

20, 1951

No. 35 of 1948.

In the Privy Council.

31109

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL.
(GOLD COAST SESSION)

UNIVERSITY OF LONDON
W.C.1.
9 - NOV 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

- 1. ABOUL RACHANAN TAMIM.
- 2. PHILIP YOUNIS ZACCA (Defendants) - - Appellants

AND

- 10 COMPROLLER OF CUSTOMS (Gold Coast)
(Plaintiff) - - - - - Respondent.

Case

for the first appellant, TAMIM.

RECORD.

1. This is an appeal from the judgment of the West African Court of Appeal (Gold Coast Session), dated the 29th November, 1947, which affirmed a judgment of the Supreme Court of the Gold Coast dated the 19th July, 1947, which reversed a judgment of the Court of the District Magistrate, Accra, dated the 8th March, 1947, dismissing the claim of the Respondent for the forfeiture of certain textile goods, and the imposition of penalties.

2. The questions which seem to fall for determination in this appeal are as follows :—

(A) Whether there was jurisdiction to try the suit summarily without pleadings, having regard to the provisions of the Customs Ordinance (Chapter 132 of the Laws of the Gold Coast 1936 Revision), and particularly of subsections (1) and (3) of section 145 of that Ordinance, which limits jurisdiction without pleadings to cases in which the duty paid value of the articles alleged to be liable to forfeiture is not more than £50 in the case of potable spirits or £25 in the case of other articles, and limits the pecuniary penalty to £50 in the case of potable spirits or in the case of other articles £25. The value of the goods in this case was many thousands of pounds, and the penalties claimed and imposed were £500 in each case ?

(B) Whether the appeals in the Courts below have been disposed of according to law ?

CASE FOR APPELLANT TAMIM

(C) Whether the warehouse of one Sassine is or was at any material time a "place" within the meaning of section 5, subsection 1 (B) of the Import, Export and Customs (Defence) Ordinance, 1939 ?

(D) Whether at the time of seizure or at any material time the goods involved in this litigation should be deemed to have been or were prohibited goods within the aforesaid section 5 of the Ordinance ?

(E) Whether the textile goods involved in this litigation have been seized by the Respondent in a legal manner ?

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(F) Whether on the facts both or either of the Appellants should forfeit the said textiles or penalties should be imposed on them ?

3. The relevant statutory provisions are appended to this Case.

4. The Appellant, Tamim, a Lebanese subject and a textile merchant, was in 1945 residing in Dakar. About the 5th July, 1945, having received a passport at Dakar on the 16th June, 1945, he applied to the British Consulate General at Dakar for a visa for Accra. His destination and object for the journey was given as "Accra (on business) to buy cotton piece goods." As a reference in support of his application he gave the name of Messrs. Captan, Ltd., a Lebanese controlled firm at Accra.

5. Tamim was granted a visa for fourteen days which was subsequently extended by the police at Accra from time to time. On the 21st August, 1945, he arrived at Accra and at first stayed with his sponsor, Mr. Captan. He knew no English. Shortly afterwards Tamim became acquainted with one Sassine, and thereafter with Zacca, the second appellant. Both were, as was Tamim, Lebanese. Tamim had two businesses, a merchant's, carried on in a large warehouse in Accra, and a transport business, carried on at a depôt about half a mile distant from the warehouse. His vehicles ran between Accra and Nigeria via Lome in French Mandated Togoland. Zacca was the manager of the Beyrout Trading Co. Ltd., a subsidiary of the United Africa Co. Ltd.

6. In order to enable him to buy textiles Tamim had to await the arrival of money (for which he had written to Dakar about the 9th September, 1945) to be forwarded to him.

About the 17th October, 1945, he had received information that the money was on its way.

On the 23rd October, 1945, he was told by the Bank that £22,793 had arrived for him but that it could not be paid over by the Bank without further confirmation from the Head Office in London of the B.B.W.A.

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After its arrival and in anticipation of receiving payment, Tamim started to purchase textiles. For his purchases he borrowed £8,000 from Zacca who, in his turn, had borrowed £3,000.

In making these purchases Tamim had two ideas, viz. first to endeavour to go to French Mandated Togoland and get an import licence and French

p. 63 (Ex. A).

p. 63, ll. 34-35.

p. 3, ll. 1-9.

p. 13, l. 15.

p. 11, l. 33.

p. 13, ll. 17-19.

p. 4, l. 22.

p. 6, l. 13.

p. 20, ll. 10-22.

p. 15, ll. 50-51.

p. 16, ll. 9-10.

p. 3, l. 9.

p. 19, ll. 10-23.

p. 16, l. 3.

p. 20, ll. 30-38.

p. 64 (Ex. Z1).

p. 21, ll. 20-24.

p. 11, l. 32.

p. 13, ll. 27-28.

p. 15, ll. 22-23.

p. 94, ll. 11-16.

p. 38-40.

help to procure a British export licence, and secondly, if this failed, to resell the textiles in the Gold Coast, when, as the season was coming on, he expected to make a profit.

