

20, 1951

Appeal No. 35 of 1948.

In the Privy Council.

31104

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.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
	<i>IN THE DISTRICT MAGISTRATE'S COURT, ACCRA.</i>		
1	Writ of Summons (Suit No. 1608/46) <i>Plaintiff's Evidence.</i>	5th October 1946	1
2	Leonard Chapman, 1st Witness	23rd November 1946	2
3	Sassine Elias Sassine, 2nd Witness	27th November 1946	4
4	A. D. W. Allen, 3rd Witness	27th November 1946	6
5	Cuthbert Bruce, 4th Witness	27th November 1946	7
6	E. Mai Quomme, 5th Witness	27th November 1946	8
7	Herbert Chandler, 6th Witness	4th December 1946	8
8	Henry Danjoh, 7th Witness	4th December 1946	9
9	E. S. Packham, 8th Witness	18th December 1946	9

RECORD OF PROCEEDINGS

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
10	Sassine Elias Sassine, 2nd Witness (recalled)	18th December 1946 8th January 1947	9
11	Robert O. Ayree, 9th Witness	8th January 1947	12
12	Submission on behalf of Defendant Zacca <i>1st Defendant's Evidence.</i>	8th January 1947	13
13	A. R. Tamim, 1st Defendant	8th January 1947	13
14	R. Ballantyne, 1st Witness	15th January 1947	18
15	Frederick Plange, 2nd Witness	15th January 1947	19
16	Loutfi Mouamar, 3rd Witness	15th January 1947	19
17	Q. O. Quansah, 4th Witness	15th January 1947	20
	<i>2nd Defendant's Evidence.</i>		
18	P. Y. Zacca, 2nd Defendant	15th January 1947	20
19	Court Notes— (a) Address by Mr. Dove for 1st Defendant (b) Address by Mr. Eve for 2nd Defendant (c) Reply by Mr. Manyo-Plange for Plaintiff	18th January 1947 18th January 1947 18th January 1947	25 26 26
20	Judgment	8th March 1947	28
21	Plaintiff's Grounds of Appeal	6th May 1947	37
	<i>IN THE SUPREME COURT.</i>		
22	Notice of 1st Defendant's intention to apply for reversal or variation of part of judgment	27th May 1947	38
23	Notice of 2nd Defendant's intention to apply for reversal or variation of part of judgment	28th May 1947	39
24	Supplementary Notice on behalf of 1st Defendant	31st May 1947	40
25	Supplementary Notice on behalf of 2nd Defendant	7th June 1947	41
26	Court Notes of arguments by Counsel— (a) Plange for Plaintiff	18th June 1947	42

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
	(b) Dove for 1st Defendant	18th and 19th June 1947	43
	(c) Hardy for 2nd Defendant	19th and 20th June 1947	44
	(d) Plange in reply for Plaintiff	20th, 24th and 25th June 1947	45
	(e) Dove in answer for 1st Defendant	25th and 26th June 1947	48
	(f) Hardy in answer for 2nd Defendant	26th June 1947	49
27	Judgment	19th July 1947	50
28	Court Notes of Judgment	19th July 1947	55
<i>IN THE WEST AFRICAN COURT OF APPEAL.</i>			
29	Grounds of Appeal on behalf of 1st Defendant	5th September 1947	55
30	Grounds of Appeal on behalf of 2nd Defendant	6th September 1947	57
31	Proceedings	21st November 1947 24th November 1947	59
32	Judgment	29th November 1947	60
33	Notice of Motion for Final Leave to Appeal	29th January 1948	62
34	Court Notes granting Final Leave to Appeal to His Majesty in Council	24th February 1948	62

EXHIBITS

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
<i>Plaintiff's Exhibits.</i>			
" A "	Letter from Ag. British Consul-General to C.I.D., Accra, in the visa application	5th July 1945	63
<i>1st Defendant's Exhibits</i>			
" B "	Declaration as to goods	(19th November 1945)	79
" C "	Receipt by S. E. Sassine to A. G. Heward-Mills for £1,000 deposit	19th November 1945	79
" D "	Letter—Frans Dove to A. G. Heward-Mills	9th November 1945	77
" E "	Telegram—Tamim to Sassine	(1st November 1945)	75
" F "	Telegram—Tamim to Sassine	3rd November 1945	76
" G "	Cable—Sassine to Tamim	14th March 1946	86

NO.	DESCRIPTION OF DOCUMENT	DATE	PAGE
" H "	Cables—		
	(a) Sassine to Tamim (in French)	15th (April 1946)	100
	(b) Sassine to Tamim (English Translation of " G ")	14th March 1946	86
	(c) Sassine to Tamim (English Translation of " H " (a))	15th April 1946	100
	<i>Plaintiff's Exhibits</i>		
" I "	Bills and Statements	October 1945	66
" J "	Letter from A. R. Tamim to S. E. Sassine	1st November 1945	75
" K "	Telegraphic transfers received Account for £22,793 ..	23rd October 1945	66
	<i>1st Defendant's Exhibits</i>		
" L "	Copy of Writ of Summons, <i>Tamim v. Sassine</i> , No. 152/45	17th November 1945	78
" M "	Copy Order for Joinder of the Comptroller of Customs, Suit 152/45	10th December 1945	81
" N "	Statement of Claim, Suit 152/45	29th December 1945	83
" O "	Defence of Comptroller of Customs, Suit 152/45 ..	4th January 1946	84
" P "	Proceedings to Judgment in Suit 152/45	28th December 1945 to 1st April 1946	80, 82, 85, 87
" Q "	Writ of Summons, Suit 65/1946, <i>Tamim v. Comptroller of Customs</i> , and Statement of Claim	4th May 1946	103
" R "	Defence—Suit 65/1946	6th June 1946	107
" S "	Reply—Suit 65/1946	14th June 1946	109
" T1 "	Rulings in Suit 65/1946	2nd November 1946	113
" T2 "	Ruling in Suit 65/1946	21st September 1946	109
" T3 "	Letter—Frans Dove to Comptroller of Customs	7th November 1945	76
" T4 "	Letter—Comptroller of Customs to Frans Dove	8th November 1945	77
" T5 "	Letter—Frans Dove to Comptroller of Customs	26th April 1946	101
" T6 "	Letter—Comptroller of Customs to Frans Dove	27th April 1946	102
	<i>2nd Defendant's Exhibit</i>		
" Z1 "	P. Y. Zacca Account with Bank of British West Africa ..	10th July 1945 to 31st March 1946	64
	<i>Plaintiff's Exhibits</i>		
" Z2 "	(1) Statements as to goods	(25th October 1945)	69
	(2) Interrogation of 1st Defendant	(29th October 1945)	72

**LIST OF DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT PRINTED**

DESCRIPTION OF DOCUMENT	DATE
<i>IN THE DISTRICT MAGISTRATE'S COURT</i>	
Court Notes of adjournments	6th November 1946 20th November 1946 11th December 1946
Motion for conditional leave to appeal	11th March 1947
Affidavit in support	11th March 1947
Court Notes granting conditional leave to Appeal	19th March 1947
Order reviewing conditional leave to Appeal	2nd April 1947
Notice of Appeal	26th March 1947
Bond for costs on Appeal	9th April 1947
Motion for final leave to Appeal	21st April 1947
Affidavit in support	21st April 1947
Court Notes granting final leave to Appeal	30th April 1947
<i>IN THE SUPREME COURT</i>	
Court Notes of adjournments	31st May 1947 13th June 1947
Motion on behalf of 1st Defendant for conditional leave to Appeal and for stay of execution	21st July 1947
Affidavit of L. Louamar in support	21st July 1947
Court Notes granting conditional leave to Appeal	26th July 1947
Motion on behalf of 2nd Defendant for conditional leave to Appeal and for stay of execution	23rd July 1947
Affidavit of P. Y. Zacca in support	22nd July 1947
Court Notes granting conditional leave to Appeal	26th July 1947
Notice of Motion on behalf of 1st Defendant pursuant to order of Court	30th July 1947
Court Notes as to stay of execution	8th August 1947
Notice of Appeal on behalf of 1st Defendant	28th July 1947
Notice of Appeal on behalf of 2nd Defendant	19th August 1947
Motion on behalf of 1st Defendant for final leave to Appeal	27th August 1947

DESCRIPTION OF DOCUMENT	DATE
Affidavit of L. Louamar in support	27th August 1947
Motion on behalf of 2nd Defendant for final leave to Appeal	23rd August 1947
Affidavit of T. D. Hardy in support	23rd August 1947
Court Notes granting final leave to Appeal	30th August 1947
<i>IN THE WEST AFRICAN COURT OF APPEAL</i>	
Notice on behalf of Defendants of intention to Appeal to His Majesty in Council	9th December 1947
Notice of Motion for conditional leave to Appeal	9th December 1947
Affidavit of 1st Defendant in support	9th December 1947
Affidavit of 2nd Defendant in support	9th December 1947
Court Notes granting conditional leave to Appeal to His Majesty in Council	12th December 1947
Bond for costs on Appeal	16th December 1947
Justification of Sureties	16th December 1947
Notice of Appeal	5th February 1948
Motion for approval of sureties together with affidavit in support ..	5th February 1948
Court Notes approving sureties	14th February 1948
Affidavit in support of Motion for final leave to Appeal	29th January 1948
Supplementary Affidavit in support	19th February 1948

EXHIBIT NOT PRINTED

NO.	DESCRIPTION OF DOCUMENT	DATE
" T "	Part Proceedings, Suit 65/1946, <i>Tamim v. Comptroller of Customs</i> (" Q," " R," " S," " T1 " and " T2 " printed, <i>see Index</i>)	21st May 1946 to 19th October 1946

In the Privy Council.

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

BETWEEN

ABOUL RACHANAN TAMIM and PHILIP YOUNIS
ZACCA (Defendants) - - - - - *Appellants*

AND

10 COMPTROLLER OF CUSTOMS (Gold Coast) (Plaintiff) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

WRIT OF SUMMONS (Suit No. 1608/46).

Suit No. 1608/46.

IN THE SUPREME COURT OF THE GOLD COAST
EASTERN PROVINCE.*

DISTRICT MAGISTRATE'S COURT HOLDEN AT ACCRA.

Between COMPTROLLER OF CUSTOMS - - - - Plaintiff
and

20 1. A. R. TAMIM
2. P. ZACCA - - - - - Defendants.

To 1, A. R. Tamim 2, P. Zacca.

YOU ARE HEREBY COMMANDED in His Majesty's name to attend before this Court at Accra on Wednesday the 6th day of November 1946 at 8.30 o'clock in the forenoon, then and there to answer a Suit by the Plaintiff of Accra against you.

30 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

In the District Magistrate's Court, Accra.

No. 1.
Writ of Summons (Suit No. 1608/46), 5th October 1946.

* Error in Record—This Writ not issued out of the Supreme Court.

*In the
District
Magistrate's
Court,
Accra.*

No. 1.
Writ of
Summons
(Suit No.
1608/46),
5th
October
1946,
continued.

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 PLAINTIFF CLAIMS—

(1) from the 1st Defendant the forfeiture of the said goods and a penalty of £500 by virtue of section 5 (1) of the Import Export and Customs Powers (Defence) Ordinance, 1939 ;

(2) from the 2nd Defendant a penalty of £500 by virtue 10 of section 5 (1) of the Import Export and Customs Powers (Defence) Ordinance, 1939.

Issued at Accra the 5th day of October, 1946.

(Sgd.) JOHN C. BURT,

District Magistrate.

Sum claimed	£500 - -	and Forfeiture against 1st Defendant	
	£500 - -	Penalty against 2nd Defendant	
Court fees	23 - -		
Bailiff's fees	- 2 -		
Total	£1023 2 -		20

*Plaintiff's
Evidence.*

No. 2.
Leonard
Chapman,
1st Witness,
23rd
November
1946.

PLAINTIFF'S EVIDENCE.

No. 2.

Leonard Chapman, 1st Witness.

CORAM L. G. LINGLEY, Esquire, District Magistrate on Saturday the the 23rd day of November, 1946, at Accra.

1608/46

COMPTROLLER OF CUSTOMS

V.

TAMIM

ZACCA.

30

Plange : 1st Defendant visited Gold Coast. His time was extended and finally left for French Territory. Made arrangements to export goods which he had bought. Were stored with No. 2. Were seized from Sassine who was to transport to French Territory. No licence for export.

Examina-
tion

LEONARD CHAPMAN, sworn :

Acting Superintendent C.I.D.

" A "

On 5th July 1945 I received an application for a visa through British Consul General Dakar for A. R. Tamim to visit Gold Coast (marked " A "). I issued a visa on guarantee of Captan.

On 21st August Defendant visited Gold Coast and was granted a pass for two weeks. This was extended 3rd September to 9th September. Applications by Tamim were made to extend these periods. He applied for a further extension of two weeks. Captan then withdrew his sponsorship. He was then sponsored by Sassine. He was granted a final extension until 22.9.45. I warned him that we should take action if he did not leave. Information was received. I extended his visa to 10th October 1945. He applied for an exit permit. It was granted to him on 10th October. He in fact left on 27th October 1945. I had received certain information. On 29th October, a Monday, I received information from British Customs Aflawo. I went to Sassine store. I saw 103 bales of cotton and five cases of silks and woollens. I instructed Sassine that he was not to remove the cottons without permission of Police. I had gone to Sassine in consequence of what I heard on 27th October 1945. I also went to see, on or about 2nd November I went to Zacca's store in Selwyn Market Street. I said I hear you are in this Tamim racket. I said I was referring to illegal exportation of over two million francs and preparation for export 103 bales of cotton and five cases of silk goods. He became very angry and abusive. I said I might have to take action against him if he did not give us information. Then he said he would tell me everything he knew about the cottons and silks. He gave me the names of people from whom Tamin purchased goods and the rough amount he spent with each store. He said most had been sent to the store from others and from his store to Sassine's warehouse.

*In the
District
Magistrate's
Court,
Accra.*

*Plaintiff's
Evidence.*

No. 2.
Leonard
Chapman,
1st Witness,
23rd
November
1946,
continued.

Dove—Cross-examination :

I mentioned two million francs.
I considered it had to do with the matter.
I had visited house and seen Senate.
I had seen Tamin's statement.
30 I didn't hear him make the statement.
I didn't ask it as a means of getting information.
I didn't threaten Zacca.
I don't call it a threat or that it was so interpreted.
He certainly gave information then.
Purchase of goods is not illegal.
I don't imagine it is illegal to keep goods in the store : or to remove.
Dove : Or to remove to Sassine's store ?
Plange : Objects to this question.
Court : Not allowed : presumably main issue for Court to decide in
40 this case.

Cross-
examina-
tion on
behalf of
1st
Defendant.

Dove—Cross-examination :

I saw them in Sassine's store.
I gave instruction.
I did nothing.
I knew Tamim had an action in High Court.
His Lawyer asked for a visa for him to come.
I refused this application.
He made several applications.
The Consul General was informed.
50 I know he appealed to Government by petitions to come and fight
case.
Leave was granted.

In the District Magistrate's Court, Accra. *Eve—Cross-examined :*

Plaintiff's Evidence.

No. 2.
Leonard Chapman,
1st Witness,
23rd
November
1946,
continued.
Cross-examination on behalf of 2nd Defendant.

I have nothing to do with grant of export licences.
I know his store not warehouse.
I have never been to warehouse.
I know nothing of custom of traders.
His information was accurate.
I passed information to Customs.
They took over the goods.
I got no subsequent application after the communication to Consul General.
I didn't recommend petition.

10

No. 3.

Sassine Elias Sassine, 2nd Witness.

27.11.46.

No. 3.
Sassine Elias Sassine,
2nd
Witness,
27th
November
1946.

CORAM L. G. LINGLEY, Esquire, District Magistrate on Wednesday,
the 27th day of November, 1946, at Accra.

1608/46

COMPTROLLER OF CUSTOMS

V.

TAMIM and ZACCA.

Hearing resumed.

20

Examination.

SASSINE SASSINE, sworn :

Merchant and Transport Owner. I run between Gold Coast : Mandate and Nigeria. To get to Nigeria they go through Lome.

I know Tamim—A Lebanese who came here from Dakar.

About 25th (24–26th) October 1945 I had telephone call from Tamim asking me to come to see him at Zacca's Office. I went at 2.30 p.m. on the Thursday or Friday. I met Tamim and P. Y. Zacca.

Tamim said they had goods for transport (in possession of Zacca) to Lome. They said cotton goods and silks—between 103–106 bales and six cases of silks. They said they were in P. Y. Zacca's warehouse. I agreed to transport the goods. I removed the goods from Zacca's warehouse to my warehouse. I removed them on instructions of both Tamim and Zacca. I removed them for transport. I think it was afternoon of 25th October I removed the goods. I had them until I received instruction from Tamim. He came the next day. He asked if I had a car to meet a friend at Ahafaa. I was to receive instruction from Tamin. Then he said he would tell me to send the goods after he had left. I gave him a car which he had at hotel. At 7.30 he said he would come and see me. He did not. He said he was coming to tell me the time when I was to send the goods. I didn't see him again. This was the Friday night. 30 40

I received information on Saturday or Sunday. I had a telephone call from Police. The Police came to my premises. Mr. Chapman came. He gave me instructions about the goods—between Sunday and Monday.

Zacca asked me to return the goods then. I refused. They remained with me until Customs removed them. Mr. Allen came with other European and Police.

Dove—Cross-examination :

Tamim spoke first : he said we have goods to be transported to Lome.

10 Zacca said he would show me the goods in his warehouse. They started to bargain about price of transport to Lome.

Tamin said how much to transport to Lome.

I said £400.

Zacca offered £360.

Zacca asked me to take them to my warehouse as he was receiving a shipment of goods and wanted room. Also it would be easier for me to.

I got instructions to take them to Lome.

As to the day I was to receive instructions.

I didn't know they were breaking the law.

You have to get permit.

20 Other firms don't give me the permits.

They gave them to their own clerks.

I didn't ask for their permits.

It wasn't my business.

I know my business may be forfeited.

It is the truth about this arrangement.

The Customs seized the goods.

I was not an informer.

Police questioned me.

30 He warned me not to touch the goods : he said he had information from Lome I had certain goods in my warehouse.

Mr. Conway was in charge.

I instructed Mr. Dove to write about same to Comptroller.

I saw the letter that was written.

It was correct.

It said "for safekeeping."

They were for transport not safekeeping.

I wrote the letter for my protection in case Tamim held me responsible.

It may be different.

