Hon Mofolleng

CRI/A/85/82

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

BOKANG LELIMO Appellant

v

REX Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 11th day of March, 1983

The appellant Bokang Lelimo was jointly charged (with Ephraim Leihlo Lenono) with the following offences the brief particulars whereof being shown in brackets :-

> Theft (of a negotiable instrument in the sum of R37,650.47 the property or in the lawful possession of the Food Self-Sufficiency Project - Count III);
>
> Forgery (of the name of the payee of the note from Fedmis to Fedmisa - Count IV);
>
> Fraud (with the object of causing loss and prejudice to the Food Self-Sufficiency Project - Count V).

The learned Chief Magistrate convicted the appellant of receiving stolen property, a competent verdict under the charge of theft, supra; and sentenced him to four years imprisonment but found him not guilty of forgery and fraud. The appellant appeals against his conviction but not against the sentence.

The evidence against the appellant was largely common cause but it is important I think to put the facts into perspective.

Ephraim Leihlo Lenono was the Financial Controller of the "Food Self-Sufficiency Project" (the project) a Government department attached to the Prime Minister's office in Maseru according to the oral evidence but on documents produced, such as Exhibit B and Exhibit F, also associated with the Ministry of Agriculture. The name of the project is indicative of its

/objects.

objects. The operation of the project involved, amongst other things, the purchase of fertilizers for distribution to farmers in Lesotho. Fedmis(Pty)Ltd of Sasolburg in the Republic of South Africa supplied the fertilizers. It is not necessary for the purpose of this appeal to go into the details about the method of payment to the supplier, suffice it to say that upon the receipt of the invoice or invoices the project accounts department would prepare a payment voucher and a cheque in the name of the supplier covering the invoice or invoices for the goods. Mr. Lenono will have to check if the cheque and the voucher are in order, would sign the cheque as first signatory (to the project's account held at Lesotho Bank) and present the cheque (and supporting papers) to his superior and Director Mr. Phakoane (PW1) who was the second signatory. The cheque is, or should be, then posted or passed in some way to the supplier in settlement.

On the 10th January 1981 the appellant went to the Standard Bank Branch in Ladybrand and opened a "partnership account" in the name of Fedmisa. It has been described as a "Savings Account" but on the document it is styled "Plus Plan". The form (Exhibit H) upon the strength of which the account was opened states that at a meeting of the partners of Fedmisa held in Maseru on the 9th January 1981 (a day previously) it was agreed that such an account be opened. The appellant deposited R1000 and left. The "partnership" purported to be between the appellant and one Ralph Lenyolosa who purported to have appended his signature to the form. Mr. Visser (PW9) of Standard Bank Ladybrand testified he did not know who is Ralph Lenyolosa. Mr. Bornman for the appellant did not ask Mr.Visser if he had seen another man with the appellant that day who may have been Ralph. The appellant, however, testified Ralph was there. The sole signatory on the partnership account however was the appellant. There is, if I may digress for a moment here, an obvious error in the typed record that the signatory was A1 (i.e. Lenono) but I have checked the magistrate's handwritten manuscript and it was in fact the appellant.

On the 16th January 1981 the accounts department of the project prepared a payment voucher (Exhibit B) to settle Fedmis (Pty)Ltd of Sasolburg six invoices in the total sum of R37,650.47. The cheque for that amount (Exhibit C) was prepared on the 20th January 1981 and both were passed first to Lenono

/who

who signed the cheque and next to Phakoane (PW1) the director and second signatory. It was a bank certified cheque. It was also crossed.

The cheque was seen at the project's office in possession of or in the custody of Lenono on or about this date. Lenono was in charge of the safe.

The cheque never reached its destination.

On the 21st January 1981, i.e. a day after the cheque was issued, and eleven days after the opening by the appellant of an account at Standard Bank Ladybrand in the partnership name of Fedmisa the appellant presented himself at the bank in Ladybrand with the cheque for R37,650.47. The cheque originally issued to Fedmis(Pty)Ltd had in the meantime been altered by the addition on an "a" to the word Fedmis. The Bank accepted the cheque and was prepared to deal with the proceeds in whatever manner the appellant requested. The crossing of the cheque would not of course have been a hinderance but the cheque was made out in the name of a limited private company not a partnership and the proceeds ought not to have been paid, certainly not paid without a query. But this is what happened. I emphasise this because in part of the proceedings and throughout the magistrate's judgment the partnership account opened by the appellant has been referred to as Fedmisa(Pty)Ltd. It was not. It was simply Fedmisa.