On the 25th October, 1945, the Bank released the remittance to Tamim who drew it in cash. p. 19, l. 17.
p. 66, (Ex. K).

He repaid Zacca his loan and paid him £4,700 for textiles bought from his firm. Tamim made further purchases on the 25th, in all resorting to eight merchants from whom he bought textiles to the value of £16,181.7.11. The total bulk of the textiles amounted to about seven lorry loads. p. 20, ll. 38-39.
pp. 64-65 (Ex. 21).
p. 6, l. 15.

10 The Respondent claims the forfeiture of these textiles. pp. 66-69.

7. By custom wholesalers allow buyers to leave their purchases in the seller's warehouse for a few days pending despatch (scilicet, despatch by the seller to the buyer); also a buyer purchasing from several wholesalers is allowed to collect his purchases at the warehouse of one of the large sellers. In accordance with this custom Zacca allowed Tamim to leave the goods purchased from the Beyrout Trading Co. Ltd. in its warehouse for two days and to remove his other purchases thereto for the same period. Zacca could not give this accommodation longer as his Company was expecting the new season goods. p. 21, ll. 1-12.
p. 13, ll. 30-31.
p. 3, ll. 21-24.

20 8. While the goods were in the warehouse of Beyrout Trading Co. Ltd., Sassine met Tamim and Zacca there.

What happened at the ensuing interview can be described in the words of the judgment of the learned Magistrate.

He said :—

30 “Sassine . . . described two interviews. First on or about the 25th October he says he got a telephone call from Tamim, asking him to come to Zacca's office. He went at 2.30 on a Thursday or Friday and met Tamim and Zacca. Tamim said they had goods for transport to Lome: cotton and silk goods that were in Zacca's warehouse. After bargaining he agreed to transport the goods for £360. Zacca asked him to take the goods to his own warehouse as Zacca was expecting a shipment of goods and wanted room for them. Each Defendant gave an account of the interview in Zacca's office. Tamim's version is that Sassine came and told him that the police said he must go the next day. He then said: ‘Go to Lome and get an import licence from the French authorities and I will find ways and means to transport the goods to you there. As soon as you send me an import licence, I will see the customs authorities whom I know and will ask them to get you an export licence.’ Zacca said he showed Sassine the goods in the warehouse and then Sassine and Tamim started bargaining. His only concern was to have the goods moved quickly so as to have room for a shipment of goods he was expecting.” p. 31, ll. 28-37.
p. 4, ll. 25-33.
p. 31, ll. 38-44.
p. 13, ll. 32-39.
p. 31, ll. 45-48.
p. 21, ll. 13-17.

40 The learned Magistrate accepted the version of Sassine as to what happened at this interview although he found that Sassine was an unreliable witness with patent defects in his character, and a person with whom it was bad enough for Zacca and Tamim to have had any dealings at all. p. 33, l. 42.
p. 33, l. 48.
p. 33, ll. 45-46.

p. 34, ll. 8-9.

The learned Magistrate accepted this version because in his view "the other circumstances of the case lead me to the conclusion that it must be true."

p. 21, ll. 28-27.
p. 14, l. 50.

It is respectfully submitted that the circumstances of this case do not support Sassine's version of the interview. There was no reason to reject the evidence of Zacca who was a responsible business man in Accra, and who disclaimed any interest in the textiles claimed to be forfeited by the Respondent.

p. 5, l. 14.

p. 5, ll. 16-17.
p. 4, ll. 36-37.
p. 6, l. 16.
p. 13, ll. 37-39.
p. 11, ll. 9-10.

There is no dispute but that Tamim did arrange for his goods to be removed from the warehouse of Beyrout Trading Co. Ltd. to Sassine's warehouse; that Sassine took them to his warehouse and that Sassine was willing to transport them to Lome for about £360, both Tamim and Sassine agreeing that this transport was dependent upon Sassine receiving further instructions from Tamim which instructions were never given. 10

p. 4, ll. 31-32.
p. 21, ll. 17-18.

9. On the 27th October, 1945, Sassine removed the seven lorry loads of textiles from Zacca's warehouse to his warehouse.

It is respectfully submitted that Sassine's warehouse is not a "place" within section 5 (1) (b) of the Import, Export and Customs Powers (Defence) Ordinance as neither of the Appellants had brought the textiles thither for the purpose of exporting them. 20

p. 3, l. 9.
p. 13, l. 36.
p. 14, ll. 4-9.
p. 17, ll. 14-33.

10. Tamim left Accra on the 27th October, 1945 for Lome in a car hired from Sassine. Upon crossing the border he received in French territory 2,462,000 francs, which he had purchased for sterling in the Gold Coast. He did not declare this sum to the French authorities but on their searching the car, the money was found and confiscated. He was taken into custody, questioned, but released on the 30th October, 1945.

pp. 72-74 (Ex. 22).

p. 19, ll. 1-6.
p. 3, ll. 9-14.
p. 5, ll. 1-3.
p. 25, ll. 46-47.
p. 6, l. 30.

