**MONTSERRAT**

**IN THE COURT OF APPEAL**

**Criminal Appeal No. 1 of 1999**

**BETWEEN:**

**1. ERIC WILLIAMS**
**2. AUSTIN HOWE**
**3. CLEMENT CASSELL**

Appellants

and

**THE QUEEN**

Respondent

**Before**:

The Hon. Mr. C.M.Dennis Byron — Chief Justice
The Hon. Mr. Albert Redhead — Justice of Appeal
The Hon. Mr. Albert N.J. Matthew — Justice of Appeal (Ag.)

**Appearances**:

Mr R. Francis for Appellant No. 1;
Dr. H. Browne for Appellant No.2;
Mr. D. Hamilton for Appellant No.3;
Ms A. Weekes Q.C. and Mr. C. Meade for the Crown.

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**1999: October 11, 12 and 13;**
**November 22.**

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## JUDGMENT

[1] **MATTHEW, J.A. (Ag.)** The Appellants were convicted by a Jury before *Saunders J.* on February 22, 1999 for offences in relation to the disappearance of a quantity of Eastern Caribbean Currency from the Barclays Bank vault in Plymouth belonging to the Eastern Caribbean Central Bank.

[2] Eric Williams, the first Appellant, was convicted of the offence of conspiracy to burgle. The particulars of that offence state that Eric Williams, Austin Howe, Clement Cassell, Raphael Herbert, Ronald Irish and Cyril Daley between the 31st day of October 1997 and the

11th May 1998, conspired together and with other persons unknown, to enter as trespassers, the archives room and vaults of Barclays Bank, Plymouth in the Colony of Montserrat, with intent to steal. Williams was sent to prison for a term of 15 months.

[3] Austin Howe and Clement Cassell, the second and third Appellants respectively, were convicted of the offence of burglary. The particulars of that offence state that Eric Williams, Austine Howe, Clement Cassell, Raphael Herbert, Roland Irish and Cyril Daley on a day between the 31st day of October 1997 and the 11th day of May 1998 having entered as trespassers, part of a building namely the archives room and vaults of Barclays Bank, Plymouth in the Colony of Montserrat, stole therein a quantity of Eastern Caribbean Currency approximately $922,000.00 in face value.

[4] These two offences or counts were put to the Jury in the alternative. They considered the burglary count first and found Appellant No.1 not guilty but found Appellants No.2 and No.3 guilty. They then proceeded to consider the conspiracy count and found Appellant No.1 guilty. Appellants No.2 and No.3 were each sent to prison for a term of 2 years.

[5] Each of the Appellants filed notices of appeal against their convictions within the stipulated time and although there has been some collaboration between learned Counsel for the Appellants, each has presented a substantial case for his client. This judgment will, of necessity, have to deal with each Appellant separately.

[6] But before doing so, it is necessary to give a brief background to this episode. The Eastern Caribbean Central Bank in St.Kitts is the monetary authority for the Islands of the Organization of Eastern

Caribbean States (OECS). They issue new notes to the different Islands. In Montserrat their representative was Miss Alfreda Meade. The Central Bank would send new notes to Miss Meade for use by the Commercial Banks in Montserrat and these were kept in the Barclays Bank vaults. These notes would have serial numbers which would be recorded by Miss Meade. It is pertinent to state that Miss Meade would also redeem money from the local banks for onward transmission to Headquarters.

[7] The evidence is that of the $922,000.00 stolen from the bank $805.000.00 were new notes, $75,000 were not new notes and $42,000 were coins. The money was kept in safes which have combination locks. According to Miss Meade there are really two safes but each has four compartments. There are two combination locks on each compartment. In order to get to the cash in the compartments they must be opened by a Barclays Official and Miss Meade at the same time. Miss Meade received a batch of cash on May 15, 1997 and she issued cash to three banks in Montserrat on May 21, 1997 and she checked the remainder of cash that was left in the vaults.

[8] Before one gains entry to the vault where the safes with the money are kept, one has to enter a door which is secured by two sets of keys one for the top, the other for the bottom and then has to go through a grill door which is secured by keys as well. This is the normal entry to get to the cash. There is also another room close by called the archives room and the allegation as indicated in the indictment is that entry to the vaults with the money was not through the regular entry but by way of the archives room and jack-hammering through a partition wall and then jumping down into the area where the safes were located. It is a matter of some debate

as to whether the chubb door on the archives room is secured by a combination as the first Appellant hotly contests alleging further that he does not know the combination, or whether it is secured by keys to which the first Appellant has daily access as the Prosecution contends. There is also a grilled door secured by a padlock in the archives room.

