

20,1951

EXHIBITS.

Exhibits.

Plaintiff's Exhibit.

Plaintiffs' Exhibits.

"A." Letter from British Consulate-General, Dakar, to C.I.D., Accra.

British Consulate-General,
Dakar.

5th July, 1945.

"A."

Letter from
British
Consulate-
General,
Dakar, to
C.I.D.,
Accra,
5th July
1945.

Sir,

I have the honour to inform you that I have received an application for a visa from Abdul Rahman Tamim particulars of whom are given on the accompanying sheet.

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I should be grateful to learn whether this person's statement are [sic.] correct and whether I am authorised to issue him a visa.

I have the honour to be, Sir,

Your most obedient Servant,

(Sgd.) E. W. JEFFERY,

Acting British Consul-General.

The Criminal Investigation Branch,
Gold Coast Police, Accra.

VISA APPLICATION FORM.

20 (Consular Post)

(No.)

1. Surname of Applicant (in Capitals). TAMIM.

2. Christian Names. Abdul Rahman.

3. (a) Maiden Name — (b) Patronymic —

4. (a) Present Address. 22, Rue Sandiniery, Dakar.

(b) How long resident. Six years.

5. Nationality. Lebanese.

6. Profession. Commerçant.

7. (a) Date of Birth. 1914.

(b) Place of Birth. Beyrout. (c) Sex. M.

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8. (a) Number of Passport. 6870.

(b) Date of Issue of Passport. 16/6/45.

(c) Place of Issue of Passport. Dakar.

(d) Any return visas. Yes.

9. Destination and Object of Journey. Accra (On business) to buy cotton piece goods.

10. Probable length of stay. One fortnight.

11. Address to which travelling. Messrs. Captan Ltd. Accra.

12. If on business, names and addresses of firms to be visited. Messrs. Captan Ltd. Accra.

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13. Particulars of means of support in (United Kingdom or British Possession). Self means.

14. References :—

(a) Name. Captan Ltd.
Address. Accra.

(2) Name.
Address.

15. Particulars of previous visits.

16. Signature of Applicant. (Sgd.) A. R. Tamim.

Remarks of Control Officer and reasons for reference of application.

(Signature of Control Officer)

(Sgd.) E. W. JEFFERY.

(Date) 5.7.45.

50

EXHIBITS

Exhibits.

Plaintiff's Exhibit (but marked as Defendants' Exhibit).

Plaintiff's Exhibits (but marked as Defendant's Exhibit.)

"K." Telegraphic Transfers Received A/c.

BANK OF BRITISH WEST AFRICA LIMITED.

(Incorporated in England).

Accra Branch. 16 Dec. 1946.

Telegraphic Transfers Received a/c.

"K." Telegraphic transfers received account, 23rd-25th October 1945.

Date	Particulars	Dr.	Cr.
1945			
Oct. 23	B.A.O. Dakar a/c A. R. Tamim		22793 - - 10
	Cost of cable collected ..	6 13 4	
25	Amount paid	22786 6 8	
		<u>£22793 - -</u>	<u>22793 - -</u>

Prepared by (It'd.) ?

For Bank of British West Africa Limited.

Additions checked by —

(Sgd.) ?
Manager.

Examined by —

(Sgd.) ?
Ag. Accountant.*Plaintiff's Exhibits.*

Plaintiff's Exhibit.

"I." Bills and Statements.

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"I." Bills and Statements, October 1945.

Copy of Invoice 4052.

Telegraphic Address :

No. 4098.

"ZOCHINIS," Accra.

ACCRA, 24th October, 1945.

Mr. S. E. Sassine.

Dr. to Paterson, Zochonis & Co. Ltd.

A1	15,353½ yds. printed a/s Cotton Crepe	3/0	53 - 6
A1	63,447¼ ,, Morocain	3/-	67 1 9
A1	26,199¼ ,, printed Spun Ray & Cotton	2/6	24 18 2
			<u>£145 - 5 30</u>

One hundred and forty-five pounds & fivepence only.

Certified True Copy

For Paterson, Zochonis & Company Limited.

(Sgd.) ?

*Exhibit " I " (contd.) :**Exhibits.*

Copy.

K. Chellaram & Sons, Accra

Plaintiff's Exhibits.

Wholesale Dept.

Cash Memo.

