

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 4/93

COR: THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A. (AG.)

SHIRLEY GRAHAM v. REGINA

Donald Smith for Appellant

M. Palmer for Crown

May 17 & June 8, 1993

GORDON, J.A.

The appellant was convicted on an indictment for forgery, uttering and obtaining money by means of a forged document in the Resident Magistrate's Court - St. Elizabeth, on January 21, 1992. On April 21, 1992, sentences of imprisonment at hard labour on each count for six months suspended for twelve months were imposed. On May 27, 1993 the appeal was heard and allowed, the convictions quashed and the sentences set aside. We now place on record our reasons.

Mrs. Enid Bent of Top Hill, St. Elizabeth, received from the Court's office in Black River a cheque for \$1,790.30 in September 1989 in settlement of a civil debt. She lodged this cheque to her account in a bank but it was returned to her dishonoured. In April 1990 she was visited by her friend, the appellant, who was a corporal of police. Mrs. Bent asked the appellant to assist her and delivered the cheque to the appellant, asking her to get cash. The appellant promised to assist. The appellant spoke to Mr. Nanco, the Deputy Clerk of the Courts and he, on or about the 19th April, 1990, issued a cheque in substitution for the one now stale dated. On April 22, 1990, the

appellant wrote on the cheque "Please deliver to Shirley Graham," wrote the complainant's name and signed her name and encashed the cheque with Mr. Arthur Ambersley. About two weeks after she received the cheque she visited the complainant and told her she had obtained the money but did not have it with her as she was not coming directly from her home but had obtained a lift and in passing, stopped to inform her. She said she would send the money to the complainant by one Mr. Mitchell.

The complainant did not receive the money and after making enquiries she went to the Black River Police Station on May 18, 1990. In June 1990, the appellant visited her and gave her the sum of \$1,790.30. The appellant told her her baby was ill and she was thus not able to have brought the money before then.

The appellant admitted receiving the cheque, encashing same and informing Mrs. Bent that she had the money. She lived some twenty-five miles from Mrs. Bent and eventually she got a drive to Mrs. Bent's house and delivered the money to her.

The sole ground of appeal urged by Mr. Smith was:

"That the Learned Resident Magistrate erred in Law in holding that the conduct of the Appellant towards the witness Ambersley was sufficient to establish the requisite intent on Count one of the indictment by failing to make a distinction between an intent to deceive and the intent to defraud; it is the latter intent that must be proved where the forged instrument is a valuable security."

He submitted that the indictment charged an intent to defraud and the Crown had failed to establish this intent. Mr. Palmer conceded that the Crown had failed to prove an intent to defraud and he therefore could not support the conviction.

We agree that there had been a failure by the Crown to prove "the intent to defraud." Mrs. Bent had not been defrauded neither had Mr. Ambersley. It was the appellant's evidence that she made

the endorsement on the cheque in pursuance of Mrs. Bent's request to obtain cash and in the belief that Mrs. Bent would have consented to her doing so. And indeed Mrs. Bent admitted in evidence that if requested she would have consented. The intent that is material is that which existed at the time the cheque was encashed and as to that the evidence is that the appellant advised the complainant she had received the money and was holding it for delivery to her.

"To defraud is to deprive by deceit; it is by deceit to cause a man to act to his injury." Re London Globe Finance Corporation (1903) 1 Ch. 728, 732.

We hold the failure of the Crown to establish the "intent to defraud" is fatal.