

20, 1951

In the Privy Council.

Appeal No. 35 of 1948.

31106

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

ABOUL RACHANAN TAMIM AND PHILIP YOUNIS
ZACCA (Defendants) APPELLANTS,

AND

COMPTROLLER OF CUSTOMS (GOLD COAST)
(Plaintiff) RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an appeal from a judgment of the West African Court of Appeal (Gold Coast Session) dated the 29th November, 1947, affirming a judgment of the Supreme Court of the Gold Coast dated the 19th July, 1947, which held that the District Magistrate at Accra in a judgment dated the 8th March, 1947, had rightly found on the evidence that the Appellants had (as alleged by the Respondent in his writ of summons) between the 24th and 29th October, 1945, brought certain cotton and silk goods to the premises of one Sassine at Accra for the purpose of the goods being exported without a licence, but which further held that the District Magistrate was wrong in construing the Export (Restriction) Order, 1940, as not applying to the export contemplated by the Appellants.

2.—The Import, Export and Customs Powers (Defence) Ordinance 1939, by Section 3 (1) empowered the Governor to prohibit or regulate the import or export of goods into or from the Gold Coast or their carriage coastwise or their shipment as ships' stores. By Section 5 (1) any goods imported, exported, carried coastwise, shipped as ships' stores or "brought to any quay or other place, or waterborne, for the purpose of being exported or of being so carried or shipped," in contravention of an order under the ordinance, are deemed prohibited goods and shall be forfeited; and the exporter or his agent, or the shipper, is made liable to a customs penalty of £500.

CASE FOR THE RESPONDENT

p. 29, l. 16 3.—Pursuant to the ordinance the Governor duly made the Export (Restriction) Order (No. 35) 1940 which provided that no goods other than passengers' baggage should be exported except under licence.

p. 30, l. 25 4.—The facts as found by the learned Magistrate may be summarised as follows :

- p. 31,
ll. 21-24 (A) The first Appellant (hereinafter called "Tamin") arrived in the Gold Coast by air from Dakar on the 21st August, 1945. He received permission to stay for two weeks, but extensions were granted until the 10th October, 1945; and he in fact 10 left on the 27th October, 1945.
- p. 30, l. 35,
p. 31, l. 26 (B) During Tamin's stay Tamin got to know Sassine, who ran a transport service from Accra to Nigeria through Lome in French Togoland, and the second Appellant (hereinafter called "Zacca").
- p. 30, l. 40-
p. 31, l. 8.
p. 33,
ll. 18-33 (C) Tamin caused his partner in Dakar to transfer to Tamin in Accra some £22,000. Tamin's incredible story was that he wanted the money to set up in business in the Gold Coast; but apparently permission for the transfer was obtained by the use of a list of goods with a customs stamp which, it was 20 suggested, showed that an export licence from the Gold Coast would be issued.
- p. 31,
ll. 9-14 (D) Before the money arrived Tamin bought goods on credit. Sassine bought silks for Tamin, and Zacca lent £5,000 to Tamin and enabled Tamin to get goods from one Asafiri.
- p. 31,
ll. 14-19 (E) When the money arrived Zacca paid £13,000 into his own account to cover the loans and to pay for goods bought. Tamin drew the balance in cash, and the cash was kept in Zacca's safe until required to pay for goods, the purchase price of which was always paid in cash. 30
- p. 31, l. 20 (F) All the goods thus bought were sent to Zacca's wholesale warehouse about the 24th October, 1945.
- p. 30, l. 20 (G) No licence for the export of these goods had been granted, nor was any application for a licence made.
- p. 31,
ll. 31-37 (H) About the 25th October, 1945, Sassine had an interview with Tamin and Zacca at Zacca's office. Tamin said that Tamin and Zacca had cotton and silk goods then in Zacca's warehouse for transport to Lome. As Zacca purported to be expecting a shipment to arrive and therefore to want room, Sassine agreed to take the goods to Sassine's warehouse, and to carry 40 them thence to Lome for £360. (The versions which Tamin and Zacca gave of the interview were rejected by the learned Magistrate after a detailed consideration of the probabilities).
- p. 31, ll.
33-48
p. 33, l. 37
p. 34, l. 14