11. Superintendent Chapman, C.I.D., acting on the orders of Mr. Ballantyne, the Commissioner of Police, who had apparently received information from Lome by way of the British Customs Preventive post at Aflao, on the 29th October, 1945, went to Sassine's warehouse, where he saw 103 bales of cotton goods and five cases of silks and woollens being the greater part of Tamim's purchases. He told Sassine not to remove these goods without police permission. 30

p. 5, ll. 28-30.

p. 19, l. 8.

Thereafter, Mr. Ballantyne communicated with the Comptroller of Customs.

p. 17.

p. 75 (Ex. E).

12. On the 1st November, 1945, on his release, Tamim saw the French High Commissioner but discovered that because of the incident of the francs he could get no help from him. He realised he would not be allowed to return to the Gold Coast to dispose of his textiles. Accordingly he sent the following telegram from Lome to Sassine: "Hand over goods to Zacca authorisation not granted." He also sent the following letter to Sassine:— 40

p. 75 (Ex. J).

"Dear Sir,

p. 16, ll. 28-31.

I beg to inform you that the British Authorities have not delivered me an export licence and so far I have decided that you

should return back to Mr. Zacca the goods received from him and which I have ordered to be shipped.

I have given instructions to Mr. Zacca to rather sell the said goods and pay the value of same to the B.B.W.A. Accra on my account.

Hope this letter will have your kind attention and oblige."

On receipt of the above letter, Sassine did nothing except to make the following endorsement :— p. 75.

10 " Police already know about the goods and to ask not to deliver them to anybody."

On the 3rd November, 1945, Tamim sent the following telegram :— p. 76 (Ex. F).

" Zacca mandated settle affair please deliver goods to him Regards."

Between the first and second telegrams, Zacca having received a telegram from Tamim on the 1st November, 1945, went to Sassine who said he had heard from Tamim but declined to hand over the goods, saying he had a claim against Tamim and demanding a large sum before doing so, but saying nothing about the police. p. 22, ll. 1-8. p. 10, l. 38.

20 Sassine still did not take any action and the textiles remained in his warehouse.

13. On the 6th November 1945, the then Comptroller of Customs (Mr. Conway) in person, accompanied by the Senior Collector of Customs, seized the goods at Sassine's warehouse and caused them to be removed to the custody of the Customs. No reason was given for the seizure. p. 87, l. 40. p. 88, l. 14. p. 6, l. 31.

It is respectfully submitted that, as the Comptroller of Customs produced no authority for the seizure and no evidence has been given of his authority to enter and seize under either section 137 or 138 of the Customs Ordinance, such seizure was illegal. p. 97, ll. 10-14. p. 97, ll. 33-39.

30 14. On the 7th November, 1945, Sassine, through his Solicitor, wrote a letter to the Comptroller of Customs stating that the goods had been " deposited with Mr. Sassine for safe-keeping," and inquiring as to the reason for the seizure and asking for their return. p. 76 (Ex. T3). p. 76, ll. 26-27.

On the 8th November, 1945, the Comptroller replied that the goods had been seized " as prohibited articles under the Customs Laws " and could not be returned. p. 77 (Ex T4). p. 77, l. 10.

On the 8th November, 1945, Tamim's Solicitor wrote a letter to Sassine demanding the return of the goods. p. 88, l. 15.

40 On the 9th November, 1945, Sassine's Solicitor in a letter to Tamim's Solicitor attributed the seizure to Tamim having taken Sassine's car across the frontier, and added that Sassine had a lien upon the goods for lorry hire and on other accounts. p. 77, l. 39. p. 78, l. 3. p. 77, ll. 31-38.

15. Meanwhile, on the 8th November, 1945, the Comptroller of Customs, in purported pursuance of section 139 of the Customs Ordinance p. 84, ll. 8-11. p. 6, l. 40. p. 7, l. 8.

left a notice of the seizure at the Avenida Hotel, Accra, where Tamim had lived during his stay treating it as Tamim's last known place of abode though the Comptroller well knew that Tamim had left there; was at Lome unable to return and was represented in Accra by lawyers.

p. 88, ll. 4-6.

Notice of the seizure was given in the *Gazette* under section 6 of the Customs Defence Ordinance, 1939.

p. 97, ll. 28-29.

16. On the 17th November, 1945, Mr. Heward-Mills, as attorney for Tamim, issued a writ against Sassine claiming the return of the goods or their value, and damages for their detention.

p. 78 (Ex. L).

On or about the 9th November, 1945, Mr. Heward-Mills interviewed 10 Mr. Conway, the Comptroller, and asked him if he wanted a claim from him as attorney of Tamim. Mr. Conway replied that he did not; that he already had notice through Sassine and would be seeing the Law Officers with a view to taking action under section 145 of the Customs Ordinance, as early as possible.

p. 88, ll. 33-37.
p. 81, ll. 5-7.
p. 90, ll. 20-27.
p. 105, ll. 13-18.
p. 113, ll. 29-31.