N 159.
24.10.45.*" I." Bills and Statements, October 1945, continued.*

3 B/s Khaki Drill

i.e. 300 pieces in all @ 19/- £285 0 0

32 Ps. Spun Crepe Border (1264½ yards) @ 3/- 189 13 6d.

33 Ps. Printed Crepe (1485½ yds.) @ 3/6 259 19 3d.

10

Total £734 12 9d.

£734 12 9d.

Paid

(Sgd.) Khemchand.

Aoudad & Hage

General Merchants

P.O. Box 892,

Accra.

Copy.

Cash sales.

20

Invoice.

Goods bought by Mr. A. Tamim.

2 cases contg. :—

2690 yds. Silk @ 1/9 yd. 235 7 6

1 case contg. :—

658½ yds. Woollen @ 10/- yd. 329 5 -

12 Bales contg. :—

1190 pes. Domestic @ 29/- pes. 1725 10 0

Paid in full 2290 2 6

E. & O.E.

24.10.45

30

Aoud & Hage

(Sgd.)

?

Partner.

Invoice

49

Mr. A. R. Tamim.

25/10/45

Bought of H. Matouk

15000 yds. White Drill 2/2

£1625 - -

Paid by cash.

*Exhibits.**Exhibit "I" (contd.):*

25th Oct. 1945

*Plaintiff's Exhibits.**"I."*Bills and
Statements,
October
1945,
continued.

Drt. A. R. Tamim				
Crt. B. T. Co. Ltd. (Zacca Bros.)				
			£	s. d.
733 Pes Print 25/22675 =	45/-	1649	5	0
1000 ,, Fancy 11/6456	22/-	1100	0	0
1200 ,, S. Shirting				
	O5/6454 13/-	780	0	0
600 ,, Drill Khaki 7648250/2	26/-	780	0	0 10
120 ,, Shirting 08/6456	15/-	90	0	0
380 ,, ,, 05/6864	15/-	285	0	0
		<u>£4684</u>	<u>5</u>	<u>0</u>
	£4684 5/-			

25/10/45

Tamim Accra
Bot. of A. Asafiri & Co.
Accra.

377 Pes Print	44/6	838	16	6
135 ,, ,,	44/6	300	7	6 20
360 ,, Khaki 7067	10/-	342	-	-
150 ,, ,, 250	26/-	195	-	-
		<u>1,676</u>	<u>4</u>	<u>-</u>

[sic.] £1674 4/-

One thousand six Hd. & Seventy-six pds. 4/-
Pd. Cash.

Bardawil Bros.

Accra

5418 134½ Pes. Prints @	28/-	£188	6	0
713 79 Pes. ,,	28/-	110	12	0 30
6406 1826 yds. ,,	2/4	213	0	8
1468 441-10/12 Pes. ,,	45/-	994	2	6
1490 558½ ,, ,,	45/-	1317	7	6
		<u>£2823</u>	<u>8</u>	<u>8</u>

Goods sold to

Mr. A. R. Tamim and paid in cash.

Exhibit "I" (contd. :

E. G. Irani & Bros.

Statement to Mr. A. Tamim.

*Exhibits.**Plaintiff's Exhibits.*

	Lot No.	Pces.	Yards	Refer.	Price	£	s.	d.	"I."
(1)	7130	F.B.	152-5/12	413	23/-	175	5	5	Bills and Statements, October 1945, continued.
(1)	7230		50	2094	514	226	7	-	
(1)	7230		49	2023	515	219	3	2	
	7192		100		4388	222	10	-	
	5579		200	36" fancy print		280	-	-	
10	(3)		382	M. Keylani 48" Afr. print	44/6	849	19	-	
			150	Irani Bros. 36"	31/-	232	10	-	
						<u>£2,205</u>	<u>14</u>	<u>7</u>	
						£2,205	14	7	
Cash payment						£1,500	-	-	
Balance						<u>£705</u>	<u>14</u>	<u>7</u>	

Plaintiff's Exhibit.

- "Z2." (1) Statements as to goods.
 (2) Interrogation of 1st Defendant.

E. C. IRANI & BROS.

General Merchants

P.O. Box 152

Accra

Gold Coast West Africa

25th October, 1945.

(Director of Supplies Office Current No. 73/23 26 Oct 9145 Case No. 3/15).