- (I) As thus arranged Sassine moved the goods to his own warehouse so that the goods could be sent to Lome. p. 31, l. 49
p. 33, l. 50
- (J) About the 26th October, 1945, Tamin hired a car from Sassine, and said he would come back to tell Sassine when Sassine was to send the goods. p. 31, l. 50—
p. 32, l. 2
- (K) On the 27th October, 1945, Tamin, leaving the Gold Coast by car, was stopped at the French frontier, where the car and some 2,500,000 undeclared francs found in the car were confiscated. Tamin alleged to the French police that Zacca had given Tamin the francs to pay freight and customs duty on goods to be sent to Dakar, the balance to be paid into Zacca's account at Lome. p. 32,
ll. 3-12
- (L) Tamin sent telegrams to Sassine and Zacca and by letter instructed Sassine to hand the goods over to Zacca. p. 32, l. 13
- (M) On the 29th October, 1945, the Gold Coast police instructed Sassine not to move the goods without police authority. Zacca asked for the goods, but Sassine refused to return them. On the 6th November, 1945, Customs officers removed the goods from Sassine's warehouse. p. 32,
ll. 18-25
- (N) In a search of Zacca's premises were found a copy of Tamin's statement at Lome, and lists of goods said by Zacca to have been left behind by Tamin. p. 32,
ll. 26-28
- 5.—The learned magistrate thought that the irresistible conclusion to be drawn from the facts was that both Tamin and Zacca intended to export the goods without licence, and had bought them for that purpose. In reaching that conclusion the Magistrate required such proof as would satisfy a criminal court, had regard to the fact that certain evidence was available only against Tamin, and treated Sassine as a witness to be believed only when the surrounding circumstances compelled acceptance of his evidence. The Magistrate set out a number of circumstances which in his view compelled him to find every material fact in favour of the Respondent. p. 32, l. 29
p. 35,
ll. 16-22
p. 34, l. 19
p. 33,
ll. 37-48
p. 32, l. 31—
p. 34, l. 45
- 6.—In the Supreme Court the acting judge reviewed the facts and sustained the finding of facts of the learned magistrate. The West African Court of Appeal held that not only was there abundant evidence to justify these findings by the two lower courts but it was difficult to imagine that any court could have come to other conclusions. pp. 51-54
pp. 60-61
- 7.—After setting out his findings of fact the learned magistrate turned to the question whether the removal to Sassine's warehouse amounted to exporting the goods. In his opinion the goods started on their journey across the frontier when they were moved from Zacca's warehouse. He did not see, however, how "other place" in Section 5 (1) of the Ordinance can include Sassine's warehouse, or indeed how the section can apply to any method of land transport or to transport over a land frontier. After considering the construction of the relevant provisions, the learned magistrate p. 34, l. 46
p. 34, l. 48—
p. 35, l. 9
p. 35,
ll. 23-37
p. 35, l. 38—
p. 37, l. 2

held that "other place" could be given no reasonable meaning which included Sassine's warehouse.

8.—The respondent respectfully submits that consideration of the mischief which the Ordinance was intended to prevent, and of the language of the Ordinance shows that Tamin and Zacca each broke the Ordinance when on their instructions the goods were brought to Sassine's warehouse for the purpose of being exported in contravention of the Export (Restriction) Order (No. 35) of 1940.

p. 50, 1. 35—
p. 51, 1. 10

p. 54, 1. 36

9.—While the Respondent's appeal to the Supreme Court was pending, the construction for which the Respondent contends had been adopted by the West African Court of Appeal in two judgments. Applying these judgments the Supreme Court set aside the learned magistrate's decision that Section 5 (1) of the Ordinance did not apply to land transport, and entered judgment for the respondent on his claim against both Tamin and Zacca. 10

p. 60, 1. 44—
p. 61, 1. 26

10.—Tamin and Zacca appealed to the West African Court of Appeal. While their appeal was pending the decision of the Privy Council in *Attorney-General v. Fakhry Ayyas* (1947) A.C. 332 was reported. Similar legislation in Palestine was there construed in the same way as the West African Court of Appeal had construed the Gold Coast Ordinance. As a result the point of law on the construction of the Ordinance was not argued; and on the facts the appeal was dismissed. 20

11.—The respondent submits that the judgment of the West African Court of Appeal was right, and that this appeal should be dismissed for the following amongst other

REASONS

1. BECAUSE by concurrent findings of fact the courts below have held that the goods in question were brought to Sassine's warehouse on the instructions of both Appellants for the purpose of being exported to French Togoland without a licence. 30
2. BECAUSE an order prohibiting the export of the goods without licence had been made under the Import, Export and Customs Powers (Defence) Ordinance, 1940, and therefore the goods were brought to Sassine's warehouse for the purpose of being exported in contravention of an order under the Ordinance.
3. BECAUSE Sassine's warehouse was an "other place" within the meaning of Section 5 (1) of the Ordinance.
4. BECAUSE each of the appellants was the exporter of the goods or his agent within the meaning of Section 5 (1) of the Ordinance. 40

FRANK GAHAN.

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RESPONDENT.

CASE FOR THE RESPONDENT

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Solicitors for the Respondent.