17. When the suit came on for trial the Supreme Court, on the 10th December, 1945, upon the application of Sassine, ordered the Comptroller of Customs to be joined as Defendant.

p. 81 (Ex. M),

On the 17th December, 1945, pleadings were ordered.

p. 82, ll. 20-28.

On the 29th December, 1945, Mr. Heward-Mills, as attorney for 20 Tamim, filed a Statement of Claim in which he pleaded inter alia that Tamim had "handed the aforesaid goods lawfully and innocently to the first Defendant (Sassine) for safe keeping, returnable on demand"; that in spite of repeated demands the said goods had not been returned, and that the first Defendant had either dealt with the goods in such a way as to render them liable to seizure or they had been unlawfully seized by the second Defendant (Comptroller of Customs).

p. 83 (Ex. N).

p. 83, ll. 33-35.

18. The Comptroller of Customs in his defence of the 4th January, 1946, alleged that the goods had been seized on the 6th November, 1945, as prohibited goods and condemned under section 139 of the Customs 30 Ordinance, with which he had complied and that the plaintiff had no claim against him.

p. 84.

Such defence did not state for what cause they were alleged to be prohibited goods of which the Appellant remained ignorant.

In the proceedings Sassine does not appear to have filed a written defence.

p. 21, ll. 21-23.
p. 100, ll. 1-4.

19. The trial of the action was resumed on the 28th March to the 1st April, 1946, and after recording oral and documentary evidence on behalf of the Plaintiff the learned Judge dismissed the action as against both Defendants. As to the original Defendant, it was admitted by the 40 Plaintiff at the close of case that there was no evidence against Sassine that the latter had dealt with the goods in such a way as to render them liable to seizure. As to the Comptroller, the Court ruled that he had no case to answer and could not in the circumstances be sued (as he had been) in the name of his office. It was during the arguments of Counsel

p. 11, l. 4.

for the Comptroller after the close of the Plaintiff's case that the Comptroller first disclosed that the alleged cause of forfeiture was a breach of section 5 (1) (b) of the Defence Ordinance.

20. On the 26th April, 1946, Tamim's Solicitor requested the Comptroller of Customs to take action under section 145 of the Customs Ordinance for condemnation, but the latter insisted that the goods were deemed to be condemned under section 139. p. 101.
p. 102.

21. Consequently Tamim, by his attorney, on the 4th May, 1946, instituted an action in the Supreme Court against the Comptroller, claiming a mandamus commanding the Comptroller to commence proceedings for forfeiture. p. 103.

The Comptroller of Customs in his defence dated the 6th June, 1946, contended that the action was not maintainable. p. 107.

22. On the 21st September, 1946, the Supreme Court overruled certain preliminary points of law taken on behalf of the Comptroller and a motion to dismiss the suit in limine as vexatious. p. 109 (Ex. T2).

On the 2nd November, 1946, the Court, having overruled further technical objections of the Comptroller, held that the claim had abated as the present suit has been commenced. p. 113 (Ex. T1).

23. On the 5th October, 1946, the Respondent by writ of summons instituted

THE PRESENT SUIT

in the Court of the District Magistrate at Accra, against the Appellants, alleging that:—

“ Between the 24th day of October, 1945, and the 29th day of October, 1945, 103 bales and 6 cases of cotton and silk goods were brought to the premises of S. E. Sassine, Transport Owner, at Accra, by the 1st and 2nd Defendants, for the purpose of the said goods being exported without a licence contrary to the terms of the Export (Restriction) Order, 1940, made pursuant to the provisions of section 3 (1) of the Import, Export and Customs Powers (Defence) Ordinance, 1939 (and by reason of the premises, the said goods were at all material times prohibited goods within the meaning of section 5 (1) of the Ordinance) ”

and the Respondent claimed forfeiture of the goods and the imposition of £500 penalty on each of the Appellants. Under section 145 (1) of the Customs Defence Ordinance these claims may be heard by a District Magistrate exercising civil jurisdiction. The ordinary civil jurisdiction of such a Magistrate under the Courts Ordinance section 42 is limited as to debts, damages and pecuniary claims up to £150. There were no pleadings ordered or delivered, nor was any plea taken at the hearing. It is respectfully submitted that as the value of the goods and the penalty claimed exceeded the amounts set out in section 145 (3) of the Customs Ordinance (cap. 132) trial of the present action without pleadings was not permissible.

p. 28, l. 6.
 p. 26, l. 22.
 p. 24, l. 36, 4-5.
 p. 32, ll. 26-28.
 p. 34, 37.
 p. 25, ll. 6-10.
 p. 44, ll. 27-32.
 p. 57, ll. 37-46.

24. Oral and documentary evidence was recorded. During the recording of the evidence the police searched Zacca's premises with a view to obtaining evidence and seized various documents (Ex. Z), which were put in. It is respectfully submitted that this procedure was objectionable and unwarranted by law.

