

15 of 1977

IN THE PRIVY COUNCIL

Nos. 47 and 48 of 1975

ON APPEAL  
FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N:

1. BERNARD PIANKA

2. TERRY HYLTON

Appellants

and

THE QUEEN

Respondent

and BETWEEN

THE DIRECTOR OF PUBLIC  
PROSECUTIONS

Appellant

and

1. TERRY HYLTON

Respondents

2. BERNARD PIANKA

(Consolidated Appeals)

RECORD OF PROCEEDINGS

*Philip Conway Thomas & Co.,*  
*61 Catherine Place,*  
~~WILSON-FREEMAN,~~  
~~678 Westminster Palace Gardens,~~  
~~Artillery Row,~~  
London SW1E 6HB

Solicitors for Bernard Pianka  
and Terry Hylton

CHARLES RUSSELL & CO.,  
Hale Court, Lincoln's Inn,  
London WC2A 3JL.  
Solicitors for the Respondent in the  
first Appeal and the Director of  
Public Prosecutions in the second  
Appeal

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- 2. BERNARD PIANKA

Respondents

(Consolidated Appeals)

RECORD OF PROCEEDINGS

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1.

IN THE PRIVY COUNCIL

Nos.47 and 48 of 1975

O N A P P E A L  
FROM THE COURT OF APPEAL OF JAMAICA

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1. TERRY HYLTON
2. BERNARD PIANKA

Respondents

(Consolidated Appeals)

---

RECORD OF PROCEEDINGS

---

No.1

Information No. 3961/74 and Backing

In the  
Resident  
Magistrate's  
Court

—  
No. 1

On Saturday the 10th day of August in the year  
aforesaid one Bernard Pianka and Terry Hilton of the  
said parish of America with force at Rio Nouvo and  
within the jurisdiction of this Court

Information  
No.3961/74  
and Backing

Did unlawfully had ganja in their possession.

Contrary to Section 7(c) of Chapter 90.

In the  
Resident  
Magistrate's  
Court

BACKING

        
No. 1

Information  
No. 3961/74  
and Backing  
(continued)

Plea: Each not guilty  
13/8/74

Tried: 7/10/74, 17/10/74

Verdict: Both guilty

Sentence: Each to be imprisoned and kept at  
Hard Labour for 2 years. In addition  
each ordered to pay a fine of \$1000  
or 12 months Hard Labour.

No. 2

Information  
No. 4373/74  
and Backing

No. 2

Information No. 4373/74 and Backing

10

On the 10th day of August in the year afore-  
said one Bernard Pianka and Terry Hilton of the  
said parish of Saint Mary with force at Rio Neuvo  
and within the jurisdiction of this Court

Did unlawfully use a certain conveyance to  
wit: Motor boat named "Star Baby" to convey ganja.

Contrary to Section 22(1)(e) of Chapter 90.

BACKING

Tried: 7/10/74 & 17/10/74

Plea: Not guilty

Verdict: Guilty

Sentence: Each to be imprisoned for 12 months  
at Hard Labour. Sentence to run  
concurrent with sentence on Information  
No. 3961/74.

20

In the Resident Magistrate's Court  
For the parish of Saint Mary

In the  
Resident  
Magistrate's  
Court

Holden at Port Maria in the parish aforesaid  
on the 23rd day of September, 1974.

Information No. 3961/74  
" 4372/74  
" 4373/74

R E G I N A

VS.

10

BERNARD PIANKA  
TERRY HILTON

FOR

POSSESSION OF GANJA  
EXPORTING GANJA  
CONVEYING GANJA

PLEA: Each not guilty on each charge

20

Mr. Martin Wright, Director of Public Prosecutions  
and Mr. O. Parkin Crown Counsel for the Crown.  
Mr. Roy Taylor for Pianka.  
Mr. C. Noita for Hilton.

No. 3

Fernando Gayle

Fernando Gayle (sworn):

Corporal of Police and Chief Immigration  
Officer for Portland. 8th August, 1974 was on  
duty at Port Antonio.

Remember seeing two defendants on the "Star  
Baby" Boat anchored in Port Antonio Harbour.

30

As Immigration Officer I checked boat.  
Ascertained where they were coming from and where  
they were going.

Spoke to Captain Terry Hilton. He said he was  
coming from Miami. He said he had planned to cruise  
around island, but had not yet made up mind where he  
was going. Told him to report to me when he had  
made up mind.

Prosecution  
Evidence

No. 3

Fernando  
Gayle

Examination

In the  
Resident  
Magistrate's  
Court

Part of my duty to ascertain registry of boat.  
Have crew list made out by Hilton. He made 5 of  
list for my purpose. This is crew list.  
Admitted in evidence Exhibit 1.

Prosecution  
Evidence

No. 3

Fernando  
Gayle

Examination

23rd September  
1974

(continued)

Registry on list is Miami. Gave Hilton and  
his Co-Pilot Pianka landing for 7 days. Before  
Captain departed he was required to let me know  
where he was going. Not sure of time I spoke to  
Captain, could be before mid-day. He never  
reported back to me. Never saw boat again.  
About 2 days later I checked harbour, boat was  
not there.

10

When I checked boat I do not remember if  
dinghy was attached. Defendants were not required  
to inform me what was on boat. Customs Officer  
was on boat when I checked. Don't know what was  
said to him.

Cross-  
examination

XXD: by Mr. Taylor also holding for Mr. Neita

Boat is not of Jamiacan registry.

No RE-XN.

20

No. 4

Freddy Gordon  
Examination

23rd September  
1974

No. 4

Freddy Gordon

Freddy Gordon (sworn)

Customs Officer at Port Antonio. Remember  
9th August, 1974 was stationed at Port Antonio.

Cannot remember seeing two defendants. 9th  
August, 1974 remember doing something in connection  
with Star Baby. Gave a coast wise clearance to  
Mo-Bay. Gave it to person who gave name as Terry  
Hilton. He signed document. When clearance is  
given to a Port, person is supposed to go to that  
Port.

30

This is the coast wise clearance. Admitted  
in evidence exhibit 2. Did not check boat to see  
what was on it. At that time defendants was not  
required to make declaration at that stage.

When person enters Port from a Foreign Port



he is supposed to make a declaration. I did not go on board when dealing with defendants. I did not go on board at anytime. Peter Brown went on board. Did not see boat when it was leaving.

In the Resident Magistrate's Court

No XXN: by Mr. Taylor also holding for Mr. Neita.

Prosecution Evidence

No. 4

Freddy Gordon

Examination

23rd September 1974 (continued)

No. 5

No. 5

Fernando Gade (recalled)

Fernando Gayle (recalled)

Fernando Gayle (recalled) (still on oath)

Examination

10

I went on board boat while I was checking. Had no difficulty moving about. Saw no bags on boat.

23rd September 1974

XXD: by Mr. Taylor also holding for Mr. Neita

Cross-examination

Did not carry out systematic search of boat.

No. 6

No. 6

Richard Harvey

Richard Harvey

Richard Harvey (sworn)

Examination

20

Captain Jamaica Defence Force Coast Guard. Night of 9th August, 1974 was on duty at sea in command of H.M.S. Manatee Bay. Was operating between Galina point and Discovery Bay. My boat is equipped with radar. While on duty picked up indication on my radar set about 23.47 (11.47 p.m.) at that time I was off Galina point and 2 miles off shore.

23rd September 1974

Picked up radar transmission coming from direction of 260° from Rio Neuvo. I decided to investigate by going down line of transmission.

In the  
Resident  
Magistrate's  
Court

—  
Prosecution  
Evidence

No. 6

Richard  
Harvey  
Examination

23rd  
September  
1974  
(continued)

On my radar screen I can see coastline if nearby and also ships. Could see approximate location from which transmission was emanating.

On going down line of transmission I saw a small contact. I was approximately 4 miles from it when I saw it. At that time I could see portion of coastline on my screen.

Could see from Oracabessa to Mawmee Bay Coastline. Rio Neuvo was included in coastline I could see. When I first saw contact it was approximately 3 miles north of Rio Neuvo. 10

Radar transmission when I first picked them up they were coming directly from Rio Neuvo. Rio Neuvo is a Bay. By 3 miles from Rio Neuvo I mean the outer edge of Bay. When I first saw boat it was heading in a North Easternly direction.

When I first saw contact there were no lights displayed. Boats travelling by night are required to have navigational lights.

Lights should have been a red one on Port side that is left side, green light on right side, a white mast headlight and a white stern light. Boat displayed none of those lights. Eventually intercepted boat. From point when I first got radar transmission to point where I intercepted boat coast line between Galina and Rio Neuvo was nearest to me. 20

Parish is Saint Mary. When I intercepted boat it was 3.8 miles from Rio Neuvo Bay. Up to time I intercepted boat it was displayed in no navigational lights. My boat had on navigational lights. 30

My boat is also equipped with search light. I made use of search light in relation to Star Baby boat.

My boat actually went alongside other boat. By search light I saw two persons on boat. When I first turned on search light could not see who was in charge. When I intercepted boat I saw Hilton in charge. 40

Gave Lieutenant Lewin and Sergeant Buttler certain instructions and put them on board. Made

contact with Ocho Rios Police. I escorted "Star Baby" to Ocho Rios.

Met Police at Ocho Rios. When I intercepted boat there was no name displayed on boat. Name is required to be displayed also Port of Registry. They were not displayed.

10 Registration number was displayed on boat. Do not recall number. Went on board the Star Baby at Ocho Rios. On board Star Baby I saw interior of boat laden with vegetable matter resembling marijuana. Bags did not allow easy access.

Only clear space was beside lower wheel. Spoke to two persons I saw on board. The two defendants are the two persons. As Officer of Coast Guard it was my duty to check on boat. Required documents, spoke to both defendants asking for Boat's document.

20 Cannot recall who spoke to me. They handed documents to me namely: Certificate of Registry Florida, Letter from Owner. This is the letter. Letter admitted in evidence exhibit "3".

I also got other documents. I have not got Certificate. I handed documents to the Police. I intercepted boat at 32 minutes past midnight. When I spoke to defendants Constable Scott was present.

30 Defendants were cautioned before I spoke to them. Constable Scott cautioned the defendants. Do not remember who handed me documents. Other than asking defendants for Ship's documents, I had other talk with them.

Ascertained where boat was coming from and where it was going. Do not remember who spoke to me. They told me where they were coming from but not where they were going.

Coastline Clearance (exhibit 2) had the information. Did not see name "Star Baby" anywhere on boat.

40 Boat was taken from Ocho Rios to Discovery Bay. Bags of vegetable matter were taken off at Discovery Bay by Police.

In the  
Resident  
Magistrate's  
Court

—  
Prosecution  
Evidence

No. 6

Richard  
Harvey

Examination

23rd  
September  
1974

(continued)

In the  
Resident  
Magistrate's  
Court

Prosecution  
Evidence

No. 6

Richard  
Harvey

Examination

23rd  
September  
1974  
(continued)

Cross-  
examination

After vegetable matter removed, boat was searched in presence of both defendants. Papers were found. This yellow piece of paper in relation to Boston Whaler was found in boat. Admitted in evidence Exhibit 4.