There may be a difference : sometimes it is important.

40 Tamim brought an action against me.

You defended the case.

Mr. Sawyerr was present : he said nothing : there was no case to answer.

Mr. Heward Mills said they were given to me for safekeeping.

He wasn't questioned by me.

I had previously told Counsel they were for transport.

This morning I put to him before I came to court.

Tamin said he would tell me when he was ready.

He never told me.

50 The understanding was that if he left Friday I was to follow on Saturday or Sunday.

I was not going to put myself in fire.

*In the
District
Magistrate's
Court,
Accra.*

*Plaintiff's
Evidence.*

No. 3.
Sassine
Elias
Sassine,
2nd
Witness,
27th
November
1946,
continued.
Cross-
examina-
tion for
1st
Defendant.

*In the
District
Magistrate's
Court,
Accra.*

Eve—Cross-examination :

*Plaintiff's
Evidence.*

No. 3.
Sassine
Elias
Sassine,
2nd
Witness,
27th
November
1946,
continued.
Cross-
examina-
tion for
2nd
Defendant.

We spoke Arabic no doubt.

Na is me. Aruc is "I."

At 2.30 p.m.

I was meeting him several times a day.

Tamim said "we."

I understood him to mean Tamim and Zacca.

I understood that it was for both of them.

That both owned them.

I deny it was "I."

Zacca joined in conversation.

He took a big part.

My warehouse is large : about half a mile from transport.

I took them to my warehouse.

It was seven lorry loads about.

I was to wait instructions but if he left Friday I was to follow.

Zacca wasn't present then when he told me this in hotel.

Instructions to load and move.

I had plenty of room.

I don't know if other people have empty warehouses at that time. 20

Tamim left for Aflawo.

He wrote to me and telegram.

He said I was to hand goods over to Zacca.

I had then spoken to Mr. Chapman.

Court : When goods arrived in town Tamim Zacca to pay me.

Re-examin-
ation.

Re-examination :

Mr. Heward Mills was cross-examined that goods were to be taken to Lome.

I asked for an extension for Tamim.

He didn't know I had a big warehouse. 30

No. 4.
A. D. W.
Allen,
3rd Witness
27th
November
1946.
Examina-
tion.

No. 4.

A. D. W. Allen, 3rd Witness.

ARTHUR DUDLEY WILLIAM ALLEN, sworn :

Senior Collector of Customs now at Winneba.

In 1945 I was at Accra.

On 6th November I took part with Comptroller in seizure of prohibited goods on premises of Sassine. Cotton piece goods and silk goods. The majority in bales : some in cases—a bale of 100—and cases. I know they are still with Customs.

I sent a notice of seizure addressed to Tamim at his hotel. 40

Cross-examined :

I knew Tamim had left the hotel.
I was told he was in Lome.
I sent no notice there.

In the
District
Magistrate's
Court,
Accra.

Cross-examined :

None.

Plaintiff's
Evidence.

Re-examined :

The last known address is required.

No. 4.
A. D. W.
Allen, 3rd
Witness,
27th
November
1946,
continued.

No. 5.

10

Cuthbert Bruce, 4th Witness.

CUTHERBERT BRUCE, sworn :

Assistant Police Lome.

I know A. R. Tamim a Lebanese. I saw him 29th October 1945 in our department at Lome. He was in custody. I was instructed to make enquiries. He was brought before me Superior Inspector of Police. He was questioned by Inspector. I wrote it down the questions and answers. He was told the charge of importing 2,462,000 francs currency.

Dove : The statement should be produced ?

Plange : Entitled to give oral evidence of the questions and answers.

20

Court : In my opinion oral evidence can be given of what Tamim said in answer to these questions.

He admitted that he imported the amount. He said that the money was given to him by Zacca to pay for goods when they arrived at Lome which he wanted to send to Dakar. He said he had purchased the goods in Accra. He said Zacca gave him the money to pay customs duties and steamer fees to Dakar. If any money was left it was to be paid to Bank at Lome in Zacca Accra.

We asked if he had permission from British Government to export. He said No. He didn't say how he proposed to get the goods to Lome.

30 *Dove—Cross-examined :*

I don't know if French Government gave him any permission to import.

Eve—Cross-examined :

He made a statement to French Police.

I wrote the statement.

I know of no other statement.

He used Zacca's name as we questioned him where he got francs.

He said he would open an account.

He was questioned for one and half hours.

No. 5.
Cuthbert
Bruce,
4th
Witness,
27th
November
1946.
Examina-
tion.

Cross-
examina-
tion for
1st
Defendant.
Cross-
examina-
tion for
2nd
Defendant.

40 *Re-examined :*

He said nothing about getting French to assist him in getting licence from British.

Re-examin-
ation.

In the
District
Magistrate's
Court,
Accra.

No. 6.

E. Mai Quomme, 5th Witness.

EDWARD MAI QUOMME, sworn :

Plaintiff's
Evidence.

2nd Division Customs Department.

Export Licensing Officer : I prepare them for Comptroller. Applications come to me for export licences. I have been clerk Export Licensing since October 1941. I have been so until present time : except when on leave on two occasions. March—May 1942 and January—March 1944.

From August 1945—October 1945 I received no application for an export licence from A. R. Tamim for textiles. 10

Such an application would be on my file. There is no such application.

I received no enquiries from A. R. Tamim about export of silk or cottons.

Export without licence is prohibited. Licences are granted for all produce of Gold Coast and "personal effects" of a passenger. We do not grant licences for export of imported goods. This is published in Gazette 1940.

As far as I remember there has only been one case of a licence being granted for re-export of a large quantity of textiles—16,000 yards of khaki drill. This was Army salvage. 20

Cross-
examina-
tion.

Cross-examined :

They are not given.

Cross-examined :

None.

No. 7.
Herbert
Chandler,
6th
Witness,
4th
December
1946,

No. 7.

Herbert Chandler, 6th Witness.

HERBERT CHANDLER, sworn :

Director Supply.

I deal with all transfer of supply. I deal with any application for transfer out of the Colony. Between August 1945 and November 1945 30 I received no application on behalf or by Tamim. I returned from leave early September 1945. I would see any application on my file if I received while I was on leave. I have made no special examination.

Cross-
examina-
tion for
2nd
Defendant.

Eve—Cross-examined :

Any communication from French Authorities that they were anxious for import of such goods might affect my decision in granting export licence.

Re-examin-
ation.

Re-examined :

I shouldn't recommend unless on extraordinary circumstances such amounts. 40

No. 8.

Henry Danjoh, 7th Witness.

In the
District
Magistrate's
Court,
Accra.

HENRY DANJOH, sworn :

Georges Becquay sworn as Interpreter :

Plaintiff's
Evidence.

Acting Chief Customs Officer Lome. I deal with Export and Import Licences: the applicants go to Ministry of Economic Affairs: it is connected with my office. I know of applications for import and export licences. Between August and October 1945 no application was made to French Government for import of goods by Tamim. I have seen Tamim in connection with seizure of French money by us. We seized 2,483,000 francs. We seized it because he declared on £25 when he entered the country. We searched his car: he should have declared the francs.

No. 8.
Henry
Danjoh,
7th
Witness,
4th
December
1946.

Cross-examination : None.

No. 9.

E. S. Packham, 8th Witness.

No. 9.
E. S.
Packham,
8th
Witness,
18th
December
1946.

ERIC STEWART PACKHAM, sworn :

Assistant Colonial Secretary. I deal with currency control. I have no record of permission of His Excellency the Governor to Tamim to export francs. I have examined the records for 1945.

20 *Dove—Cross-examined :*

A record of applications and record of permission granted is kept. An authority is granted for transfer of francs out of sterling area: this is done by Bank. Applications are made direct and not through Bank. People don't apply to take money out physically. We keep no record of that.

Cross-
examina-
tion for
1st
Defendant.

Eve—None.

Re-examination :

Re-examin-
ation.

No one can take more than £5 out without authority. Authority is obtained on application which is recorded. Record is kept of any authority.

No. 10.

Sassine Elias Sassine, 2nd Witness (recalled).

No. 10.
Sassine
Elias
Sassine,
2nd
Witness
(recalled),
18th
December
1946.
Cross-
examina-
tion for
1st
Defendant.

Recalled at request of 1st Defendant.

SASSINE ELIAS SASSINE still on oath—1st Defendant now being in Colony :

Dove—Cross-examined :

I knew Tamim stayed with Captan.
I met him in town.

*In the
District
Magistrate's
Court,
Accra.*

*Plaintiff's
Evidence.*

No. 10.
Sassine
Elias
Sassine,
2nd
Witness
(recalled),
18th
December
1946,
continued.

Not at Captan.
I never invited him to lunch at Avenida.
Captan guaranteed him.
I became very friendly with him.
I never suggested he should stay at Avenida.
He asked me to help him to get an extension.
I may have got three extensions.
I never signed the guarantee—I took no money for guarantee.
I never said I was friendly with Police and could get extension. 10
He didn't say at first that he was expecting money to buy goods.
He told me when the money arrived.
I knew he was buying goods.
I met him in P.Z.*
I bought some silk £145 for him.
When we met at Zacca's I never said police said we should clear
out at once.
I never went in morning.
I don't know if he was told to clear out.
I don't know who was to tell him to go away.
At meeting at Zacca's the question of going was not mentioned. 20
I don't know why he left the next morning.
I saw him at Avenida in evening 6.30 p.m.
I never talked about going.
I knew he was going : he told me.
He said he would send word but he went without speaking.
At 3.30 p.m. the goods were removed to my wholesale by my lorry.
I deny it was after Tamim left.
I can't say if it was after he left hotel in my car.
107 bales and 6 packages when Customs checked : they were not
checked before. 30
I gave no receipt.
I never took the receipt from Zacca.
I never got it from him.
The Customs seized goods on 6th November.
I put all goods in one room : they were all for Customs : I never
put four bales aside : they said four bales were missing.
I say Mr. Dove was present when they were removed by Customs.
I claimed £1,000 for my car and damages.
I don't remember how much for car : it is on the claim.
I received £1,000 for the car not £625. 40
I never said I would receive four bales to cover the balance : I said
I would pay for four bales.
19th November 1945 I signed this receipt.
The contents are true.
Dove : Tendered.
Plange : Objection that irrelevant.
Court : I think this document can be tendered.

Cross-examined :

"C."
I gave this receipt for cash (Marked "C").
I never sold a car to Tamim a lorry or car. 50

He never paid £930 in Zacca store.
 This was written by Mr. Dove on my instructions.
 It was produced in Divisional Court.
 It related to Tamim (Marked " D ").
 I claimed £360 for the lorries.
 It refers to transport of goods to Lome.

*In the
 District
 Magistrate's
 Court,
 Accra.*

They were off the road six days working for him so I charged for them.

*Plaintiff's
 Evidence.*

10 It was from the day moved to my wholesale to day seized waiting for his instructions.

No. 10.
 Sassine
 Elias
 Sassine,
 2nd
 Witness
 (recalled),
 18th
 December
 1946,
continued.
 " D."

He may have left 27th October Saturday in morning.
 They were seized on 9th November.
 I got instructions not to move them.
 I count six from first interview to Monday.
 Perhaps Tuesday.
 I got instructions from police on Monday afternoon.
 I charged £1,460 for return of cash lent to Tamim.
 I didn't give him cash.

20 *Court* : Warned that need not answer if witness thinks he is incriminating himself.

Witness : I do not think it will lay me open to criminal prosecution but it will injure me.

I didn't lend him money.

I never said I was friendly with Customs.

I never pointed out any Customs official and said he was biggest Customs official.

I never said I could get export licence if he got French authorities to give permission.

30 Tamim never said I should keep goods and he hoped to come back to sell them.

He never said if he couldn't come he wanted me to get authority.

He said may be he would get permission from French authorities.

Tamim can't read or write English.

I received a telegram from him—It was produced in the Divisional Court (Marked " E ").

And this (Marked " F ").

I heard he went to Dakar from Lome.

I have been in communication with Tamim since.

40 I asked him to give me a power of attorney to deal with the goods. I don't remember saying the goods will be lost.

I got a letter from Khouri in Gambia asking me to help him.

If he succeeded the money was to be paid through Gambia.

I agreed.

I got a cable that it was coming but gave it to Mouamar : I was not annoyed.

I know Mouamar well : we have discussed it.

On 27th November I may have gone to Mouamar : I can't remember the occasion.

I owed him a large amount of money.

50 He had my cheque.

Zacca had my cheque for £1,500 less £825—£672 15s. I never suggested I should have the cheque back or give evidence against him.

" E."
 " F."
 p. 128.

*In the
District
Magistrate's
Court,
Accra.*

*Plaintiff's
Evidence.*

No. 10.
Sassine
Elias
Sassine,
2nd
Witness
(recalled),
18th
December
1946,
continued.

They suggested giving me something if I didn't give evidence.
There was no such conversation.
I was always going to Mouamar : not only once ; not to ask him not
to present his cheque.

I know Nassib Azar.

I never sent for Mouamar to come.

Zacca sent others to me.

Mouamar came with others but I don't remember.

Nassib coming with him.

I was in bed : they may have come.

I don't remember saying " I hear you have power of attorney from
Tamim."

Everyone knew it.

He never said " Why should I tell you."

He never said " I am under no obligation to you."

I never said " I had a way of getting goods back and drop the goods."

He never said I shouldn't suggest such things.

I never said if Tamim didn't agree then Tamim would lose.

I am a proper Christian.

Hearing resumed.

I sent cables to Tamim.

I didn't write it as it is in French.

Somebody wrote it for me— Chagowy.

I remember this is the translation.

This is the cable (Marked " G ").

And another (Marked " H ").

I am referring to Tamim, myself and Comptroller of Customs.

After I got telegram Zacca asked me for the goods.

I never said I would only give them if he gave me £5,000.

I asked for no money.

I told him I had instructions from police.

They were not seized by Customs then.

Cross
examina-
tion for 1st
Defendant
continued.
8th
January
1947.
" G."
" H."

Re-examin-
ation.

Re-examination :

Tamim mentioned authority from French.

When he was buying goods.

When Mouamar and Chahin interviewed me with Zacca : Mouamar
suggested they would give me £2,000 to give evidence on their side.

I didn't report it to any official.

When Tamim left I didn't know he was going to cross border.

I understood telegrams to mean I was to hand over goods.

No. 11.
Robert O.
Ayree,
9th
Witness,
8th
January
1947.
Examina-
tion.

No. 11.

Robert O. Ayree, 9th Witness.

ROBERT OKINE ARYEE, sworn :

Exhibits Clerk Supreme Court. I have in my possession eight invoices
tendered in *A. G. Heward Mills v. S. E. Sassine and others*. They were
tended by Plaintiff (marked " I ").

The full title of case was *A. G. Heward Mills Attorney for A. R. Tamim
versus S. E. Sassine and Comptroller of Customs*.

Cross-examination :

None.

10

20

30

40

50

No. 12.

SUBMISSION on behalf of Defendant Zacca.

CASE FOR COMPTROLLER.

Eve : No evidence to connect 2nd Defendant at all. Mentioned once in connection with francs.

Plange : A joint venture on 166 (1) an abettor.

 1st DEFENDANT'S EVIDENCE.

No. 13.

A. R. Tamim, 1st Defendant.

10 *Dove* calls :—

Elias Said Sarkis, sworn as Interpreter.

ABOUL RACHANAN TAMIM, sworn :

I am from Lebanon now living in Dakar. In August 1945 I came to Gold Coast leaving on 19th August 1945 : and arrived 20th August. I lived with M. Captan. I went to Immigration Office and showed my passport. I stayed about 12 days with him. I then stayed at Avenida Hotel. Sassine sent his car for me : I had got to know him. I didn't know him before I arrived. I met him with Captan three or four days after landing. I first got to know Zacca about ten days after arrival. I saw Sassine every day or other day. I was allowed fifteen days : Sassine then sponsored me for three times : each fifteen days. Sassine went and asked it for me with my passport. I didn't go. No one else sponsored me. I started buying goods in Accra from different stores. I went to P.Z. with Sassine. Sassine bought the goods for me. I had money transferred from my store at Dakar : it was transferred to London and London to here. £22,890 about—Out of that money I paid for goods. I told Sassine I had the money. I bought the goods in the hope I should be allowed to establish a business in the Gold Coast. I was not allowed to stay here. I only learned this ways [*sic*] before I had leave. I told Sassine I had money coming and I wanted to buy goods that month. I bought the goods and collected them and put them in Zacca's wholesale. Sassine saw me at Zacca's store one day before I left. Sassine said police won't let me stay. They want me to go the next day. Sassine said go to Lome and get an import permit from French Authorities and he would find ways and means to transport goods to me there. The next day early in morning Sassine sent me his car. I went in it to Lome. Sassine said this in Zacca's store : before noon. Sassine said as soon as you send me the import licence I will see the Customs Authorities whom I know and will endeavour to get you an export licence. This was the day before I left. Sassine asked £350 or £360 for freight. I bought a car and paid Sassine

In the District Magistrate's Court, Accra.

Plaintiffs' Evidence.

No. 12.
Sub-
mission on
behalf of
Defendant
Zacca,
8th
January
1947.

1st Defendant's Evidence.

No. 13.
A. R.
Tamim, 1st
Defendant,
8th
January
1947.
Examina-
tion-in-
Chief.

*In the
District
Magistrate's
Court,
Accra.*

*1st
Defendant's
Evidence.*

No. 13.
A. R.
Tamim, 1st
Defendant,
8th
January
1947,
continued.

for it in Zacca's store—£900. It was a Buick. He did not deliver it as he said there was repairs to be made and tyres to be changed. It has not been delivered. I can't remember day 26th—Friday or Saturday—26th October. At Lome I had trouble with French Authorities. The car was confiscated with francs I was carrying. I was questioned what foreign things I had. I told them I had £12 or £17 in English currency notes, 1 bottle whisky and personal effects. I was searched. The francs were found. They had not asked me about French money. I would have made a declaration if I had known it was required. After confiscation I saw the High Commissioner, Ag. Governor. I explained but he could not grant me an import licence for goods because of frontier incident. I can't read or write English. I sent a telegram to Sassine: one to Zacca. I sent a letter from Lome. I got no goods. I gave a power of attorney to Heward Mills. Loutfi Mouamar Zacca had no interest in money or goods I bought here. I told French they belonged to Zacca because I thought by saying francs belonged to Zacca there was a possibility of not being confiscated. The francs did in fact belong to me. The francs were the "balance" of money? *Witness*: I do not want to answer. The francs were purchased with what was left of money from London. 10

I tried to get a permit to come back. The British Consul gave me permission but the Authorities here refused permission—12 April 1946. 20

*Cross-
examina-
tion for
2nd
Defendant.*

Eve—Cross-examined:

There are many Lebanese in Dakar.

