

29th June, 1987

Before the Bailiff assisted by Jurats Perrée and Coutanche

POLICE COURT APPEAL: FRANCIS WILFRED DOWSE

THE BAILIFF: What you say Miss Nicolle is quite right of course, this Court does not usually interfere with the finding of fact by the Magistrates if there is evidence on which they could come to the decision they did. So far as the mens rea is concerned, that may well be so in this particular case, but to allow the conviction to stand in the form that it does would be manifestly unfair to the appellant because there would be recorded against him a figure, quite a high figure, of which he was convicted of obtaining by false pretences, when in fact we do not know what proportion of that relates to the damage in Jersey or the damage in England. It is admitted that there was an accident in England, it is admitted and the Magistrate accepted that there was some damage done in England. The question is how much was done in England and how much was done in Jersey, and of course it is admitted on the other side by Mr. Le Quesne that if the charge had been worded in such a way that his client knew that there were two allegations, one in respect of the English claim, which in fact could not have been substantiated because Mr. Coles was prepared to pay for it, and the other in respect of the Jersey claim or the Jersey damage only, there might well have been no answer to that claim, except on the question of mens rea and that would have been a matter

for the Magistrate to decide. We think that the test that we must apply is whether, having framed the charge in the way it was framed, the defendant was embarrassed and prejudiced by the way in which it was framed, and the way indeed the case was conducted because of that initial error. We think he was and we think it would be wrong to allow the conviction to stand. It is therefore quashed, with costs.
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Authorities referred to:-

Archbold (41st edition) p.41 "Value"

Archbold (41st edition) p.51 "Consequences of a defective indictment being left uncorrected"

(In particular R.-v- Nelson (1977) 65 Cr.

App. R119, CA; and

R -v- Ayres (1984) 1 All E.R. 619)