Asked questions about the Boston Whaler mentioned on Exhibit 4. Got no reply. Star Baby is now in Kingston in custody of Coast Guard. Boat was escorted to Ocho Rios with both defendants in it.

10

Star Baby had a wooden plaque with name Trade Winds Trawler on it. It was about description of boat mentioned in Exhibit 3.

Boat was about 25 tons. Boat capable of maximum speed of 10 miles. Had never seen boat before.

XXD: by Mr. Taylor

Trade Winds Trawler is not type of boat. It is Manufacturer's name. Ascertained name of boat from documents which were handed to me and which I found on boat.

20

Documents corresponded with boat. When I picked up boat it was heading out to sea. Would not agree boat was travelling at near maximum speed from time I first picked it up to time I intercepted it.

Before boat appeared on screen I had picked up transmission. I actually saw boat at distance of 4 miles on my radar screen. At that time it was approximately 3 miles from Rio Neuvo.

30

I travelled approximately 3 miles between time of transmission and first materialisation on screen.

I was 4 miles from contact when I saw transmission on my screen. I travelled 3 more miles before I got visual materialisation. I travelled 25 miles-per-hour from time I picked up transmission.

Agree it was about 10 minutes of travelling from time I picked up transmission to time it materialised on screen.

40

Speed of Star Baby was about 7 miles-per-hour. Star Baby would have travelled 1 mile during time I travelled 3 miles.

When I was 4 miles from boat it was about 3 miles from Coast line. Do not recall time I got materialisation on screen,

Thirty-five minutes elapsed from time of materialisation to time of interception. In 35 minutes Star Baby would have travelled about  $3\frac{1}{2}$  miles.

Certificate showed boat was of United States of America Registry. It was Florida. Defendants were co-operative. They gave no trouble.

XND: by Mr. Neita

Was present when Constable Scott interviewed defendants. Constable Scott and myself did not ask defendants questions simultaneously. Asked defendants questions after they had been cautioned. Police asked defendants questions after they were cautioned. We did not question concurrently.

I was interested in ship's documents. I cannot recall who asked questions first.

RE-XD: When I intercepted Star Baby she was 3.8 miles north of Rio Neuvo.

No. 7

Harvey Lewin

HARVEY LEWIN (sworn):

Lieutenant in Jamaica Defence Force. 9th August, 1974 was on patrol duty on Manatee Bay captained by Richard Harvey.

Sometime during night I was awakened. Observed crew up and flood light on and fixed on a vessel some distance off from our boat. My boat intercepted other boat.

I went on board the other boat which was Star Baby. No navigational lights were on Star Baby.

In the  
Resident  
Magistrate's  
Court

—  
Prosecution  
Evidence

No. 6

Richard  
Harvey

23rd  
September  
1974

Cross-  
examination  
(continued)

Re-  
examination

No. 7

Harvey Lewin  
Examination

23rd  
September  
1974

In the  
Resident  
Magistrate's  
Court

—  
No. 7

Harvey Lewin  
Examination

23rd  
September  
1974  
(continued)

Did not ask about lights.

Asked one of the two men on board to turn on light. Two defendants are the two men. When asked two defendants said nothing. They turned on lights.

I remained on board Star Baby and took her to Ocho Rios. Could not see down below boat. Nothing was taken off boat at Ocho Rios.

In Discovery Bay several bags of vegetable matter were taken off boat. I travelled on Star Baby boat from Ocho Rios to Discovery Bay.

10

First saw bags when I got to Ocho Rios. Bags were in Cabins down below. Boat had draught of about 2'-3'. Travelled about 5½ miles from point I entered to Discovery Bay.

Had seen boat once before. It was about 3-4 months earlier in year. Anchored off Silver Seas Hotel.

I drew a picture of it and took Registration Number. Registration Number is FL 9337 BF. Saw nobody on board then.

20

Boat had no radar antenna. Could see boat externally. On 9/8/74 boat was equipped with radar. It had antenna.

Antenna is essential to operation of radar. Went on board at 12.32 on night of 9th August that is early Saturday morning.

1.00 p.m. Court adjourns.

2.0 p.m. Court resumes.

Harvey Lewin (still on oath)

No XXn by Mr. Taylor.

30

No XXN by Mr. Neita.

No. 8

Stanley Scott

In the  
Resident  
Magistrate's  
Court

Stanley Scott (sworn)

Prosecution  
Evidence

No. 8

Stanley Scott

Examination

23rd  
September  
1974

Detective Constable stationed at Ocho Rios, St. Ann. Night of 9th August, 1974 was at the Ocho Rios station. Received certain radio message.

10 As a result I left on Police Boat with Sergeant Holness. From Ocho Rios travelled East. While at sea met Coast Guard and Star Baby boat. Travelled about 1 mile from Ocho Rios when I met them. Had not yet reached White River.

White River is Western Boundary of parish of Saint Mary. White River is about 2 - 3 miles from Ocho Rio Neuvo. Eastern Boundary of Saint Mary is Windsor Castle which is east of Annotto Bay.

From where Galina is. Galina is west of Annotto Bay. Went on board the Star Baby. Boarded it in Ocho Rios Harbour. Travelled back with them to Ocho Rios.

20 On board Star Baby were two defendants, Lieutenant Harvey Lewin. I identified myself to both defendants. I saw a quantity of crocus bags of ganja.

Told both defendants that I was a Policeman. Told them what they had on boat was ganja. I cautioned defendants before speaking to them. After caution, Hilton said "We got caught."

30 Pianka said nothing. Arrested both defendants for Possession of Ganja, Exporting Ganja, and Conveying Ganja. Cautioned them. Hilton and Pianka said nothing.

Took defendants to Discovery Bay along with boat. They travelled on boat to Discovery Bay. I travelled on it also. At Discovery Bay boat was unloaded.

I took 60 bags of Ganja off boat. Both defendants were in boat when Ga nja was taken off.

Two defendants were taken along with Ganja to Discovery Bay Police Station. In their

In the  
Resident  
Magistrate's  
Court

—  
Prosecution  
Evidence

No. 8

Stanley Scott  
Examination

23rd  
September  
1974  
(continued)

presence bags were sealed. On boat some of the bags were open and some were tied.

After bags were sealed they were placed in Store room at Discovery Bay minus one bag. One bag could not hold in Store room. It was taken to Ocho Rios and placed in Store room.

On 14th August, 1974 I took 59 bags to Government Analyst. The 59 were from Discovery Bay. On 16th August, 1974 I took bag from Ocho Rios.

10

16th August, 1974 I received back all the bags. Have Certificates for all bags signed by Mr. McLeod Government Analyst.

Separate Certificate for the one bag. 12 Certificates for 59 bags. 12 Certificates for 59 bags admitted in evidence Exhibit 5.

Certificate for separate bag admitted in evidence Exhibit 6.

No XXN by Mr. Taylor.

No XXN by Mr. Neita.

20

Case for Crown closes.

Mr. Taylor submits:

Court has no jurisdiction to try offenders for offences.

No. 9

Proceedings  
7th October  
1974

No. 9

Proceedings

CONTINUED ON THE 7TH DAY OF OCTOBER, 1974

Mr. Wright submits Court has jurisdiction.

Mr. Taylor replies.

Court: Court has jurisdiction to try offenders for offences. Prima facie case made out.

30

Mr. Taylor: Defence rests in relation to Pianka.

Mr. Neita: Defence rests in relation to Hilton.



CONTINUED ON THE 17TH DAY OF OCTOBER, 1974

Court findings: That both defendants had joint physical control of boat and 60 bags of ganja, which I accept were on boat. That both defendants had knowledge that 60 bags contained ganja.

Verdict: Both defendants guilty of Possession of Ganja and conveying ganja.

No verdict on Exporting Ganja.

10 Mr. Taylor addresses Court on Sentence of Pianka.

(Character reference from University of South Carolina seen)

Mr. C. Neita addresses Court on Sentence of Hilton.

(Character reference from University of South Carolina seen)

20 Sentence: (1) Possession of Ganja: Each to be imprisoned and kept at Hard Labour for 2 years and in addition to pay fine of \$1000 or 12 months Hard Labour.

(2) Conveying Ganja: 12 months Hard Labour. Sentence on (2) to run concurrently with Sentence on (1).

Verbal Notice of Appeal against conviction and Sentence.

Both accused remanded in custody.

Mr. Wright applies for forfeiture of the boat.

Adj: 5/12/74

In the  
Resident  
Magistrate's  
Court

—  
No. 9

Proceedings

17th October  
1974

In the  
Resident  
Magistrate's  
Court

No. 10

Grounds of Appeal - Terry Hilton

No.10

IN THE RESIDENT MAGISTRATE'S COURT  
FOR THE PARISH OF SAINT MARY

Grounds of  
Appeal

HOLDEN AT PORT MARIA

Terry Hilton  
17th October  
1974

REGINA

VS - for 1) Possession of Ganja  
2) Transporting Ganja  
3) Exporting Ganja

T.W. HILTON

10

TAKE NOTICE that at the hearing of the above-captioned Appeal the Appellant will rely upon the Grounds of Appeal set out hereunder:-

GROUND 1.

The learned Resident Magistrate, in virtue of Section 4(1) of the Territorial Sea Act, 1971 (Act 14 of 1971) had no jurisdiction to try the Appellant on the charges laid against him, they, not being matters 'punishable on Indictment'.

20

ALTERNATIVELY -

GROUND 2.

The Sentences imposed by the learned Resident Magistrate in respect of the several offences were individually and/or cumulatively harsh, severe and excessive.

WHEREFORE THE APPELLANT PRAYS:-

- 1) that the Convictions recorded against him be quashed, the Sentence(s) set aside and a verdict of Acquittal be entered; or,
- 2) The Sentence(s) of Imprisonment may be substituted by imposition of a fine;
- 3) That he may have such further or other relief as to the Court may seem meet.

30

DATED the 17th day of October 1974.

(Sgd.) Roy Taylor

ROY L.A. TAYLOR  
ATTORNEY-AT-LAW FOR THE APPLICANT

In the  
Resident  
Magistrate's  
Court

No.10

FILED by ROY L.A. TAYLOR of No.11 Duke Street,  
Kingston, Attorney-at-Law for and on behalf of the  
Appellant herein whose address for service is that  
of his said Attorney-at-Law.

Grounds of  
Appeal  
Terry Hilton  
17th October  
1974  
(continued)

No. 11

Grounds of Appeal - Bernard Pianka

No.11

Grounds of  
Appeal

10 IN THE RESIDENT MAGISTRATE'S COURT  
FOR THE PARISH OF SAINT MARY

Bernard  
Pianka

HOLDEN AT PORT MARIA

17th October  
1974

REGINA

VS

- for

- 1) Possession of Ganja
- 2) Transporting Ganja
- 3) Exporting Ganja

BEN PIANKA

20 TAKE NOTICE that at the hearing of the above-  
captioned Appeal the Appellant will rely upon the  
Grounds of Appeal set out hereunder:-

GROUND 1

The learned Resident Magistrate, in virtue of  
Section 4(1) of the Territorial Sea Act, 1971,  
(Act 14 of 1971) had no jurisdiction to try  
the Appellant on the charges laid against him,  
they, not being matters 'punishable on  
Indictment'.