With relations in Gold Coast.

There is a firm of Zacca in Dakar related to Defendant.

I know them personally.

I knew they had relatives here.

I introduced myself to Zacca as a friend of his relatives as they suggested.

I opened an account with B.B.W.A. 30

Zacca introduced me to B.B.W.A.

I bought goods. I bought most from Zacca.

There is a custom that when buying goods you can leave them in warehouse of biggest seller—among Lebanese at Dakar.

A Lebanese custom.

I had no premises when I purchased goods.

I asked for space in wholesale of Zacca.

He said he could store for three or four days only.

He said he was receiving goods himself.

He asked me to move the goods. 40

I was going to Lome: I told him to hand goods to Sassine against receipt.

Zacca didn't suggest Sassine.

Money came 45 days after me.

I knew the transfer had been authorised.

I started purchasing the goods before money arrived: on credit.

I got the money before Zacca loaned me money.

I purchased goods with money.

I repaid Zacca.

Zacca had no interest in the goods; nor in the francs. 50

Plange—Cross-Examination :

*In the
District
Magistrate's
Court,
Accra.*

When I applied to Consul General at Dakar I said I only wanted to visit Gold Coast. So I only got a visa for 14 days.

There is no firm of Captan Bros. in Dakar.

My arrival in 1945 was my first visit.

M. Captan is a relation of mine.

My step father is a relative of Captan.

I had heard of him but never met him.

*1st
Defendant's
Evidence.*

10 When my brother returned from Lebanon he stayed with Captan in Accra.

I introduced myself to Captan.

My brother was in Dakar when I left.

He gave me no letter.

When I arrived I met Mouamar at Airfield waiting for someone else.

At Airport I mentioned that Captan was sponsoring me (Mouamar hold my power of attorney in this case).

Mouamar took me to Captan.

I had heard of Captan being a big merchant in textile trade.

I saw he was one of the big ones.

20 British Consul had asked authorities here if Captan would sponsor him.

After I had been here a week I got the idea of establishing business because trade was free and not restricted.

I didn't discuss it with Captan.

I thought of applying to stay here to start business.

I never told police I wanted to stay.

I went with employee of Captan and asked for extension I applied for money when I was here.

By Court—I came here to study trade.

30 I left Captan as Sassine said it would be better for me to stay at Avenida: police had refused to give me extension when I went with Captan's employee for extension.

I went about first week in September for extension.

With aid of Sassine I got other extension.

On 9th September I was warned I must leave by 22nd September—by air or land.

By 22nd September I knew there was no hope of remaining.

I got a pass to go to Lome on 10th October.

I stayed because I was not well.

40 Sassine informed police for me.

I was taken ill on 8th October: I wasn't feeling well.

I informed the police: Hospital telephoned the police.

Doctor said to them I was not well on 10th October.

I went to Doctor and told him I was not well on day I got exit permit to October.

I didn't tell police as I didn't go to police myself.

I told Sassine to tell police: he said he had: I told him to extend my time.

50 I wanted extension as I found trade was free and I had written for money to Dakar.

I wrote to Dakar about 20 days after my arrival.

*No. 13.
A. R.
Tamim, 1st
Defendant,
8th
January
1947,
continued.
Cross-
examina-
tion for
Plaintiff.*

In the
District
Magistrate's
Court,
Accra.

1st
Defendant's
Evidence.

No. 13.
A. R.
Tamim, 1st
Defendant,
8th
January
1947,
continued.

"J."

When staying with Captan I went before 14 days expired to police : one day before it expired.

I wrote to Dakar about 20 days after my arrival for money. I didn't start purchases before 24th October.

I asked for invoices when I had money to pay.

The goods were delivered two or three days before I left the Gold Coast.

The money arrived—Bank informed me 10 days before I left that money was on the way.

It arrived three or four days before I left.

10

I left the goods with Zacca to give to Sassine.

To be transported after he gets the proper export licence.

I knew I could apply from Dakar for permanent residence.

I left them for safe custody : if I could get import licence and Sassine an export licence I would ship them to Lome : if not I was going to apply for permanent residence.

I first wanted to establish business—my main object in getting money.

I deny I always wanted to take them to Dakar.

I deny that when I wrote for money I knew I couldn't stay because I proposed to go back and apply from French territory for permission for permanent residence.

After I left I decided not to apply because of the incident on the border.

In Gold Coast I approached no authority for permanent residence.

I couldn't have written to Dakar to ask for permission.

French law requires me to return to Dakar.

I made no enquiries to French Authorities.

I signed this letter (Marked "J").

I never said English authorities but the French authorities—also "import".

30

There are two mistakes.

I got French authorities to transport by getting my partner to take necessary steps.

It was to buy goods.

Not to export to Dakar.

I sent a proper invoice in name of Asafiri.

I informed Dakar of prices.

I sent a list of goods that I could obtain in Gold Coast and asked Dakar to send £40,000.

I remember I borrowed an invoice from Asafiri to write the list.

40

Stamp "*Customs Accra Export Licence approved*".

I borrowed a sheet and gave it to Sassine to have it typed : I don't know what he said in English.

I sent it without reading it when Sassine typed it : I folded it and put it in envelope.

Asafiri is one of the persons I bought goods from.

I didn't see any stamp.

I know they are very strict in Lome about export and imports.

I don't know about currency.

I have been trading in Dakar for six years.

50

My partner deals with currency.

I don't know how my partner dealt with the matter.

10431. French Import Licence on 12 October to import to Dakar—
 I don't know anything about it as I was here.
- I returned to Dakar on 20th December 1945. My partner said he asked Bank to transfer in sterling all the money we had in francs.
- I don't know what he had to do : I didn't ask.
- I bought the goods with money sent from Dakar by Bank : I don't know anything about French Government confirming it.
- I am a Lebanese trading in Dakar.
- I didn't ask French Government in Dakar to assist when the goods were seized.
- £16,000 is about the value of goods seized.
- I was never prosecuted in Dakar in respect of transfer without goods. No trouble of any kind.
- The two million francs were acquired out of money remaining.
- I wouldn't like to say where I got them.
- I think trouble would happen to me here.
- I obtained the francs on the border by arrangement.
- I had no licence to take them out.
- I had crossed over Gold Coast border.
- I thought I had better receive it in French territory : I obtained them from one Julian.
- I made arrangements here : I paid him in sterling here and was to receive the francs at border.
- I thought it safer to receive in French territory.
- I hid it under seat for safety.
- I left it under seat when I interviewed Customs.
- It was found by Acting Chief of Customs.
- I told them I was using it to pay for import duty and freight to Dakar.
- I didn't mention licences as it had nothing to do with police.
- I don't know if in Dakar Customs deal with licences.
- I didn't tell Acting Chief all about it as I am not a resident there.
- I asked High Commissioner in person orally for licence.
- Four or five days after I left Accra.
- I was arrested on 27th.
- I was in custody about 48 hours.
- I was arrested on Saturday night.
- The matter was finished on following Tuesday.
- I interviewed High Commissioner on third day after—Thursday.
- No one else was present : there were clerks outside.
- I went with George Williams who had asked for the interview.
- I didn't ask Bureau Economics as I was not a local merchant.
- My statement was taken down in writing : I applied for no copy.
- Ben Kwaku may be my driver.
- I was not present when he was examined.
- I don't know if he was examined.
- I had a lawyer there : he did nothing in connection with my interview with High Commissioner.
- Lawyer wouldn't help as I had no official papers from Gold Coast to prove I had goods here to be exported.
- Before I left I didn't ask my partner to get import licence into Dakar.
- I was going to Dakar to get permission of British to stay : with help of French Government.

*In the
District
Magistrate's
Court,
Accra.*

*1st
Defendant's
Evidence.*

No. 13.

A. R.
Tamim, 1st
Defendant,
8th
January
1947,
continued.

*In the
District
Magistrate's
Court,
Accra.*

*1st
Defendant's
Evidence.*

No. 13.
A. R.
Tamim, 1st
Defendant,
8th
January
1947,
continued.

If they couldn't get it I was going to try to get an import licence.
After this incident on border I changed my mind and told Zacca
to sell.

I was fed up with what happened.

I sent no copy of proceedings to anyone in Gold Coast.

I don't know how Zacca got it.

I deny I sent it to Zacca so he would know what I said.

I deny I came here to buy goods and smuggle them out.

Textiles are cheaper here.

20% 30%

They are more scarce than here.

I deny I went to Sassine to get them over the border knowing I had
no licence.

Even if they had got out they would have been seized by French.

They seized nothing I declared.

Only personal effects are allowed.

I deny I knew they were already covered by licence.

My telegram was not a "blind" not the letter.

On 1st November I didn't know police had done anything about goods.

I knew I could get no import licence.

Before I left I gave no instruction about shipping to Dakar.

10

20

Re-
examina-
tion.

Re-examined :

I asked no one in Dakar to get import licence.

No one told me that any licence existed.

I never saw the invoice after sending it to my brother.

I don't know if Sassine kept a copy.

He used a pencil draft.

I don't know what happened to it.

I don't remember if he kept the draft.

I posted it.

30

15.1.47.
(It'd.) L. G. L.

No. 14.
R.
Ballantyne,
1st Witness,
15th
January
1947.

No. 14.

R. Ballantyne, 1st Witness.

RICHARD BALLANTYNE, sworn :

Commissioner of Police. Between 21st August and 6th November
I was Commissioner : I didn't know Tamim. He never approached me
personally or through Sassine. I was informed of seizure of goods. I had
no interest in the goods. I gave instructions about them. I think on
29th October.

40

The police were investigating the matter : the movement of goods.
No records were kept. Records of complaints may or may not be made.
The Comptroller of Customs made no complaint to me before 29th October
nor before 6th November.

Cross-examined :

I received information that goods were on premises of Sassine. That they were to be smuggled.

I passed information to Comptroller; on his instructions I sent Mr. Chapman to Sassine's premises: to instruct Sassine not to remove the goods or allow anyone to remove.

I sent him myself and then communicated with Comptroller.

In the District Magistrate's Court, Accra.

1st Defendant's Evidence.

Re-examination :

I received no information that they were removed.

10 I have no information of an attempt to smuggle by A. R. Tamim after Mr. Chapman's instructions.

No. 14.

R. Ballantyne, 1st Witness, 15th January 1947.

continued. Cross-examination. Re-examination.

No. 15.

Frederick Plange, 2nd Witness.

FREDERICK PLANGE, sworn :

Counter Clerk B.B.W.A. I have met Tamim in the Bank. I have here 23rd October 1945 certified extract of statement of money transferred from Dakar. It was paid on 25th October 1945. (Put in and marked "K.")

No. 15. Frederick Plange, 2nd Witness, 15th January 1947.

Eve—Cross-examined :

20 Money was paid when we received confirmation from London office. Tamim and Zacca came to draw money on 23rd.

They were informed we were waiting for confirmation: that they should come back.

On 23rd we received notice from Dakar to pay amount.

We get no notification about exchange restrictions.

Cross-examination for 2nd Defendant

No. 16.

Loutfi Mouamar, 3rd Witness.

LOUTFI MOUAMAR, sworn :

30 I am from Palestine: an Arab. I know Tamim. He sent me a power of attorney about goods seized in this country. I got a message from S. E. Sassine saying he was ill and I should see him. I went with Nassib Hassar. We saw him in bed. We had a conversation. I asked why he sent for me. He said that he had heard I had received a power of attorney from Tamim. I said Yes.

Plange : Not relevant to pursue the collateral.

Dove : To show Sassine is not to be believed.

Court : I do not think that this evidence is relevant. I do not think I am concerned with Sassine's subsequent conduct.

Dove : In view of ruling shall not call Nassib.

No. 16. Loutfi Mouamar, 3rd Witness, 15th January 1947.

Interjection for Plaintiff.

In the District Magistrate's Court, Accra.

No. 17.

Q. O. Quansah, 4th Witness.

QUASHIE OPLIM QUANSAH, sworn :

1st Defendant's Evidence.

Registrar Divisional Court. I produce a certified copy of original writ (Marked "L"). Also order of Court joining (Marked "M") Comptroller of Customs. (Pleadings marked "N" and "O.") These are proceedings and judgment (Marked "P").

No. 17.

Q. O. Quansah, 4th Witness, 15th January 1947.

This is a certified copy of writ and statement of claim in a second case *Tamin v. Comptroller of Customs* (Marked "Q"). Also the defence (Marked "R") and reply ("S") and proceedings ("T") and rulings by Court ("T1," "T2," "T3"). I produce original letters put in evidence "T4," "T5," "T6."

"Q" "R," "S" "T1," "T2," "T3" "T4" "T5," "T6."

2nd DEFENDANT'S EVIDENCE.

No. 18.

P. Y. Zacca, 2nd Defendant.

2nd Defendant's Evidence.

No. 18. P. Y. Zacca, 2nd Defendant, 15th January 1947.

PHILIP YOUNIS ZACCA, sworn :

Examination-in-chief :
2nd Defendant :

I live in Accra. I am manager of Beyrout Trading Company Limited : a subsidiary branch of U.A.C. I first met Tamim at end of September 1945. He came to my store and introduced himself to me. I have cousins in Dakar. He brought greetings from my cousins. They had not written to me that they were coming. I introduced him to B.B.W.A. : to the Manager at his request. I have an account at both banks. He had informed me he was expected some money to be transferred from Dakar in his favour. He said it was being transferred in order to buy some goods. I went with him again : sometime in October when he expected the transfer to arrive. I was present when Bank said they had received notice but were waiting for authority of London Office. I advanced Tamim money between those days notification and confirmation. I gave him cash. He bought goods with it. He bought goods from P.Z. Chellarams : Bardawill Bros. : Asafiri and Co. : H. Matoub : Herani Bros. : Aouad and Hage. I advanced him £5,000 cash : I borrowed £3,000 from Asafiri by cheque. £3,000 was repaid on 25th October. This is my bank statement 9th December 1946 showing payment to me to Asafiri on 25th October 1945. It shows the receipt of same amount on 24th September—from Asafiri (Marked "Z1"). Tamim had received money on 25th October—I saw him draw it all out. He repaid me both amounts : and paid for goods £4,800—bought between 23rd and 25th October.

"Z1."

*In the
District
Magistrate's
Court,
Accra.*

*2nd
Defendant's
Evidence.*

No. 18.
P. Y.
Zacca,
2nd
Defendant,
15th
January
1947,
continued.

I was not present when he bought other goods. The goods I sold to him remained in my wholesale. He told other sellers to send goods to my wholesale. He had bought a lot from me and I have a wholesale store. It is customary for a seller with a wholesale to store goods sold for a few days until they could be dispatched: also for a buyer to collect all goods he is buying at the wholesale of a large seller: it is custom in Accra: he then goes to transport owner to bargain for price to take all the goods. He cannot keep them indefinitely. I allowed it for two days only. I was expecting goods from England for season: direct from
10 England through U.A.C.

The goods from other sellers arrived about 25 or 26 at my wholesale. Tamim was present when delivered. They remained over two days. Then Mr. Sassine came to my store and saw Mr. Tamim there. I took Mr. Sassine to my wholesale: I showed him all the goods Tamim had bought from me and other firms. He started bargaining with Tamim about cost of transport. I made it plain that the goods must go after one or two days. They were cleared on 27th October. Tamim was not present. He had gone the previous day. The last I saw of him was 25th October. He said goodbye to me at my bungalow.

20 Tamim said he was expecting the money in order that he might buy goods: he had two main thoughts: first—I shall endeavour to go to French side and get an import licence and get influence of French in order to get an export licence from here: if this is unsuccessful I propose to sell here and hope to make money as the season is coming on.

I never heard any irregularity in dealing with goods suggested: nor after the sale and before seizure. I gave Tamim no francs. I had nothing to do with goods after they had been purchased. I had no interest in them: in none of goods he purchased.

Dove—Cross-examined:

- 30 Sassine came at about 11 a.m.
I think this was the day that Tamim came to say goodbye.
As far as I know he left early the following morning.
I am not sure of exact dates.
I said nothing to him to suggest I was interested in the goods.
Sassine said the police want you to clear out immediately.
Tamim said he would go.
The goods were in my wholesale.
Tamim asked me to deliver the goods to Sassine and get a receipt from him.
- 40 Sassine came for the goods after Tamim had left.
I delivered the goods to Sassine and got a receipt: as a business man and on instructions of Tamim.
It was in Arabic: written and signed by him.
Two or three days later Sassine came and reported seizure of his car: he said he would see Tamim and would take him the receipt and deliver it personally.
I gave it to Sassine.
I trusted him.
His evidence is untrue.
- 50 Tamim paid him £900 for a Buick in £1 notes in my store—red notes.

Cross-
examina-
tion for 1st
Defendant.

In the
District
Magistrate's
Court,
Accra.

2nd
Defendant's
Evidence.

No. 18.

P. Y.

Zacca,
2nd
Defendant,
15th
January
1947,
continued.
Cross-
examina-
tion for
Plaintiff.

I received a telegram about 1st November. I went to Sassine.

He said he had heard from Tamim.

I asked him to hand over goods to me according to Tamim's instructions.

He said he wanted £5,000 before he would hand over.

He said it was "damages" that he had suffered.

He said nothing about police.

I didn't pay £5,000 : so I didn't get goods.

An action was fought against him.

Cross-examination by Plange :

10

I gave evidence in case against Sassine and Comptroller for Tamim.
" Tamim said Lome goods were cheaper and more plentiful than in Dakar."

" And he discussed with me about getting money from Dakar to Bank here to buy goods."

" I understood that the purpose of his visit was to buy goods."

" I have been manager of Beyrout Co. for 14 years."

I have experience of business world.

I took a receipt.

The object was not to protect myself.

If I had not been instructed I should have taken receipt.

It is only custom : for no other purpose.

I kept it for Tamim as procedure in business.

It was not a precaution as a business man.

I understood Mr. Dove's question.

I gave it back to Sassine to give to Tamim.

I say there was a receipt.

" Z2."

These papers were found in my store and house (" Z2 ").

I met Tamim towards end of September.

I can't say how long after I met Tamim that I went to Bank.

A few weeks after.

I went when he was withdrawing the money.

He drew £22,700 odd.

All in West African notes.

He was staying at Avenida Hotel.