	Woollen Double Width @	25/- per Yd.
	Silk Crepe Amprime	5/- " "
	Printed Silk Asstd.	2/6 " "
	Plain Silk	2/- " "
30	Poplin Plain Asstd.	3/- " "
	Light Khaki	1/6 " "
	Singlets	30/- " Doz.
	Afr. Fancy Prints 36	2/5 " Yd.
	" " " 48	3/5 " "
	Drill Asstd.	2/4 " "

Director of Supplies,

Accra.

I shall be obliged to know if these prices are reasonable.

Yours faithfully

40

E. G. Irani & Bros.

Please quote landed duty paid cost prices of the above.

(Sgd) ?

for Director of Supplies.

29. X. 45.

"Z2."(1)
Statements as to goods
October 1945.

Exhibits.

Exhibit " Z2 " (1) (contd.)

Plaintiff's
Exhibits." Z2. "
(1)
Statements
as to goods,
October
1945,
continued.

Goods to be purchased and transported to Dakar by A. R. Tamim.

Yds.	Woollen-Double Width @	25/- per Yd.	
"	Silk Crepe Amprime "	5/- "	"
"	Printed Silk Asstd. "	2/6 "	"
"	Plain Silk "	2/- "	"
"	Poplin Plain Asstd. "	3/- "	"
"	Light Khaki "	1/6 "	"
Doz.	Singlets "	30/- "	Doz.
Yds.	Afr. Fancy Prints 36 "	2/5 "	Yd.
"	" " " 48 "	3/5 "	"
"	Drill Asstd. "	2/4 "	"

10

Director of Supplies,
Accra.

I shall be obliged to know if these prices are reasonable.

Yours faithfully,

6,500 Yds.	Woollen Double Width @ 25/- per Yd.	£8125	
15,000 "	Silk Crepe Amprime @ 5/- per Yd.	3750	
30,000 "	Printed Silk Asstd @ 2/6 per Yd.	3750	
10,000 "	Plain Silk @ 2/- per Yd.	1000	20
20,000 "	Poplin Plain & Asstd. @ 3/- per Yd.	3000	
10,000 "	Light Khaki @ 1/6 Per Yd.	750	
300 Doz.	Singlets @ 30/- " Doz.	450	
100,000 Yds.	African Fancy Prints - 2/5		
	36" - per Yd.	12083 6 8	
40,000 "	Drill Asstd. @ 2/4d Per Yd.	4666 13 4	
		37575 - -	
60,000 "	Prints 48" 3/5	10250 - -	
		47825 - -	

Yds.	Woollen Double Width @	25/- per yd.	30
"	Silk Crepe Amprime "	5/- "	"
"	Printed Silk Asstd. "	2/6 "	"
"	Plain Silk "	2/- "	"
"	Poplin Plain Asstd. "	3/- "	"
"	Light Khaki "	1/6 "	"
Doz.	Singlets "	30/- "	Doz.
Yds.	Afr. Fancy Prints 36 "	2/5 "	Yd.
"	" " " 48 "	3/5 "	"
"	Drill Asstd. "	2/4 "	"

Exhibit " Z2 " (1) (contd.)

Exhibits.

Goods Bought by Mr. A. R. Tamin from Accra Market.

Plaintiff's Exhibits.

658½	Yds. Woollen	@	25/-
3750	" Silk Crepe Amprime	@	5/-
2690	" " " "	@	2/6
15000	" White Drill		2/4
16920	" Khaki Drill		2/4
61194	" Asst. Afri Prints 36"		2/6
33048	" " " " 48"		3/6

" Z2."
(1)
Statements
as to goods,
October
1945,
continued.

10

Add 5% Commission on net value.

Goods bought by Mr. A. R. Tamim

From Accra Market.

658½	Yds. Woollen	@ 25/- per Yd.	£823	2	6
3750	" Silk Crepe Amprime	@ 5/- " "	937	10	-
2690	" " Amprime	@ 2/6 " "	336	5	-
15000	" White Drill	@ 2/4 " "	1750	-	-
16920	" Khaki " "	@ 2/4 " "	1974	-	-
61194	" Asst. Afri. Prints 36"	2/6 " "	7649	5	-
33048	" " " " 48"	3/6 " "	5783	8	-

20

Add 5% Commission on Net Value

19253	10	6
962	13	6
£20216	4	-

26th October, 45

Goods bought by Mr. A. R. Tamim

From Accra Market.

