Colonial Court of Admiralty shall not have jurisdiction under this Act to try or punish a person for an offence which according to the law of England is punishable on indictment". It will be observed that this jurisdiction though denied by the Act had already been conferred by the Admiralty Offences (Colonial) Acts,

1849 and 1860. By s. 3 of the Colonial Court of Admiralty Act, 1890, the legislature of a British possession may by any colonial law confer upon any inferior or subordinate court in that possession such partial or limited Admiralty jurisdiction but is further provided therein that any such Colonial laws shall not confer any jurisdiction which is not by that Act conferred upon a Colonial Court of Admiralty. The legislature of a British possession is thereby not empowered under and by virtue of the provisions of the Colonial Court of Admiralty Act, 1890 to confer jurisdiction upon an inferior or subordinate court to try offences which are purely summary conviction offences.

The position immediately after the enactment of the Colonial Courts of Admiralty Act, 1890 was that the Admiral had jurisdiction in relation to offences committed within the territorial sea but those offences were limited to such offences which if committed within the body of a county in England were triable on indictment. Parliament had made that provision applicable to the dependent territories also. Parliament had not conferred jurisdiction upon any court or upon the Admiral (the exercise of the jurisdiction of whom had been transferred to the High Court in England and to the Central Criminal Court) in respect of offences committed within the territorial sea and which if committed within a county in England would have been cognizable as summary jurisdiction offences only.

In 1891 the Resident Magistrates Law was enacted by the legislature in Jamaica. Section 7 of that Law provided as follows -

"For the purposes of the criminal law, the jurisdiction of every Court shall extend to the parish for which the Court is appointed, and one mile beyond the boundary line of the said parish. Provided always, that the boundaries of every parish shall be deemed to extend to such part of the sea

as lies within three miles of the coast line of such parish; the decision of the Magistrate as to any distance for the purpose of deciding any question as to jurisdiction under this section shall be final."

The power of disallowance was not exercised by Her Majesty in respect of the Law of which that provision forms a part. By that provision a Resident Magistrate was given jurisdiction to try all summary conviction offences committed not only within the limits of the parish for which the Court was appointed but extended seaward beyond for a distance of three miles of the coast line of that parish. The word "deemed" in the proviso created a statutory fiction whereby a parish extended beyond its coast line for a distance of three miles to seaward. Just as a foreigner committing an offence on land within the coast line of a parish was amenable to the jurisdiction of the Resident Magistrate so he was too where he committed an offence beyond its coast line and within a distance of three miles therefrom. That is to be contrasted with the provisions of s.30 of the Judicature (Supreme Court) Law, Cap. 180 enacted in 1880 -

"30. The jurisdiction of the Circuit Court appointed to be held in any parish shall extend over the whole of such parish, and over so much of any adjoining parish as lies within one mile of the boundary of such first-mentioned parish, and over so much of the sea as lies within three miles of the shore of such parish, and over the high seas in respect of crimes within the jurisdiction of the Supreme Court:

Provided always, that the Circuit Court for Kingston shall have jurisdiction over the parish of St. Andrew as if it formed part of the parish of Kingston.

There was no similar deeming provision in this section. The jurisdiction of a Circuit Court in so far as it related to the sea as lies within three miles of the shore of the parish was that of the Admiral which, in respect of crimes committed by foreigners on foreign ships, was subject to prescribed conditions and confined to offences which if committed on land in England would be triable on indictment. (The Territorial Waters Jurisdiction Act, 1878). When by s.4(1) of the Territorial Sea Act, 1971, the

provisions of the 1878 English Act ceased to have effect in so far as they related to Jamaica it became necessary to preserve the Circuit Courts' jurisdiction to try such offences. This has been achieved by enacting the provisions of s.4(1) (a) of the Territorial Sea Act, 1971.

The provisions of s.267 of the Judicature (Resident Magistrates) Law, Cap. 178 as amended by s. 8 of the Second Schedule to the Territorial Sea Act, 1971 enlarges the geographical extent of the Resident Magistrate's jurisdiction by providing that every parish shall be deemed to extend to such part of the sea as lies within 12 miles of the coast line of such parish. An amendment in similar terms has been made by the 1971 Act to s.30 of the Judicature (Supreme Court) Law, Cap. 180.

We have come to the conclusion that by reason of the enactment of s.7 of the Resident Magistrates Law, 1891 the criminal jurisdiction of the Resident Magistrates of this Island included the trial and punishment of summary conviction offences committed by a foreigner on a foreign ship within the territorial sea. This jurisdiction is preserved by s.4(4) (b) of the Territorial Sea Act, 1971. It is now necessary to see whether in the instant case the exercise of any power or authority in pursuance of that jurisdiction is such as to constitute a breach of Article 19 of the 1958 Convention. This brings us to a consideration of the facts and circumstances disclosed by the evidence in the instant case.

On August 8 and 9, 1974, the Star Baby was lying at anchor at Port Antonio. The physical condition on board this motor boat of but 25 tons burthen was that free access about the vessel ^{was} afforded to Cpl. Gayle on August 8 when he went on board. When the Star Baby was boarded by officers from the Manatee Bay on the night of August 9 the only clear space was beside the lower wheel. Sixty bags containing ganja were then aboard. The clear

inference is that the bags containing ganja were loaded onto the Star Baby either when she was at Port Antonio or at any rate when she was still within the territorial sea of Jamaica. While by Article 14 of the 1958 Convention a ship navigating through the territorial sea for the purpose of making for the high seas from internal waters is passage through the territorial sea, in the circumstances of this case even if the Star Baby was not bound for Montego Bay (for which she had been given clearance that day) but rather was making for the high seas this was not in right of innocent passage through the territorial sea for the appellants had received into their possession while on the territorial sea a dangerous drug the **possession and conveyance** of which were prohibited under the criminal law in the territory of Jamaica and its receipt and conveyance by the appellants in that event was prejudicial to the good order of Jamaica. The consequences of the crime therefore extended to Jamaica and additionally was such as to disturb the good order of the territorial sea. That being so and these being within the exceptions contained in Article 19 there was no contravention of Article 19 in seeking to invoke the criminal jurisdiction of the court.

We are therefore of the view that the criminal jurisdiction of the Resident Magistrate enabled her to try and to punish the appellants on the informations laid against the appellants.

For these reasons the appellants' appeals against their convictions are dismissed.

In respect of the sentences imposed on the appellants we are of the view that that they are not unduly harsh, severe or excessive individually or cumulatively. Their appeals against the sentences imposed on them are also dismissed the sentences being affirmed save that for the period of 12 months imprisonment at hard labour ordered to be imposed in default of

payment of the fine of \$1,000 there shall be substituted a period of 6 months imprisonment at hard labour the maximum period permitted by s. 195 (1) of the Judicature (Resident Magistrates) Law, Cap. 179. Sentences to commence with effect from February 1, 1975.