I have three safes : I kept the money in a safe for him.

He drew from me when he made various purchases.

I left £5,000 : £5,000 cash.

I don't pay in every day.

Asafiri had met Tamim.

Tamim was starting to buy.

Loan was between notification and confirmation.

Asafiri's store is opposite ; they had been together ; for some time before 23rd.

About same time I met him.

I know Asafiri.

Asafiri did not come to give credit so I had to borrow £3,000 ; I didn't tell Asafiri that money was not paid at Bank.

Tamim used to draw amounts ; £2,000 or £3,000 at a time.

I don't remember any cheque in payment of these goods.

50

- When Sassine came it was first time I knew he had to leave country.
The day before he left.
Before I knew he had an exit permit to go but Sassine was helping
10 him with police to stay here.
I got no receipt for £5,000 I lent Tamim.
It was only for one day.
I didn't think it necessary for a receipt.
It was a matter of hours; another cable from London.
The pressing hurry was not that he might have to leave: he had his
10 permit.
I didn't know if Sassine could get another extension.
I lent £5,000 without a receipt.
I took it for granted Sassine would succeed.
There was no pressing hurry.
It is not a fixed custom to make such loans by cheque. But it is done.
I don't know it is the practice.
I got money on 24th or 25th.
Before Tamim was told he must go.
He couldn't open an account so he had to draw all the money.
20 Because he wasn't stationed here.
I didn't ask if he could open account.
I didn't go round getting invoices after police started making enquiries.
I gave invoices to police: they were already issued to Tamim at
time of purchase.
After 23rd he made first purchases.
He said I want to bring some money to buy goods.
I don't know how Sassine came there.
They agreed between £300 and £350 for transport.
I didn't intercede as a mutual friend. I showed him the bales.
30 There was little bargaining Tamim agreed at once when Sassine
named amount.
I am not far from Sassine—two minutes walk.
£900 was paid from Bank to Sassine.
Sassine said he would move the goods and give a receipt. I have
been here during war period.
I hope I am a respectable member of community.
I know of the restrictions.
I know of smuggling cases of prosecution into French Territory.
I have heard of members of my community being prosecuted.
40 Textiles are controlled by quota.
To preserve supply in Colony.
I made no applications to Customs or Supply.
I didn't ask if he got import licence at Dakar.
I wasn't surprised when he said he was going to get import licence
at Lome.
I didn't advise him to get export licence first.
I don't know signature.
On 25th October there may be communication with Director of
Supply—I didn't know.
50 The list of goods sent to Customs and Supply are the same.
The heading is "Goods to be purchased and transferred to Dakar
by A. R. Tamim."

*In the
District
Magistrate's
Court,
Accra.*

*2nd
Defendant's
Evidence.*

No. 18.
P. Y.
Zacca,
2nd
Defendant,
15th
January
1947,
continued.

I had no interest in the francs seized by French.

I didn't know he had taken a large sum of francs.

I didn't know he had acquired them.

This is a copy of examination of Tamim by French.

I didn't get it to know what he had said.

I couldn't store goods longer.

I was expecting goods and made it clear to Tamim.

There was no arrangement between us whatsoever before he left.

I got telegram asking me to get goods back.

I was not surprised as he explained in telegram.

"And settle affair with Sassine."

That only refers to transport costs.

I tried to get them from Sassine—two or three times.

I could hire another wholesale for him easily.

Sassine is not a merchant.

"I have never known of this type of prints being re-exported."

"They are ordered for people coming from French territory."

"I didn't sell Tamim any grey baft."

"The goods I sold him came out of month's quota."

Quota for sale here not export.

I sold with knowledge he was taking to Dakar.

I didn't ask for his export licence.

I didn't ask authorities if I should sell to him for re-export.

Sassine asked for receipt.

I didn't say so on a previous occasion.

I never discussed possibility of re-export.

I wasn't helping him.

Transport was not ordered by both of us.

They were not taken for purpose of being taken to Lome. I never
know of any illegal purpose.

It was not reason for £350 being charged.

I didn't give him 2 million francs.

He never telephoned me when arrested.

Sassine told me first.

After I got a telephone communication about three days later.

This copy came after French witness gave evidence in this case.

I sent for it.

I didn't take it to my lawyer.

Ex., see
"Z2."

Re-exam-
ation.

Re-examination :

The loan from Asafiri was made to me.

The £5,000 was my own money.

Any matter for receipt was personal.

I never introduced Sassine to Tamim.

These papers were left by Tamim.

As far as I remember all were left by Tamim.

By Court : I got this receipt from police at seizure.

"Irani invoice" shows same goods as letter to Director of Supply.

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COURT NOTES.

(a) Address by Mr. Dove for 1st Defendant.

*In the
District
Magistrate's
Court,
Accra.*

Hearing resumed.

Dove : Refers Court to page 265 Gazette 27th April 1946.*Plange* : Does Court require translation of French documents.*Court* : No.*Eve* : How did this document come in possession of the Plaintiff.*Plange* : A document put to Witness in cross-examination.10 *Court* : Cannot exclude document now.*Dove* : Material times not limited to 29th October 1945. On 1st November Defendant ordered goods to be sold.

Goods were in store of 2nd Defendant : evidence that Sassine was to hold until got notification that permits obtained.

Entrusted to him for safe keeping : he had a wholesale.

Meeting on 26th October.

Goods moved on 27th October.

On 27th 1st Defendant arrested on border.

Comptroller empowered to act on suspicion : seized goods.

20 1st Defendant realised impossible to get permits so gave instructions for return of goods and sale. 1st November.

Clear that Sassine should have handed over goods on 1st November.

If seized goods between 24-27 might have a case when seized were no longer with Sassine for purpose of transport but were being held in breach of undertaking.

Not a bona fide claim by Comptroller : previous proceedings.

Letter on 7th November (" T3 ").

" T4 " is the reply that ground—prohibited goods.

Action :

30 Defence that no application within one (145) month.

After determination of case notice in Gazette.

Letter asking proceedings might be taken.

Reply by letter.

Application for mandamus.

Defence para. 18.

2nd November final ruling.

Meeting on 26th October of great importance : defects in view of Sassine's evidence.

His version—to keep goods until he got further instructions.

40 Defendants say—that 1st Defendant was to get French and British authorities and then instruct Sassine to transport.

Nothing to suggest any intention to export without licence.

Not for " export without licence."

Goods should have been seized at once : took no steps until 9th November.

Must assume that Comptroller knew nothing of information in hands of police : who had no authority to tell Sassine to keep goods.

No. 19.
Court
Notes,
18th
January
1947.

(a) Address
by
Mr. Dove
for 1st
Defendant.

In the
District
Magistrate's
Court,
Accra.

No. 19.
Court
Notes,
18th
January
1947,
continued.

Seizure was wrongful : Sassine was trustee for Defendants. If had been handed to 2nd Defendant then Comptroller could not have seized them : fact in Sassine's custody can make no difference in law.

No reason why 1st Defendant shouldn't buy any amount of goods : a margin to purchase francs : no evidence that they belonged to 2nd Defendant.

No evidence of any false permits being sent to Dakar to obtain licence at Dakar.

Documents found with 2nd Defendant not material.

(b) Address
by
Mr. Eve
for 2nd
Defendant.

(b) Address by Mr. Eve for 2nd Defendant.

10

Eve : 157 (2). Onus on Defendant.

No evidence that Zacca assisting export without licence.

Zacca made no advance before notification that money on its way : no question of receipt being necessary.

Trading customs of Syrians.

Zacca not present when goods arrived at his warehouse. Tamim telephoned Sassine to discuss transport.

Zacca had nothing to do with it.

Sassine admitted he was holding until he heard from Tamim.

Only other evidence is the statement of Tamim that money belonged 20 to Zacca.

Documents found two months after issue of writ.

Nothing to connect Zacca disclosed by his cross-examination.

Has discharged onus placed on him.

If Court decides 2nd had an interest in goods still no evidence that goods would have been exported without a licence. Still of great value here during "cocoa season." 1st Defendant went knowing that English licence the more difficult to obtain : prior obtaining of French licence would support application

These goods needed several lorries.

30

(c) Reply
by
Mr. Manyo-
Plange
for
Plaintiff.

(c) Reply by Mr. Manyo-Plange for Plaintiff.

Plange : Claim in terms of Ordinance. Goods taken to premises for purposes of exportation without licence. Comptroller has to show :—

- (1) Goods taken to Sassine.
- (2) Purpose was exportation.
- (3) Without a licence.

These points have been established. Defendants were caught and now say we were going to get a licence first. Would apply to seizure short of frontier town.

The two defences are inconsistent : Zacca's defence supports Comp- 40
troller. Tamim says he bought goods to sell here and then if not allowed to stay he would buy to get export licence. Zacca says Tamim was to buy goods to take to Dakar and if not successful he would sell here.

No attempt to get assistance of French Authorities.

Case established by Sassine merely tried to transport goods to Lome : would have set out with goods if not heard what had happened at frontier. Cross-examination can only establish Sassine knew of intention to smuggle.

Confused by Zacca's account that only discussed transport—price of £350.

There was no export licence.

Intention to get licence negatived :

10 (1) Enquiries to British Consul at Dakar would be needed. Tamim avoids this by saying export was an afterthought.

(2) An application to French Authorities.

(3) Tamim admits sent a list of goods obtainable to Dakar.

(4) No enquiries to Authorities in this country.

20 French Customs Officer said brought franc to pay import duties : at once asked if he had licence to export goods. Having made this statement that he had no licence : had to telegraph Sassine at once. Only stopped by action of police on 29th October. No goods were purchased until 24th October : two days before leaving : after visit to bank. £22,000 worth of goods purchased just before leaving country and giving them to transport owner. He was committing a breach of Customs laws smuggling out francs : says received them on frontier.

Had made statement to French that exporting without licence : then sends telegram. Tamim explains this by saying he interviewed Governor : but forgot the letter which followed dated same day : "to be shipped." Letter is a blind.

Whole of £22,000 drawn in one day : paid cost [*sic.* cash] for goods. If goods got out no trace of his dealings left behind.

Zacca lends £8,000 cash to Tamim a stranger—again no record.

30 Tamim suggested complete ignorance of Customs Restrictions. Would French allow export of sterling without assurance that goods being brought in exchange.

Tamim admits sending goods but did not notice the stamp on it.

Told on 9th October would be prosecuted if stayed in country.

Applied for money after this.

Captan made it possible to get visa and got extension : one of big merchants.

A relation of Tamim:

He is never approached in connection with this matter.

After 9th Captan no longer sponsored Tamim.

40 Then complete stranger sponsors him.

Case against Zacca :

Acting jointly with Tamim. Assists with £8,000. Defence that an ordinary trader assisting another—Sassine says both were transporting goods. In fact Zacca gave material assistance in abetting the contravention. A business man of standing : sell £5,800 goods and advances £8,000 to assist other purchases : out of monthly quota. Can he have thought there was any possibility of getting goods out of country? Admitted knew of no such case.

Present when transport arranged—without any protest.

*In the
District
Magistrate's
Court,
Accra.*

No. 19.
Court
Notes,
18th
January
1947,
continued.

*In the
District
Magistrate's
Court,
Accra.*

No. 19.
Court
Notes,
18th
January
1947,
continued.

Goods kept in his warehouse. Told Tamim couldn't keep for more than a day or two. Within three days he is wanting to take them back. Telegram must show Zacca knew details of "affair": already a contract to transport. £350 to be paid anyway: not consistent with agreement to hold until Sassine was given authority to move goods.

"Z.2" found with Zacca. "Goods to be transported to Dakar." £37,000 worth of goods. On 24th October there is an enquiry to Director of Supplies: on Irani paper but same list as "Z.2." No mention of possibility of export—Tamim still in the country.

The questionnaire is clearly an old document. If Zacca innocent in 10
affair would have no interest to the statement of Tamim. Shows Zacca has interest in the matter.

Previous proceedings :

Goods seized on 6th November and on 7th gets letter from Sassine: not a claim by Sassine as Heward Mills attorney of Tamim had been present at seizure. Why was action only against Sassine? Comptroller not a legal authority so there was a non-suit. Mandamus not by prerogative writ but common law action: no question of lack of bona fides.

Suggestion that francs bought with balance of purchase money £2,300. At 200 to £1 2 million is over £20,000. At least £16,000 used. 20

"Material dates" suggested might be a case if seized between these dates but not a case when instructions rescinded. Purpose to export was there: real seizure is on 9th October when Mr. Chapman went to stop Sassine moving the goods: goods under control of authorities: police and customs.

Parties to be informed of date of judgment.

L. G. L.

No. 20.
Judgment,
8th March
1947.

No. 20.
JUDGMENT.

CORAM L. G. LINGLEY, Esquire, District Magistrate on Saturday the 30
8th day of March, 1947, at Accra.

1608/46

COMPTROLLER OF CUSTOMS

V.

1. A. R. TAMIM
2. P. ZACCA.

JUDGMENT.

Claims under the Customs Ordinance are heard by a District Magistrate exercising civil jurisdiction. In this case the Comptroller of Customs' claims is set out in the Writ of Summons—

"Between the 24th day of October, 1945, and the 29th day 40
"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 (and by reason
 “ of the premises, the said goods were at all material times pro-
 “ hibited goods within the meaning of section 5 (1) of the Ordinance).

*In the
 District
 Magistrate's
 Court,
 Accra.*

—
 No. 20.
 Judgment,
 8th March
 1947,
continued.

“ And the Plaintiff claims—

10

“ (1) from the first defendant the forfeiture of the said goods
 “ and a penalty of £500 by virtue section 5 (1) of the Import,
 “ Export and Customs Powers (Defence) Ordinance, 1939 ;

“ (2) from the second defendant a penalty of £500 by virtue
 “ of the section 5 (1) of the Import, Export and Customs Powers
 “ (Defence) Ordinance, 1939.”

The Export (Restriction) Order (No. 35), 1940, reads as follows :—

20

“ (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 order was made pursuant to provisions of Section 3 (1) of Import,
 Export and Customs Powers (Defence) Ordinance, 1939, which reads :—

30

“ 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) reads as follows :—

“ 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

40

“ (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.”

There were no written pleadings. If ordered they might have saved
 some of the formal evidence given but the proceedings being of a penal
 nature it is perhaps natural that there were no admissions by the
 Defendants.

*In the
District
Magistrate's
Court,
Accra.*

No. 20.
Judgment,
8th March
1947,
continued.

Shortly the case for the Comptroller was that Tamim came to the Gold Coast and purchased goods with the intention of exporting them without licence to French Territory : that he did this with the assistance of Zacca ; both knowing that there was no possibility of their being granted a licence to export such goods : that they then handed over the goods to Sassine to transport to French Territory. They were seized in Accra before Sassine sent them off.

The Defendants denied liability. They were separately represented. The first Defendant Tamim denied any intention to export without licence. He says he saw trade conditions were favourable in the Gold Coast so he decided to set up business here and purchased goods hoping he would be allowed to stay. When he realised he would not be allowed to stay in the Gold Coast he decided to try and get the necessary licences to take goods to Dakar : then, after being arrested on frontier, he decided after all to sell off the goods in the Gold Coast. 10

The second Defendant said that he had no interest in the goods and no part in any attempt to export them without licence : that Tamim was a friend of his cousins and he merely gave him such assistance as one merchant might give another.

Evidence was given that there was no application for a licence to export these goods : that no export licence was granted. It was not disputed. There was evidence, that the grant of a licence to export such a large quantity of cotton and silk piece goods would be quite unique. 20

The circumstances which led up to the seizure have to be considered.

An application for a visa for Tamim to visit Gold Coast was forwarded by the British Consul General at Dakar. This was granted on a guarantee of Tamim by Captan a merchant in Accra and a relative of Tamim.

On 21st August 1945 Tamim arrived and was given a pass to stay for two weeks. He met Mouamar at the Airport who took him to Captan. He stayed with Captan. He says that after he had been in Accra for a week he decided to establish a business in the Gold Coast as he considered trade was less restricted than in French territory. He did not discuss this idea with Captan and never informed the police that he wished to stay here permanently. Still guaranteed by Captan he got an extension of time to 9th September 1945. He got to know Sassine and met Zacca the 2nd Defendant. He left Captan and stayed at the Avenida Hotel, Accra. When he applied for an extension again Captan did not guarantee him. Sassine therefore guaranteed him and there was an extension to 22nd September : he was warned that action would be taken against him if he did not leave by that date. Tamim says that about three weeks after his arrival he wrote to his partner at Dakar for money to be transferred to him. He says this was to enable him to buy goods to start a business in the Gold Coast : it must have been clear to him that he could not stay in the Colony ; he says he intended to return to French territory and wait there for permission to reside permanently in the Colony. Some £22,000 were transferred from Dakar through London to the Accra branch of the Bank of British West Africa : the Bank was notified on 23rd October 1945 of the transfer. Zacca introduced Tamim to the Bank. Tamim was informed the money was on the way. They came to draw the money on 23rd October. They were informed that the Bank had to wait for 50

- confirmation from London. Tamim was cross-examined about this transfer. He said he knew nothing about currency control as his partner dealt with that side of the business and that he still does not know how his partner obtained authority to transfer the money. He admitted preparing a list of goods on an invoice borrowed from Asafiri. It was stamped "Customs Accra: export licence approved." He says he gave it to Sassine to have typed and the typed copy was forwarded to Dakar without his reading it. He said he had no knowledge of any import licence issued at Dakar. Before the money arrived he started purchasing goods on credit. Sassine
- 10 knew he was buying goods and bought some silks for him. After hearing of the notification at the Bank on 23rd October Zacca lent Tamim £5,000 in cash and enabled him to get goods from Asafiri who would not give credit but was willing to loan £3,000 to Zacca to enable Tamim to buy his goods. When his money arrived Zacca paid £13,000 cash into his own account. This amount would cover the loans and pay for £4,800 worth of goods bought from Zacca between 23rd October and 25th October. The balance of the money drawn by Tamim was kept in Zacca's safe and used to pay for the goods he had purchased. All payments for goods were in cash: when the payments were made Tamim says he asked for invoices.
- 20 All the goods were sent to Zacca's wholesale about the 24th October 1945. Tamim should have left the country on 22nd September but the police, in consequence of information they had received, granted him an extension to 10th October 1945: on that date he was given an exit permit for which he had made an application. He in fact left on 27th October 1945.