[9] Joy Field-Ridley, the Bank's Operations Manager, states that owing to increasing volcanic activity, Barclays Bank transferred operations to Antigua on 1st September 1997 but before that it had long left Plymouth. Appellant No.1 who was an employee of Barclays was transferred to Antigua on that date. On 31st October 1997 P.C. Albert Williams made a check at Barclays and saw the right section of the Eastern door smashed leaving a space 24"x24" wide enough so that anyone could have entered the bank. He and other Police personnel entered the bank and he made a complete check inside the bank. He said all the interior doors were intact. This same Officer had occasion to visit the bank on May 11, 1998 and there he met the main door which leads to the archives room opened as well as the chubb door which leads to the emergency exit to the treasury vault.

[10] One notes that the dates on the indictment relating to the particulars of the offences coincide with the visits of P.C. Albert Williams to the bank.

**Eric Williams**

[11] In his directions to the Jury the learned Trial Judge rightly told them that a conspiracy was an agreement to do something unlawful. He asked them to consider the count of conspiracy after they had

considered the count of burglary and only against such accused that they had acquitted of burglary. He told them that the entire evidence of Neville Blake was relevant to the conspiracy charge, evidence which if they accepted it shows evidence of a plan, a scheme, to burgle the bank. Blake had named Howe as the chief conspirator and Cassell was mentioned as the person who revealed to him that the purpose in digging the wall was to work towards some money. The entirety of Irish's evidence, subject to the requirement for its corroboration, also supports the existence of a scheme to burgle the bank. As the learned Judge states: *"The evidence and one's own commonsense would indicate that a huge operation was involved, that included the use of heavy equipment, planning, the recruitment of skilled personnel and a certain amount of intimate knowledge of the bank's layout."*

[12] The case for the Prosecution against Eric Williams is purely circumstantial. As stated earlier there seems to be no doubt that the burglars gained entry through the archives vault and Joy Field-Ridley, the Officer who had the responsibility of managing the bank in Montserrat, under cross-examination stated that the keys to the archives room in Plymouth were not control keys, they were not kept in the Treasury in Antigua, they were kept by a member of management but Mr. Williams had almost daily access by uplifting the keys.

[13] As the learned Trial Judge put it, on the basis of the above evidence, the Prosecution was inviting the Jury to draw a number of inferences. They were asking them to conclude that (a) the Barclays burglars were given keys by someone in order to open the chubb door and the grill door that permitted entry into the archives

room or that someone with access to those keys entered the Bank and opened those doors for the burglars (b) that the burglars had inside information. They knew exactly what they were about, they did not go jack-hammering their way to every locked room in the bank. They took a purposeful route to where the ECCB safes were; and (c) that the burglars would not have mounted such a precise and elaborate operation unless they had very good reason to believe that there was money in those safes. The Prosecution's case is that all these are circumstances which point to Eric Williams. The learned Trial Judge said if the Prosecution's case had ended there, the Jury and himself would be entitled to say that those circumstances were wholly insufficient.

[14] It was the submission of Mr. Francis that since there is a combination on the door to the archives vault or room and his client said he had no knowledge of the working of the combination he could not give access to the burglars and therefore the case should have ended there. This was certainly a view of the evidence which the Jury could take. Obviously they believed otherwise.

[15] But as the learned Trial Judge indicated there were other circumstances surrounding the Appellant which the Jury had to deliberate upon. The evidence is that the bank was burgled in January or February. On February 28 a bag belonging to the Appellant containing $9,000 made up of $100 and $50 new Eastern Caribbean currency notes was found. There was no direct evidence that this $9,000 was issued or re-issued money but the Prosecution was inviting the Jury to consider this evidence against the background that Williams is a banker. At the time he was working in Antigua as a Grade 3 Officer having been transferred since September 1, 1997 when Barclays ceased operations in

Montserrat. The Jury would have considered whether such a person would be carrying around that amount of cash with him and in Montserrat during the volcanic crisis.

[16] The Appellant gave a statement to the Police and in that statement he was questioned about an account he had with Barclays in Antigua. The account number was 3018727. The amount in the account was $113,227.38 and the Prosecution invited the Jury to consider that his explanations in respect of some of the transactions left much to be desired and he lied either to the Police or to his employer or possibly to both in respect of a particular transaction. The learned Judge found that in the first four months of 1998 he made deposits of well over $50,000.00.