ALTERNATIVELY -

GROUND 2

30 The Sentence imposed by the learned Resident  
Magistrate in respect of the several offences  
were individually and/or cumulatively harsh,  
severe and excessive.

In the  
Resident  
Magistrate's  
Court

—  
No.11

Grounds of  
Appeal

Bernard  
Pianka

17th October  
1974  
(continued)

WHEREFORE THE APPELLANT PRAYS:

- 1) that the Convictions recorded against him be quashed, the Sentence(s) set aside and a verdict of Acquittal be entered; or,
- 2) The Sentence(s) of Imprisonment may be substituted by imposition of a fine;
- 3) That he may have such further or other relief as to the Court may seem meet.

DATED this 17th day of October 1974

(Sgd.) Roy Taylor

10

\_\_\_\_\_  
ROY L.A. TAYLOR  
ATTORNEY AT LAW FOR THE APPELLANT

FILED by ROY L.A. TAYLOR of No.11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Appellant herein whose address for service is that of his said Attorney-at-Law.

No.12

Proceedings  
5th December  
1974

No. 12

Proceedings

Mr. R. Taylor appears for owner of boat.

Mr. Wright, Deputy Director of Public Prosecutions applies for Forfeiture of boat under Section 4 of D.D. (Amendment) Act 1974.

20

Mr. Taylor

Before application can be entertained duty of Crown to satisfy Court as to (a) of Section 4 of D.D. (Amendment) Act 1974. No evidence to satisfy Court that person convicted owned conveyance or that the owner of boat permitted it to be used in the commission of the offence and further the Crown has failed to establish any circumstances which would render it just to make such an order.

30

Mr. Wright

Evidence before Court. Boat found in jurisdiction laden with ganja. Both defendants were

convicted. Application flows from conviction. Notarised document dated 1/5/74 by Robert E. Mosely giving permission to both defendants to operate, use and live aboard until December 31st, 1974. No restriction. Offence committed during authorization. Term "permit" is unfettered handing over. On evidence construction of "permit" allows Court to say circumstances under which boat was handed over, there was permission to use boat in way it was used.

In the  
Resident  
Magistrate's  
Court

—  
No.12

Proceedings  
5th December  
1974  
(continued)

10 Mr. Taylor replies:

Document makes it clear boat was not owned by defendants. Obvious persons convicted were authorised to operate, use, live aboard for period.

No. 13

Robert E. Mosely

Robert E. Mosely (sworn)

20 Attorney-at-Law. Live and practise in South Caroline U.S.A. Owner of boat the "Star Baby". Purchased boat in Port Lauderdale, Florida. First paid \$1,000 deposit on boat and then \$6,700 and then \$2,300 total down payment \$10,000. Got receipts for payments.

Cash price of boat including sale tax \$35,195.16. Entered into a Retail Instalment contract. Total price \$54,280.

I produce receipts, statement and contract in respect of the boat. Admitted in evidence together Exhibit 1. Insured boat with Unity Marine Insurance Services Inc.

30 Paid annual premium of \$456.00. Received statement as to limits of Policy as to where boat should travel. I produce statement from Insurance Company and letter showing policy accepted. Admitted in evidence Exhibit 2.

Was sent forms to be signed relative to registering of boat. Admitted in evidence Exhibit 3. Know Pianka and Hylton. Signature on notarised document dated May 1, 1974 is my signature.

No.13

Robert E.  
Mosely

Examination

5th December  
1974

In the  
Resident  
Magistrate's  
Court

—  
No.13

Robert E.  
Mosely

Examination

5th December  
1974

(continued)

Gave document to Pianka and Hylton. Copy document admitted in evidence Exhibit 4. Gave document pursuant to a request they made for chartering boat. Star Baby was not first boat I owned.

There was written Charter Agreement. Did not consider it strange ~~that~~ the defendants made request for Exhibit 4. 15/4/74 I entered into Charter agreement with defendants.

Terms of charter were set out in writing and signed by Pianka, Hylton and myself. It was notarised. This is the Charter Agreement. My signature is on document. I saw Pianka and Hylton place their signatures on document. Charter admitted in evidence Exhibit 5.

10

Did not at anytime alter the terms of the charter agreement to permit both accused to come to Jamaica with boat and use it for purpose for which they used it.

Understood Pianka and Hylton to use it for general fishing, snorting, skin diving and taking parties to Florida Keys and Bahamas.

20

Jamaica is not within terms of agreement. Subsequently learnt boat was seized. Was informed by State Department.

Cross-  
examination

XXD: by Mr. Wright

Have been practising Law since 1971 - general practise civil, criminal and domestic.

It is to my knowledge that the trafficking in drugs is seriously regarded by U.S.A. Government.

30

It is not to my knowledge that boats have been used in illicit trafficking of Ganja.

It is to my knowledge that boats have been used in illicit trafficking of ganja to my country.

Not certain as to date I took possession of boat.

It was latter part of March, 1974. It was after I paid balance.

My purpose in buying boat was because I have always had boat for my pleasure.

At time I bought Star Baby I had a smaller boat. I wanted a larger boat that I could sleep in.

Approximately 2 weeks after I got boat I hired it to Pianka and Hylton.

Have known Hylton since November, 1973. Have known Pianka since November, 1973.

10 They move together. They work in Florida with Construction Company.

They were not in University at that time.

Did not know where Pianka and Hylton were living when I first met them. I eventually got to know where they lived.

Pianka and Hylton did not continue on construction job after I hired boat to them.

Know Pianka and Hylton were once University Students. Do not know if they were drop outs. Know they are no longer at University.

20 Both Pianka and Hylton paid me \$7,500 on hiring boat.

Period of lease was as stated in Exhibit 5. Can explain difference in dates on Exhibits 4 & 5.

After Pianka and Hylton took possession of boat they decided to put radar on it. They contacted me. I did not wish one. Both Pianka and Hylton said they would go ahead if I gave them 1½ months longer. Regard Exhibit 4 as extension of the charter.

30 Did not pay for radar installation. It cost about \$2,000.

I was not supposed to pay them back.

Would say Exhibits 4 & 5 including

Pinaka and Hylton could not take off radar after it was installed.

In the  
Resident  
Magistrate's  
Court

—  
No.13

Robert E.  
Mosely

Cross-  
examination

5th December  
1974

(continued)

In the  
Resident  
Magistrate's  
Court

—  
No.13

Robert E.  
Mosely

Cross-  
examination

5th December  
1974  
(continued)

Pianka and Hylton took possession of boat a day or 2 after signing Exhibit 5.

I went to hand boat over to them.

Saw boat again after I gave Pianka and Hylton.

Cannot remember exact date. I saw it in May and in June.

Don't recall the date in May or date in June.

It was near end of May, 1974 and early part of June. Have not since seen boat.

Did not know that time boat was held was not first time it had come to Jamaica until I came out to Jamaica.

10

Exercised no supervision to see if Pianka and Hylton complied with rules.

Had somebody to keep eye on boat. Person lived in area. Person was my friend who accompanied me on boat whenever I went out.

Know American Coast Guard patrol Seas. Did know boats were being used for trafficking in ganja when I executed Exhibit 5.

20

Know boat can travel out of prescribed area when put to sea. Did not warn Coast Guard.

Would not want Coast Guard to stop my boat if it was out on High Seas.

Did not want Coast Guard to have anything to do with boat.

For purpose of Insurance I assume I could have included Jamaica.

Was asked area boat would operate when insuring same. Did not name Jamaica.

30

Know of existence of Jamaica at that time.

Did not know at that time that there was trafficking in ganja between my country and Jamaica.



Saw boat 3 times after agreement was signed - first when I handed over boat and last time in June.

Do not agree that in view of knowledge I took no step or effective steps to see that boat was not engage in trafficking ganja.

Actual Insurance Policy was on the boat. I have not got it.

Have not paid off for boat.

10 Apart from the \$1000, I have made monthly instalments of \$368.00.

If Court makes order against me, Insurance Company cannot help me.

No RE-XN

Application of forfeiture of boat granted.

Mr. Taylor gives Verbal Notice of Appeal

No. 14

Grounds of Appeal

IN THE RESIDENT MAGISTRATE'S COURT  
IN THE PARISH OF SAINT MARY

20 HOLDEN AT PORT MARIA

ON APPEAL

REGINA

VS - For 1) Possession of Ganja  
2) Transporting Ganja  
BEN PIANKA 3) Exporting Ganja

AND

T.W. HILTON

IN THE MATTER OF AN APPLICATION FOR  
FORFEITURE OF YACHT STAR-BABY  
EX PARTE ROBERT E. MOSELEY.

30

TAKE NOTICE that at the hearing of the above-

In the  
Resident  
Magistrate's  
Court

—  
No.13

Robert E.  
Mosely

Cross-  
examination

5th December  
1974  
(continued)

No.14

Grounds of  
Appeal

6th December  
1974

In the  
Resident  
Magistrate's  
Court

          
No.14

Grounds of  
Appeal

6th December  
1974  
(continued)

captioned Appeal the Appellants will rely upon  
the Grounds of Appeal set out hereunder:-

GROUND 1:-

The Learned Resident Magistrate erred in  
making the Order for Forfeiture of the Yacht  
STAR-BABY in that -

- a) she was functus officio at the time she  
made the order she having passed sentence  
on the accused Pianka and Hilton on a date  
prior to the making of the order: 10

(See RMCA No.131/74 decided 5/12/74).

- b) the prosecution had advanced no evidence  
whatsoever to support the making of an  
Order for Forfeiture under the provisions  
of Section 4 of the Dangerous Drugs  
(Amendment) Act, Law 16 of 1974.

GROUND 2:-

The finding of the Learned Resident Magistrate  
which provided the basis and the ratio decidendi 20  
of the making of the Order for Forfeiture to wit,

"that the document Exhibit 5 proved that  
Mr. Moseley the owner of the Yacht STAR-  
BABY had given permission to both Accused  
to use the said yacht for the purpose for  
which they in fact used it,"

was wrong and anathema the ejusdem generis rule.

GROUND 3:-

The judgment and order of the learned Resident  
Magistrate was unreasonable and cannot be  
supported having regard to the evidence, both  
sworn and documentary. 30

WHEREFORE THE APPELLANTS PRAY:-

- 1. That the Judgment and/or Order be set  
aside.
- 2. That this Honourable Court may grant  
such further or other relief as may be  
just.



In the  
Resident  
Magistrate's  
Court

—  
No.15

Affidavit of  
Norman O.  
Samuels  
17th December  
1974  
(continued)

Application for Forfeiture of the Yacht STAR-BABY held in the Resident Magistrate's Court for the Parish of Saint Mary at Port Maria before Her honour Miss Pauline Gibson, on the 5th of December, 1974.