Tamim himself did not see the police but was assisted by Sassine, who interviewed the police and obtained the extension for him. Sassine is transport owner running a service from Accra to Nigeria through Lome in French Togoland. Sassine was called as a witness by the Plaintiff. Tamim was not in the Colony at that time. When he arrived Sassine

30 recalled for further cross-examination. He described two interviews. First on about 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

40 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.

Sassine then moved the goods to his warehouse. He said this was on

50 instructions of both Defendants. He then described how Tamim came to him the next day and hired a car. Tamim said he would come back to

*In the
District
Magistrate's
Court,
Accra.*

*No. 20.
Judgment,
8th March
1947,
continued.*

tell Sassine the time he was to send the goods. He did not come; and Sassine did not see him again.

Tamim left the Gold Coast on 27th October 1945 and was stopped at the French frontier. His car was searched and some 2½ million francs were found in his car. As these had not been declared they were seized; and both francs and car confiscated. He had no permission to take francs out of the Gold Coast from the officer dealing with Currency Control. French Police and Customs Officials gave evidence that Tamim made a statement to the French Police that the money was given to him by Zacca to pay for goods which he wanted to send to Dakar: that he was to pay customs duty and freight to Dakar, and pay balance into Zacca's account at Lome. 10

He then sent telegrams to Sassine and Zacca, followed by a letter that Sassine should hand over the goods to Zacca.

Tamim described an interview with the High Commissioner in Lome. He says that the High Commissioner refused to assist him to get an import licence for the goods because of the frontier incident.

On the 29th October Chapman (the first witness) of the Gold Coast Police went to see Sassine, and told him not to move the goods without instructions from the police. When Zacca asked for the return of the goods, Sassine refused. On 2nd November 1945 Chapman went to see Zacca who told him the names of the people from whom Tamim purchased the goods, and the rough amount that Tamim spent at each store. 20

On 6th November Customs Officers removed the goods from Sassine's warehouse.

Later Zacca's premises were searched. A copy of Tamim's statement at Lome and various lists of goods were found. Zacca says these were left behind by Tamim.

I think the irresistible conclusion to be drawn from the facts is that both Tamim and Zacca intended to export these goods without licence, and that they purchased them with that end in view. Much of the history of the case is taken from the evidence of the Defendants, and this was not contradicted by oral evidence, but its truth has to be assessed after consideration of all the surrounding circumstances. There are many small details that standing alone are not important, but when they are all taken together do support the contention of the Plaintiff. For example, I cannot understand why Tamim leaves Captan after meeting Sassine and Zacca: Captan no longer guarantees him: he never tells Captan of any intention of establishing a permanent business here. The times are so remarkable. Tamim sends for money after he has been warned that action will be taken against him if he does not leave. The goods are purchased within three days of leaving the country: I cannot believe that the goods were purchased to start a business: it is difficult to believe that anyone is going to spend such a sum on goods when he is leaving the country. Certainly they were of value during the coming "season," but it seems to be an unusual form of investment by a man who has taken no steps to get permission to stay here permanently. I find the cash dealings between Zacca and Tamim suspicious: it is certainly a fair comment that there would have been no record of Tamim's activities in the country if he had not been stopped at frontier. I do not see why Tamim should not have 40 50

opened a banking account. I consider that Zacca's assistance goes far beyond the assistance one might expect one merchant to give another. I am prepared to believe that large sums of money might change hands for a short time but Zacca assists Tamim at the Bank : he introduces him to other merchants to assist him to get goods ; and sells him goods worth £4,800. We were not told what Zacca's monthly quota of goods was, but £4,800 worth of goods sold to a new arrival in the country sounds unusual. I am satisfied this assistance was given in consideration of the profits that would result if these goods could have been got into French territory.

*In the
District
Magistrate's
Court,
Accra.*

—
No. 20.
Judgment,
8th March
1947,
continued.

- 10 The estimate of the goods at £16,000 is based on Tamim's evidence. They were too bulky to bring to the Court, and I assume they have not been opened by the Plaintiff, so he gave no evidence as to their value. On the documents found with Zacca we find values up to £37,000. Even taking the value given by Tamim, one cannot accept his evidence that the francs confiscated were bought with the rest of the £22,000. It is clear he had other financial assistance that he did not disclose : all the circumstances point to the conclusion that this assistance came from Zacca.

- 20 It is impossible to believe Tamim was not fully aware of currency controls, and he must have known, and know now, the steps his partner took to get authority to transfer money from Dakar. The application for this transfer must have been based on the possibility of getting goods for import : it seems reasonable to infer that it would have had some documentary support. Tamim admits that a list of goods was sent by him. It must have purported to have some official approval. I cannot believe Tamim's ignorance of the stamped endorsement on the list. A similar list had been sent to Director of Supply, to ascertain if the prices charged were reasonable. That was the only purpose, and it was the only communication addressed by Tamim to the authorities. There was never any approach to any authority here for permission to reside permanently ;
- 30 nor for permission to export the goods. I am satisfied the Defendants never believed that there was the slightest chance that an export licence for this class of goods could be obtained. Releases of these goods are strictly controlled by monthly quota even within the Colony. Collecting the goods at Zacca's warehouse is explained by reference to a custom of traders. There may be such a custom, but it seems clear that here again Zacca was assisting Tamim.

- The intention of Defendants to export is shown by their dealings with Sassine : in the interview with Sassine we got the important conflict of direct evidence. But to decide what happened at the interview at
- 40 Zacca's office it is still necessary to rely on inference from the surrounding circumstances. I do not accept the evidence of the Defendants as to what was said. Nor is Sassine a reliable witness. He was cross-examined at length. It showed that he had more dealing with the Defendants than he suggested in examination in chief. I cannot feel that establishing this really assisted the Defendants : it was bad enough that they had dealing with him at all. I refused to allow evidence to be called to rebut Sassine's version of interviews with other people. It would have added nothing to one's appreciation of the patent defects in Sassine's character. I am satisfied that Sassine agreed to transport the goods to Lome for £360 ;
- 50 and that the goods were moved to Sassine's warehouse so that they could be sent to Lome. I do not believe the version of the Defendants, that the

In the
District
Magistrate's
Court,
Accra.

No. 20.
Judgment,
8th March
1947,
continued.

goods were to remain at Sassine's warehouse until an export licence was obtained. I think that everything was arranged for the goods to go to Lome; everything except the exact moment of dispatch which depended on the day that Tamim himself left. Sassine says that Zacca took part in the bargaining and made it clear that both he and Tamim were sending the goods to Lome. I think Zacca did join Tamim in the arrangement with Sassine. I am only prepared to accept Sassine's evidence on the point because the other circumstances of the case lead me to the conclusion that it must be true. Both the previous dealings of the Defendants and subsequent events leave no room for doubt that Sassine's account of this important interview is the correct one. The arrangement was only for transport, there was no suggestion of a charge for keeping the goods in Sassine's warehouse. Clearly Sassine was to send them off at once: waiting for an export licence might have meant a delay of months. This view is confirmed by what I call the second interview: when Tamim saw Sassine alone and hired a car. Sassine was to follow when he was told Tamim was going. The goods were moved: again there is a curious point: Whether a receipt was given by Sassine and what happened to it. 10

After arrest Tamim made the statement to the French Police. It is not evidence against Zacca. It must be considered as affecting Tamim alone. He said he got the francs from Zacca. He now says that this explanation was made up to avoid confiscation. When asked in this Court how they were purchased, Tamim first said he did not wish to answer; he then said they were purchased at the frontier with the balance of the money from Dakar. All this did nothing to establish his credibility as a witness. He admitted at Lome that he had no licence to export. Then came the telegrams and the letter that Sassine was to hand the goods over to Zacca. Yet Sassine is supposed to be holding them until a licence is obtained, and Zacca is anxious to have an empty warehouse for his new consignment of goods. To me the only explanation is that the goods were in fact in possession of Sassine, the transport owner, for dispatch to Lome, and Tamim's statement that there was [*sic.*] export licence made it imperative to get them back at once from Sassine so that Zacca could look after them. Again Zacca assists by asking Sassine for goods after he had received a telegram with the wording "Affair." The goods could have remained with Sassine if they were really to stay in his warehouse until Tamim got an export licence. Later a copy of the statement was found with Zacca. It is again a small point. I do not attach great weight to it, but the copy is a well worn document, certainly not new, and was not shown to Zacca's lawyer. It is one of the things that shows Zacca's interest in the matter. I do not think that it is necessary to decide if Zacca had an actual share in the ownership of the goods. He is liable under Section 166 (1) of the Ordinance as an abettor. I am satisfied he gave such assistance that makes it proper to find that he was an abettor. I have found that there was an intention to export the goods: I think both Defendants had that intention. It remains to consider if the removal to Sassine's warehouse amounted to exporting the goods. 40

At first sight it would not appear to be so. Ordinarily goods are found near a frontier or near a coast line, and here they are seized many miles from the frontier to which they were being dispatched. The further any seizure is from the frontier the more difficult it is to regard goods as being 50

exported. This is certainly the extreme case, but I think that the goods started on their journey across the frontier when they were moved from Zacca's warehouse. I say it was extreme because they were moved to Sassine's warehouse; not even to his lorry station. There is nothing in the nature of a point of departure about a warehouse. I use lorry station to mean the starting place for a regular service of lorries. The only parallel I can think of is the posting of a package of some prohibited goods at a Post Office in an inland town. I do not think the sender could say that such a package was not being exported.

*In the
District
Magistrate's
Court,
Accra.*

No. 20.
Judgment,
8th March
1947,
continued.

10 I accept the contention of the Plaintiff that the direction of Chapman to Sassine not to allow the goods to be moved from his warehouse must be regarded as a seizure of the goods by the Comptroller, although they were not removed until later by Customs Officials. I do not consider that any new instructions to Sassine by Defendants can absolve them from any liability once they had given instructions to transport the goods.

20 There is provision in the Ordinance that the onus of disproving guilty knowledge is on a defendant. In this case I do not feel it has any application. I have recognized the penal nature of the proceedings, and in arriving at findings of fact I have required such proof as would satisfy a Criminal Court. I have at no time regarded any onus of proof as resting on the Defendants and have looked for affirmative proof of the allegations of the Plaintiff.

30 It becomes necessary to consider the law relied on by the Plaintiff. If the Plaintiff is to succeed it is necessary to interpret "any quay or other place" in s. 5 (1) of Import, Export and Customs Powers (Defence) Ordinance 1939. "Or other place" has to include Sassine's warehouse. I do not see how it can. In general I do not see how the section can apply to any method of land transport; nor can I see that it applies to transport over a land frontier. Section 5 (1) reads: "(If any goods) (a) are imported, exported carried coastwise or shipped as ships' stores . . . or (b) are brought to any quay or other place, or waterborne for the purpose of being exported or of being so carried or shipped . . . those goods shall be deemed to be prohibited goods." On the face of it goods can be brought to a quay or other place without liability unless for the purpose of being exported, carried coastwise or shipped as ships' stores. There is nothing to show a land frontier was contemplated. One refers to Maxwell on the Interpretation of Statutes for assistance.

40 The first rule is that general words are to receive their full and natural meaning. This rule is reflected in the Interpretation Ordinance Cap. 1 of this Colony. Section 34 provides that "Or" shall, unless a contrary intention appears, be construed disjunctively and not as implying similarity, unless the word "similar" or some other word of like meaning is added. The next rule is that the general words which follows particular words of the same nature as itself takes its meaning from them and is presumed to be restricted to the same genus as those words. I find some difficulty in applying this to "quay or other place." "Or other place" are in no sense words of the same nature as "quay" but on the other hand there is nothing to suggest that a wider meaning is intended. Another difficulty is that there is only the word "quay" and not several words of the same nature before the general words. But quay by no means exhausts that genus. There are many synonyms for the word.

*In the
District
Magistrate's
Court,
Accra.*

—
No. 20.
Judgment,
8th March
1947,
continued.

After consideration of these rules one finds that this section is further complicated by a specific word "waterborne" being added after the general words. This is one reason why I feel I cannot give a general meaning to the phrase. One can think of so many cognate expressions that the draughtsman saved by using the phrase that I feel reluctant to construe "or other place" as being any more than a convenient summary of the many synonyms for "quay."

One must give general words a wide meaning if consideration of the Ordinance as a whole shows that such a construction was intended. The objects of an Ordinance may require the widest construction to be given 10 to general words.

One is really being asked to interpret "or other place" to extend the operation of the Ordinance to land frontiers and to include a land equivalent to quay: the point of departure by sea. I have examined the 1939 Ordinance to see if there is anything to suggest this.

The preamble is as follows:—

"An Ordinance to provide for controlling the importation, exportation and carriage coastwise of goods and the shipments of goods as ships' stores; to provide for facilitating the enforcement of the law relating to the matters aforesaid and the law 20 relating to trading with the enemy; and to provide for purposes connected with the matters aforesaid."

I feel that "and carriage coastwise of goods and the shipments of goods as ships' stores" shows that the "importation" or "exportation" did not include anything except transit by sea. Section 5 (2) only considers ship. With the exception of one reference to aircraft there is nothing in the Ordinance to suggest that land frontiers were even considered: the whole Ordinance clearly envisages sea transport. The 1939 Ordinance is war time legislation. It is just worth noticing that at the time the Gold Coast was surrounded by Allied territory; trading with the enemy would 30 usually be by sea.

Referring to Cap. 132 the main Customs Ordinance I again find no reference to land frontiers in the preamble or main section. There is a general section giving power to make regulations governing the land frontiers, but none of the operative sections deals with, or even seems to consider the land frontier. It is similar to, and presumably, based on an Act of Parliament; even the numbering of some of the sections is the same. The Act never had to consider land frontiers. I feel that had the Ordinances in fact been drafted with the land frontiers in mind there would have been sections that stated this clearly. I am not going to say 40 the main Ordinance does not apply to land frontiers but I do say that I can find nothing in either Ordinance to show any intention that "or other place" must be given a wide construction.

My view that the Ordinance of 1939 does not contemplate a land frontier at all may be wrong. If so I think it is still necessary to consider if "or other place" can include a warehouse and does not mean some point of departure.

I have used a lorry station as an example: the closer parallel to quay is a frontier post established on the frontier. I fell [*sic.*] "other place" must be limited in some way. It cannot mean any place or anywhere. In 50

my opinion there is no construction that is not unreasonably wide that can apply to the warehouse in which these goods were seized.

For these reasons there must be judgment for the Defendants.

Irwin : The findings of fact indicate view of the Court that Defendants had no merits so there should be no order as to costs.

Court : The Defendants are entitled to costs. I assess the brief fee at 100 guineas for each Defendant : remaining costs to be taxed.

I make no order as to the goods : application must be made to His Excellency the Governor.

*In the
District
Magistrate's
Court,
Accra.*

No. 20.
Judgment,
8th March
1947,
continued.

10

(Sgd.) L. G. LINGLEY.

8.3.47

No. 21.

PLAINTIFF'S GROUNDS OF APPEAL.

(Title.)

The Appellant, being dissatisfied with the judgment of His Worship L. G. Lingley, District Magistrate, delivered on the 8th day of March 1947, and having obtained final leave to appeal therefrom dated the 30th day of April 1947, hereby appeals to the Divisional Court, Accra, upon the grounds hereinafter set forth :

No. 21.
Plaintiff's
Grounds
of Appeal,
6th May
1947.

20

GROUNDS OF APPEAL.

1. That the learned District Magistrate erred in law in holding that the Import, Export and Customs Powers (Defence) Ordinance, 1939 (No. 9 of 1939), did not contemplate land frontiers by reason of there being no mention of land frontiers in the Ordinance.

2. That the learned District Magistrate erred in law in holding that Sassine's warehouse to which the goods were brought for the purpose of exportation was not covered by the phrase "or other place" in section 5 (1) (b) of the Ordinance.

3. That the learned District Magistrate misdirected himself—

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(A) in directing himself that the construction of the phrase "or other place" in section 5 (1) (b) of the Ordinance must be limited and that the phrase cannot mean any place or anywhere ;

(B) in directing himself that the phrase "or other place" in section 5 (1) (b) of the Ordinance must be construed as a convenient summary of the many synonyms for the word "quay" by reason of the word "waterborne" in the section ;

(C) in directing himself that the word "importation" or "exportation" in section 5 (1) (b) of the Ordinance did not include anything except transit by sea.

40

4. That the learned District Magistrate having found in effect the word "place" not to be *ejusdem generis* with the word "quay" (even

*In the
District
Magistrate's
Court,
Accra.*

No. 21.
Plaintiff's
Grounds
of Appeal,
6th May
1947,
continued.

though that rule did not apply) erred in not giving the word "place" its full and natural meaning.

5. That the learned District Magistrate having held that the goods started on their journey across the frontier when they were moved from Zacca's warehouse erred in not giving judgment for the Plaintiff.

Dated at Law Officer's Chambers, Accra, this 6th day of May 1947.

(Sgd.) J. MANYO PLANGE,
Counsel for Appellant.

To the Registrar, District Magistrate's Court, Accra.

And to A. R. Tamim, First Defendant-Respondent or Mr. Frans Dove, 10
His Solicitor.

And to P. Zacca, Second Defendant-Respondent or Messrs. Giles, Hunt
and Co., His Solicitor.

*In the
Supreme
Court.*

No. 22.
Notice of
1st
Defendant's
intention to
apply for
reversal or
variation of
part of
judgment,
27th May
1947.

No. 22.

NOTICE of 1st Defendant's intention to apply for reversal or variation of part of judgment.

(*Title.*)

TAKE NOTICE that upon the hearing of the Plaintiff's appeal from the judgment delivered in this action and dated the 8th day of March 1947, the 1st Defendant-Respondent A. R. Tamim intends to contend that the said Judgment should be reversed or varied because :—

20

(1) It wrongly decided that there was the intention to export the goods without a licence and that both Defendants had that intention; and

(2) The findings of fact against the Defendants were against the weight of evidence.

Dated the 27th day of May, 1947.

(Sgd.) FRANS DOVE,
Solicitor for the 1st Deft.-Respdt.

To The Registrar, Divisional Court, Accra.

And to the above-named Plaintiff-Appellant, Accra.

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No. 23.

NOTICE of 2nd Defendant's intention to apply for reversal or variation of part of judgment.

*In the
Supreme
Court.**(Title.)*No. 23.
Notice of
2nd
Defendant's
intention to
apply for
reversal or
variation of
part of
judgment,
28th May
1947.