[17] The Appellant denied the charge including the fact that he had no knowledge of the combination for the door to the archives room. He submitted five grounds of appeal as follows:

(1) "The Learned Trial Judge erred in Law in that at the end of the case for the prosecution the learned Trial Judge found that there was a case for the appellant to answer.
(2) The Learned Trial Judge failed to fairly put the case for the appellant to the Jury in that the Trial Judge did not indicate to the Jury that while the case of the prosecution against the Appellant was said to be based on circumstantial evidence, the evidence led at trial showed:
    (a) The Burglars of the Bank had gained access to the Treasury Vault through a chubb door which was capable of being locked only by a combination lock and that the Appellant did not have access to such combination number.
    (b) That no evidence had been led that prior to the time of entry by the burglars of the treasury vault through the said chubb door that the door had in fact been locked.
    (c) That the prosecution had failed to prove that the padlock on the inner grill door was the lock which had

originally been on the grill door when operations in the Plymouth Branch had been ceased.

(d) That the said padlock had been opened other than by a key to which the Appellant had access. The said keys having been secured in a sealed envelope with the signature of a former employee thereon as security.

(3) The Learned Trial Judge erred in law and in fact by directing the Jury that they could take into consideration the fact that the Appellant had dropped a bag containing the sum of nine thousand dollars as evidence of his involvement in a conspiracy to burgle the bank.

(4) The learned Trial Judge also erred in law by directing the Jury that evidence of a co-accused that the Appellant had caused to be brought a draft in the sum of twenty-nine thousand dollars was evidence which could be used by the Jury to infer the Appellant's guilt on the count of Conspiracy to Burgle.

(5) That the verdict is unsafe and unsatisfactory."

**Ground 1:**

[18] This ground of appeal is based on the Appellant's version of the evidence that the chubb door to the archives room is secured by a combination and he, not being a senior or Treasury Officer at the Bank at the time it operated from Plymouth had not been given the information to access that combination. It was also submitted in that context that there were many individuals who were in a position to know that money was kept in the vault. Learned Counsel submitted that the Prosecution led no evidence to show that the Appellant had any association with any of the persons alleged to have been the conspirators or that the Appellant was cabable of providing the information necessary to assist in the burglary. Counsel further pointed out that after the burglary was discovered and while the Appellant was in custody he had directed Mrs. Joy Field-Ridley, the Manager of Operations and Customer Services at Barclays Bank, Antigua, to an envelope containing the keys to the grilled door of the archives room and that envelope was sealed and signed by an employee who was not the Appellant.

[19] Learned Queen's Counsel for the Prosecution after reviewing the evidence submitted that it was not always possible to prove every gap in a case. Some one got the archives door opened. The Appellant had access to the keys according to another version of the evidence and he was a Grade 3 Supervisor at the Bank. She pointed to other circumstantial evidence in the case. She submitted that the exercise of the Learned Trial Judge's discretion in rejecting the submission of no case to answer could not be faulted.

[20] In my judgment the Crown's case depends on more than William's opportunity to assist the burglars. Incidentally, it is not quite accurate to say he had no association with any of the persons alleged to have been conspirators. The evidence is that Williams employed Howe, Cassell and others to secure the bank in Plymouth. It cannot be denied that the burglars gained entry through the archives room, that is after negotiating the chubb door whether by combination or keys, and then doing the same to the padlock on the grilled door. According to P.C.Williams in October 1997 he had occasion to visit the inner doors of the bank and they were all intact and that includes in particular the archives chubb door. Greenaway saw the chubb door opened in January. The burglary is more specifically stated to be late January or early February. But by May 11, 1998 when P.C.Williams returned to the Bank things were changed concerning the archives room. It was not as he last saw it.

[21] I do not attach a lot of significance to the fact that the key in the sealed envelope could not open the lock on the grilled door after May 11, 1998. One simple explanation is that the burglars

destroyed the original lock and put on some other lock to complicate matters.

[22] One needs to remember that the money which was stolen was lodged in a very restricted area. Only persons living in Montserrat or who were privileged to visit Plymouth can appreciate that this was not a place which was exposed to all and sundry. One had to get permission to enter that Exclusion Zone as Ruben Meade puts it in his examination in chief.