The appellant then and there opened a <u>personal</u> account in which R21,650.47 were deposited. He deposited R4000 in the Fedmisa partnership account. He asked for and was given a banker's cheque for the amount of R7800 made in favour of Thusanang Motor Spares (this amount Mr. Visser says was credited to Thusanang Motor Spares but it is not clear if he had meant the firm's account at their Branch in Ladybrand or to an account elsewhere where the cheque was cashed) and he asked for and was given R5000 in travellers cheques. The learned magistrate at page 55 of his judgment seems to have been perplexed by Mr. Visser's treatment of the proceeds since the total disbursements were R38,450.47 and the amount of the cheque was less. With respect I see nothing extraordinary in this. The appellant, as Mr. Visser says, drew R800 on the same day from the Fedmisa account, and he thought it was probably in cash. The position on the 21st January 1981 then was that the sum of R37,650.47 destined to the fertilizer firm of Fedmis(Pty)Ltd

/of

of Sasolburg ended up precisely and in its totality in the appellant's pocket or in an account or accounts of which he was the sole signatory.

The appellant admits at the trial that the project had suffered loss but says that he himself was not party to that and had acted throughout in good faith. Lenono absconded in the midst of the trial which commenced in April 1982 and has not been traced since but a statement Lenono made to another magistrate was already in evidence before the trial magistrate. Mr. Borgman for the appellant briefly cross examined the magistrate who took down that statement.

The loss was not discovered until a bank reconciliation was made in June 1981 and the appellant and Lenono were apprehended and interviewed by the police. There is of course no onus upon the appellant to say anything either to the police or to anybody else but there was proof that he had been in possession of a cheque recently stolen - in fact on the same or previous day -and the presumption,rebuttable of course, is that he acquired it from somebody, most probably Lenono, with whom it was last seen. In late July 1981 the appellant made a statement to a magistrate in Sesotho, an official language, and the mother tongue of the presiding Chief Magistrate. The Sesotho and English translation were admitted in evidence without contest i.e. the appellant did not at any time suggest that it was not freely and voluntarily made.

The Sesotho and English translation appear in the magistrate's judgment and need not be repeated.

The appellant when giving evidence disputed the accuracy of the translation on two points. Firstly he says that he told the magistrate who took it down this: "I assisted Lenono in his act of theft by way of cashing a cheque from his employers" and not as appears in the translation. Secondly that the consideration for cashing the cheque was that Lenono would give him R5000 not R500 as it appears in both the original Sesotho and the translation. The magistrate at pages 52 and 53 accepted the first point taken by the appellant as the more accurate translation, and on the second point he accepted that the consideration to be received by the appellant was to be R5000 not R500.

/In sum

In sum total that statement is prima facie a confession of guilt. The appellant has identified the R37,650.47 he cashed to have been somebody else's, viz, Lenono's employers; he identified his role as an assistant to theft; and identified his consideration (or cut) on the deal which consisted of R5000 and a promise that a further R5000 would be lent to him. In that statement he explains that out of the proceeds he gave Lenono R10,000 at the Holiday Inn Maseru and R15,000 in Johannesburg. That of course totals R35,000 assuming he helped himself immediately to the "loan". The statement continues that he started to pay Lenono the balance (whether of the proceeds or the loan and the proceeds combined matters not) by instalments leaving R2500 still outstanding.

The evidence against the appellant at the end of the case for the Crown was formidable. It consisted of circumstantial evidence of the most compelling kind which was buttressed by, to any reasonable reader, an unequivocal confession of association with the crime or crimes committed. There was a lot of explaining to do not only in regard to the circumstantial evidence but in regard to the confession. I say this because it is clear as anything can be that Lenono but not the appellant (for he did not work at the project) was familiar, because of his senior position at the project, of the name of the company Fedmis(Pty)Ltd who supplied the fertilizers. When therefore on the 10th January 1981 the appellant opened the account at Ladybrand with Fedmisa as his choice of name (at an alleged meeting of partners held on the 9th January 1981) only one of two things could have happened,

(a) that the choice of name was a coincidence, or

(b) that Lenono passed to the appellant the name of one of the project's suppliers in furtherance of a conspiracy between them and in preparation of the impending fraud which did in fact succeed twelve days later.