4. That after all the evidence had been led and addresses made by both Counsel in the case the Learned Resident Magistrate stated that she was granting the Application for Forfeiture because the document Exhibit 5 proved that Mr. Moseley, the owner of the Yacht STAR-BABY had given permission to both accused to use the said Yacht for the purpose for which they in fact used it.

10

SWORN at 44 Duke Street in the Parish of  
Kingston this 17th day of December 1974  
Before me:-

NORMAN O.  
SAMUELS

Illegible

JUSTICE OF THE PEACE

FILED by ROY L.A. TAYLOR of No.11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Defendant/Appellants whose address for service is that of their said Attorney-at-Law.

20

No.16

Affidavit of  
Roy L. Taylor  
14th January  
1975

No. 16

Affidavit of Roy L. Taylor

IN THE RESIDENT MAGISTRATE'S COURT  
FOR THE PARISH OF SAINT MARY

HOLDEN AT PORT MARIA

ON APPEAL

R E G I N A

VS. - for 1) Possession of Ganja  
2) Transporting Ganja  
3) Exporting Ganja

30

BEN PIANKA

AND

T.W. HILTON

IN THE MATTER OF AN APPLICATION FOR  
FORFEITURE OF YACHT STAR-BABY  
EX PARTE ROBERT E. MOSELEY.

I, ROY L.A. TAYLOR, being duly sworn, make Oath and say as follows:-

In the Resident Magistrate's Court

1. That I am an Attorney-at-Law.

2. That I reside at No.59 Miami Drive, Independence City, in the Parish of Saint Catherine and have my Chambers at 11 Duke Street, Kingston, Jamaica.

No.16 Affidavit of Roy L. Taylor

2. That at the hearing of the Application for Forfeiture of the Yacht STAR-BABY I represented the interests of Mr. Robert E. Moseley, Attorney-at-Law and owner of the said Yacht.

14th January 1975 (continued)

10

3. That after all the evidence had been led and addresses made by both Counsel in the case the Learned Resident Magistrate stated that she was granting the Application for Forfeiture because the document Exhibit 5 proved that Mr. Moseley, the owner of the Yacht STAR-BABY had given permission to both accused to use the said Yacht for the purpose for which they in fact used it.

20

SWORN at 1A Duke Street in the Parish of Kingston this 14th day of January 1975 Before me:- Roy Taylor ROY L.A. TAYLOR

Illegible  
JUSTICE OF THE PEACE,  
KINGSTON.

FILED by ROY L.A. TAYLOR of No.11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Defendant/Appellants whose address for service is that of their said Attorney-at-Law.

30

No. 17

No.17

Affidavit of Keith A. Jarrett

Affidavit of Keith Jarrett

IN THE RESIDENT MAGISTRATE'S COURT FOR THE PARISH OF SAINT MARY

24th January 1975

HOLDEN AT PORT MARIA

ON APPEAL

R E G I N A

VS.

In the  
Resident  
Magistrate's  
Court

BEN PLANKA - For 1) Possession of Ganja  
AND 2) Transporting Ganja  
T.W. HILTON 3) Exporting Ganja

No.17

Affidavit of  
Keith Jarrett

24th January  
1975  
(continued)

IN THE MATTER OF AN APPLICATION FOR  
FORFEITURE OF YACHT STAR-BABY  
EX PARTE ROBERT E. MOSELEY.

I. KEITH JARRETT, being duly sworn, make  
Oath and say as follows:-

1. That I am an Attorney-at-Law. 10

2. That I reside at 60 Lenfield Drive, Kgallo  
in the Parish of Saint Andrew and have my Chambers  
at 32 Church Street, Kingston, Jamaica.

3. That I was present at the hearing of the  
Application for Forfeiture of the Yacht STAR-  
BABY held in the Resident Magistrate's Court for  
the Parish of Saint Mary at Port Maria before Her  
Honour Miss Pauline Gibson, on the 5th of  
December, 1974.

4. That after all the evidence had been led and 20  
addresses made by both Counsel in the case the  
Learned Resident Magistrate stated that she was  
granting the Application for Forfeiture because  
the document Exhibit 5 proved that Mr. Moseley,  
the owner of the Yacht STAR-BABY had given  
permission to both accused to use the said Yacht  
for the purpose for which they in fact used it.

SWORN at Supreme Court in  
the Parish of Kingston this  
24th day of January 1975  
Before me:-

Keith Jarrett  
KEITH JARRETT

30

Illegible  
JUSTICE OF THE PEACE  
ST. ANDREW

FILED by ROY L.A. TAYLOR of No. 11 Duke Street,  
Kingston, Attorney-at-Law for and on behalf of  
the Defendant/Appellants whose address for  
service is that of their said Attorney-at-Law.

No. 18  
Judgment

In the Court  
of Appeal

          
No.18

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO.137/1974

Judgment  
12th June  
1975

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.

10 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.)

20 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  
30 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.

40 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

In the Court  
of Appeal

—  
No.18

Judgment

12th June

1975

(continued)

1971) had no jurisdiction to try them on the charges laid against them, these 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. 10  
The boat of 25 tons burthen was lying an 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. 20  
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. 30  
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 40  
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.

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Judgment

12th June

1975

(continued)

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20

The appellants were later charged on the information 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 information laid against them. These submissions were overruled by the learned Resident Magistrate.

30

40

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

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Judgment

12th June  
1975

(continued)

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.

10

20

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:-

30

40

"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:

In the Court of Appeal

No.18

Judgment

12th June 1975

(continued)

- (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.

10

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.

20

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.

30

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."

40

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

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12th June  
1975

(continued)

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 supreme 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.

10

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

20

"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."

30

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.

40

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.

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No.18

Judgment

12th June  
1975

(continued)

10

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

20

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

30

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.

40

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,

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Judgment

12th June  
1975

(continued)

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.

10

20

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.

30

40

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.

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Judgment

12th June

1975

(continued)

10 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 as 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  
20 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 for paragraph (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

In the Court  
of Appeal

—  
No.18

Judgment

12th June  
1975

(continued)

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 -

10

"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 wherewith 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."

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

In the Court  
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1975

(continued)

10        "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."

20        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.

30        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 in 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  
40        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

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1975

(continued)

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. 10

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 it 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. 20 30 40

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.

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No.18

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12th June

1975

(continued)

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

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"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."

30

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 -

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of Appeal

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1975

(continued)

"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;

10

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.

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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.

40

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.

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of Appeal

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1975

(continued)

10 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.

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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 the Court  
of Appeal

No.18

Judgment

12th June  
1975

(continued)

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 on 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.

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No.19

Supplementary  
Ground of  
Appeal

27th June  
1975

No. 19

Supplementary Ground of Appeal

IN THE RESIDENT MAGISTRATE'S COURT  
FOR THE PARISH OF SAINT MARY

HOLDEN AT PORT MARIA

ON APPEAL

REGINA

VS

BEN PIANKA

AND

T.W. HILTON

- For 1) Possession of Ganja  
2) Transporting Ganja  
3) Exporting Ganja

20

IN THE MATTER OF AN APPLICATION FOR  
FORFEITURE OF YACHT STAR-BABY  
EX PARTE ROBERT E. MOSELEY

TAKE NOTICE that at the hearing of the above-captioned Appeal the Appellants will rely upon the Supplementary Ground of Appeal set out hereunder:-

GROUND:-

The Order for Forfeiture was null, void and/or bad in law, that Order having been made consequent upon and in proceedings which were properly applicable to an application for revocation under section 4(3) of The Dangerous

Drugs (Amendment) Act 1974 - Law No.16 of 1974.

In the Court of Appeal

WHEREFORE THE APPELLANTS PRAY:-

No.19

- 1. That the Judgment and/or Order be set aside.
- 2. That this Honourable Court may grant such further or other relief as may be just.

Supplementary Ground of Appeal

27th June 1975

(continued)

DATED the 27th day of June, 1975.

(Sgd.) Roy Taylor

ROY TAYLOR

ATTORNEY AT LAW FOR THE DEFENDANT/  
APPELLANTS

10

FILED by ROY L.A. TAYLOR of No.11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Defendant/Appellants whose address for service is that of their said Attorney-at-Law.

No.20

No.20

Judgment

Judgment

2nd July 1975

IN THE COURT OF APPEAL

20

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO.137A of 1974

BEFORE: The Hon. Mr. Justice Graham-Perkins, presiding  
The Hon. Mr. Justice Hercules  
The Hon. Mr. Justice Watkins (Ag.)

REGINA v. BERNARD PIANKA  
and  
TERRY HILTON

Mr. Roy Tahlor for the appellants.  
Mr. T. Usher for the Crown.

30

2nd July, 1975

WATKINS, J.A. (Ag.):

On July 2, 1975 this Court allowed the appeal of the appellants against an order of forfeiture

In the Court  
of Appeal

—  
No.20

Judgment

2nd July 1975  
(continued)

made on December 5, 1974 by Miss P.E.Gibson,  
resident magistrate for the parish of St. Mary  
and set aside the said order for forfeiture.  
We now give our reasons.

Bernard Pianka and Terry Hylton had been  
convicted by the learned resident magistrate on  
October 17, 1974 on informations laid under the  
Dangerous Drugs Law charging them jointly inter  
alia with possession of ganja and with conveying  
ganja. Their yacht, the Star-Baby, had been used,  
it was alleged, in the commission of the offences,  
and on conviction and sentence the prosecution,  
pursuant to section 23A(2) of the Dangerous Drugs  
(Amendment) Act applied to have the yacht forfeited  
to the Crown. On application of the attorney-at-  
law for the appellants the matter was then and  
there adjourned for consideration to December 5,  
1974. On this date not only did the Court hear  
submissions from both sides but thereafter the  
proceedings were re-opened by the calling of further  
evidence, albeit at the instance of the appellant,  
and the Crown cross-examined a witness, the alleged  
owner of the yacht. At the end of this re-opened  
hearing the learned resident magistrate made the  
order of forfeiture referred to.

10

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This particular power to forfeit the property  
of a subject with which resident magistrates are  
clothed is of course entirely derived from statute.  
The procedures in conformity with which its exer-  
cise may be invoked as well as the conditions,  
scope and manner thereof are similarly regulated,  
and any purported exercise of the power which does  
not comply with the statutory requirements must  
necessarily be unauthorised in law. Prior to the  
amending statute authority for same was to be found  
in section 24 subsection 2 of the Dangerous Drugs  
Law, and these provisions stated as follows:-

30

"On the conviction of any person for an  
offence against this Law the Court may upon  
the application of the prosecution order the  
forfeiture of any vehicle used in the  
commission of the offence and seized pursuant  
to this section."

40

This power of forfeiture was in some respects  
rather wide and in other respects too narrow. On  
the one hand its general exercise was regulated by  
no, or no clearly expressed rules, whilst on the



other hand forfeitable property was too limited. In addition neither an appellant against whom an order for forfeiture was made nor an innocent party aggrieved by such an order had any right to relief. It is common knowledge that on occasions exercise of the power gave rise to well-founded grievances. It is common knowledge too that yachts, boats and other small sea-going vessels increasingly used in the illegal traffick in ganja around our shores escaped forfeiture being outside the embrace of the statutory term "vehicle". In April 1974 Parliament took action. The old provisions were wholly repealed and replaced by the amending Act, the relevant provisions of which are in these terms:

23A(2) "On the conviction of any person for an offence against the Law, the Court shall, upon the application of the prosecution order the forfeiture of any conveyance used in the commission of the offence, and seized pursuant to this section, if the Court is satisfied that -

(a) such person owns the conveyance, or the owner thereof permitted it to be so used, or

(b) the circumstances are otherwise such that it is just so to order.