[23] Joy Field-Ridley states that from April 1, 1997 she was given the responsibility of managing the bank in Montserrat from Antigua. She stated:

> *"The keys for the archives room in Plymouth were not control keys. They were not kept in the Treasury in Antigua. They were kept in the rented storage in St.Mary Street. Those keys were kept by a member of Management, but Mr. Williams had almost daily access by uplifting the keys. In 1998 we had all Montserrat records stored there. Any customer that required information, Mr. Williams was required to get information from the St.Mary's Street storage. Likewise Mr. Greenaway."*

The Prosecution is relying on other evidence besides what was tendered by Mrs. Field-Ridley. The fact is that there was a breaking of a bank and large sums of money, most of it new Eastern Caribbean Currency notes stolen, evidence points that a number of people were involved, an unduly large amount of new notes belonging to the Appellant found, unusual large deposits to his bank accounts about the same period, a strange transaction involving a $29,000 draft sent from Montserrat to the Appellant in Antigua, the fact that the $29,000 draft was paid for in cash and the inevitable lie that surrounded that transaction.

[24] The Appellant lost a bag in Montserrat containg his passport and $9,000 made up of new $100 and $50 notes on 28th February 1998. At the time Appellant had been living and working in Antigua for approximately 5 months. He said he gave Charles Allen $29,000 to buy a draft in Montserrat to send to him in Antigua. Allen proved to be a hostile witness for the Crown and after much difficulty he eventually said that the Appellant asked him to go to the Bank of Montserrat to pick up a message for him. He said he did that and the message was a draft for $29,000. One wonders why the Appellant could not buy his own draft and whether it is usual to have such a transaction done by means of cash. The date of the transaction was March 5, 1998.

[25] I believe the Learned Judge had in mind the principles in accordance with which his discretion should be exercised and he proceeded to do so with all the advantages of having seen and heard the prosecution witnesses. This ground of appeal fails. The following authorities are relevant:

1. **Archbold [1998] edition, paragraph 15-444/445**
2. **Terrence O'Leary [1988] 87 Cr. App. R.387**
3. **Leroy Owen Lesley [1966] 1 Cr.App.R.39**

**Ground 2:**

[26] In short, by this ground the Appellant is alleging that the Learned Trial Judge failed to fairly put his case to the Jury. Learned Queen's Counsel has rightly observed that paragraphs (a)-(d) relate to factual issues on which Defence Counsel was entitled to address the Jury. My own view is that paragraph (a) is a matter for the Jury and they could either accept or reject the Appellant's assertion. As regards (b) I do not think the Prosecution's case is that burglars went through the Treasury vault. If what is intended is

the archives room, there is the evidence of P.C. Albert Williams who says that the chubb door was locked. As regards (c) and (d) I do not see the effect of this as it could easily be the case as I have suggested above that the burglars removed the original padlock and replaced it with another of their own.

[27] In my judgment the learned Trial Judge fairly and adequately put the case of the Appellant to the Jury. The Judge said, *inter alia*:

> *"Before you make up your mind one way or another you must assess all that Williams said in his statement to the Police and what he said at the trial ……. ……..*
> *If you are unsure or if you are left in doubt then you must acquit him. You cannot convict an accused unless you are sure the facts proved are not only consistent with the guilt of the accused, but are also such as to be inconsistent with any other reasonable conclusion ……."*

This ground of appeal fails.

**Ground 3:**

[28] This ground of appeal relates to the significance of the evidence pertaining to the $9,000 found with the Appellant's passport. Learned Counsel for the Crown replied that the summing up in relation to the issue of the nine thousand East Caribbean Dollars cannot be faulted in law or in fact. On this aspect of the case the learned Trial Judge directed the Jury as follows:

> *"On February 28th a bag belonging to Eric Williams is found and that bag contained $9,000 in new Eastern Caribbean currency notes. Now there is no direct evidence that this new Eastern Caribbean currency came from Barclays Bank. There is no direct evidence that this $9,000 was issued or unissued money or if it carried the letter "A" or "M" or indeed as to exactly when this bag was lost by Williams. But the prosecution is inviting you to consider this evidence against the background that Williams is a banker. At the time he was residing and working in Antigua. You would ask yourself whether such a person would be carrying around that amount of cash with him and in Montserrat during the volcanic*

*crisis. Another strand to their creation of their attempts to create a rope."*

In my judgment the evidence was very relevant and admissible and the Judge was right to leave it for the consideration of the Jury. This ground of appeal fails.