The cheque itself (Exhibit C) did not bear the project's stamp but there were clear indices, known to the appellant, who knew Lenono's job at the project, that it was not his personal cheque:- it was made out to a limited private company and the appellant's firm was not; it bore two signatures not one; it was a bank certified cheque (individual persons admittedly sometimes do get such cheques to pay for a purchase in situations such as

/an auction

an auction or where personal cheques are unacceptable in tender); and it was for a relatively large amount. When coupled with

(a) the fact that the appellant is an educated man and holder of a BA degree in administration (obtained in 1977) and a former Maseru Town clerk, and

(b) the statement he gave the magistrate in July 1981; the possibility that the appellant was a victim of ill fate of grotesque dimensions is reduced to practically nil.

The only chance the appellant had to escape conviction was to try to explain what appears to be the inexplicable for the force of circumstances alone admit of little other inference except one of guilt and his statement also had to be explained for as I said it admits of little other inference except one of confession.of guilt.

The appellant's explanation to the trial magistrate was that Lenono gave him the cheque at Maseru Bridge (the magistrate accepted this) but that he did not know it was stolen from Lenono's employers. The appellant proceeded to unfold a story of a deal in diamonds worth R5000 (which took place in December) between a partnership of which Lenono was a partner on the one hand, and his (i.e. the appellant's) partnership (Fedmisa) on the other, and explained his statement to the magistrate who took it down by relating the word "consideration" to that diamond deal adding (at p 36 lines 10 - 13 of the typed record) that the police told him "that the cheque deposited at the Standard Bank was a stolen cheque and that was the reason why he made the statement", a kind of explanation that reminds me of Littledale's J charge to the jury more than a century ago in R. v. Clark (full report not available to me but the passage is quoted in Wills on Circumstantial Evidence 5th Ed p.112) who is reported to have said:

> "So natural and forcible is this rule of presumption (modern legal text book writers prefer the words 'inference' or 'irresistible inference') that the guilty are insinctively compelled to endeavour to evade its application by giving some explanation or interpretation of adverse facts, consistent, if true, with innocence, but its force is commonly aggravated by the improbability or absurdity even, of such explanation or the inconsistency of them with admitted or incontrovertible facts. All such false, incredible, or contradictory statements, if disproved or disbelieved, are not simply neutralised, but become of substantive inculpatory effect".

/Appellant's

Appellant's counsel in his address to the trial magistrate (and indeed to me) submitted rather ingenously that the appellant's previous statement before the magistrate who had taken it down is capable of two interpretations: either that the appellant was telling the magistrate about his "state of mind" at the time he received Exhibit C (the cheque) from Lenono or about his state of mind and knowledge after being informed by the police of Lenono's actions "thus conveying his present state of mind to the magistrate". The implication of this submission is that an inference of guilt via Visser's evidence (admitted anyway) cannot be had, and if via the previous statement it cannot be had either unless it is established that the appellant was referring to the events in January 1981 when he received the cheque from Lenono, but not if the appellant was describing his feelings after having been informed by the police in July that the cheque was stolen in which event the appellant's assertion that he did not have guilty knowledge in January 1981 and his explanation of the diamond deal, could "reasonably possibly be true".

The appellant of course did not swear to this latter interpretation in his evidence but counsel pointed out that the appellant did lay the ground for this by the statement he made to the trial magistrate which I quoted earlier in this judgment. The learned magistrate who had before him the circumstantial evidence earlier outlined in this judgment and the direct evidence of an apparently unequivocal confession of guilt rejected the appellant's explanation of the diamond deal and also rejected counsel's submission about the "two interpetations".

The only ground of appeal is that the magistrate had misdirected himself by relying (in convicting the appellant of receiving) on the confession of Lenono (Exhibit E) implicating the appellant which confession (apart from its having been contested - this latter emerged on cross examination not before the magistrate gave evidence) was inadmissible as evidence against the appellant in terms of s. 230 of the Criminal Procedure and Evidence Act 1981.

Principal Crown Counsel admits that misdirections occurred but submits that it is a case where the proviso to s. 329 should be applied. To uphold the appeal (he added) would tantamount to gross miscarriage of justice.

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The passages where the misdirections occur (these last are underlined) are herewith reproduced: p 50 lines 25 to end of page and p.51 line 1.