(3) If, upon the application of any person prejudiced by an Order made by the Court is satisfied that it just to make such order, the Court may upon such terms and conditions (if any), as it seems meet, revoke that order."

This amendment has introduced three innovations, namely (i) criteria are now expressly laid down in paragraphs (a) and (b) of subsection 2 subject to which the magisterial power of forfeiture must now be exercised, and the evidence satisfying either of these criteria must be adduced in the course of the antecedent trial leading to a conviction and not in hearing subsequent thereto; (ii) a convicted party against whom an order of forfeiture is made as well as a party aggrieved by such an order may now have that order reviewed; and (iii) forfeitable property is extended to include means of transportation by sea. Since this amendment

In the Court  
of Appeal

—  
No.20

Judgment

2nd July 1975  
(continued)

In the Court  
of Appeal

No.20

Judgment

2nd July 1975  
(continued)

several orders of forfeiture thereunder have been made. In Regina v. Marvin Germany (R.M.C.A.131/74) this Court had occasion to strike down such an order in circumstances in which forfeiture was sought and obtained some considerable time subsequent to the conviction of the appellant. We held that the learned resident magistrate was functus officio when she made the order. The circumstances of the instant case are somewhat different. As already indicated application for forfeiture was made on the date on which the conviction was recorded and consideration thereof was adjourned to a subsequent date. At the adjourned hearing, however, the proceedings were not limited to submissions based on the evidence adduced at the preceding trial as allowed under section 23A subsection 2 of the amending legislation, but contrary to these provisions were extended to embrace the hearing of new evidence and an adjudication thereon leading to the order of forfeiture. No statutory authority exists for this procedure. The evidence on which any such order, if made, must be based, must be evidence adduced during the course of the hearing leading to the conviction and not otherwise. In these circumstances the instant order ought not to stand and accordingly we allowed the appeal and set aside the order.

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No.21

No.21

Order  
granting  
Conditional  
Leave to  
Appeal

Order granting Conditional  
Leave to Appeal

30

IN THE COURT OF APPEAL

RESIDENT MAGISTRATES COURT CRIMINAL APPEALS NO.137  
of 1974 AND NO.137A of 1974  
BOTH APPLICATIONS HEARD TOGETHER

BETWEEN: BERNARD PIANKA }  
AND } DEFENDANTS/APPELLANTS  
TERRY HYLTON }

AND THE DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

31st July  
1975

UPON A MOTION for Leave to Appeal to Her Majesty in Council from the Judgment of the Court of Appeal dated 12th June, 1975, made by or on

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behalf of the Defendants/Appellants coming on for hearing this day and upon hearing Mr. H.G.Edwards, Q.C., on behalf of the Defendants/Appellants and Mr. C.F.B. Orr, Q.C., on behalf of the Prosecution:

In the Court  
of Appeal

—  
No.20

IT IS HEREBY ORDERED as follows:-

Order  
granting  
Conditional  
Leave to  
Appeal

31st July  
1975

(continued)

- 10 1. That leave be granted to the Applicants herein to appeal to Her Majesty in Council from the decision of the Court handed down on the 12th day of June, 1975:
- 20 2. That the Applicants shall, within 90 days from the date hereof procure the preparation of the record herein for despatch to England

and pursuant to the provisions of section 110(2)(b) of the Constitution of Jamaica and section 35 of the Judicature (Appellate Jurisdiction) Act, the Court certifies:

(i) That the following points of Law arise for consideration:

- 20 (1) Whether or not in virtue of section 4(1) of the Territorial Sea Act, 1971, the Courts of Jamaica and specifically the Resident Magistrate's Courts have jurisdiction to try summary offences committed by a foreigner on a foreign ship
- (a) within the territorial sea;
- (b) passing through the territorial sea.
- 30 (2) Whether or not in the instant case the exercise of any power or authority in pursuance of that jurisdiction was such as to constitute a breach of Article 19 of the 1958 Convention.

(ii) That the said points of Law are of exceptional public importance and that it is desirable in the interest of the public that a further appeal should be brought.

40 AND UPON A MOTION for and on behalf of the Director of Public Prosecutions coming on for hearing and upon hearing Mr. C.F.B. Orr, Q.C., for the Director of Public Prosecutions and Mr. H.G. Edwards, Q.C., on behalf of the Defendants

In the Court  
of Appeal

No.21

Order  
granting  
Conditional  
Leave to  
Appeal

31st July  
1975

(continued)

IT IS HEREBY FURTHER ORDERED:

(i) That leave be granted to the Director of Public Prosecutions to appeal to Her Majesty in Council from the Judgment of the Court handed down on the 2nd day of July, 1975;

(ii) That the Director of Public Prosecutions shall, within 90 days from the date hereof procure the preparation of the record herein for despatch to England. 10

and pursuant to the provisions of section 110(2)(b) of the Constitution of Jamaica and section 35 of the Judicature (Appellate Jurisdiction) Act, the Court certifies:

(i) That the following points of Law arise for consideration:

(1) Whether or not an order for forfeiture under section 23(2) of the Dangerous Drugs Act is invalid if made at a date subsequent to conviction on the ground that the Resident Magistrate was functus officio; 20

(2) Whether or not a Resident Magistrate may lawfully defer sentence in relation to the order of forfeiture for the purpose of hearing and considering evidence relevant thereto; and

(3) Whether or not in the instant case it was valid and reasonable so to do.

(ii) That the said points of law are of exceptional public importance and that it is desirable in the interest of the public that a further appeal should be brought. 30

AND IT IS FURTHER ORDERED that there be a stay of all further proceedings in relation to the Boat, the subject of the order for forfeiture.

Dated this 31st day of July, 1975.

BY THE COURT

Sgd. H.E. Johnson  
REGISTRAR (Ag.)



In the Court  
of Appeal

No. 23

No.23

Order granting Final Leave to  
Her Majesty in Council to the  
Director of Public Prosecutions

Order  
granting  
Final Leave  
to appeal to  
Director of  
Public  
Prosecutions

19th November  
1975

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEALS

NOS.

BETWEEN: THE DIRECTOR OF PUBLIC PROSECUTIONS

AND: BERNARD PLANKA

AND: TERRY HYLTON

10

BEFORE: The Hon. Mr. Justice Graham-Perkins  
The Hon. Mr. Justice Swaby  
The Hon. Mr. Justice Zacca

The 19th day of November, 1975

UPON the Motion for Final Leave to appeal to  
Her Majesty in Council against the Judgment of the  
Court of Appeal of Jamaica dated the 2nd day of  
July, 1975, coming on for hearing this day before  
the Court of Appeal, after hearing Mr. C.F.B. Orr,  
Q.C. for the Director of Public Prosecutions and  
Mr. Roy Taylor on behalf of the Defendants

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IT IS HEREBY ORDERED that final leave be  
granted to the Director of Public Prosecutions to  
enter and prosecute his appeal against the  
Judgment of the Court of Appeal of Jamaica dated  
2nd July, 1975.

BY THE COURT

Sgd. H.E. Johnson  
Registrar, (Ag.)  
Court of Appeal.

EXHIBITS

Exhibit 1 (e) (REM) Retail Instalment Contract

Exhibit 1 (e) (REM) Retail Instalment Contract 4th January 1974

RETAIL INSTALLMENT CONTRACT (MARINE) SECURITY AGREEMENT THE TERMS OF THIS CONTRACT ARE ON BOTH SIDES OF THIS PAGE

BUYER Name Robert E. Moseley (Please Print) Address 2126 Devine St. City Columbia County State South Carolina Telephone No. Zip Code

FOR OFFICE USE ONLY Dealer No. Account No.

Buyer (meaning all persons who sign this contract as Buyer or co Buyer, jointly and severally) has today purchased from Seller, on a time sale basis, under the terms stated on the face and back hereof, received and accepted in its present condition the yacht, boat or other type of watercraft described below, together with its furnishings, accessories and related equipment (hereinafter called "Boat").

DESCRIPTION OF BOAT Table with columns: HULL, YEAR BUILT, MANUFACTURED BY, MODEL, L/G/A, BEAN, HULL SERIAL #, ENGINES, DIESEL, MANUFACTURED BY, H.P., ENGINE SERIAL # (S)

Name of Boat, State or CG Identification # (if any), Home Port or Anchorage, Equipment included

SECURITY INTEREST

Seller has retained a security interest in the Boat and Buyer hereby grants to Seller a security interest therein (including any furnishings, equipment, and accessories which may hereafter be attached thereto, or used in connection therewith and stored thereon) as security for the payment and performance of Buyer's obligation under this contract to holder (meaning Seller or an assignee of this contract) from Seller.

REQUIRED INSURANCE

Buyer is required to have and maintain for the term of this contract, at Buyer's expense, insurance against loss of or physical damage to the Boat (Hull Insurance), with a "loss" payable clause protecting lienholder (as interest may appear) and provision for ten day notice of cancellation to lienholder, and against liability to others for use of Boat (Protection & Indemnity). Buyer has the right to obtain such insurance through an agent or broker or other person of Buyer's choice as well as through Seller.

\*CREDIT INSURANCE OPTION The Buyer whose signature appears in this box elects credit life insurance or credit life and accident and health insurance on the person designated below as the proposed insured. Buyer understands and acknowledges that such insurance was not required as a condition of the extension of credit by Seller and that Buyer's decision to purchase such insurance was voluntarily made after the disclosure to him of its costs, which are Life \$...; Accident and Health \$...

Name of Buyer Proposed for Insurance, Age, Complete only if such person is less than age 65 on date of this contract and a charge for life insurance only or both life insurance and accident and health insurance is included. This insurance is not available if Buyer is a corporation. See Notice of Proposed Group Insurance on reverse side.

Table with columns: Description, Amount, Total. Rows include Cash Price, Total Down Payment, Unpaid Balance of Cash Price, Finance Charge, Total of Payments, Deferred Payment Price, ANNUAL PERCENTAGE RATE.

Total of Payments is payable in 120 consecutive monthly installments beginning 19... Regular Installment \$ 368.40 Final Installment \$ 368.40 (if no date specified, use month after date hereof.)

LATE PAYMENT AND DEFAULT CHARGES This is of the essence hereof. Buyer agrees to pay on each installment in default for a period of not less than 10 days an amount equal to 5% of such installment or 5% whichever is less, in addition to the regular installment, and Buyer agrees to pay court costs plus reasonable attorney's fees upon default if this contract is referred to an attorney not a salaried employee of the Seller or holder for collection.