**Ground 4:**

[29] This ground of appeal could only apply to the evidence of Yvette Lee who was at one time a co-accused of the Appellant. Counsel for the Crown, in response, submitted that a careful reading of the learned Judge's summing-up will clearly show that he warned the Jury to ignore anything said by the co-accused Yvette Lee. The actual words of the Judge were –

> *"In assessing the evidence against Williams, I must warn you that you should not take cognizance of anything said by Yvette Lee in her statement to the Police. You would recall that she told Brade that someone gave her money and she didn't know where it came from. You must disregard that as we consider the case against Eric Williams. Her statements and interviews with the Police do not constitute evidence against any of her co-accused."*

This ground of appeal is misconceived.

**Ground 5:**

[30] Clement Cassell has filed a similar ground of appeal. I shall deal with this ground of appeal when I deal with Cassell's grounds of appeal towards the end of the judgment.

**AUSTIN HOWE**

[31] The evidence against this Appellant was particularly strong. There was direct evidence that he committed burglary. This direct evidence is to be found in the testimony of Roland Irish who was also charged with the offence. Roland Irish pleaded guilty, was

dealt with by the Judge and then gave evidence for the Crown. Needless to say he is an accomplice and the Jury were adequately directed as to how they should treat his testimony. Irish testified that he entered the bank on several different evenings. I think the burglars made six or seven visits to the bank. On each occasion according to Irish, Howe was present. Howe was there when the jack-hammer was being used. He was present when a hole was made in the wall. Howe was one who made his way through that hole in the wall and entered the vault. He was one giving instructions. He was there when the final door was cut and items were retrieved from the safe and placed into a black bag.

[32] In support of Irish's evidence the Prosecution tendered the evidence of Neville Blake, a mason. Blake's evidence is to the effect that in January 1998 Howe told him that he had a building to termite and invited him to a place for that purpose. He went with Howe for that reason and Howe instructed him to cut a wall at the bank. He said that after he was told something he felt uncomfortable doing that kind of job. He told Howe he has children and he was not getting involved in that because it was wrong. After that evening Blake never returned to the scene.

[33] The Police had occasion to search Howe's residence on May 13, 1998 when Howe handed over a brief case with $3,855 Eastern Caribbean currency. He denied the money was from Barclays Bank. The Police found $60.00 in $1.00 coins in a transparent plastic bag. Now on that occasion Howe lied to the Police. He told them this was all the money he had in the house. When questioned about a bag he said all it contained was medical tools and he had not got the key to the bag. When the Police threatened to break the bag Howe delivered the key to the bag which

contained $10,690.00 in new crisp Eastern Caribbean currency notes. Police Officer Duberry checked the serial numbers of the money against the serial numbers of monies missing from Barclays Bank and most of the money fell within the list of serial numbers.

[34] The learned Trial Judge told the Jury that in February 1998 deposits of approximately $32,000 were made to accounts owned by Howe and of this at least $30,000 was in the form of cash. The Prosecution invited the Jury to conclude from the direct evidence of Irish, the evidence of Blake and of the other circumstances that the Appellant Howe must have been one of the burglars.

[35] Howe denied the allegations. He admitted that money was found at his home and that the Police took away $14,697.00 and other things from his home without giving him any receipt. He said Blake's evidence was untrue and that Blake had told him that Inspector Reddock had forced Blake to lie on him. He also said in effect that Irish was not speaking the truth.

[36] Howe filed the following grounds of appeal:

> (1) The Learned Trial Judge erred in law in misdirecting the Jury on the issue of corroboration.
> (2) The Learned Trial Judge erred in law in misdirecting the Jury on the issue of circumstantial evidence.
> (3) The conviction cannot be supported by the admissible evidence.
> (4) The Learned Trial Judge erred in law in failing to put the Prosecution to their election as to which offence Conspiracy or Burglary or Handling they intended to proceed on at the close of the case for the Prosecution.
> (5) The Learned Trial judge erred in law in inviting the Jury to consider evidence which was inadmissible and highly prejudicial to the Appellant Austin Howe.

(6) The Learned Trial Judge erred in law when he ruled that notwithstanding no witnesses were named on the back of the Indictment the Prosecution was entitled to:
(a) call witnesses; and
(b) call any number of additional witnesses who though available at the stage of the Preliminary Inquiry never gave evidence at the said Inquiry.
(7) The Learned Trial Judge erred in law in failing to draw to the Jury's attention the compelling evidence and real possibility that there was no money in the vaults of Barclays Bank Plymouth between the 31st October 1997 and 11th May 1998 given the burglary which occurred there on 30th October, 1997.

It should be stated here that Howe and Cassell presented similar defences to a large extent and had some common grounds of appeal. I shall deal with Howe's grounds only for the time being.