658½	Yds. Woollen	@ 25/- per Yd.	£823	2	6
3,750	" Silk Crepe Amprime	" 5/- " "	937	10	-
2,690	" " " "	" 2/6 " "	336	5	-
15,000	" White Drill	" 2/4 " "	1750	-	-
30 16,920	" Khaki " "	" 2/4 " "	1974	-	-
61,194	" Asst. Afri. Prints				
	36"	" 2/6 " "	7649	5	0
33,048	" " 48"	" 3/6 " "	5783	8	-

Plus 5% Commission Net Value

£19253	10	6
962	13	6

Total £20216 4 -

Exhibits.

Exhibit "Z 2 (1)" (contd.)

Plaintiff's
Exhibits.

GOLD COAST

	6500 Yds. Woollen double width @ 25/-	£8125	-	-
"Z2."	15000 ,, Silk Crepe Amprime 5/-	3750	-	-
(1)	30000 ,, Printed Silk Assorted 2/6	3750	-	-
Statements	10000 ,, Plain Silk 2/-	1000	-	-
as to goods,	20000 ,, Poplin Plain & Assorted 3/-	3000	-	-
October	10000 ,, Light Khaki 1/6	750	-	-
1945,	300 Dozen Singlets 30/-	450	-	-
continued.	100,000 Yds. African Fancy Prints			10
	36" 2/5	12083	6	8
	40,000 ,, Drill Assorted 2/4	4666	13	4
		<hr/>		
		£37,575	-	-
		<hr/> <hr/>		

25th October, 45.

4	Woollen Double Wdth @ 25/- per Yd.		
	Silk Crepe Amprime ,, 5/- ,, "		
	Printed Silk Asstd. ,, 2/6 ,, "		
	Plain Silk ,, 2/- ,, "		
	Poplin Plain Asstd. ,, 3/- ,, "		
	Light Khaki ,, 2/6 ,, "		20
	Singlets ,, 30/- ,, Doz.		
	Afr. Fancy Prints 36" 2/5 ,, Yd.		
	" " " 48" 3/5 ,, "		
	Drill Asstd. 2/4 ,, "		

Director of Supplies,
Accra.

I shall be obliged to know if these prices are reasonable.

Yours faithfully

"Z2."

"Z 2"(2) Interrogation of 1st Defendant.

(2)
Interrogation of 1st
Defendant,
29th
October
1945.

Il a declare se nommer TAMIM Abdul Rahman, ne a Beyrouth 30
(LIBAN) en 1914 de feu Amin TAMIM et de Hosson SAKHER, marie
a Rasmia SAKHER, pere de trois enfants.

Toutes les formalités voulues Par le loi ayant ete remplies, il a ainsi
depose.

D.—Vous etes inculpe d'importation fraudeleuse au Togo de deux
Millions quatre cent cinquante deux mille frs. en billets de banque
de l'Algerie at de l'AOF Veuillez nous preciser dans quelle conditions
vous avez importer ces capitaux.

R.—Le 27 Octobre 1945 je me suis presente au Poste de Douane d'Aflao,
j'y ai declare mon avoir en argent et marchandises, e'trangers 40
m'appartenant. Deux Europeans ont verifiees la voiture et ont