TAKE NOTICE that upon the hearing of the Plaintiff's appeal from the Judgment delivered in this action and dated the 8th day of March 1947 the second Defendant-Respondent P. Y. Zacca intends to contend that the said Judgment should be reversed or varied in the following particulars :—

10 That the finding of facts as specified hereunder (and appearing on pages 32 and 33 of the Judgment in the Appeal Record) should be reversed as being contrary to the weight of evidence—

(A) The irresistible conclusion to be drawn from the facts is that both Tamim and Zacca intended to export these goods without licence and that they purchased them with the end in view.

(B) I find the cash dealings between Tamim and Zacca suspicious.

(C) I consider that Zacca's assistance goes far beyond the assistance one might expect one Merchant to give another.

20 (D) I am satisfied this assistance was given in consideration of the profits that would result if these goods could have been got into French Territory.

Dated the 28th day of May 1947.

(Sgd.) GILES HUNT & CO.

Solicitors for the Second Defendant-Respondent.

To The Registrar, Divisional Court, Accra.

And to the above-named Plaintiff-Appellant, Accra, and/or his Counsel.

In the
Supreme
Court.

No. 24.

SUPPLEMENTARY NOTICE on behalf of 1st Defendant.

(Title.)

No. 24.
Supple-
mentary
Notice on
behalf of
1st
Defendant,
by Frans
Dove, Esq.,
31st May
1947.

TAKE NOTICE that upon the hearing of the Plaintiff's appeal from the judgment delivered in this action and dated the 8th day of March 1947 the 1st Defendant-Respondent A. R. Tamim intends to contend that the said judgment, apart from its finding on the point of law, should be reversed or varied because :—

(1) The finding that there was an intention to export the goods without a licence and that both Defendants had that intention, was based entirely on the evidence of S. E. Sassine, who according to the learned District Magistrate, was an unreliable witness and was, therefore, wrong. 10

(2) The learned District Magistrate did not take into consideration, the fact that the said S. E. Sassine was estopped by his conduct, in the case of A. R. Tamim versus S. E. Sassine and the Comptroller of Customs, from denying that he had received the goods for safe custody and that he could not return the goods to A. R. Tamim's representative because they had been seized by the Comptroller of Customs and/or that the Plaintiff was estopped by his defence to the statements of claim in the same action and in the action of A. R. Tamim versus the Comptroller of Customs from alleging that the goods were delivered to S. E. Sassine for the purpose of exportation without licence. 20

(3) The learned District Magistrate wrongly found that the alleged notice to Sassine not to remove the goods amounted to a seizure of the goods by the Comptroller of Customs.

(4) The learned District Magistrate did not take into consideration the fact that at the time the goods were seized by the Comptroller of Customs the goods were being wrongly detained by Sassine, who had been instructed to deliver them to Zacca for sale and that Zacca had demanded the goods from Sassine but delivery had been refused by Sassine and that Sassine had demanded £5,000 before returning the goods, without any reference to any order from the Police. 30

(5) The learned District Magistrate did not take into consideration, the cablegrams by Sassine to Tamim asking for a Power of Attorney in favour of himself and suggesting that if it was not given, Tamim would lose his goods.

(6) The Court wrongly rejected evidence of the witness Moamar, that Sassine was demanding money before giving evidence for Tamim.

(7) The documents alleged to have been found in Zacca's safe were wrongly admitted in evidence against Tamim and 40

(8) The finding that the 2nd Defendant abetted the 1st Defendant was wrong in fact and in law.

Dated the 31st day of May 1947.

(Sgd.) FRANS DOVE,

Solicitor for 1st Defendant-Respondent.

To the Registrar, Divisional Court, Accra, and to the above-named Plaintiff-Appellant, Accra.

No. 25.

SUPPLEMENTARY NOTICE on behalf of 2nd Defendant.

Supplemental to Notice filed on 30th May, 1947, on behalf of Second Defendant-Respondent P. Y. Zacca.

*In the
Supreme
Court.*

No. 25.
Supple-
mentary
Notice on
behalf of
2nd
Defendant,
7th June
1947.

TAKE NOTICE that upon the hearing of the Plaintiff's appeal from the judgment delivered by His Worship Mr. L. G. Lingley, District Magistrate on the 8th day of March, 1947, the 2nd Defendant-Respondent P. Y. Zacca (without prejudice to his general rights on appeal as conferred by the Courts Ordinance 1935) intends to contend that in the event of the Plaintiff-Appellant being successful on his Grounds of Appeal as filed, judgment should not be entered for the Plaintiff-Appellant against the Second Defendant-Respondent for the following reasons and upon the following grounds (inter alia) :—

1. That the said judgment has not found as a fact that the second Defendant-Respondent was "the exporter of the goods or his agent, or the shipper of the goods" within the terms of section 5 (1) of the Import, Export and Customs Powers (Defence) Ordinance, 1939.

2. That to hold the second Defendant-Respondent was an exporter or agent or shipper as aforesaid would be contrary to the weight of evidence.

3. That the learned District Magistrate erred in his finding and/or implying that the second Defendant-Respondent was a conspirator with and/or an accomplice of the first Defendant-Respondent in any attempt to export goods from the Gold Coast without licence and in particular :—

(A) That the learned District Magistrate erred in assuming that the second Defendant-Respondent had ever purchased goods for this purpose or had any financial interest in goods purchased by the first Defendant-Respondent (page 32 of the Record of Appeal).

(B) That the learned District Magistrate failed to give weight to the second Defendant-Respondent's evidence that he always knew that goods purchased by the first Defendant-Respondent were for export to Dakar (page 23 of the Record).

(C) That the learned District Magistrate erred in admitting against the second Defendant-Respondent evidence of the first Defendant-Respondent smuggling francs from the Gold Coast and that there was no evidence entitling the learned District Magistrate to conclude that assistance to purchase such francs had come from the second Defendant-Respondent and generally that the learned District Magistrate's comments on the second Defendant-Respondent as to this matter are unjustified and irrelevant and should be disregarded (page 34 of the Record).

4. That section 5 (1) of the Import, Export and Customs Powers (Defence) Ordinance, 1939, permits of the Plaintiff-Appellant recovering only one penalty of £500, and that the Plaintiff-Appellant is not entitled to recover this penalty from both the first and second Defendants-Respondents as claimed.

Dated the 7th day of June, 1947.

(Sgd.) GILES HUNT & CO.,

Solicitor for the second Defendant-Respondent.

To the Registrar, Divisional Court, Accra, and to the above-named Plaintiff-Appellant and/or his Counsel.

*In the
Supreme
Court.*

No. 26.
COURT NOTES of arguments by Counsel.
(a) Plange for Plaintiff.

No. 26.
Court Notes
of
arguments
by Counsel,
18th June
1947.

IN THE SUPREME COURT OF THE GOLD COAST, Eastern Judicial
Division, held at Victoriaborg, Accra, on Wednesday the 18th day of
June, 1947, before QUASHIE-IDUN, Ag.J.

COMPROLLER OF CUSTOMS - - - - Appellant

V.

A. R. TAMIM and P. ZACCA - - - - Respondents.

Appeal from judgment of D.M. Accra.

Mr. Manyo-Plange for Appellant. 10

Mr. Dove for 1st Respondent.

Mr. Hardy for 2nd Respondent.

Mr. Dove calls attention of Court to Notice filed by 1st Respondent.
Refers to White Book Order 58 Rule 6.

Mr. Plange refers to Rule 20 Order 52 Schedule 3 of the Courts
Ordinance.

Mr. Hardy identifies himself with submission of Mr. Dove.

By Court: Leave granted to Respondents to argue the points raised
in their notices.

Mr. Plange argues appeal. 20

Refers to claim of Plaintiff at page 1.

Refers to No. 29 of 1939. Import, Export and Customs Powers
(Defence) Ordinance. Section 5 (1) (b).

Refers to Order No. 35 of 1940. Export Restriction Order. As to
2nd Respondent—Refers to section 166 of Cap. 132.

Refers to facts proved before the trial Court.

Refers to Exhibit "A" visa at page 63. Submits no evidence that
1st Respondent applied for permit to export cotton goods. Refers to
evidence that 1st Respondent applied to the Director of Supplies to say
if the prices of goods list of which was submitted were reasonable. 30

Refers to Exhibit Z (2) at pages 69-70.

Refers to wording on page 70 (Goods to be purchased and trans-
ported to Dakar by A. R. Tamim). Refers to evidence of the removal of
the goods from the wholesale of 2nd Respondent to Sassine's warehouse.
Refers to telegram sent by 1st Respondent to 2nd Respondent at page 129
of Record.

Refers to Exhibit "J" at page 75 of Record. Submits that the
goods were bought by the 1st Respondent with the assistance of the
2nd Respondent.

Refers to evidence of Sassine and submits no reason why the Court
should not have believed Sassine's evidence as to the arrangement made
to export the goods to Lome. Copies of Exhibit Z (2) from page 69
of Record were found in the house of 2nd Respondent. 40

Now deals with Grounds of Appeal.

(a) Plange
for
Plaintiff.

Ground 2 : Refers to page 37 of Record.

Refers to decision of Court of Appeal in case *Comptroller of Customs v. C. J. Chahin and Malam Seedi* and *Comptroller of Customs v. F. A. Simon and Malam Seedi*, 29th May 1947, also *Comptroller of Customs v. Affo Fulani*, 30th May 1947. Submits that the decisions show that the Interpretation of the D.M. of section 5 (1) (b) of 29 of 1939 is wrong.

Mr. Dove states that the Reports cannot go beyond the decisions quoted and that they bind this Court.

Plange continues :—

10 Submits that all the grounds of appeal rest on the interpretation to be placed on section 5 ss. (1) (b) of 29 of 1939. Submits that the judgment of the Court below should be reversed and judgment entered for Appellant.

(b) Dove for 1st Defendant.

Mr. Dove argues on behalf of 1st Respondent.

The Appellant is aggrieved by the finding of fact by the learned Magistrate. Gives a brief summary of the case. Refers to page 63 of Record also to page 63. Submits that it was within the knowledge of the Authorities that the Appellant was coming to the Colony to purchase
20 cotton goods. Submits that the Court did not consider the object of the Appellant's entry into this Colony before coming to the decision that he came to buy goods and smuggle them.

Refers to evidence of 1st Appellant and letter Exhibit "J." Submits that the words "British Authorities" and "export" were proved by the Appellant to be wrong. Reads evidence of Appellant from page 13 to 18.

Findings of Facts by Learned Magistrate :

Deals with evidence that Tamim was told by Sassine to leave the Colony. It is not denied that Tamim and Sassine bargained to transport the goods. Submits that the learned Magistrate found that Sassine was
30 an unreliable witness. Page 33 of Record. Submits that evidence of Sassine should not have been believed. Deals with paragraphs 1 and 2 of Notice filed by Respondents. Submits that the learned Magistrate ignored anything that preceded the trial which was put in evidence. Refers to Exhibit "Q" at page 104. Refers to evidence of Sassine at page 5 where he admitted that he caused the letter Exhibit "Q" to be written. Refers to statement of claim by Attorney of Tamim in his action against Sassine and Comptroller of Customs at page 83. Deals with the defence filed by the Comptroller of Customs at page 84.

Adjourned 9 a.m. tomorrow.

40

(Sgd.) S. O. QUASHIE-IDUN,
Ag.J.

19th June 1947.

Same Counsel.

19th June
1947.

Mr. Dove continues :—

Refers to Statement of Defence filed by Appellant in *Tamim v. Comptroller of Customs* at page 107 paragraph 8 of Statement of Defence.

*In the
Supreme
Court.*

No. 26.
Court Notes
of
arguments
by Counsel,
18th June
1947,
continued.

(b) Mr.
Dove for
1st
Defendant.

*In the
Supreme
Court.*
No. 26.
Court Notes
of
arguments
by Counsel,
19th June
1947,
continued.

Submits that the Appellant admitted in paragraphs 3 and 4 of the 1st Respondent's Statement of Claim. See page 107. Submits onus was on the Appellant to prove that the purpose of exporting the goods illegal. Refers again to Sassine's evidence at page 5 as to the keeping of the goods. Refers to last paragraph of learned Magistrate's Judgment at page 34 and submits no circumstances to corroborate the evidence of Sassine. Note that it was admitted that Sassine took delivery of the goods because Zacca was expecting goods for storage in his wholesale. Submits that Sassine claimed £1,400 from Tamim—see page . At page he admits he did not give Tamim cash. Refers to two telegrams sent by Sassine to Tamim—pages 86 and 100 of Record. Submits that up to the 15th April 1946 the date of 2nd telegram, Sassine knew that Tamim had done nothing to warrant the seizure of the goods by the Comptroller of Customs. When Sassine failed to get the Power of Attorney from Tamim then he made up his mind to give evidence against him. 10

Paragraphs 3 and 4 of Notice :

Submits no evidence that the Police were acting upon the instructions of the Customs. Refers to evidence of Ballantyne at page 19 of Record.

Paragraph 5 already dealt with.

Paragraph 6 of Notice :

Refers to evidence of Mouamar at page 19. Submits that the Court should not have rejected that evidence which was intended to prove that Sassine had turned tail because he did not obtain the Power of Attorney from Tamim. 20

Paragraph 7 :

Submits that Exhibit Z (2) was wrongfully admitted. The Police searched the premises of the 2nd Respondent. Two or three days before 2nd Respondent gave evidence; took possession of the documents and tendered them in evidence against the 2nd Respondent. 30

Mr. Plange admits that the document referred to was obtained as a result of Police search.

Paragraph 8 :

Refers to section 166 of Customs Ordinance Cap. 132 sub-section (1) and (2). Refers to opening of Counsel for Appellant at page 2 of Record. Submits opening does not show in what respect 2nd Respondent aided and abetted the 1st Respondent. Refers to Judgment at page 34. Submits that the Court was wrong in assuming that there was conspiracy between Tamim and Zacca to buy the goods and export them.

(c) Hardy
for 2nd
Respondent.

(c) Hardy for 2nd Defendant.

Mr. Hardy argues for 2nd Respondent :

Refers to Judgment at page 28. Refers also to 2nd Respondent's notice. Also to supplement to Notice. 40

The grounds upon which the learned Magistrate drew his conclusions appear at page 32 commencing with the words " Much of the history of the case . . ." The Court in its Judgment gave examples of the circumstances

which led him to find facts against the Respondents. Refers to Zacca's evidence at page 24 where he admitted that he sold goods with the knowledge that Tamim was taking the goods to Dakar. Submits that it does not follow that Zacca assisted Tamim to export the goods illegally.

*In the
Supreme
Court.*

No. 26.
Court Notes
of
arguments
by Counsel,
18th June
1947,
continued.
20th June
1947.

Adjourned 9 a.m. tomorrow.

(Sgd.) S. O. QUASHIE-IDUN,
Ag.J.

20th June 1947.

Same Counsel.

10 *Mr. Hardy continues :—*

Refers to passages of Judgment at page 33 where he deals with the intention of the Defendants to export the goods. Submits that the 2nd Defendant admitted being present at the conversation between the 1st Respondent and Sassine about the transport. Refers to the Judgment from page 32 to page 34. Refers to Sassine's evidence under cross-examination on this point at page 5 of Record. In contrast with the evidence refers to letter written by with Mr. Dove on the instructions of Sassine—page 104 of Record.

20 *On the question of the surrounding circumstances* where the Court held supported the evidence of Sassine. Refers to page 32 (Judgment) to pages 32 and 33. Submits the circumstances mentioned by the learned Magistrate did not in law amount to a corroboration of Sassine's evidence. Submits no evidence that the Respondents agreed to share any profits and to the Court's conclusion at page 33 as to profits is not correct.

30 *Refers to Exhibit Z (2)*: Submits that no evidence as to whether the exhibits were found in Zacca's house or store. Refers to evidence of Zacca under cross-examination at page 23. Refers to finding of the Court on the documents. Submits no record that Zacca admitted the documents were left by Tamim. Submits that evidence of Zacca at page 24 under re-examination where it stated: "These papers were left by Tamim" could only refer to the invoices because he had already stated that he had obtained a "copy" after French witnesses gave evidence. Refers to Judgment at page 33 as to assistance given by Zacca to Tamim. Submits that it was a wrong conclusion to arrive upon the evidence. It is not surprising that Zacca kept the copy of the French document if he did keep it at all because allegations had been made by Tamim against him. Submits that the finding of the document in the possession of Zacca may be consistent with Zacca's innocence. No evidence as to where the documents were found. Refers to evidence of Chapman at page 3.

40

(d) Plange in reply for Plaintiff.

Mr. Plange: The case of Plaintiff was that the goods were removed from the warehouse by Zacca to Sassine's warehouse with the purpose of being exported by Tamim. Submits it was proved that the goods were removed for transportation to Lome. It was proved that there was no export licence in respect of the goods. No application had been made for

(d) Plange
in reply for
Plaintiff.

*In the
Supreme
Court.*

No. 26.
Court Notes
of
arguments
by Counsel,
18th June
continued.

export licence. No enquiries were made as to the possibility of obtaining export licence. Zacca had lived in this country for 14 years and was well conversant with Export Restrictions. The Defendants practically admitted that goods were deposited in Zacca's warehouse, but the goods were removed to Sassin's wholesale. Zacca admitted that the goods were bought for exportation to Dakar. The issue was whether there was an intention to export goods without licence. Refers to page 30 of Record—Summary of case—Refers to case of 1st Respondent as summarised by the learned Magistrate. Refers to Exhibit "P" page 83, paragraph 5. Refers to evidence of Heward-Mills at page 87. Paragraphs 7, 8 and 10 also 10 paragraph 11. Refers to evidence of Zacca at that trial at page 93 of Record.

Submits there is a conflict between the evidence given by Tamim and Zacca as to the intention to purchase the goods. Submits that question is whether the Court believed Tamim that he had no intention to export without licence.

Adjourned 23.6.47 at 9 a.m.

(Sgd.) S. O. QUASHIE-IDUN,
Ag. J.

24th June
1947.

24th June 1947.
Same Counsel.

Mr. Plange continues :—

20

On the point that Tamim could not have gone to Lome for Import Licence—refers to page 13 where Tamim states he knew transfer had been allowed—also page 14.

Submits that Tamim did not start buying goods until he met Zacca. Refers to evidence of Zacca at page 20. Also at pages 23-4. Refers to evidence of Sassine that the Defendant attempted to pay him £2,000 in order not to give evidence against him.

As to date of seizure, submits it was the date on which the goods are liable to seizure or forfeiture.

As to Inadmissibility of Exhibit Z (2) :

30

Submits that the documents were admissible.

Firstly : Submits points against 1st Respondent are his purchasing goods after he had known he would not be allowed to remain.