PREPAYMENT REFUND Should balance be prepaid in full prior to maturity date, a refund of the unaccrued portion of the FINANCE CHARGE will be calculated by Rule of 78, after deduction of \$15 acquisition charge.

NOTICE TO THE BUYER-(a) Do not sign this contract before you read it or if it contains any blank spaces. (b) You are entitled to an exact copy of the contract you sign. (c) You have the right to pay in advance the full amount due and under certain conditions obtain a partial refund of the FINANCE CHARGE.

Accepted. The foregoing contract is hereby set good under the terms of the assignment on the reverse side. Buyer acknowledges receipt of an executed copy of this RETAIL INSTALLMENT CONTRACT.

Signed by DEALER, Buyer (Robert E. Moseley), and Witness (Kathy S. Snow) with date 4-1-74.

Exhibit  
1 (e) (REM)  
Retail  
Instalment  
Contract  
4th January  
1974  
(continued)

### OTHER CONDITIONS OF CONTRACT

Buyer warrants that the hauling port or anchorage where the Boat is to be kept is and that he will not change such location without the written consent of the holder hereof. Buyer agrees that all equipment, accessories, and parts attached or added to the Boat shall by accession immediately become a part of the Boat, and that the Boat shall at all times be at the Buyer's risk, and the loss, injury or destruction of the Boat shall not release the Buyer's obligations hereunder. The Buyer shall not sell, mortgage, assign, encumber, secrete, lose possession of, or dispose of said Boat, or any part thereof, or this contract, or any interest therein, nor permit to be created any debt, mortgage, lien, claim or charge of any kind whatsoever upon said Boat. The Buyer will from time to time pay and discharge or cause to be discharged all taxes, assessments, license fees and other public charges imposed, levied or assessed upon the said Boat and will pay and discharge or cause to be paid and discharged all claims and demands which, if not paid, might in admiralty, in equity, at law, or otherwise, have precedence over or be on a parity with the rights of the holder under this contract. The Buyer, during the term of this contract, shall register, enroll, record, and have numbered said Boat as required or permitted by any and all laws of the United States of America, and of any State, municipality or locality where said Boat may be kept or stored at any time, now or hereafter enacted. Buyer shall comply with all laws pertaining to the use or operation of the Boat, and shall not use or permit said Boat to be used contrary to any laws with respect to intoxicating liquors, narcotics, or other products, or for any illegal purpose whatsoever. If the Boat is lost, stolen, or destroyed or injured by fire, collision or otherwise, the Buyer shall notify the holder hereof within 24 hours thereafter. If the Boat is lost, stolen, or destroyed or injured by fire, collision or otherwise, the Buyer shall notify the holder hereof within 24 hours thereafter. Buyer shall make any loss payable to and deposit the policies with the holder hereof, in order to protect against fire, theft, collision, liability to others for collision, and perils of the sea and other waters, and such other hazards as the holder hereof may direct. Buyer agrees, in addition, to insure whenever required by the holder, general liability, casualty, and workmen's compensation insurance. Should Buyer fail to procure, or maintain such insurance which shall constitute a default hereunder, holder may do so on Buyer's behalf and in such event, Buyer agrees that the holder hereof may, at its option, and at the expense of the Buyer, place insurance on the Boat to protect itself, and the Buyer agrees to pay on demand the cost of insurance so ordered and placed by such holder, and the cost of such insurance with interest at the highest lawful contract rate shall be a part of the obligation of the Buyer hereunder and waived hereby. The Buyer hereby grants to the holder hereof the sole and exclusive right at any time or from time to time to cancel all policies of insurance, or any of them, on the Boat for which the premiums have been advanced by such holder, and the Buyer hereby irrevocably constitutes the holder hereof, its officers, agents, and attorneys, as his attorneys in fact, with full authority to effect any such cancellation and to do everything necessary to carry out such purposes and in receipt and receipt for any unearned premiums due under such policies. Buyer agrees that it shall not be obligatory upon the holder to effect any such cancellation or to collect unearned premiums on such policies. If Buyer and holder hereof mutually agree in writing to include property and/or life insurance in this contract such insurance shall be deemed part of the original purchase hereunder and the contract shall be accordingly modified. If group credit life or other insurance is included in the contract and such insurance is cancelled, any unearned portion of the insurance charges, together with the unearned portion of the credit service charge applicable thereto, shall be credited to the final maturing installments of the contract. Buyer agrees that if any installment of the total of payments, or any other sum due hereunder, is not paid when due, or in case default shall be made in any other term or condition hereof or set forth in any other promise, obligation, or undertaking of Buyer, or if Seller shall fear diminution, removal or waste of the Boat, or if lien, seizure, attachment or other writ of any kind or nature shall be levied upon the Boat or any part thereof, or if any lien or encumbrance be placed upon or against the Boat, or if the Boat shall be seized or become subject to seizure for any unlawful purpose or reason whatsoever, or if Buyer shall make or offer any assignment or composition for benefit of creditors, or if a petition for bankruptcy is filed by or against Buyer, or if Buyer shall have had any of his property placed in the possession of any receiver or trustee, then the entire unpaid balance shall at Seller's election become due immediately, and Seller may, without notice, demand or legal process, take possession of the Boat where it is located, and may, but shall not be obligated to, sell the same in accordance with all applicable law at public or private sale, and apply the proceeds, after deducting all expenses and liens, to the payment of said indebtedness, and pay Buyer the surplus, if any; or, in case of a deficiency Buyer will pay Seller the same at once. All rights and remedies herein contained are cumulative and not alternative. Buyer agrees to give written notice to Seller within 72 hours after repossession of Boat if Buyer claims any article not covered hereby was contained in Boat at time of repossession, and agrees that failure to do so shall be a waiver of and bar to any subsequent claim therefore. Acceptance of any payments after maturity, or waiver or extension of any other breach or default of Buyer shall not constitute a waiver of any other or subsequent breach or default of Buyer, and no waiver of or change in the terms of this contract shall be binding on the holder hereof unless evidenced by a writing signed by an officer of such holder. The taking of any new or additional security or guaranty shall not constitute a waiver of the reservation of title herein. This contract includes the entire agreement of the parties and is not subject to cancellation by the Buyer. No warranties, express or implied, and no representations, promises, or statements have been made by the Seller, unless endorsed hereon in writing, and no oral warranties, representations, promises, or statements shall bind the holder hereof. The Buyer agrees to use the Boat in a careful and prudent manner and to make and pay for any and all repairs thereto which may be necessary to keep the Boat in as good condition as it now is. The Buyer agrees that any notices to the Buyer shall be sufficiently delivered if deposited in the mail in a postpaid wrapper addressed to the Buyer at the Buyer's address as hereinafter set forth.

### SELLER MAY ASSIGN THIS CONTRACT

This agreement may be assigned without notice to Buyer. Buyer agrees not to assert against an assignee any claim or defense arising out of the sale under this contract. Any provision of this contract which is contrary to any applicable law shall be deemed inoperative and null and void in such state insofar as such provisions may be in conflict with said law, but said law shall not invalidate any other parts of this contract in such state. If the Boat hereunder is not delivered at the execution hereof, serial numbers and the due date of the first installment may be omitted herefrom and inserted by the Seller after signature by the Buyer. Buyer certifies that there is and is to be no extension of credit in connection with the purchase of the Boat herein described other than that evidenced by this agreement. Buyer authorizes Seller and any assignee of this contract to release to credit bureaus, credit interchanges and other grantors of credit, such information relating to this transaction and Buyer's creditworthiness, as may be determined pertinent by Seller or such assignee.

### ASSIGNMENT BY DEALER

TO GENERAL ELECTRIC CREDIT CORPORATION

OR  
GENERAL ELECTRIC CREDIT CORPORATION OF GEORGIA:

To induce you to purchase the within instrument, signed by one or more buyers (herein called "Buyer") the assignor warrants that (1) Buyer's credit statement submitted herewith is substantially true unless otherwise specified; (2) Buyer was at least 21 years of age and otherwise legally competent to contract at the time of the execution of said instrument; (3) said instrument arose from the bona fide sale of the merchandise described in said instrument; (4) the down payment was made by Buyer, in cash and not its equivalent unless otherwise specified, and no part thereof was loaned directly or indirectly by the assignor to Buyer; (5) there is no owing on said instrument the amount as set forth therein; (6) said instrument and such guaranty submitted in connection therewith is in all respects legally enforceable against each purported signatory thereof and (7) the assignor has the right to assign said instrument and thereby convey good title to it and said merchandise. For value received, the assignor hereby assigns to you all its interest in said instrument and property and authorizes you to do everything necessary to collect and discharge the same.

All the terms of any existing written agreements between the assignor and you are made a part hereof by reference, and assignor understands that you rely upon the above warranties and upon said agreements in purchasing said instrument.

Neither the representation of the said merchandise from the Buyer for any cause, nor failure to file or record this instrument when required by law (it being the duty of the assignor to file or record the instrument) shall release the assignor from assignor's obligation hereunder, and in said agreements, with you (See also side for Dealer-Assignor's signature to this Assignment)

**NOTICE OF PROPOSED GROUP INSURANCE**— If a charge for life insurance or charges for life and accident and health insurance are included in terms of cost on reverse hereof, such insurance is contemplated in connection with this Contract on Buyer proposed for insurance on reverse hereof under Group Credits Insurance Policy No. G1 14950 issued by THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Newark, N. J. provided this Contract is assigned to General Electric Credit Corporation or General Electric Credit Corporation of Georgia. If such insurance is obtained, it will have effect on the date from which finance charges accrue hereunder and a descriptive certificate will be furnished within 30 days; 2. It will remain in force, subject to terms of the Group Policy, until discharge of the indebtedness; 3. Under life insurance a lump sum benefit is payable, if, while insured, Buyer dies or becomes totally disabled and remains so disabled and insured for a waiting period equal to the term of (a) six months and (b) one-half the full scheduled term of the indebtedness, amount payable in event of death or total disability being that necessary to discharge the indebtedness; at death or at the commencement of said waiting period, reduced in either instance by the total amount of (c) all installments due and unpaid at the commencement of the waiting period and (d) all installments falling due during the waiting period; but in no event shall more than \$25,000 be so payable with respect to all indebtedness of Buyer the duration of which are concurred in whole or in part; 4. Accident and health insurance, if applicable, provides monthly benefits for total disability of Buyer which commences while Buyer is insured and continues beyond a 30 day elimination period, amount of the monthly benefit being equal to the monthly installment payment required hereunder subject to a maximum monthly limit of \$300 with respect to all indebtedness of Buyer; 5. Any benefits provided are subject to any and all terms, conditions, limitations and exclusions of the Group Policy and will be paid to the group policyholder to reduce or extinguish indebtedness remaining unpaid, any balance being payable by policyholder to Buyer, if living, otherwise to his estate. If any proposed insurance is not obtained or a charge therefor in excess of any applicable limit is made, notice therefor will be sent to Buyer and appropriate refund or credit will be made in event of termination of insurance prior to maturity of this Contract, any unearned portion of insurance charges of \$1.00 or more, will be promptly paid or credited. The refund formula is based on "The Rule of 78" and is on file with the State Insurance Department where reviewed and with the above assignee.