1. "How the cheque - Exhibit C - which according to the evidence of PW5 was handed to accused 1 for safe-keeping in his office at the project came into the hands of accused 2 is explained by accused 2's evidence on oath before this court, his statement - Exhibit A - before a magistrate and to a certain degree supported by accused 1's statement before a magistrate".

2. Page 53 line 13 to line 26:

"Here again I am inclined to believe the accused when he says he told the magistrate that the consideration for cashing of a cheque - Exhibit C - was that Lenono would give him R5000 and not M500. That however does not mean accused 2 did not know that the cheque was from Lenono's place of work. Indeed, as it will be shown shortly hereafter this (sic) supports accused 1's statement to another magistrate in that the agreement between accused 1 and accused 2 was that the latter would receive some benefit out of the cheque he received from the former;

Accused 2's evidence supported by his statement to the magistrate (Exhibit A) as well as the statement of accused 1 (Exhibit E) all explain that the cheque - Exhibit C - was handed to him by Lenono. According to the statement of accused 1, Exhibit E, accused 2 received the cheque, Exhibit C, at the project offices, etc..."

3. Page 55 line 10 to the end and p. 56 lines 1-16. Lenono's statement appears fully in the magistrate's judgment and is not quoted.

"Be that as it may, the important point is that accused 2 clearly treated the money on Exhibit C as though it was his own money. In accordance with what he had told the magistrate in his statement, Exhibit A, one would have expected him to have cashed the cheque and handed the money to accused 1 and perhaps retain only R5,000 which was to be a gift or consideration to him for cashing that cheque. Realising this anomaly accused 2, in his evidence, started the story that he and a certain Ralph Lenyolosa were dealing in diamonds and accused 1 had taken their R5,000 worth of diamonds and the R5,000 he had taken out of the amount on Exhibit C was for the diamonds which accused 1 had taken. Ralph Lenyolosa was not called as a witness and asked where this Lenyolosa could be found accused 2 told the court that he had lost contact with him and did not know where he could be found. Although, according to the evidence of accused 2, Ralph Lenyolosa was present when Exhibit H was completed at the Bank in Ladybrand, accused 2 was the only partner who

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filled in the names of the partners of Fedmisa(Pty) Ltd. There was an error in the way the name of Lenyolosa was written on Exhibit H and accused 2 initialled the correction of the error in the name of Lenyolosa. The whole story about this Ralph Lenyolosa bristles with uncertainly and I have no doubt in my mind that it is a fabrication which accused 2 thought of after he had made the statement Exhibit A before the magistrate.

Again in his evidence on oath accused 2 told the court that when he received Exhibit C from Lenono he did not suspect that there was anything wrong with it as it was bearing only the Bank guarantee and no departmental stamp of any kind. He took it to be a faithful cheque from Lenono who was paying the debts he (Lenono) was owing to Fedmisa(Pty)Ltd for diamonds received or to be received from the partnership Fedmisa(Pty)Ltd. This is certainly not what accused 2 said in his statement, Exhibit C, which was admitted unchallenged except in two points already referred to, supra. In that statement accused 2 told the magistrate who recorded it that the cheque was from accused 1's place of work. That accused 2 knew that the cheque Exhibit C was not a personal cheque but came from accused 1's place of work is supported by accused 1's confession, Exhibit E, recorded by PW3, Mr. C.M. Pali, one of the magistrates in Maseru etc....."

4. Page 58 line 20 to end and p. 59 line 1 to 4:

"It has been argued before me that accused 2's statement, Exhibit A, is capable of two interpretations, namely, that accused 2 was either telling the magistrate about his state of mind at the time when he received Exhibit C from Lenono or he was telling the magistrate about his state of mind and knowledge after being informed by the police of Lenono's action and thus conveying his mind to the magistrate. I am not impressed by the argument. The statement, Exhibit A, was made by accused 2 on 29th July 1981, long after he had received Exhibit C from Lenono. Read in conjunction with the above quoted statement Exhibit E - by accused 1 before another magistrate accused 2's statement leaves no room for any of the two interpretations. When he received Exhibit C from Lenono in January, 1981, accused 2 knew very well that the cheque had been stolen from Lenono's employer and it was in accordance with a premeditated scheme made by the two men that Exhibit C would be cashed and the money used for their own interests. There is therefore no reasonable justification for the argument which I have no hesitation to reject as being unfounded."