- decouverts une serviette que j'avais sous le siege arriere. Les douaniers m'ont presentes la serviette et m'ont interrogés sur son contenu et j'ai repondu quelle contenait de l'argent francais en billet de l'AOF. Nous avons fait le decompote ensemble et nous avons trouves une somme de deux millions quatre cent cinquante deux mille francs en billet de l'AOF et douze mille francs en billets de la France Libre et de la Tunisie. J'ai apporte cet argent pour pouvoir payer les frais de douane, de transit concernant des marchandises que j'ai achete en Gold Coast avec l'autorisation de l'Office des Changes de Dakar.
- 10 J'ai achete en Gold Coast des marchandises pour une somme de vingt et un mille livres environ. D'ailleurs j'ai depose la facture chez le Juge d'Instruction lorsque ce magistrat m'a interroge.
- D.—Chez qui avez vous achete ces marchandises ?
- R.—J'ai achete ces marchandises par l'intermediarie de Mr. Zacca commercant etabli a Accra.
- D.—Avez-vous une autorisation des autoritees Anglaises.
- R.—Non.
- R.—C'est Mr. Zacca qui m'a remis cet argent.
- D.—Dans quelle condition vous a-t-il remis cet argent ?
- 20 R.—La veille de mon depart, ce commercant m'a remis cet argent en me demandant de le depose pour lui a l'agence de la B.A.O. a Lome. Il m'a precise que cet argent n'avait cours en Gold Coast et m'a permis de prelever le necessaire pour le dedouanement et le transport des marchandises.
- D.—Pourquoi avez-vous approuve le besoin de cette somme sous le siege de la voiture ?
- R.—Je l'ai mis a cet endroit pour que personne ne voit cet argent en cours de route.
- D.—Par quel moyen comptiez-vous rembourser au sieur Zacca l'argent necessaire au dedouanement et au transport de vos marchandises ?
- 30 R.—Je comptais avoir d'autres autorisations de l'Office des Changes pour me permettre de le rembourser.
- D.—Dans quelles conditions le sieur Zacca est-il arrive en possession d'une somme aussi importante en billets francais ?
- R.—Je n'en sais rien.
- D.—Permettez-moi de douter de votre bonne foi, car vous devez avoir des preuves, si non des suppositions concernant les moyens employes par Zacca pour detenir une somme pareille.
- R.—Je n'en sais rien.
- 40 D.—Zacca a-t-il un compte en banque a Lome ?
- R.—Non. Il m'a demande d'ouvrir un compte en son nom.
- D.—Connaissez-vous de vos compatriotes a Lome ?
- R.—Non, c'est la premiere fois que je suis venu au Togo et je n'y connais personne.
- D.—Depuis combien de temps etes-vous etabli a Dakar ?
- R.—J'habite Dakar depuis six ans. J'y ai d'ailleurs mes parents et mes beaux parents.

Exhibits.
 —
Plaintiff's Exhibits.
 —
 " Z2."
 (2)
 Interrogation of 1st Defendant,
 29th
 October
 1945,
continued.

- Exhibits.* D.—Avez-vous habits en Colonie Anglaise ?
- Plaintiff's Exhibits.* R.—Non, c'est la premiere fois que me suis rendue dans une Colonie Anglaise.
- " Z2." D.—Comment avez-vous fait la connaissance de Mr. Zacca ?
- (2) R.—J'ai fait sa connaissance a Accra. Je lui ai explique les raisons pour lesquelles je venais dans cette ville et il s'est mis a ma disposition.
- Interrogation of 1st Defendant, 29th October 1945, continued. D.—Ne trouve-vous pas curieux qu'une personne que vous connaissez a peine depuis deux mois vous ait confie une somme aussi importante ?
- R.—Non, nous employons toujours ce procede entre nous et meme avec des Europeans. 10
- D.—A qui appartient la voiture Chevrolet No. CP 3583 WAC que vous avez utilise pour venir a Lome ?
- R.—Je ne connais pas le proprietaire, c'est mon compatriote Zacca qui m'a procure cette voiture.
- D.—Que signifie les initiales S.E.S. peintes sur la vitre arriere de ce vehicule.
- R.—Je n'en sais rien.
- Lecture faite et signe avec nous et le greffier en approuvant seize mots rayas nuls et une surcharge.
- Il a declare se nommer 20
- KWAKU, Ben ne a Accra GOLD COAST le 17 Mai 1915, fils de Koffi Koumma et de Ewachoua, marie pere de deux enfants, cheffeur demeurant a Accra Gold Coast, Station Road.
- Toutes les formalities voulues par la Loi ayant ete remplies il a ainsi depose.
- D.—A qui appartient la voiture No. C.P. 3583 WAC vous conduisez ?
- R.—Ce vehicule appartient au sieur Elias Sassine demeurant a Accra.
- D.—Dans quelle condition avez-vous ete amene a conduire le sieur Tamim Abdul Rahman a Lome ?
- R.—Vendredi soir a 5 Heures, mon patron Sassine Assalaud, Con. m'a 30 prevenu qui j'avais a conduire un Monsieur a Lome. J'ai prepare la voiture. Mon m'a dit que le passager demeurait a l'hotel " Disantor " et que je devais le chercher samedi a quatre heure du matin.
- D.—Avez-vous vu le sieur Tamim en compagnie de votre patron ?
- R.—Oui, ce libanais venait quelquesfois a la boutique de mon patron et je l'ai vu converser avec ce dernier. Je vous rapporte le fait suivant qui montre qu'ils se connaissaient parfaitement. Il y a dix jours environ mon patron m'a fait conduire ce libanais au Service des Cables, par la suite a la Banque Barclay.
- D.—Lorsque le sieur Tamim est monte en voiture etait-il en possession 40 d'une serviette ?
- R.—Je n'ai rien remarque au depart.
- D.—Vous avez remarque la serviette que a ete saisie a la douane de Lome ?
- R.—Oui, c'est moi que l'ai transportais de la voiture au bureau.
- D.—Avez-vous vu ce sac en possession du sieur Tamim lorsqu'il est monte dans la voiture a Accra ?