Exhibit 1 (REM) Receipt for \$1,000

Exhibit 1 (REM) Receipt for \$1,000 3rd March 1974

**RECEIPT** Date March 3, 1974 No. 2732  
 Received From Robert E. Mosley  
 Address 2126 Devine St, Suite 102 Columbia SC  
One Thousand and <sup>00</sup>/<sub>100</sub> Dollars \$1,000  
 For Deposit on TWT 34 Hull #67

ACCOUNT		HOW PAID	
AMT OF ACCOUNT		CASH	\$1000.00
AMT PAID		CHECK	
BALANCE DUE		MONEY ORDER	

By Andrew Adams

Exhibit 1 (a) (REM) Receipt for \$6,700

Exhibit 1 (a) (REM) Receipt for \$6,700 18th March 1974

**RECEIPT** Date 18 March 1974 No. 2756  
 Received From Robert E. Mosley  
 Address 2126 Devine St Suite 102, Columbia, S.C.  
Six thousand seven hundred and 00/100 Dollars \$6,700.00  
 For Deposit TWT 34 Hull 67

ACCOUNT		HOW PAID	
AMT OF ACCOUNT		CASH	
AMT PAID		CHECK	<input checked="" type="checkbox"/>
BALANCE DUE		MONEY ORDER	

By Emily Slange

Exhibit 1 (b) (REM) Receipt for \$2,300

Exhibit 1 (b) (REM) Receipt for \$2,300 26th March 1974

**RECEIPT** Date 26 March 1974 No. 2768  
 Received From Robert E. Mosley  
 Address 2126 Devine St, Suite 102, Columbia SC 29205  
Two thousand three hundred and 00/100 Dollars \$2,300.00  
 For Additional deposit TWT 34TR #67

ACCOUNT		HOW PAID	
AMT OF ACCOUNT		CASH	
AMT PAID		CHECK	<input checked="" type="checkbox"/>
BALANCE DUE		MONEY ORDER	

By Emily Slange

Exhibit 1 (c) (REM) Copy Cheque for \$2,300

Exhibit 1 (c) (REM) Copy Cheque for \$2,300 25th March 1974

**THE CITIZENS AND SOUTHERN NATIONAL BANK**  
 OF SOUTH CAROLINA  
**CASHIER'S CHECK**  
 COLUMBIA, S. C. March 25, 1974 No. 57344  
 \$2300 AND 00/100 CTS.  
 UNDERWOOD MARINE  
 Joseph P. Hudick

Exhibit  
1(d) (REM)  
Statement of  
Account  
26th March  
1974

Exhibit 1 (d) (REM) Statement of Account

U

# UNDERWOOD MARINE

WORLD'S LARGEST Sailing Yacht - Trawler Yacht DEALERSHIP

MIAMI • FT. LAUDERDALE • ST. PETERSBURG

Mr. Robert E. Mosely  
2126 Devine Street  
Suite 102  
Columbia, S.C. 29205

26 March 1974

TRADEWINDS 34 TRAWLER, HULL 67

BASE BOAT with standard equipment		\$ 31,476.50
Rigging and Commissioning		875.00
Benmar Model 14B Automatic Pilot	\$ 999.00	
Solenoid	52.00	
2 Sprockets & chain	34.00	
Wiring, terminals	30.00	
Labor	375.00	
	<u>\$1,490.00</u>	<u>1,490.00</u>
<b>SUB TOTAL</b>		<b>\$ 33,841.50</b>
Florida 4% Sales Tax		<u>1,353.66</u>
<b>TOTAL</b>		<b>\$ 35,195.16</b>
<b>LESS: Credits</b>		
Deposit 3/15/74	\$ 1,000.00	
Deposit 3/18/74	6,700.00	
Deposit 3/26/74	2,300.00	
Total	<u>\$10,000.00</u>	<u>\$ 10,000.00</u>
<b>BALANCE, to be financed</b>		<b>\$ 25,195.16</b>

*Andy Adams*  
Andy Adams for UNDERWOOD MARINE

*March 27, 1974*  
Date

1871 S.E. 17TH STREET • FT. LAUDERDALE, FLORIDA 33316 • PHONES: FT. LAUDERDALE (305) 525-4368  
MIAMI (305) 945-6211 • OUT-OF-STATE, CALL TOLL FREE 800 327-7605

Exhibit 2 (REM) Letter, Unity Marine Insurance  
Services Inc. to R.E. Moseley

Exhibit  
2 (REM)  
Letter, Unity  
Marine Insurance  
Services Inc. to  
R.E. Moseley  
28th March,  
1974



Marine • Commercial • Personal

24 1st St. N.  
St. Petersburg, Fla. 33701  
821-5053 (813)

UNITY MARINE INSURANCE SERVICES, INC.

March 28, 1974

Mr. Robert E. Moseley  
2126 Devine Street, Suite 102  
Columbia, South Carolina 29205

Re: Yacht Insurance Quotation on 1974 Tradewinds 34'

Dear Mr. Moseley:

Regarding our telephone conversation of 3-28-74, below is  
the quotation that we discussed.

"All Risk" Hull:	\$34,000.	\$34,000.
Liability (P&I):	\$300,000.	\$300,000.
Medical Payments:	\$1,000.	\$1,000.
Deductible:	\$200.	\$400.
Annual Premium:	\$594.	\$456.

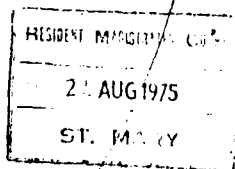
The deductible applies only to physical loss, and not to the  
liability or medical payments. I would recommend the higher  
of the two deductibles. This policy gives you coverage from  
Eastport, Maine to Pensacola, Florida, the Florida Keys and  
all the islands of the Bahamas.

I talked to Andy Adams this afternoon, and he will let me know  
when coverage is to begin. Please send me a check at your  
earliest convenience.

I look forward to working with you.

Very Truly Yours,

*Phillip R. Schneider*  
Phillip R. Schneider



PRS/lb

Exhibit  
3 (REM)  
Letter,  
Underwood  
Marine to  
R.E. Moseley  
with forms  
2nd April  
1974

Exhibit 3 (REM) Letter, Underwood Marine to  
R.E. Moseley with forms

# UNDERWOOD MARINE

WORLD'S LARGEST Selling Yacht — Traveler Yacht DEALERSHIP

MIAMI • FT. LAUDERDALE • ST. PETERSBURG

2 April 1974

Mr. Robert E. Moseley  
2126 Devins St.  
Suite 200  
Columbia, S.C. 29205

Dear Bob:

Enclosed are the necessary forms to register your boat in Florida. The power of attorney form is rarely ever necessary; however, we customarily have one signed to prevent unforseeable delays in registering the boat.

If it is inconvenient for you to have your signature notarized on the title application, just return to me and I will take care of this matter.

Please return all signed forms to my attention.

Thank;  
UNDERWOOD MARINE

*Andy Adams*

Andy Adams  
Yacht Sales  
Fort Lauderdale

Exhibit  
3 (REM)  
Underwood  
Marine to  
R.E. Moseley  
with forms  
2nd April  
1974  
(continued)

**SPECIAL POWER OF ATTORNEY**

I, \_\_\_\_\_  
 of \_\_\_\_\_  
 do by these presents authorize:  
 \_\_\_\_\_  
 Named Individual  
 to act as my attorney in fact in signing my name to any and all forms  
 necessary for transfer of my right, title and interest in and to the following  
 described vessel:  
Tide Winds 34 TR \_\_\_\_\_  
 Manufacturer or Builder's Name Boat Title Number  
 \_\_\_\_\_  
 Boat Registration Number Hull Serial Number  
 Signed at \_\_\_\_\_ Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 \_\_\_\_\_  
 Witness Sign Here  
 \_\_\_\_\_  
 Witness Florida Board of Conservation  
 Randolph Hodges, Director  
 FBC Form No. T-3

DMR Form No. T-4

**BOAT LIEN NOTICE**

Lien holder shall forward this form together with the Certificate of Title and a fee of \$1.00 to record a lien on this boat.

Title Certificate No. \_\_\_\_\_

Mail to: DEPARTMENT OF NATURAL RESOURCES  
 Randolph Hodges, Executive Director  
 Larson Building  
 Tallahassee, Florida 32304

Notice is hereby given that there is an existing contract involving the motorboat described below held by:

Advance Mortgage Co.  
 Lien Holder  
1800 West 49th St.  
 Whose Address is  
Kialeah, Fla. 33012

Who claims a lien as herein shown.

FL \_\_\_\_\_  
 Boat Registration No. Manufacturer or Builder's Name Model Year

Type Propulsion  Inboard  Outboard  Sail  Other \_\_\_\_\_

Marine Secu. Agreen, \$44,208.00  
 Date of Lien Amount of Lien Date of Lien

Randolph Moseley  
 \_\_\_\_\_  
 Signature of Registered Owner(s)

2126 Devine St., Suite 200, Columbia, S.C. 29205  
 Owner's complete current address

Exhibit  
3 (REM)  
Underwood  
Marine to  
R.E. Moseley  
with forms  
2nd April  
1974  
(continued)

APPLICATION FOR BOAT TITLE AND REGISTRATION

Fee \$2.00

STATE OF FLORIDA

DNR Form T-1

1. Owner's Name <u>Moseley Robert E.</u>	
Address <u>2126 Devine St, Suite 200, Columbia, S.C. 29205</u>	
2. Manufacturer's or Builder's Name <u>Tradewinds Trawler</u>	Model Year <u>1973</u>
Manufacturer's Serial Number of Boat <u>Hull 062</u>	
Boat Registration Number <u>FL</u>	Hull Material <input type="checkbox"/> 1. Wood <input type="checkbox"/> 2. Aluminum <input type="checkbox"/> 3. Steel <input checked="" type="checkbox"/> 4. Fiberglass <input type="checkbox"/> 5. Other
Type of Propulsion <input type="checkbox"/> 1. Outboard <input checked="" type="checkbox"/> 2. Inboard <input type="checkbox"/> 3. Sail <input type="checkbox"/> Other	Type Fuel <input type="checkbox"/> 1. Gas <input checked="" type="checkbox"/> 2. Diesel <input type="checkbox"/> 3. Other
Use of Boat <input checked="" type="checkbox"/> 1. Pleasure <input type="checkbox"/> 2. Commercial <input type="checkbox"/> 3. Dealer <input type="checkbox"/> 4. Manufacturer	Hull Length ft. <u>34</u> in. <u>0</u>

APPLICATION WILL NOT BE ACCEPTED UNLESS THE FOLLOWING LIEN STATEMENTS ARE COMPLETED

3. I/we certify that all liens on this boat are listed below:

Lien Holder's Name <u>Advance Mortgage Co.</u>	Liens <u>\$44,208.00</u>
Street Address <u>1800 West 49th St.</u>	Date of Lien _____
City and State <u>Mialeah, Fla. 33012</u>	Amount of Lien _____

If additional liens exist attach a listing of these to this application. Give all information requested under item 3. (Additional fee of \$1.00 to record each lien).