5. The magistrate also wrote thus (page not numbered) in his reply to the grounds of appeal:

"It has been pointed out during the course of my judgment that there was undisputed evidence that the appellant had received the cheque - Exhibit C -

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from Lenono. Although the appellant wanted the court to believe that he did not know that Exhibit C had been stolen and he took it to be a faithful cheque from Lenono his story was rejected as false. <u>If appellant's statement (Exhibit A) were to be read in conjunction with that of Lenono (Exhibit E)</u> there can be no doubt at all that the appellant was fully aware that Exhibit C had been stolen. Indeed, on the evidence as a whole I was satisfied that it had been proved beyond reasonable doubt that appellant had committed the crime of receiving stolen property well knowing that it had been stolen and was accordingly convicted.

(Sgd) B.K. Molai
CHIEF MAGISTRATE
14/9/82"

I must confess that at first sight I found the underlined misdirections far too serious to sustain the conviction but on further and maturer reflection it would be wrong I think to take them in isolation and out of context.

The first passage quoted deals with the question of how the stolen cheque came into the hands of the appellant. The fact of the matter is that the learned magistrate's discourse of Lenono's role was irrelevant for there can be no doubt surely that appellant had possession of the cheque. The magistrate in fact excluded <u>Lenono's</u> inadmissible statement that the cheque was received by the appellant at his office and accepted the only evidence that could have been accepted (that of the appellant himself) in the following words that appear at the end of p.53 and in the first paragraph of p. 54:

> "Acc 1 (i.e. Lenono) had conveniently disappeared and was not available for cross examination..... In any event even if he were available .... and had adhered to what he told the magistrate(i.e. testified so on oath) it must be borne in mind that he and accused 2 (appellant) were co-accused in law. Accused 2 (appellant) could not be convicted on the 'evidence' of his co-accused alone. In the absence of any other evidence apart from the statement made by accused 1 (Lenono) to the magistrate I am prepared to accept etc.... that he(appellant) received Exhibit C at the border post".

The second passage quoted begins with the acceptance of appellant's evidence that he told the magistrate that his "consideration" would be M5000 not M500 but the magistrate adds that that did not mean that the appellant did not know that the cheque was from Lenono's place of work (this was the magistrate's preferred translation) but the rest of the passage

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(though inarticulately expressed) means that the figure itself mattered little and that the operative words used by appellant in his statement, to wit, receipt of "consideration" "supports" Lenono's statement that the appellant was to have this gift. There is some confusion of thought as well as expression for by that time Lenono was gone and no "support" was needed by anything said against him by the appellant. The magistrate may have implied that the converse provides the "support". If any support is needed that the appellant did not do what he did on the 21st January for love, or the fancy story of the diamonds, it has been provided by his deeds viz, the manner of his disposition of the proceeds of the cheque subject matter of the chargeswhich the magistrate dealt with in the third passage quoted above where another misdirection occurs. This however was prefaced by a lengthy review of the story of the diamonds and the appellant's partner Lenyolosa which story was rejected as a fabrication and an after thought. This occurred before the magistrate misdirected himself further. The magistrate dealt with the import of the appellant's words as used in his statement but this was with reference to his previous finding of "fabrication" and afterthought". The magistrate concludes that the points the appellant challenges had no bearing on, or touch upon, his admission of receipt of the "consideration". What the learned magistrate was attempting to say with respect, is that the story of the diamonds, if there was a scintilla of truth in it would have been told by the appellant to the magistrate, irrespective of what appellant's counsel submitted in argument may have been the appellant's state of mind.

The fourth misdirection appears in the magistrate's discourse in answer to counsel's argument, an argument based on no positive oath but on an oblique and evasive testimony. If there is substance in this the appellant (who is no fool) would have told the magistrate something like this -

> "I have now been informed by the police that the cheque I cashed for Lenono was stolen from his employers. If so then I must have assisted him in his act of theft. This is not so,he owed my firm R5000 on a diamonds deal and since the cheque he gave me exceeded that amount I asked him if he would grant me a loan of R5000 and he accepted. I have repaid the balance of the cheque except for perhaps R2500".

No judicial mind, considering the circumstances, could interpret the words used in the statement as having this meaning. Even if

/that

that was what was actually said (which was not) it is still a fanciful explanation that cannot fall under the "reasonably possibly true" formula.

The fifth misdirection occurs in the learned magistrate's reply to the ground (actually notice) of appeal when he again refers to Lenono's statement but this only after he declares that he found the appellant's explanation false.