25. The learned District Magistrate on the 8th March, 1947, delivered judgment, holding that the irresistible conclusion to be drawn from the facts was that both Tamim and Zacca intended to export these goods without licence and that they had purchased them with that end in view. He observed that much of the history of the case was taken from the 10 evidence of the Appellants and that this had not been contradicted by oral evidence but its truth had to be assessed after consideration of all the surrounding circumstances. The learned District Magistrate then considered the surrounding circumstances and further found that Zacca was liable under section 166 (1) of the Ordinance as an abettor since he had given such assistance that made it proper to come to such finding and that having found there had been an intention to export the goods he thought both the Appellants had had that intention.

The learned Magistrate then held that the goods had started on their journey across the frontier when they had been moved from Zacca's 20 warehouse to that of Sassine and that the direction of Mr. Chapman to Sassine not to allow the goods to be moved from his warehouse was a seizure of the goods by the Comptroller although they had not been moved until later by Customs Officials, and that new instructions given by the Appellants to Sassine could not absolve them from any liability once they had given instructions to transport the goods. The learned Magistrate then considered the law. He held that the Import, Export and Customs Powers (Defence) Ordinance 1939 did not contemplate a land frontier, but even if it did the words "other place" in section 5 (1) (b) of the 30 Ordinance must be limited in some way since it could not mean any place or anywhere and that there was no construction that was not unreasonably wide that could apply to Sassine's warehouse in which the goods had been seized. Accordingly there would be judgment for the Appellants with costs.

p. 37.

26. From this judgment the Comptroller of Customs, the Respondent appealed to the Divisional Court of the Supreme Court at Accra.

pp. 38 & 40.
 pp. 39 & 41.

Sassine and Zacca each filed cross-objections to facts found against them.

p. 41, ll. 8-9.

It is respectfully observed that the Courts Ordinance 1935 gave a general right of appeal both on law and fact. 40

p. 43, ll. 2-5.

27. After the delivery of the judgment of the District Magistrate and before the hearing of the Appeal by the Supreme Court, the West African Court of Appeal delivered, upon the 29th and 30th May, 1947, judgments in the following three cases:—

- (1) *Comptroller of Customs v. C. J. Chahin & Malam Seedi,*
- (2) *Comptroller of Customs v. F. A. Simon,*
- (3) *Comptroller of Customs v. Affo Fulani,*

which held that the phrase "or other place" in the Defence Ordinance was not limited to places similar to "quay" and that land frontiers were covered by the Ordinance.

28. On the 19th July, 1947, the Supreme Court (Quashie-Idun, J.)^{p. 50.} delivered judgment in the appeal. The learned Judge, holding that he was bound by the three judgments of the West African Court of Appeal, reversed the learned Magistrate's decision on the interpretation of the Defence Ordinance.

10 On the facts the learned Judge held there was ample evidence before the learned District Magistrate to support his finding that there had been an intention on the part of Tamim to export the goods; that they had been removed to Sassine's warehouse on their way to Lome and that it was unnecessary to deal with Tamim's other grounds of objection.

As to Zacca, the learned Judge held that there was ample evidence to support the finding of the learned District Magistrate that he was an abettor of Tamim in the transaction and that both Tamim and Zacca had an intention to export goods without a licence.

20 Accordingly he allowed the appeal, sustained the findings of facts of the learned District Magistrate and ordered judgment to be entered against both Tamim and Zacca. Furthermore, in sustaining the finding of fact that both Defendants had the intention to export without licence, he entirely misapprehended the evidence as to the sum for transport (some £360) mentioned between Sassine and Tamim in the presence of Zacca. He repeatedly treats this sum as to be paid for the transport of the aforesaid goods from the warehouse of the Beyrout Trading Co. Ltd. to the warehouse of Tamim, a distance which was two minutes' walk. He treats this as fantastic and as greatly influencing him in disbelieving the cases of Tamim and Zacca and supporting the finding of the District Magistrate.<sup>p. 52, l. 46 to p. 53, l. 9.
p. 54, ll. 15-34.</sup>

Sassine

30 29. It is respectfully submitted that the Supreme Court, in hearing the appeal and cross-objections, has failed to exercise its full jurisdiction to the prejudice of Tamim and Zacca, inasmuch as the appeal being by way of rehearing or reviewing, the said Court has not considered the evidence in the case and come to its own conclusion on the merits of the case. The Supreme Court has only considered the question whether there was or was not evidence to support the finding of the learned District Magistrate. In the words of Sir John Beaumont delivering the judgment of the Judicial Committee of the Privy Council in *Thiagaraja Bhagavathar v. The King Emperor* L.R. 74 I.A. 132 at p. 410 :—

40 "Leave once having been granted, however, the matter is at large, and the Court of Appeal must dispose of the appeal on the merits, paying due regard, however, to the principles on which Courts of Appeal always act in such cases."^{p. 51, ll. 11-13.}

30. From the judgment of the Supreme Court Tamim and Zacca appealed to the West African Court of Appeal. Pending the disposal of the appeal the Judicial Committee of the Privy Council delivered judgment in *Attorney-General for Palestine v. Fakhyr Ayyas*, L.R. 1947 A.C. 332, holding that the meaning of "place" in section 5 (1) (b) was not limited by the

reference therein to "quay" and sea carriage alone is not inherent in the phrase "quay or other place" and therefore those words afford no context for limiting the meaning of "exported" in the subsection to exportation by sea and further "place" in section 5 (1) (b) was not confined in its application to a spot which possessed some characteristic other than locality but applies where goods were brought to a place for the purpose of export by land.