**Ground 1**

[37] Learned Counsel for the Prosecution submitted that the learned Judge's summing-up in relation to the law on corroboration was entirely adequate. I agree and I do not agree with learned Counsel for the Third Appellant, Clement Cassell, that the Judge should have directed the Jury that Blake was an accomplice. The Judge said:

> "So that if you find that Blake is an accomplice then Irish's evidence cannot corroborate Blake's evidence in respect of the particular circumstances that they both speak to. Secondly, for such evidence to be corroborated it must confirm in some material particular not only the evidence that the crime has been committed but also the evidence that the particular defendant committed it."

The issue of "*accomplice vel non*" is for the Jury. See **Archbold [1979] ed. Para.1426** and **Davies v D.P.P. 1954 A.C. 378.**
This ground of appeal fails**.**

**Ground 2:**

[38] Learned Queen's Counsel for the Prosecution submitted that the learned Trial Judge's summing up in relation to circumstantial evidence was adequate and cannot be faulted. I agree that the Judge correctly and fully explained to the Jury the difference between direct and circumstantial evidence and gave them examples of each. In my judgment there was no misdirection. In any event there is direct evidence that Howe as well as Cassell burgled the bank. This ground of appeal fails.

**Grounds 3 and 5:**

[39] Learned Counsel for the Appellant submitted before this Court that the money found at Howe's home was never admitted in evidence but the list of the serial numbers of the notes which was made by the Police and compared with the list produced by Miss Meade, the agent of the Central Bank, was admitted in evidence. Counsel says that was wrong.

[40] Even assuming Counsel is right, there is, as I have already stated, direct evidence of this Appellant's full participation, so that the direct evidence against him can adequately support his conviction. Those grounds of appeal accordingly fail.

**Ground 4:**

[41] The *Practice Note* laid down by **Lord Widgery C.J.** and found at **1977 2 All E.R. 540** is as follows:

1. "In any case where an indictment contains substantive counts and a related conspiracy count, the judge should require the prosecution to justify the joinder, or failing

justification to elect whether to proceed on the substantive or on the conspiracy counts.

2. A joinder is justified for this purpose if the judge considers that the interests of justice demands it."

Very early in the trial Dr. Browne submitted that the conspiracy charge should not be joined with the substantive burglary offence. Learned Counsel for the Prosecution submitted that she would justify the joinder at a time convenient to the Court. The Court then agreed to hear argument on the matter.

It seems to me that if after hearing argument the learned Trial Judge ruled that the Prosecution need not elect between the count of conspiracy and the substantive count of burglary, without more, that ruling ought not to be disturbed. This ground of appeal fails.

**Ground 6:**

[42] Under this ground of appeal which is in two parts, learned Counsel for the Appellant submitted firstly, that the Prosecution has departed from the normal practice of having the names of the witnesses listed at the back of the indictment and secondly, that a large number of witnesses were called at the trial who, though available at the stage of the preliminary inquiry never gave evidence at that inquiry.

[43] The Prosecution had to concede their error on the first part and could only ask whether that error ought to fault the trial. The Prosecution however sought refuge in the Rules for framing Indictments found at Schedule II to the Criminal Procedure Code Ordinance No.21 of 1998. Rules 1(5) and 1(6) are as follows:

> "(5) There shall be endorsed on the indictment the name of every witness intended to be examined by the Prosecution.

> (6) An indictment shall not be open to objection by reason only of any failure to comply with this rule."

As far as additional witnesses are concerned it appears that section 132 of the Criminal Procedure Code Ordinance gives the Prosecution latitude to call such witnesses subject to notice being given to the Accused as determined by the Trial Judge.

This ground of appeal fails.

**Ground 7:**

[44] Learned Counsel for the Appellant submitted under this head that the Bank had been broken into on October 30, 1997 by three non-Montserratians and even though subsequent to that date P.C. Williams and others found the inner doors of the bank secured, one cannot be positive that the money behind those doors were not removed. This, of course, is an issue of fact and as Counsel for the Prosecution submitted the learned Judge's direction to the Jury on the issue of whether there was money in the bank between October 31, 1997 and May 11, 1998 cannot be faulted. It was the view of Counsel that the evidence of P.C.Williams and Alfreda Meade is overwhelming that there was money in the bank at the relevant time. What is more is that the learned Judge specifically drew to the Jury's attention the importance of determining that there was money in the bank. He said:

> "I will draw your attention to other parts of Ms Meade's evidence which you will also consider when you need to assess that particular aspect of this matter. Because it is an important aspect of this matter. The Crown has to establish that there was money in those vaults between the 31st of October, 1997 and the 8th of May 1998 when they say that this burglary took place."