R.—Non, je n'ai pas remarque.

D.—Avez-vous vu ce libanais cache une serviette sous le siege de la voiture ?

R.—Non. S'il cache cette serviette n'a pu le faire qu'au bac ou je l'ai laisse tout seul pres de la voiture.

Lecture faite, persiste et signe etc.....

Exhibits.
Plaintiff's Exhibits.

"Z2."
(2)
Interrogation of 1st Defendant, 29th October 1945, *continued.*

1st Defendant's Exhibits.

"E."
Telegram, Tamim to Sassine, 1st November 1945.

1st Defendant's Exhibit.

"E." Telegram—Tamim to Sassine.

POST OFFICE TELEGRAPHS, GOLD COAST.

10 Time handed in
9.20

Office of origin and
Service Instructions
Lome

To Sassine Accra.

Hand over goods to Zacca authorisation not granted.

TAMIM.

Plaintiff's Exhibit.

"J." Letter from Tamim to Sassine.

From A. R. Tamim
C/o Lome.

To Mr. S. E. Sassine,
Transport Owner,
Accra.

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Lome, November 1st 1945.

Dear Sir,

I beg to inform you that the British Authorities have not delivered me an export licence and so far I have decided that you should return back to Mr. Zacca the goods received from him and which I have ordered to be shipped.

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

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

30

Yours faithfully,

A. R. T.

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

Plaintiff's Exhibits.

"J."
Letter from Tamim to S. E. Sassine, 1st November 1945.

*Exhibits.*1st
Defendant's
Exhibits." F." Telegram
from
Tamim to
Sassine,
3rd
November
1945.Time handed in
2.45

To Sassine Accra

Zacca mandated settle affair please deliver goods to him regards.

Office of origin and
Service Instructions.
Lome.

TAMIM.

1st Defendant's Exhibit.

" F." Telegram—Tamim to Sassine.

POST OFFICE TELEGRAPHS, GOLD COAST.

" T3." Letter,
Frans
Dove to
Comptroller
of
Customs,
7th
November
1945.FRANS DOVE
BARRISTER-AT-LAW & SOLICITORThe Honourable
The Comptroller of Customs,
Accra.

Sir,

Yesterday after-noon Mr. W. E. Conway, acting on behalf of the Government seized certain woollen silk and cotton goods consisting of one hundred and three (103) bales and six (6) cases in the wholesale store of Mr. S. E. Sassine in Accra and caused them to be removed therefrom.

The abovementioned goods were bought in the ordinary course of business in stores in Accra by a Mr. A. R. Tamim and deposited with Mr. Sassine for safe-keeping.

I am instructed by Mr. Sassine to enquire from you why the said goods were so seized and to ask you for their immediate return.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) FRANS DOVE,

Solicitor for S. E. Sassine.

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1st Defendant's Exhibit.
" T3." Letter, Frans Dove to Comptroller of Customs.Tutu House,
Accra, Gold Coast.
7th November, 1945.

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1st Defendant's Exhibit.

"T4." Letter from Comptroller of Customs to Frans Dove.

H.M. Customs,
Accra.

8th November, 1945.

No. 0738/3.

Sir,

With reference to your letter dated the 7th November, 1945, I have the honour to inform you that the goods which were the property of Mr. A. R. Tamim were seized by me as prohibited articles under the Customs Laws and that they cannot be returned to your client.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) W. E. CONWAY,
Comptroller of Customs.