31. On the 29th November, 1947, Sir Walter Harrigin delivering the judgment of the West African Court of Appeal (Sir Walter Harrigin, C.J. Gold Coast, Sir John Verity, C.J. Nigeria and John Alfred Lucie-Smith, 10 O.B.E., C.J. Sierra Leone) held that the points of law were concluded by the cases set out above and that there was abundant evidence to justify the findings of the Courts below. The appeal was dismissed with costs.

32. From this judgment Tamim and Zacca have appealed to His Majesty in Council, and it is humbly submitted on behalf of Tamim that the appeal should be allowed with costs, for, among others, the following

REASONS

- (1) BECAUSE there was no jurisdiction for the learned Magistrate to try the said case without pleadings.
- (2) BECAUSE the Supreme Court has failed to consider the 20 merits of the case and the true effect of and inferences from the evidence given at the hearing thereof and come to its own conclusion thereon.
- (3) BECAUSE the West African Court of Appeal has failed to supervise and correct the Supreme Court in the exercise of its jurisdiction or themselves to consider the aforesaid evidence and inferences.
- (4) BECAUSE there was no conspiracy between Tamim and Zacca to buy textiles and export them, or to do so in 30 contravention of law.
- (5) BECAUSE Tamim had not deposited the textile goods in the warehouse of Sassine for immediate or unlawful export but for safe custody to be returned on demand or to be dealt with on his future instructions, and exported if the necessary permits could be obtained.
- (6) BECAUSE before the alleged seizure of the said goods Tamim had expressly instructed Sassine to return the said goods to Zacca for sale in the Gold Coast.
- (7) BECAUSE Sassine illegally refused to redeliver the goods to Tamim or his representative on or about the 40 1st November, 1945.
- (8) BECAUSE the Comptroller of Customs illegally seized the goods from Sassine.

- (9) BECAUSE the warehouse of Sassine was not a " place " within section 5 (1) (b) of the Import, Export and Customs Powers (Defence) Ordinance, 1939.
- (10) BECAUSE there is no evidence that the Comptroller of Customs at the time of seizing the textile goods had a warrant or a writ of assistance authorising such seizure.
- (11) BECAUSE the goods were not subject to seizure nor forfeiture.
- 10 (12) BECAUSE the direction of Mr. Chapman to Sassine not to allow the goods to be moved from his warehouse was not a seizure of the goods by the Comptroller of Customs.
- (13) BECAUSE evidence as to the alleged smuggling of francs was inadmissible on the ground of irrelevancy and prejudice.
- (14) BECAUSE there was no evidence to support the finding of the learned Magistrate.
- (15) BECAUSE the Appellant is not liable to any penalties.

GLYNN BLACKLEDGE.

R. PARIKH.

APPENDIX.

THE CUSTOMS ORDINANCE

(Gold Coast, 1936, Revision. Chapter 132).

SECTION 120.—(1) All ships, boats, canoes, vehicles, or other conveyances, and all horses and other animals and things made use of in the importation, landing, removal, or conveyance of any uncustomed, prohibited, restricted, or other article liable to forfeiture under the Customs laws shall be forfeited. And all ships, boats, canoes, articles, vehicles, or other conveyances, and all horses and other animals and things liable to forfeiture, and all persons liable to be detained for any offence under the Customs laws, may be seized or detained in any place, either upon land or water, by any police officer or officer of Customs or other person duly employed for the prevention of smuggling. And all ships, boats, canoes, articles, vehicles, or other conveyances, and all horses and other animals and things so seized as aforesaid, shall with all convenient despatch be delivered into the care of the proper officer of Customs at the nearest Customs House. And the forfeiture of any ship, boat, canoe, article, vehicle, conveyance, animal, or other thing, shall be deemed to include the tackle, apparel, and furniture thereof; and the forfeiture of any article shall be deemed to include the package in which the same is found and all the contents thereof. 10 20

(2) Provided that no ship of more than two hundred and fifty tons cargo-carrying capacity shall be liable to forfeiture under this section unless the Comptroller has reasonable cause to believe that the owner, charterer, or master was concerned in or privy to the illegal act or thing proved to have been committed.

(3) With respect to any ship exceeding two hundred and fifty tons cargo-carrying capacity, which but for the next preceding subsection would be liable to forfeiture as aforesaid, it shall be lawful for the Comptroller, subject to the approval of the Governor, to fix a penalty against any such ship which he considers adequate for the offence committed with respect thereto; and in default of payment of such penalty the Comptroller may detain such ship. 30

(4) No claim shall be made against the Comptroller for damages in respect of the payment of any penalty or the detention of any ship under this section.