So the matter was correctly put before the Jury and they must have dealt with it as they accepted the evidence. So this ground of appeal as well fails.

**CLEMENT CASSELL**

[46] The evidence of Blake and Irish apply equally to Cassell. At almost all material times Blake and Irish place Cassell as being alongside Howe. So there was direct evidence that this Appellant committed burglary. Irish also testified that after the burglary he was paid $45,000 in cash by Cassell and that Cassell returned to him the cutting torch, the bottle of oxygen, the hose and the regulators which were used in the operations.

[47] On May 13, 1998 Cassell's home was searched and approximately $12,750 in Eastern Caribbean Currency notes and foreign currency amounting to EC$30,000 was found but the evidence is that Cassell is a businessman. On the following day when a further search was made one hundred and thirty-one $10.00 new Eastern Caribbean notes were found in a clothes closet. Cassell gives different explanations for the second find. In a statement to the Police he says his girlfriend knows nothing about the money and he accepts full responsibility for "anything found in here". At the trial however he said the money was either planted or was put there by someone unknown to him.

[48] This Appellant filed several grounds of appeal including issues of corroboration; failure to put the Prosecution to its election as to whether to indict for conspiracy or burglary; and calling of witnesses not listed on the indictment and other additional witnesses. I have already dealt with these submissions earlier and over-ruled them. I

shall therefore be dealing only with the following other grounds of appeal:

(1) Wrongful admission of evidence of the Appellant's bank accounts in Antigua and Barbuda.
(2) The evidence relating to foreign currency and its effects.
(3) Interview statement made on May 13, 1998.
(4) Caution statement made on May 14, 1998.
(5) Verdict of the Jury inconsistent.

**Wrongful admission of evidence of bank accounts**

[49] As already indicated there was direct evidence of the participation of this Appellant in the burglary of the bank at Plymouth and this in my view is sufficient justification for his conviction. Additionally, the Prosecution sought to show that the Appellant deposited sizeable sums of money in banks in Antigua during the period covered by the indictment and more particularly between January and February 1998. The Prosecution relied on an Order made by a High Court Judge in Antigua on August 27. 1998.

[50] Learned Counsel for the Appellant relied on section 6 of the **Banker's Books (Evidence) Act** in submitting that the evidence given by Irma Lloyd and Daniel Jordon for the banks was inadmissible.

Section 6 of the Act is as follows:

> "A banker or officer of a bank, shall not, in any legal proceeding to which the banker is not a party, be compellable to produce any banker's book, the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a Judge made for special cause."

Learned Counsel for the Prosecution quite rightly observed that no questions were asked of the witnesses as to who compelled them to give evidence.

[51] The other submission in respect of the accounts is that their value would only be prejudicial. Learned Counsel for the Prosecution conceded that the bank accounts on their own could not establish guilt but here there was a situation where there was disappearance of a large amount of cash and the investigations of the Prosecution led to people in physical possession of substantial amounts of cash at the relevant time.

[52] It must be remembered that on May 13, 1998 when Cassell's home was searched a large amount of money was found. On the following day one hundred and thirty-one $10.00 notes were found in a clothes cupboard. I am of the view that the money in the bank accounts was relevant to this case and the evidence tendered in respect of them was not wrongful. This ground of appeal fails.

**Evidence relating to foreign currency**

[53] On May 13, 1998 on the day of the first search Inspector Lewis saw Cassell with foreign currency. He checked them and left them with Cassell but on the following day when the Inspector returned to search Cassell handed the foreign currency to him. He took that currency to Police Headquarters. At the trial learned Counsel for the Appellant objected to its admission and the learned trial Judge ruled that the foreign currency should not be admitted as oral evidence of the same was already in and the prejudicial effect outweighed its probative value. Learned Counsel for the Appellant complains that despite that ruling in his summing up to the Jury the learned Trial Judge used this prejudicial evidence as evidence of the Appellant's guilt.

[54] The record indicates another view of the facts. Learned Counsel for the Crown while supporting the exercise of the Judge's

discretion in the way he directed the Jury on the foreign currency found at the Appellant's home submitted that even if fault is found with the direction such fault is insufficient to render the conviction of the Appellant unsafe and unsatisfactory.