In the five instances of misdirection an unmistakable thread emerges, viz, that the learned magistrate was not hopelessly oblivious of the inadmissibility of anything Lenono had said. It was constantly at the back of his mind. This is clearly demonstrated from his treatment of the evidence on the substantive charges of theft, forgery, and fraud, at p.59 from line 7 to almost the end of the judgment. The magistrate is completely wrong, incidentally, in his analysis of the meaning of actus reus. He seems to have been under the impression that there must be a witness or witnesses who physically perceived a joint theft of the cheque from the project's office to bring the theft conviction home, or had physically seen the appellant insert the additional "a" to bring the forgery conviction home, or heard him at the bank make an oral false representation, to bring the fraud conviction home. This is not so. The actus reus to sustain all three counts has been proved by the appellant's possession of the cheque, his taking it to the bank in Ladybrand, and in the manner of his disposal of the proceeds. If he did not add the "a" or there was doubt as to who did it, the appellant is guilty of uttering (a competent verdict on forgery) if he knew the instrument had thus been forged, and in fraud he need not have said a single word to Mr. Visser for there can be misrepresentation by conduct which there was.

What heppened in brief is that the learned magistrate rightly thought that Lenono's statement was no good for theft, forgery and fraud. He rejected the appellant's explanation of possession as false but wrongly thought Lenono's statement was an additional reason for convicting on receiving. He has here certainly gone astray on the law.

I have been invited by the Crown to apply the proviso. The proviso (with similar text) has been in existence in English Law since the Criminal Appeal Act of 1907 and has been also in

existence in Southern African jurisprudence for a long time, with this difference however, that in England and (until juries were abolished in Southern Africa) the application of the proviso had perforce to be interpreted with reference to the division of functions between the Judge and the Jury. Now the Judge(or Judicial officer) here performs both functions i.e. facts and law. I will rely on Southern African authorities.

The subject has been dealt with admirably if briefly in Hoffmann South African Law of Evidence (2nd Ed. 1970 - the third edition is not available to me) at page 342 to page 345.

The principles upon which an appellate tribunal would act are, or seem to be :

1. That the proviso would not apply if there had been an irregularity per se or actual and substantial prejudice to the accused not necessarily amounting to the satisfaction of the appellate tribunal that an innocent man has been convicted. (S. v Moodie 1961 (4) SA 752 (AD); R. v. Rose 1937 AD 467;

2. Relying on inadmissible evidence in disbelieving a witness (which must include an accused if he gives evidence) is an irregularity an appellate tribunal may or may not regard as vitiating the court a quo's findings though its leaning would be towards the accused. (R. v. Owen 1942 AD 389 and R. v Sibanda 1965(1) SA 329(SR.AD)

3. An appellate court will be satisfied that there has in fact been a failure of Justice if it cannot hold that on the evidence and findings of credibility unaffected by the irregularity there is proof of guilt beyond reasonable doubt(S.v Tuge 1966(4) SA 565 AD).

Applying the above principles there has been no irregularity per se, and looking at the evidence on record, and ignoring the misdirections there is no doubt whatsoever the appellant is guilty to the hilt not merely of receiving, but of theft, of uttering a forged document knowing it to be forged, and fraud, or to put it in the magistrate's own words "it" (i.e. what happened) "was in accordance with a premeditated scheme made by the two men that the cheque (Exhibit C) would be cashed and the money used for their own interests".

In sum total then, the appellant's conviction of receiving if it errs at all, errs to the appellant's undeserved advantage. There is no necessity to disturb this conviction though I think theft has been proved. Under the powers

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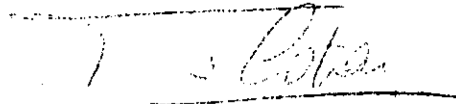
conferred upon the High Court in its appellate jurisdiction in terms of s.329(1)(c) and (d) of the Criminal Procedure and Evidence Act 1981 appellant's acquittal on the other counts is perverse and accordingly set aside and substituted for convictions of the crimes of uttering and fraud.

I confirm the sentence of 4 years imprisonment. The same sentence is imposed on each of the crimes of uttering and fraud all the sentences to run concurrently.



CHIEF JUSTICE
11th March, 1983

For Appellant : Mr. Boreman
For Respondent: Mr. Kamalanathan