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SECTION 137.—All writs of assistance issued from the Divisional Court shall continue in force during the reign for which they were granted and for six months afterwards; and any officer of Customs or person acting under the direction of the Comptroller having such a writ of assistance may, in the daytime, enter into and search any house, shop, cellar, warehouse, room, or other place, and, in case of resistance may break open doors, chests, trunks, and other packages, and seize and bring away any uncustomed or prohibited articles and put and secure the same in the King's warehouse, and may take with him any police officer. 40

SECTION 138.—If any officer of Customs shall have reasonable cause to suspect that any uncustomed or prohibited article is harboured, kept, or concealed in any house or other place in the Gold Coast, and it shall be made to appear by information on oath before any Magistrate, it shall be lawful for such Magistrate by warrant under his hand to authorise such officer to enter and search such house or other place, and to seize and carry away any such uncustomed or prohibited article as may be found therein. And it shall be lawful for such officer, and he is hereby so authorised, in case of resistance to break open any door, and to force and
 10 remove any other impediment or obstruction to such entry, search, or seizure as aforesaid; and any such officer may, if he see fit, avail himself of the service of any constable to aid and assist in the execution of such warrant, and any constable is hereby required when so called upon to aid and assist accordingly. (Amended by 30 of 1935, s. 2.)

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SECTION 139.—Whenever any seizure shall be made, unless in the possession of or in the presence of the offender, master or proprietor, as forfeited under this or any other Ordinance by which Customs officers are empowered to make seizures, the seizing officer shall give notice in writing of such seizure and of the grounds thereof to the master or proprietor
 20 of the ship or articles seized, if known, either by delivering the same to him personally or by letter addressed to him and transmitted by post to or delivered at his last known place of abode or business, if known. And all seizures made under the Customs laws shall be deemed and taken to be condemned, and may be sold or otherwise disposed of in such manner as the Comptroller may direct unless the person from whom such seizures shall have been made, or the master or owner thereof, or some person authorised by him, shall, within one calendar month from the date of seizure, give notice in writing to the Comptroller that he claims the articles so seized or intends to claim them; whereupon proceedings shall be taken
 30 for the forfeiture and condemnation thereof as provided in section 145. But, if any article so seized shall be of perishable nature or consist of a horse or other animal, the same may by direction of the Comptroller be sold, and the proceeds thereof retained to abide the results of any claim that may legally be made in respect thereof.

* * * * *

SECTION 145.—(1) All duties, and all pecuniary penalties not specifically designated fines, and all forfeitures incurred under or imposed by the Customs laws, and the liability to forfeiture of any article seized under the authority thereof, may be sued for, determined, enforced, and recovered by suit or other appropriate civil proceeding in a Magistrate's
 40 Court which Court is hereby invested with the necessary jurisdiction for the purpose, in the name of the Comptroller as nominal plaintiff; and all such proceedings shall be deemed to be civil proceedings, and, except as otherwise herein or hereunder provided, the ordinary civil procedure of the Gold Coast shall apply thereto. And the fact that the duties of Customs have been secured by bond or otherwise shall not be pleaded or made use of in answer to or in stay of any such proceedings. (Amended by 16 of 1926, s. 7, and 30 of 1935, s. 2.)

(2) Notwithstanding any provision in this Ordinance contained providing for the forfeiture of specified pecuniary penalties or of specified articles or collections of articles, it shall be lawful for the Comptroller, if in the exercise of his discretion he shall in any case see fit so to do—

(a) to sue for some lesser forfeiture, whether of pecuniary penalties or of articles or of both ; and

(b) to consent to judgment for some lesser forfeiture than that actually sued for, whether of pecuniary penalties or of articles or of both.
(Subsection (2) added by 31 of 1927, s. 3.)

(3) When any person shall be brought before a Court in the exercise of its civil jurisdiction for any offence against the Customs laws in respect of which the duty-paid value of the articles liable to forfeiture and sought to be forfeited does not exceed, in the case of potable spirits, fifty pounds, or in the case of any other articles, twenty-five pounds, the Court may proceed to hear and determine the cause or matter summarily and without a writ of summons or other formal process, but otherwise in accordance with the provisions of the Customs laws ordinarily applicable to such offence, as well with respect to forfeiture as otherwise : Provided that in such case the pecuniary penalty imposed by the Court shall not exceed, in the case of potable spirits, fifty pounds, or in the case of any other articles, twenty-five pounds. 10 20

(4) In all cases where any provision of the Customs laws is enforceable by fine or imprisonment without the option of a fine, such provision shall be enforceable by the ordinary criminal procedure of the Gold Coast applicable thereto. (Amended by 30 of 1935, s. 2.)

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SECTION 157.—(2) On the hearing or trial of any cause or matter under Customs laws, it shall not be necessary to prove guilty knowledge unless otherwise expressly enacted ; but the onus of disproving the same shall be on the defendant.

* * * * *

SECTION 166.—(1) Every abettor of a contravention of any provision of the Customs laws which is enforceable under this Ordinance by civil procedure shall be deemed civilly liable in respect of such contravention in the same manner and degree as the principal is civilly liable in respect of such contravention. 30

(2) In the case of the abetment of the contravention of any provision of the Customs laws which is enforceable by criminal procedure, the liability of the abettor shall be governed by the provisions of the Criminal Code with respect to abetments.