[55] I think it is a misdirection to say that the admission of the foreign currency into evidence is prejudicial and then to use it as probative evidence of the Appellant's guilt.

**Interview Statement**

[56] On May 13, 1998 the Appellant gave an interview to Sgt. Sullivan. Most of it pertained to the Appellant's bank accounts in Antigua and Montserrat. The Appellant was not cautioned before giving the interview and the learned Judge recognized that the failure constituted a breach of the Judges' Rules. The learned Judge conducted a *Voire Dire* at the trial and the statement was admitted. Learned Counsel for the Appellant submits that the evidence of the *Voire Dire* clearly demonstrated that the Appellant was deprived of the right of consulting with a lawyer. Learned Counsel for the Crown submitted that the Trial Judge had correctly exercised his discretion in admitting the statement into evidence.

[57] The learned Trial Judge did not accept the evidence of the Appellant that he had a conversation with Superintendent Reddock to the effect that the Superintendent would call a lawyer for him. The learned Trial Judge ruled that taking all the circumstances as a whole he was satisfied beyond reasonable doubt that the interview was voluntarily given. I can find no fault with this ruling. This ground of appeal fails.

**Caution Statement**

[58] On May 14, 1998 the Appellant after being cautioned made a statement at Police Headquarters to the effect that he takes responsibility for the One hundred and thirty-one (131) $10.00 notes found in the clothes cupboard of his home that day. That he is very concerned about the health of Joycelyn Menzies, his girlfriend, that if she remains detained her health may deteriorate rapidly. Learned Counsel for the Appellant submits that the statement by its very tenor supports the Appellant's contention that it was induced. There was a V*oire Dire* in respect of this cautioned statement where the learned Trial Judge heard the Prosecution witnesses as well as the Appellant before ruling that the statement be admitted into evidence. Here again, I cannot fault the learned Trial Judge.

This ground of appeal fails.

**Verdict of Jury Inconsistent**

[59] Learned Counsel for the Appellant Howe, made a similar submission. It is based on the fact that the Jury acquitted Cyril Daley. Learned Counsel for this Appellant submitted that Daley, by his own statement to the Police admitted that he was a burglar. Unfortunately, his statement has been omitted from the record. The learned Trial Judge stated, when he was ruling on the *Voire Dire* conducted pertaining to statements and interviews of the Accused persons, that he was satisfied beyond reasonable doubt that Daley's statement was voluntarily given.

[60] When Daley appeared at the trial he gave unsworn evidence that he knows nothing about what they have him in Court for and he indicated that it was Deputy Commissioner Telesford who asked him to give a statement to the Police and told him what to say. In

his submissions before this Court learned Counsel for the Appellant submitted that the Jury may have felt that Telesford told Daley what to write. But Counsel says the evidence of Irish puts Daley at the bank so it means the Jury did not believe Irish and the possession of money must have been the reason for convicting the Appellants, Howe and Cassell.

[61] In answer to the submission learned Counsel for the Prosecution submitted that the Jury were entitled, as judges of fact, to find one accused guilty and another not guilty. Another plausible reason for Daley's acquittal is that besides Irish's evidence there was no other surrounding circumstance which implicated him to give the necessary corroboration required for the evidence of an accomplice.

**Conviction unsafe and unsatisfactory.**

[62] Despite the misdirection with respect to the foreign currency, I am of the view that the Prosecution presented a very strong case against the Appellant Clement Cassell so that this misdirection does no injustice to his case. The case against Eric Williams and Austin Howe are equally weighty and persuasive. In the case of **Sean Cooper [1969] 53 Cr.App. Rep. 83** at page 86, *Widgery L.J.* describing the phrase *"unsafe and unsatisfactory"* said:

> "That means that in cases of this kind the Court must in the end ask itself a subjective question, whether we are content to let the matter stand as it is, or whether there is not some lurking doubt in our minds which makes us wonder whether an injustice has been done. This is a reaction which may not be based strictly on the evidence as such; it is a reaction which can be produced by the general feel of the case as the Court experiences it."

[63] In my judgment there was abundant evidence upon which the Appellants were convicted and I do not entertain any lurking doubt in my mind which makes me wonder whether any injustice has been done. This ground of appeal fails.

[64] The Appellants' appeals are therefore dismissed and their convictions and sentences are affirmed.

A.N.J. MATTHEW
Justice of Appeal (Ag.)

I concur

C.M.D. BYRON
Chief Justice

I concur

ALBERT REDHEAD
Justice of Appeal