(2) He sent for money when he knew no hope of remaining after 22nd September, 1946.

(3) Four days before leaving he purchased the goods and delivered them to Sassine to transport them to Lome.

(4) No mention of intention to obtain licence to import goods to French Authorities.

(5) The documents Exhibit Z (2) shows the purpose of buying the 40 goods.

Case against the 2nd Respondent :

Submits that the evidence against Zacca was a question of fact for the learned Magistrate. Zacca must have known that Tamim stayed with Captan before they met. (Note : No evidence as to this.) Mr. Plange does not press the point.

2nd Point :

The arrangement about transfer of money was made after discussion with Zacca. Zacca was familiar with the conditions of Export Licence and yet made no enquiry as to whether Tamim could have obtained one or not.

3rd Point :

Zacca assisted him to buy from other stores after selling goods to the value of £4,800. Zacca denied having assisted Tamim to purchase other goods. Page 97.

*In the
Supreme
Court.*

No. 26.
Court Notes
of
arguments
by Counsel,
24th June
1947,
continued.

10 As a contrast refer to Zacca's evidence at page 93 also at pages 24 and where he admitted that he took no trouble to find out if Tamim had authority to export. Submits that the discovery of Exhibit Z (2) which contains a list of goods sent to the Director of Supplies to find out about the reasonableness of the prices is evidence against Zacca. No reference as to goods intended to be transported to Dakar on the copy found with Zacca. Submits that the document could not have been left in Zacca's house or store by Tamim who left on the 27th October 1945. The minute of the Director of Supplies on the letter dated on the 25th October 1945 was made on the 29th October, 1945. Argues that no
20 question was put to Tamim as to his leaving the document with Zacca. Submits that Zacca had great interest in the whole matter. 3 days before Tamim left the Colony Zacca made no enquiries as to whether or not Tamim had an export licence. Refers to bargaining for transport of the goods to Lome in the presence of Zacca. Zacca gave evidence that he was present at the bargaining for the transport of the goods and not for safe-keeping of the goods. Submits this confirms the evidence of Sassine on the point.

Zacca's evidence was that the bargain was from £300 to £350.

30 Refers to evidence of Zacca who gave the distance between his store and Sassine's as two minutes' walk. £300 could not have been the agreed price for transporting the goods from Zacca's wholesale to Sassine's. After the bargaining Zacca delivered the goods to Sassine for the purpose of transportation.

40 Refers to evidence that Zacca returned the receipt on the goods to Sassine and submits that no receipt was given by Sassine. It shows that Zacca was not an innocent agent of Tamim. Refers to telegram from Tamim to Zacca to "settle affairs" with Sassine. What was the reason for wanting to take delivery of the goods from Sassine? Submits that the only reason was that as the goods could not be exported they should be delivered to Zacca. Zacca had had the goods removed because he had no room to store them. Submits that in view of the trouble that had arisen in Lome and the Statement made by Tamim in Lome an attempt was made to stop Sassine from transporting goods to Lome.

Refers to evidence of Bruce at page 7 as to the 2 millions francs having been given by Zacca to Tamim. Submits that it was evidence against Zacca as a statement in relation to the goods. It is evidence given by one conspirator against the other as a proof of the furtherance of a common purpose. Refers to the authority of *Comptroller of Customs v. C. J. Chahin & ors.* 25th May, 1947.

Adjourned to to-morrow.

50

(Sgd.) S. O. QUASHIE-IDUN,
Ag. J.

*In the
Supreme
Court.* 25th June, 1947.
Same Counsel.

No. 26.
Court Notes
of
arguments
by Counsel,
continued.
25th June
1947.

Mr. Plange continues :—

Submits that the copy of the statement which was made by Tamim to the French Authority found in possession of Zacca was properly considered by the learned Magistrate.

Deals again with the quantity of goods bought. Goods were in great demand here. The large quantity of goods sold to Tamim by Zacca led the Court to draw the inference that Zacca expected a profit from the transaction. Refers to page of Record. 10

As to criticism of the Court's valuation of the goods—Refers to page of Record.

Submits not necessary to prove what part of the premises the documents were found as there is admission by Zacca that they were found in his store or house.

As to the diction of Appellate Court : dealing with findings of facts by trial Court. Refers to *Abotche Kponuglo & ors. v. Adja Kodadja* Vol. 2 W.A.C.A. page 24. Also *Obeng Akesse v. Odikro Takie Ababio* 2 W.A.C.A. 264 ; *Kuma v. Kuma* 5 W.A.C.A. page 4 ; also *Nana Akpandja v. Fiaga Egblomesse* Vol. 5 W.A.C.A. page 10. Refers *Watt v. Thomas* 20 House of Lords, All England Reports 1947 Volume 1. Part 13 of Law Reports page 561.

Submits that the findings of fact should not be disturbed and that Plaintiff is entitled to Judgment.

(e) Dove in
answer for
1st
Defendant.

(e) Dove in answer for 1st Defendant.

Mr. Dove replies :—

Accepts all the authorities quoted by Counsel for Appellant. Refers to the writ of summons. Refers to section 120 of Cap. 132. Submits that if the evidence of Sassine is true then the lorries belonging to Sassine should have been seized or action brought against Sassine for their forfeiture. The failure to do so is evidence that the goods had not been removed by Sassine for the purpose of exportation. 40

Deals with Exhibit "J." Submits that the learned Magistrate took no notice of the previous proceedings relating to this matter especially the admission by Sassine that the goods were handed to him for safe-keeping. The Comptroller made no attempt to enforce the forfeiture of the goods although Tamim's attorney was there. Submits that the evidence of the Comptroller in this matter should be taken into account.

Submits that it was the duty of the Magistrate to consider all the material matters brought out during the trial. Only one simple question involved in the trial i.e. Was Sassine telling the truth when he states that the letter written at his instance by Mr. Dove was correct ? 40

[sic]

Refers to evidence of Ballantyne at page 18 as to removal of goods from Zacca's store. The primary reason was that Zacca had no space. Admits that the evidence shows that Tamim and Sassine agreed that the

goods should be conveyed to Lome in the event of their obtaining Import Licence from the French and Export Licence from the British.

Adjourned 9 a.m. to-morrow.

(Sgd.) S. O. QUASHIE-IDUN,

Ag. J.

26th June, 1947.

Mr. Dove continues :—

Refers to page 35 of Record. Judgment of the learned Magistrate paragraph 4—Onus of proof.

- 10 Submits that the Appellant should have appealed against that ruling. Submits that it was wrong for the Magistrate to have considered the circumstances as a corroboration of Sassine's evidence. Refers to Judgment at page 34. Refers again to telegram sent by Sassine to Tamim at pages 86 and 100. Submits that the Court did not take notice of these telegrams. Refers to page and submits it is another clear evidence of the character of Sassine.

Submits the circumstances accepted by the Magistrate were irrelevant and are no corroborative evidence of Sassine's evidence.

Deals with Exhibit Z (2)—Value of goods bought :

- 20 Submits the value accepted by the Court was not correct. Refers to the Invoices tendered.

On the question of Francs :

Submits that the Court had no right to assess the value of the francs as there was no evidence.

(f) Hardy in answer for 2nd Defendant.

Mr. Hardy replies for 2nd Respondent :

- 30 Submits that the case of Zacca is different from that of Tamim. Zacca knew that the goods were purchased for export to Dakar but he does not know whether they were delivered to Sassine for safe-keeping or not. Evidence shows that the association between Zacca and Tamim lasted only 4 days apart from the days on which the discussions took place. Refers to page 20.

Judgment reserved.

(Sgd.) S. O. QUASHIE-IDUN,

Ag. J.

*In the
Supreme
Court.*

No. 26.
Court Notes
of
arguments
by Counsel,
25th June
1947,
continued.
26th June
1947.

(f) Hardy
in answer
for 2nd
Defendant.

JUDGMENT.

No. 27.
Judgment,
19th July
1947.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Saturday, the 19th day of July, 1947, before Quashie-Idun, Ag. Judge.

JUDGMENT.

The Plaintiff-Appellant issued the following writ at the District Magistrate's Court, Accra :—

“ Between the 24th day of October, 1945, and the 29th day
“ of October, 1945, 103 bales and 6 cases of cotton and silk goods 10
“ 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 Plaintiff claims—

“ (1) From the first defendant the forfeiture of the said 20
“ goods and a penalty of £500 by virtue of section 5 (1) of the
“ Import, Export, and Customs Powers (Defence) Ordinance,
“ 1939 ;

“ (2) From the second Defendant a penalty of £500 by
“ virtue of section 5 (1) of the Import, Export, and Customs
“ Powers (Defence) Ordinance, 1939.”

The learned District Magistrate in a lengthy Judgment found as a fact that there was an intention on the part of the Defendants-Respondents to export the goods illegally. He however held that in law, he was not satisfied that the Import, Export, and Customs Powers (Defence) Ordinance 1939 contemplated land Frontiers and therefore the waterhouse [*sic.*] to which the goods were brought for the purpose of exportation was not covered by the phrase “ or other place ” Section 5 ss. (1) (b) of the Ordinance. He accordingly gave judgment for the Defendants-Respondents with costs. 30

Against that judgment the Plaintiff-Appellant has appealed. In arguing the appeal, Counsel for the Appellant has referred to two judgments given by the West African Court of Appeal while this appeal was pending which he contended disposed of the ruling of the learned Magistrate on the question of law.

The two judgments were given in the following cases :—

40

(1) Comptroller of Customs, Respondent

v.

C. J. Chahin and Malam Seedi, Appellants

and

Comptroller of Customs, Respondent,

v.

F. A. Simon and Malam Seedi, Appellants

which were consolidated and also the case of
Comptroller of Customs, Respondent

v.

Affo Fulani, Appellant.

*In the
Supreme
Court.*

No. 27.
Judgment,
19th July
1947,
continued.

The two judgments held in effect that the phrase "or other place" in the section 5 ss. (1) (b) of the Ordinance in question is not limited to places similar to "quay". Both Counsel for Respondents have agreed that this Court is bound by the Judgments. This would have ended these proceedings and this Court would have had no alternative but to have reversed the
10 learned District Magistrate's judgment.

The Respondents have filed Notices applying for the findings of facts against them by the learned District Magistrate to be reversed or varied and leave was granted the Respondents to argue on the questions of fact.

The facts of the case are briefly as follows: On the 20th August, 1945, the 1st Respondent Tamim who is a Lebanese living at Dakar arrived at Accra. On his application for a visa he stated that he was coming to Accra to buy cotton goods. On his arrival he lived with Mr. M. Captan a relation of his who had also guaranteed him. He was allowed to stay at Accra for two weeks. He applied for extension of his period of stay and
20 it was extended from 3rd September to 9th September. He made another application for extension. Mr. Captan withdrew his sponsorship and he was sponsored by Mr. Sassine.

Another application appears to have been made, for, the period of his stay was extended to the 22nd September, 1945. He was warned that action would be taken by the Police if he did not leave by that date. In the meantime and according to the evidence certain information had been received by the Police. His visa was extended to the 10th October and he eventually left on the 27th October, 1945. While staying in Accra Tamim met the 2nd Respondent Zacca who is a Syrian Merchant in Accra
30 and deals in cotton goods.

On the suggestion of Mr. Sassine, Tamim left Mr. Captan and went to reside at the Avenida Hotel. On the 24th October, 1945, that is three days before leaving Accra, Tamim started to purchase large quantities of cotton goods. He had already written to Dakar for a transfer of money with which to buy the goods. The money did not arrive until three or four days before he left.

In the meantime the 2nd Respondent Zacca had left him money to purchase some of the goods from him. According to the 1st Respondent the value of the goods purchased by him was about £16,000. Between
40 the 25th and 26th October the goods purchased from other sellers arrived at the wholesale of Zacca. The goods were shown to Sassine by Zacca. Sassine bargained to transport the goods for £350. Sassine carted the goods into his wholesale. On his way to Lome Tamim was stopped on the French Frontier where he was searched and two million francs were found hidden in the car in which he was travelling and which belonged to Sassine. The Police who had received information from the British Frontier went to Sassine's wholesale and saw 103 bales of cotton. On the 6th November, 1945, the goods were seized as prohibited goods.

*In the
Supreme
Court.*

No. 27.
Judgment,
19th July
1947,
continued.

After Tamim had been arrested at Lome in connection with the illegal exportation of the francs he sent two telegrams to Sassine asking him to deliver the goods to Zacca and stating that Zacca had been "mandated" to settle affair. Sassine did not deliver the goods as he had received certain instructions from the Police. After a number of legal actions, the present suit was started by the Comptroller of Customs.

The grounds on which the 1st Respondent relies to obtain a variation or reversal of the findings of facts against him are substantially as follows :—

(a) That the learned District Magistrate wrongfully accepted the evidence of Sassine as to the alleged intention to export the goods illegally, when the learned District Magistrate had come to the conclusion that Sassine was an unreliable witness and having regard to Sassine's previous conduct in the matter. 10

(b) That the Court wrongfully decided that there was the intention to export the goods without a licence.

It has been strongly contended by Mr. Dove on behalf of the Respondent Tamim that in considering the evidence of Sassine who stated that he was instructed by Respondents to remove the goods from Zacca's wholesale to his own wholesale to await a further instruction to transport them to Lome, the Court did not consider previous statements he had made to the effect that the goods were delivered to him for safe keeping. 20

The evidence before the Court was lengthy and many documents were tendered in evidence. The learned Magistrate stated in his judgment as follows :—

"I do not accept the evidence of the defendants as to what was said. Nor is Sassine a reliable witness. He was cross-examined at length. It showed that he had more dealing with the defendants than he suggested in examination-in-chief . . .

"I am satisfied that Sassine agreed to transport the goods to Lome for £360 and that the goods were removed to Sassine's wholesale so that they could be sent to Lome . . . 30

"Sassine says Zacca took part in the bargaining . . . Both the previous dealings of the defendants and subsequent events leave no reason for doubt that Sassine's account of this important interview is the correct one."

It is clear that the view that the learned District Magistrate took of the evidence of the witness Sassine is one which any Court might take if the evidence of an accomplice or of a person whose conduct in a matter had made it necessary for the Court to be cautious in acting on his evidence.

Having declared Sassine as an unreliable witness the Court found circumstances which in its opinion justified it in accepting the testimony of Sassine as to the bargaining to export the goods to Lome as the correct one. The Court must have considered the previous conduct of Sassine and also his conduct after the seizure of the goods before it came to the conclusion that he was an unreliable witness. 40

Apart from the circumstances considered by the learned Magistrate there was also the evidence of the 2nd Respondent who testified that in his presence Sassine and Tamim agreed "between" £300 and £350 for the transport of the goods. The Respondent also stated that the distance

between his warehouse and Sassine's warehouse is 2 minutes' walk. It is obvious that the learned District Magistrate could not have accepted the story that for carting 103 bales of cotton over the short distance Tamim agreed to pay Sassine £350.

*In the
Supreme
Court.*

In my view there was ample evidence before the learned District Magistrate to support his finding that there was an intention on the part of the Respondent Tamim to export the goods and that they were removed to Sassine's wholesale on their way to Lome. It is unnecessary to deal with the other grounds raised on behalf of the 1st Respondent.

No. 27.
Judgment,
19th July
1947,
continued.

10 I shall now deal with the case against the 2nd Respondent.

The learned District Magistrate found on the evidence before him that Zacca the 2nd Respondent and Tamim the 1st Respondent intended to export the goods without licence. After considering the evidence and after dealing with the part taken by Zacca in the whole transaction the learned District Magistrate stated in his judgment as follows :—

20 “ I think the irresistible conclusion to be drawn from the facts is that both Tamim and Zacca intended to export the goods without licence and that they purchased them with that end in view . . . Much of the history of the case is taken from the evidence of the defendants . . . but its truth has to be assessed after consideration of all the surrounding circumstances.”

It is contended on behalf of Zacca that the Trial Court was wrong in coming to the conclusion—

(A) That Zacca purchased the goods for the purpose of exportation without licence or that he had any financial interest in the goods purchased by Tamim.

(B) Because the Court failed to give weight to the evidence of Zacca that he always knew that the goods purchased by the 1st Respondent were for export to Dakar.

30 It is further contended that the Court erred in admitting evidence of the 1st Respondent smuggling francs from the Gold Coast and that there was no evidence entitling the Court to conclude that the assistance to purchase such francs had come from Zacca.

The learned District Magistrate stated in his judgment as follows :—

“ The 2nd Defendant said that he had no interest in the goods and no part in any attempt to export them without licence. That Tamim was a friend of his cousin and he merely gave him such assistance as one merchant might give to another.”

40 He then dealt with the facts and circumstances as far as they affected Zacca and then stated as follows :—

“ I consider that Zacca's assistance goes far beyond the assistance one might expect one merchant to give another. Zacca introduces Tamim to other merchants to assist him to get goods and sells him goods worth £4,800 . . . sold to a new arrival in the country sounds unusual . . . The estimate of the goods at £16,000 is based on Tamim's evidence . . . On the documents found with Zacca we find values up to £37,000. Even taking the value given by Tamim, one cannot accept his evidence that the francs confiscated were bought with the rest of the £22,000.

*In the
Supreme
Court.*

“ It is clear he had other financial assistance that he did not disclose.
“ All the circumstances point to the conclusion that this assistance
“ came from Zacca.”

No. 27.
Judgment,
19th July
1947,
continued.

The facts and circumstances upon which the learned District Magistrate based his findings were clearly before him and it is not unreasonable for him to have arrived at those conclusions. There was evidence before the Court that upon being arrested at the French Frontier for illegal exportation of the francs and upon being interrogated, Tamim stated that the money (francs) was given to him by Zacca to pay for goods when they arrived at Lome. A copy of the statement made by Tamim to the French 10 Authorities was found in the possession of Zacca and in my view the Court was entitled to consider it in connection with all the part played by Zacca in the whole transaction.

As against Zacca, the Court accepted the evidence of Sassine on the question of the agreement with Sassine to transport the goods to Lome. Zacca himself admitted in his evidence that he was present when Tamim and Sassine agreed between £300 and £350 for the transport of the goods. The learned Magistrate must have regarded this agreed amount as amazing when Zacca himself admitted that the distance between his own wholesale to that of Sassine was only a matter of two minutes' walk. 20

In my own view it would certainly sound fantastic to an innocent person for a transporter of goods to claim £300 for carting goods over that very short distance. It did not appear so to Zacca. According to Zacca he wanted the goods to be removed from his warehouse because he needed the space for his own goods. Yet he attempted and was willing to take delivery of them a few days later when he was instructed to collect them from Sassine after Tamim had got into trouble at Lome. One wonders how much Sassine would have claimed for the transport of the goods back to Zacca's warehouse if Sassine agreed to convey the goods to the wholesale quite close to Zacca for the enormous amount of £300-£350. 30 In my opinion there was ample evidence to support the finding of the learned Magistrate that Zacca was an abetter of Tamim in the transaction and that the Court was justified in holding that there was an intention on the part of both Respondents to export the goods without licence.