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THE IMPORT, EXPORT AND CUSTOMS POWERS (DEFENCE) ORDINANCE, 1939.
No. 29 of 1939.

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SECTION 3.—(1) The Governor may by order make such provisions as he thinks expedient for prohibiting or regulating, in all cases or any specified classes of cases, and subject to such exceptions, if any, as may

be made by or under the order, the importation into or exportation from the Gold Coast or any specified part thereof, or the carriage coastwise or the shipment as ships' stores, of all goods or goods of any specified description.

* * * * *

SECTION 5.—(1) If any goods—

(a) are imported, exported, carried coastwise or shipped as ships' stores in contravention either of an order under this Ordinance or of the law relating to trading with the enemy, or

10 (b) are brought to any quay or other place, or waterborne, for the purpose of being exported or of being so carried or shipped in contravention either of an order under this Ordinance or of the law relating to trading with the enemy,

those goods shall be deemed to be prohibited goods and shall be forfeited; and the exporter of the goods or his agent, or the shipper of the goods, shall be liable, in addition to any other penalty under the enactments relating to customs, to a customs penalty of £500.

20 (2) If any such order as aforesaid prohibits the exportation of any goods unless consigned to a particular place or persons, and such goods so consigned are delivered otherwise than to that place or person, as the case may be, the ship in which the goods were exported shall be deemed to have been used in the conveyance of prohibited goods.

30 (3) If any goods are imported, exported, carried coastwise or shipped as ships' stores, or are brought to any quay or other place, or waterborne, for the purpose of being exported or of being so carried or shipped, an officer of Customs may require any person possessing or having control of the goods to furnish proof that the importation, exportation or carriage coastwise of the goods or the shipment of the goods as ships' stores as the case may be, is not unlawful by virtue either of an order under this Ordinance or of the law relating to trading with the enemy; and if such proof is not furnished to the satisfaction of the Comptroller the goods shall be deemed to be prohibited goods unless the contrary is proved.

In any proceedings taken by virtue of this subsection, an averment that such proof as aforesaid has not been furnished to the satisfaction of the Comptroller shall, unless the contrary is proved, be sufficient evidence that no such proof has been furnished to his satisfaction.

* * * * *

SECTION 6.—Where any goods are seized as forfeited, the notice of the seizure required by section 139 of the Customs Ordinance to be given to the owner of the goods may, if the owner has no address in the Gold Coast, be given by the publication of a notice of the seizure in the *Gazette*.

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40 THE EXPORT (RESTRICTION) ORDER (No. 35), 1940

(1) No goods of any description whatsoever other than passengers' baggage shall be exported from the Gold Coast except under licence

granted by the Comptroller of Customs. It shall be within the absolute discretion of the Comptroller of Customs to grant or withhold such licence and to impose such terms and conditions as he may think fit in respect of the grant thereof.

* * * * *

THE COURTS ORDINANCE (GOLD COAST, 1936 REVISION. CHAPTER 4)

SECTION 33.—Subject to the provisions of this Ordinance and to Rules of Court made hereunder, and to any other ordinance for the time being in force, the Supreme Court shall in its appellate jurisdiction have power to hear and determine all appeals from the decisions of Magistrates' Courts in civil and criminal causes and matters given in the exercise of the original and appellate jurisdiction of the said Courts and may exercise full powers of supervision and revision in respect of all proceedings in such Courts. 10

SCHEDULE 3, ORDER 52, RULES

17. It is not open as of right to any party to an appeal to adduce new evidence in support of his original case; but for the furtherance of justice the Appeal Court may, where it thinks fit, allow or require new evidence to be adduced. A party may, by leave to the Appeal Court, allege any facts essential to the issue that have come to his knowledge after the decision of the Court below, and adduce evidence in support 20 of such allegations.

* * * * *

19. The Appeal Court may from time to time make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of the appeal; and may direct the Court below to enquire into and certify its finding on any question which the Appeal Court thinks fit to determine before final judgment in the appeal, and generally shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Appeal Court as a Court of first instance, and may re-hear the whole case, or may remit it to the Court below to be re-heard 30 or to be otherwise dealt with as the Appeal Court directs.

* * * * *

20. The Appeal Court shall have power to give any judgment, and make any order that ought to have been made, and to make such further or other order as the case may require, including any order as to costs. These powers may be exercised by the Appeal Court, notwithstanding that the Appellant may have asked that part only of a decision may be reversed or varied, and may also be exercised in favour of all or any of the Respondents or parties, although such Respondents or parties may not have appealed from or complained of the decision.

In the Privy Council.

ON APPEAL

*from the West African Court of Appeal
(Gold Coast Session)*

BETWEEN

ABOUL RACHANAN
TAMIM and Another - *Appellants*

AND

COMPTROLLER OF
CUSTOMS (Gold Coast) *Respondent.*

Case

for the Appellant TAMIM

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