4. If liens exist against this boat the title will be mailed to the lien holder upon issuing to be held until such time lien is satisfied.

5. The owner must submit with this application a manufacturer's statement of origin, builder's certificate of origin or if boat is built by owner, form No. T-2 must accompany this application.

I hereby certify that I am the owner of the above referred to boat, that there is no lien existing except as shown in this application.

Robert E. Moseley (Owner's Signature) \_\_\_\_\_ (Date)

Sworn to and subscribed before me this \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_  
Section 775.07 Florida Statutes provides for a criminal penalty for making false statement in this application.  
1/1/77

Please Do Not Mail Cash.  
Make all checks and money orders payable to:

DEPARTMENT OF NATURAL RESOURCES  
LARSON BUILDING  
TALLAHASSEE, FLORIDA 32304  
RANDOLPH HODGES, Executive Director

Exhibit 2(a) (REM) Bank Note and Letter,  
P.R. Schneider to R.E. Moseley

Exhibit  
2(a) (REM)  
Bank Note  
and Letter,  
P.R. Schneider  
to  
R.E. Moseley  
9th April  
1974

ROBERT E. MOSELEY  
ATTORNEY AT LAW - ESCROW ACCOUNT  
2126 DEVINE STREET, SUITE 102  
COLUMBIA, S. C. 29205

№ 1038

April 9

74

67-147  
532

Unity Marine Insurance Services, Incorporated

456.00

\*\*\*\*Four Hundred Fifty-six and no/100\*\*\*\*

AMERICAN BANK & TRUST  
COLUMBIA, SOUTH CAROLINA

(Re: Yacht Ins. Quot. on 1974 Tradewinds 34'  
Annual Premium)

ROBERT E. MOSELEY, ATTORNEY AT LAW  
ESCROW ACCOUNT  
COPY NOT NEGOTIABLE

0532-01470 08 01531 5101



Marine • Commercial • Personal

24 1st St. N.  
St. Petersburg, Fla. 33701  
821-5053 (813)

UNITY MARINE INSURANCE SERVICES, INC.

April 9, 1974

Mr. Robert E. Moseley  
2126 Devine Street, Suite 102  
Columbia, South Carolina 29205

Re: Yacht Insurance for 1974 Tradewinds 34'

Company: Reliance Insurance Company

Policy Period: 4-11-74/75

Dear Mr. Moseley:

Thank you for permitting our agency to handle your insurance needs. Your application has been forwarded to the insurance company, and a policy will be forthcoming within 30 days. Please consider this letter as verification of coverage until you receive your policy.

If we can be of any further service, please feel free to contact us at any time.

Very Truly Yours,

*Phillip R. Schneider*  
Phillip R. Schneider

PRE/lb

Exhibit  
5 (REM)  
Charter  
Agreement  
15th April  
1974

Exhibit 5 (REM) Charter Agreement

CHARTER AGREEMENT

THIS AGREEMENT, made and entered into, by and between Robert E. Moseley (hereinafter referred to as Owner) and Ben Pianka and T. W. Hilton (hereinafter referred to as Lessees).

WITNESSETH:

On this day, Owner has chartered and hired unto Lessees a 34' Tradewinds Trawler, currently docked at Underwood Marine, Miami, Florida, along with all the appurtenances, cables, anchors, chains, etc., which belong to the said vessel, for the term of 180 days, said lease term to begin on April 15, 1974 and end on October 15, 1974.

For the use of said yacht, the Lessees hereby agree to pay to the Owner the sum of Seven Thousand, Five Hundred Dollars (\$7,500.00), in advance, the receipt of which is hereby acknowledged.

Upon completion, cancellation, or forfeit of this charter, Lessees agree to return said vessel to the Owner at Underwood Marine, Miami, Florida, in a safe and sound condition and in a state of repair and upkeep equivalent to that at the time of delivery by Owner, less normal wear, tear, and depletion. Lessees further agree at all times to operate and care for the said yacht in a safe and conservative manner, maritime hazards and acts of God excepted, and maintain and care for said yacht during this charter in an approved manner.

Lessees hereby covenant and warrant that they are familiar with said vessel and are able and capable to operate the same. Lessees further covenant and warrant that they shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations, and requirements of the Federal, State, and City government and of any and all their departments and bureaus applicable to the operation and use of said vessel, and Lessees hereby covenant and agree to indemnify and hold harmless Owner, of and from any and all actions, causes of actions, or other liability arising out of, or in any way connected with, Lessees' use and operation of said vessel.

Lessees further agree not to commit or permit any nuisances to exist on said yacht, nor to use said yacht for any illegal or immoral purposes.

WITNESS our Hands and Seals at Columbia, South Carolina this 15th day of April, 1974.

ROBERT E. MOSELEY

By: Robert E. Moseley (SEAL)

Ben Pianka  
BEN PIANKA

T. W. Hilton  
T. W. HILTON

SWORN to and subscribed before me

this 15th day of April, 1974.

Howard L. Tracy (C.S.)  
Notary Public for South Carolina

My Commission Expires: 10/23/70.



Exhibit 3 Authority to use Yatch,  
R.E. Moseley to T. Hilton and B. Pianka

Exhibit 3  
Authority to  
use Yatch,  
R.E. Moseley  
to T. Hilton  
and B. Pianka  
1st May 1974

ROBERT E. MOSELEY  
ATTORNEY AT LAW  
8136 DEVINE STREET - SUITE 102  
COLUMBIA, S. C. 29205  
PHONE 254-7610

May 1, 1974


TO WHOM IT MAY CONCERN:

This is to certify that the undersigned, Robert E. Moseley, has given permission to Terry Hilton and Bernard Pianka to operate, use, live aboard, and otherwise utilize his 1973 34 foot Tradewinds Trawler yatch. This will remain in effect until they receive written notice from the owner, but in any event, will not expire prior to December 31, 1974.

  
ROBERT E. MOSELEY

SWORN to before me this

1<sup>st</sup> day of May, 1974.

  
Notary Public for South Carolina

My commission expires December 11, 1974

Exhibit 4  
State of  
Florida Boat  
Registration  
29th July 1974

Exhibit 4 State of Florida Boat Registration

STATE OF FLORIDA BOAT REGISTRATION

OWNER'S NAME: **HILTON, T.W.** DATE: **7-29-74**  
 ADDRESS: **Box 15 E Islamorada Fla. 33036**

**THIS IS NOT A TITLE Dade Co ATA/no**

090255

FL 0726 BU		X OTHER		Boston Mlr	
FEET	INCHES	FEET	INCHES	YEAR	PRICE
13	4			1974	6.50

1  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20

BOAT TITLE: **AF/New**  
BOAT NUMBER: \_\_\_\_\_

FLORIDA DEPARTMENT OF NATURAL RESOURCES  
 MARINE & SHIPING, EXECUTIVE DIRECTOR

EXPIRATION DATE: **JUNE 30, 1975** OVER

*Handwritten: 27/7/74*

REGISTRATION CHARGES:

1. Always carry the Certificate of Boat Registration on board when a boat is used.

2. Boat and motor owners are required to maintain:

3. The registered boat owner shall report 617 (Change) to the Florida Department of Natural Resources within ten (10) days: Change of name, address, destination or abandonment of boat.

4. A report of ownership shall be made on a boat within fifteen (15) days from the date of purchase.

5. Report to the Sheriff of the county of which accident occurs or information officer or authority after within twenty-four (24) hours accidents resulting in death, injury or property damage in excess of \$50.00.

6. If the certificate is lost or misplaced the owner can receive a duplicate by making \$1.00 to the Florida Department of Natural Resources, writing name and boat number.

REGISTRAR'S SIGNATURE: \_\_\_\_\_

REGISTRAR'S NAME: \_\_\_\_\_

REGISTRAR'S ADDRESS: \_\_\_\_\_

REGISTRAR'S CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

REGISTRATION FEE: \_\_\_\_\_

REGISTRATION CHARGES: \_\_\_\_\_

REGISTRATION NOTICE: \_\_\_\_\_

Exhibit 1 Crew List

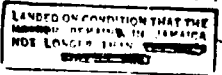
Exhibit 1  
Crew List  
8th August  
1974

NAME OF YARD - STAR BABY  
NATIONALITY - USA  
PORT OF REGISTRY - MIAMI  
REGISTRATION NO. - FL 7337 BF  
LAST PORT OF CALL - MIAMI  
TONNAGE 8 .

CREW

~~TERRY WAYNE HILTON~~  
NAMES NATIONALITY AGE  
TERRY WAYNE HILTON USA 25  
BEN PANKA USA 25

Terry Wayne Hilton  
MASTER

CYLD →  →

Arrived with cooking  
gear in st. area.



Exhibit 2  
Transire  
and Coastwise  
Clearance  
9th August  
1974.

Exhibit 2 Transire and Coastwise Clearance

JAMAICA

TRANSIRE AND COASTWISE CLEARANCE

Application and Permit for Aircraft or Ship to proceed to a port or place other than  
the first port of call.

NOTE:--Applications must be submitted in triplicate. If spaces for particulars of cargo are  
inadequate separate sheets may be used and attached.

To the Officer of Customs at King's College  
King's College \*Master/Agent of the Star Breeze  
do hereby apply for permission to proceed with the said \*aircraft/ship to Maricao Bay  
at 3.30 \*AM/PM on 9th 1974 for the purpose of  
\*discharging/loading cargo. Cruising  
I undertake to pay any expenses that may be incurred.

PARTICULARS OF CARGO FOR DISCHARGE.

From foreign NONE tons

Coastwise:— (Marks, nos, description of packages, contents and weight or measurement on which freight is  
charged must be given.)

UNDER BOND

None

DUTY PAID

None

Date 9th May 1974

Agd. Allegre  
Master or Agent  
COLLECTOR OF CUSTOMS  
PORT ANTONIO

Approved subject to the following directions and conditions: NONE

Particulars of places under seal NONE

Date 9th Aug 1974

Agd. Allegre  
Proprietor  
COLLECTOR OF CUSTOMS  
PORT ANTONIO

Delete whichever is inapplicable.

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O N A P P E A L  
FROM THE COURT OF APPEAL OF JAMAICA

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B E T W E E N:

1. BERNARD PIANKA
2. TERRY HYLTON

Appellants

and

THE QUEEN

Respondent

and BETWEEN

THE DIRECTOR OF PUBLIC  
PROSECUTIONS

Appellant

and

1. TERRY HYLTON
2. BERNARD PIANKA

Respondents

(Consolidated Appeals)

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RECORD OF PROCEEDINGS

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*Philip Conway Thomas & Co.,*  
*61, Catherine Place,*  
~~WILSON-FREEMAN,~~  
~~67-8 Westminster Palace Gardens,~~  
~~Artillery Row,~~  
London SW1E 6JL. *6418*

Solicitors for Bernard Pianka  
and Terry Hylton

CHARLES RUSSELL & CO.,  
Hale Court, Lincoln's Inn,  
London WC2A 3UL.  
Solicitors for the Respondent in the  
first Appeal and the Director of  
Public Prosecutions in the second  
Appeal