In the result, I allow the appeal and sustain the finding of facts of the learned Magistrate. The decision of the Court to the effect that section 5 (1) of Import, Export and Customs Powers (Defence) Ordinance 1939 did not cover transport by land is set aside and judgment is entered for the Appellant on his claim against both Respondents.

Costs for Appellant assessed at 50 guineas. Appellant also to have 40 costs of the trial at the Court below. Such costs to be taxed and to include Counsel's costs of 100 guineas as against both Defendants.

(Sgd.) S. O. QUASHIE-IDUN,
Acting Judge.

Counsel :

Mr. J. S. Manyo-Plange, Crown Counsel, for the Appellant.
Mr. Frans Dove for 1st Respondent.
Mr. T. D. Hardy of Messrs. Giles Hunt & Co., for 2nd Respondent.

No. 28.

COURT NOTES of Judgment.*In the
Supreme
Court.*

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Saturday the 19th day of July, 1947, before Quashie-Idun, Ag. J.

No. 28.
Court Notes
of
Judgment,
19th July
1947.

COMPTRROLLER OF CUSTOMS - - Plaintiff-Appellant

V.

A. R. TAMIM and P. ZACCA - - Defendants-Respondents.

Written Judgment delivered. Appeal allowed. Judgment of the
10 District Magistrate's Court set aside.

Costs for Appellant.

(Sgd.) S. O. QUASHIE-IDUN,
Ag. J.

No. 29.

GROUNDS OF APPEAL on behalf of 1st Defendant.*IN THE WEST AFRICAN COURT OF APPEAL.**(Title.)**In the
West
African
Court of
Appeal.*

The 1st Defendant-Appellant being dissatisfied with the judgment of the Divisional Court delivered on the 19th day of July, 1947, and having
20 obtained final leave to appeal therefrom dated the 30th day of August, 1947, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth :—

No. 29.
Grounds of
Appeal on
behalf of
1st
Defendant,
5th
September
1947.

GROUNDS OF APPEAL.

1. The finding that there was an intention to export the goods without a licence and that both Defendants had that intention, was based entirely on the evidence of S. E. Sassine, who, according to the learned District Magistrate, was an unreliable witness and was, therefore, wrong.

2. The Court did not take into consideration, the fact that the said
30 S. E. Sassine was estopped by his conduct, in the case of *A. R. Tamim* versus *S. E. Sassine and The Comptroller of Customs*, from denying that he had received the goods for safe custody and that he could not return the goods to A. R. Tamim's representative because they had been seized by the Comptroller of Customs and/or that the Plaintiff was estopped by his defences to the Statements of Claim in the same action and in the action of *A. R. Tamim* versus *the Comptroller of Customs* from alleging that the goods were delivered to S. E. Sassine for the purpose of exportation without licence.

*In the
West
African
Court of
Appeal.*

No. 29.
Grounds of
Appeal on
behalf of
1st
Defendant,
5th
September
1947,
continued.

3. That the fact that the Plaintiff did not take action against S. E. Sassine under section 120 of Cap. 132 of the Gold Coast Laws for the forfeiture of his vehicles estopped him from claiming that the goods were taken to the stores of S. E. Sassine for the purpose of transportation without a licence.

4. The Court wrongly found that the alleged notice to Sassine not to remove the goods amounted to a seizure of the goods by the Comptroller of Customs.

5. The Court did not take into consideration the fact that at the time the goods were seized by the Comptroller of Customs, the goods were 10 being wrongly detained by Sassine, who had been instructed to deliver them to Zacca for sale and that Zacca had demanded the goods from Sassine but delivery had been refused by Sassine and that Sassine had demanded £5,000 before returning the goods, without any reference to any order from the Police.

6. The Court did not take into consideration the cablegrams by Sassine to Tamim asking for a Power of Attorney in favour of himself and suggesting that if it was not given Tamim would lose his goods.

7. The Court wrongly rejected evidence of the witness Moamar, that Sassine was demanding money before giving evidence for Tamim. 20

8. The documents alleged to have been found in Zacca's safe were wrongly admitted in evidence against Tamim.

9. The finding that the 2nd Defendant abetted the 1st Defendant was wrong in fact and in law.

10. The judgment was against the weight of evidence generally and particularly because,

(A) the evidence did not support the inference that Zacca assisted the 1st Plaintiff in the hope of making a profit ;

(B) that there was no evidence that 1st Defendant had bought more goods than were disclosed by the invoices produced ; and 30

(C) that the documents found with 2nd Defendant could not and did not prove the quantity of goods bought by 1st Defendant and seized by Plaintiff.

Dated this 5th day of September, 1947.

(Sgd.) FRANS DOVE,

Appellant's Solicitor.

To the Registrar, Divisional Court, Accra, and to the above-named Plaintiff, his Solicitor or Agent, Accra.

FOUNDATIONS OF APPEAL on behalf of 2nd Defendant.

(*Title*)

*In the
West
African
Court of
Appeal.*

No. 30.
Grounds of
Appeal on
behalf of
2nd
Defendant,
6th
September
1947.

10 The Second Defendant-Respondent-Appellant Philip Younis Zacca, being dissatisfied with the Judgment of the Divisional Court, Accra, delivered by His Honour Mr. Justice S. O. Quashie-Idun, Acting Judge, on the 19th day of July, 1947, on appeal thereto from a Judgment of His Worship L. G. Lingley, District Magistrate delivered on the 8th day of March, 1947, and having obtained Final Leave to Appeal dated the 30th day of August, 1947, from the said Judgment of the Divisional Court, hereby appeals to the West African Court of Appeal upon the grounds hereinafter set forth :—

FOUNDATIONS OF APPEAL.

1. That the learned Judge was wrong both in law and fact in holding that the premises of S. E. Sassine, Transport Owner, at Accra to which the goods mentioned in the Writ of Summons were brought was a place within the meaning of Section 5 (1) (b) of the Import, Export and Customs Powers (Defence) Ordinance, 1939.

20 2. That the learned Judge was wrong in holding that the facts and circumstances upon which the learned District Magistrate based his findings were clearly before him and that it was not unreasonable for him (the District Magistrate) to have arrived at the conclusions he did and as extracted by the learned Judge in his judgment.

3. That the learned Judge failed to give weight to the fact that the learned District Magistrate had not considered the possibility of the First Defendant-Respondent-Appellant, A. R. Tamim, having purchased 2,462,000 francs other than at the then current rate of exchange and that therefore no financial assistance was required from the Second Defendant-Respondent-Appellant, P. Y. Zacca, or any one else.

30 4. That the learned Judge misdirected himself in stating " that there was evidence before the Court that upon being arrested at the French Frontier for illegal exportation of the francs and upon being interrogated, Tamim stated that the money (francs) was given to him by Zacca to pay for goods when they arrived at Lome," in that such evidence was inadmissible against the Second Defendant-Respondent-Appellant and had been so held by the learned District Magistrate.

40 5. That the learned Judge failed to give weight to the fact that the copy of the statement made by the First Defendant-Respondent-Appellant to the French Authorities was found in the possession of the Second Defendant-Respondent-Appellant as a result of a search of the Second Defendant-Respondent-Appellant's premises conducted during the course of the trial before the learned District Magistrate and after the witness Cuthbert Bruce had given evidence and further failed to give weight to the evidence of the Second Defendant-Respondent-Appellant that he had come into possession of the copy statement by sending for it after the evidence of the said Cuthbert Bruce had been given.

*In the
West
African
Court of
Appeal.*

No. 30.
Grounds of
Appeal on
behalf of
2nd
Defendant,
6th
September
1947,
continued.

6. That the learned Judge failed to give weight to the fact that the learned District Magistrate might have misdirected himself in his judgment by stating that the Second Defendant-Respondent-Appellant had said the copy of the statement of the First Defendant-Respondent-Appellant as given at Lome had been left behind by the First Defendant-Respondent-Appellant; whereas the Second Defendant-Respondent-Appellant had given no such evidence, but had stated he had sent to Lome for the document during the course of the trial before the District Magistrate.

7. That the learned Judge was wrong in assuming that the Second Defendant-Respondent-Appellant thought that the payment of £300 was in respect of moving goods from his warehouse to the premises of S. E. Sassine and failed to give weight to the evidence of the Second Defendant-Respondent-Appellant that he had been told by the First Defendant-Respondent-Appellant that he intended "to go to French side and get an import licence and get influence of the French in order to get an export licence from here (the Gold Coast)." 10

8. That the learned Judge was wrong in holding that there was evidence to support the finding of the learned District Magistrate that the Second Defendant-Respondent-Appellant was an abettor of the First Defendant-Respondent-Appellant and failed to give weight to the evidence of the witness S. E. Sassine when he stated that the Second Defendant-Respondent-Appellant was not present when he was given certain instructions by the First Defendant-Respondent-Appellant. 20

9. That the learned Judge did not give weight to the fact that the learned District Magistrate made no reference to the evidence of the Second Defendant-Respondent-Appellant in the case of *A. G. Heward-Mills as Attorney for A. R. Tamim v. S. E. Sassine and The Comptroller of Customs* and being Suit No. 152/1945 and which evidence was included in the record of both trial and was made part of the proceedings before the learned District Magistrates and in particular failed to give weight to the evidence of the Second Defendant-Respondent-Appellant on the following points :— 30

(A) That he did not know what arrangements the First Defendant-Respondent-Appellant had made with the said Sassine. That the First Defendant-Respondent-Appellant was in Accra when he gave him (the Second Defendant-Respondent-Appellant) instructions, but was in Lome when the said Sassine took the goods.

(B) That since October (1945) there had been an arrangement between the Chamber of Commerce and Government that 25 or 30% of the monthly quota would be sold wholesale and the remainder retail. 40

(C) That when he (the Second Defendant-Respondent-Appellant) allowed the First Defendant-Respondent-Appellant to store the goods, he (the Second Defendant-Respondent-Appellant) did not know how long the First Defendant-Respondent-Appellant would take to get a licence but he (the Second Defendant-Respondent-Appellant) made it plain that he could only store the goods very temporarily and he (the First Defendant-Respondent-Appellant) must make other arrangements.

10. That the "surrounding circumstances" as referred to by the learned District Magistrate were not such as to corroborate the evidence of the witness S. E. Sassine on the subject of the removal of the goods to his warehouse.

11. That there was no evidence against the Second Defendant-Respondent-Appellant that he knew that the purpose for which the goods were taken to S. E. Sassine's warehouse was for their being exported without a licence.

Dated at Accra this 6th day of September, 1947.

10

(Sgd.) GILES HUNT & CO.,

Solicitors for Second Defendant-Respondent-Appellant.

To the Registrar, Divisional Court, Accra, and to the Plaintiff-Appellant-Respondent, the Comptroller of Customs.

*In the
West
African
Court of
Appeal.*

No. 30.
Grounds of
Appeal on
behalf of
2nd
Defendant,
6th
September
1947,
continued.

No. 31.

PROCEEDINGS.

In the West African Court of Appeal, Gold Coast Session, held at Victoriaborg, Accra, on Friday, the 21st day of November, 1947: before Their Honours Sir Walter Harragin, C.J., Gold Coast (President), Sir John Verity, C.J., Nigeria, and John Alfred Lucie-Smith, O.B.E., C.J., Sierra Leone.

20

Civil Appeal 68/47.

COMPTROLLER OF CUSTOMS,

Plaintiff-Appellant-Respondent.

V.

A. R. TAMIM and P. ZACCA,

Defendants-Respondents-Appellants.

Appeal from Judgment of Quashie-Idun, Ag. J. dated 19th July, 1947.

Mr. Dove for 1st Appellant.

30 Mr. Hardy for 2nd Appellant.

Mr. Plange, Crown Counsel, for Respondent.

Mr. Dove starts to argue his appeal.

Mr. Plange asks if appeal properly before Court as the Appellants did not appeal against facts found by the Magistrate.

By Court: We will deal with this point in our Judgment.

(Sgd.) WALTER HARRAGIN,

24th November, 1947.

President.

Same Counsel.

Mr. Dove.

40 Mr. Hardy.

Thomas v. Thomas, 1947, All Eng. Rep. Vol. 1, p. 582, p. 36.

Mr. Plange not called upon.

Judgment Reserved.

(Sgd.) WALTER HARRAGIN,

President.

No. 31.
Proceed-
ings,
21st
November
1947.

24th
November
1947.

*In the
West
African
Court of
Appeal.*

No. 32.
JUDGMENT.

29th November, 1947.

No. 32.
Judgment,
29th
November
1947.

In the West African Court of Appeal, Gold Coast Session, held at Victoriaborg, Accra, on Saturday the 29th day of November, 1947 : before Their Honours Sir Walter Harragin, C.J., Gold Coast (President), Sir John Verity, C.J., Nigeria, and John Alfred Lucie-Smith, O.B.E., C.J., Sierra Leone.

Civil Appeal
No. 68 of 1947. 10

Comptroller of Customs, Plaintiff-Appellant-Respondent

V.

1. A. R. Tamim
2. P. Zacca, Defendants-Respondents-Appellants.

Judgment—Read by the President.

In this case the Plaintiff who is the Comptroller of Customs claimed against the two Defendants in the following writ :—

“ 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). 20

“ And the Plaintiff claims :—

“ (1) from the first Defendant the forfeiture of the said goods and a penalty of £500 by virtue of section 5 (1) of the Import, Export, and Customs Powers (Defence) Ordinance, 1939 ; 30

“ (2) from the second Defendant a penalty of £500 by virtue of section 5 (1) of the Import, Export, and Customs Powers (Defence) Ordinance, 1939.”

The case was heard before the learned trial Magistrate at Accra who found all the relevant facts against the Defendants-Appellants but disallowed the claim on a point of law.

The Plaintiff-Respondent thereupon appealed to the Divisional Court against the interpretation of law, whilst the Defendants-Appellants requested the Court to reverse the learned trial Magistrate's findings of fact. In the event the Divisional Court reversed the trial Court's interpretation of the law but upheld its findings of fact, and it is against this decision that the appeal comes before us. 40

It is difficult to imagine a more optimistic appeal. In the first place, the point of law decided by the Divisional Court has not even been argued as the point was decided by this Court in the cases of *Comptroller of Customs*

v. *C. J. Chahin and Malam Seedi and Comptroller of Customs v. F. A. Simon and Malam Seedi* (Consolidated) on the 29th May, 1947, and by the Privy Council in *Attorney-General v. Fakhyr Ayyas*, L.R. 1947, A.C., p. 332 which only leaves for argument questions of fact which have already been decided against the appellants in two Courts.

*In the
West
African
Court of
Appeal.*

No. 32.
Judgment,
29th
November
1947,
continued.

10 It is not our intention to set out all the facts in this case as they are already dealt with at length in the two former judgments, and in particular in the judgment of the learned trial Magistrate. We will, however, observe that *ex abundante cautela* the learned trial Magistrate has dealt with the evidence in this case in exactly the same way as he would have dealt with evidence in a criminal matter, thus assisting the Defendants-Appellants materially. Items of evidence which might have weighed the scales even more heavily against the Appellants have been excluded from consideration by the Magistrate and even then he finds the facts in favour of Respondent.

There is abundant evidence to justify the findings of fact by the learned trial Magistrate and the Divisional Court of Appeal. It is indeed difficult to imagine that any Court could have come to other conclusions.

20 It may be true that one of the principal witnesses for the Respondent was an accomplice in this illegal transaction but his evidence is corroborated in almost every particular if corroboration be needed by the surrounding circumstances and to some extent by evidence that is not in dispute. These circumstances have been carefully, concisely and fairly set out in the learned trial Magistrate's judgment and it would serve no useful purpose by repeating them here.

The appeal is dismissed with costs assessed at £34 2s. 6d.

(Sgd.) WALTER HARRAGIN,
President.

JOHN VERITY,
Chief Justice, Nigeria.

J. LUCIE-SMITH,
Chief Justice, Sierra Leone.

30

Counsel :

Mr. Frans Dove for 1st Appellant.

Mr. T. D. Hardy of the firm of Giles Hunt & Co. for 2nd Appellant.

Mr. J. S. Manyo-Plange, Crown Counsel, for Respondent.

*In the
West
African
Court of
Appeal.*

No. 33.

NOTICE OF MOTION for Final Leave to Appeal.

IN THE WEST AFRICAN COURT OF APPEAL.

No. 33.
Motion for
Final
Leave to
Appeal,
29th
January
1948.

Between **COMPTROLLER OF CUSTOMS**, Plaintiff-Appellant-
Respondent-Respondent

and

A. R. TAMIM and P. ZACCA, Defendants-Respondents-
Appellants-Appellants.

MOTION ON NOTICE for FINAL LEAVE TO APPEAL from the Judgment delivered herein by the West African Court of Appeal on the 10 29th day of November, 1947.

TO BE MOVED on Tuesday the 24th day of February, 1948, at 8.45 o'clock in the forenoon or as soon thereafter as Counsel can be heard.

Dated the 29th day of January, 1948.

(Sgd.) **FRANS DOVE**,

Solicitor for Appellants.

To the Registrar, West African Court of Appeal and to the above-named Plaintiff-Appellant-Respondent-Respondent, Accra.

No. 34.
Court Notes
granting
Final
Leave to
Appeal to
His Majesty
in Council,
24th
February
1948.

No. 34.

COURT NOTES granting Final Leave to Appeal to His Majesty in Council.

20

24th February, 1948.

In the West African Court of Appeal, Gold Coast Session, held at Victoriaborg, Accra, on Tuesday the 24th day of February, 1948: before Their Honours John Alfred Lucie-Smith, O.B.E., C.J., Sierra Leone (Presiding J.), James Henley Coussey, and Samuel Okai Quashie-Idun, JJ., Gold Coast.

Civil Motion.

COMPTROLLER OF CUSTOMS - - - - Respondent

V.

TAMIM and ZACCA - - - - Appellants.

30

Dove moves.

Buckmaster for Respondent.

Application granted in terms.

(Sgd.) **J. LUCIE-SMITH.**