Frans Dove, Esqr.,
Barrister-at-Law,
Accra.

Exhibits.

1st
Defendant's
Exhibits.

"T4."
Letter from
Comptroller
of
Customs to
Frans
Dove, 8th
November
1945.

20

1st Defendant's Exhibit.

"D." Letter—Frans Dove to A. G. Heward-Mills.

A. G. Heward-Mills, Esqr.,
Barrister-at-Law & Solicitor,
Accra.

Dear Sir,

I am instructed by Mr. S. E. Sassine of Accra to acknowledge receipt of your letter to him of the 8th instant written as Attorney for and on behalf of Mr. A. R. Tamim and to reply thereto.

1. The goods left by Mr. Tamim with Mr. Sassine were 103 bales (not 107 bales) and 6 cases.

2. Mr. Sassine had and still has a lien on the said goods for the payment by Mr. Tamim of the following charges:—

(A) Hire of 6 lorries for 6 days at £10 each per day	£360
(B) Value of one chevrolet car No. CP. 3583	£1000
(C) Hire of car No. CP. 3583 from Accra to Aflao	£25
(D) Cash lent by Mr. Sassine to Mr. Tamim	£1460
and	
(E) Cash lent by Mr. Sassine to Mr. Tamim at Avenida Hotel	£34

3. Mr. Sassine also has a further claim in damages against Mr. Tamim for breach of agreement by taking car No. CP. 3583 across the frontier into French Togoland thereby causing Mr. Sassine considerable trouble and inconveniences etc.

"D."
Letter from
Frans
Dove to
A. G.
Heward-
Mills,
9th
November
1945.

Exhibits.

1st
Defendant's
Exhibits.

"D."

Letter from
Frans
Dove to
A. G.
Heward-
Mills,
9th
November
1945,
continued.

4. In consequence of the conduct of Mr. Tamim mentioned in paragraph 3 the Government seized the said 103 bales and 6 cases of goods on the 6th instant and removed them from Mr. Sassine's store.

5. On behalf of Mr. Sassine and on his instructions I wrote to the Comptroller of Customs on the 7th instant asking for a return of the said goods but up to the present moment I have received no reply.

In the circumstances there can be no point in commencing proceedings against Mr. Sassine in respect of the said goods.

I am, dear Sir,
Yours faithfully,
(Sgd.) Frans Dove.

10

1st Defendant's Exhibit.

"L." Copy of Writ of Summons, Tamin v. Sassine, No. 152/45.

Suit No. 152/1945.

IN THE SUPREME COURT OF THE GOLD COAST, EASTERN JUDICIAL DIVISION,

Divisional Court holden at Accra.

Between : A. G. HEWARD-MILLS as Attorney for and on behalf of
A. R. TAMIM, Plaintiff

and

SASSINE ELIAS SASSINE, Defendant, Comptroller of
Customs, Co-Defendant.

20

(Joined by
order of
Court d/d
10.12.45.
W. H.
C. J.)

To Sassine Elia Sassine of Accra.

YOU ARE HEREBY COMMANDED in His Majesty's name to attend before this Court at Accra on Monday, the 3rd day of December, 1945, at 8.30 o'clock in the forenoon then and there to answer a suit by A. G. Heward-Mills, as Attorney for and on behalf of A. R. Tamim against you.

The Defendant detained and detains from the plaintiff the plaintiff's goods, that is to say 107 * 103 bales of cotton goods and 6 cases of silk.

The Plaintiff claims a return of the said goods or their value and £3,000 for their detention.

Issued at Accra the 17th day of November, 1945.

Sum claimed (A) Judicial Relief
(B) £3,000 - -

Court fees 23 - -
Bailiff's fees 1 -

£3,023 1 -

30

* Amended
this
28.3.46
(It'd.)
A. C. S.
Ag. C. J.
(Vol. 178,
p. 107.)

Certificate of Service by Bailiff.

Upon the 17th day of November, 1945, this summons was served by me on Sassine Defendant. This I did by serving a copy of the above summons on the said Defendant personally at Accra.

(Sgd.)
?
Bailiff.

40

1st Defendant's Exhibit.

"B." Declaration as to goods.

Exhibits.

I the undersigned hereby declares that I hold for and on behalf of A. R. Tamim four (4) bales of American Shirting each containing 125 pieces total value of which is three hundred and seventy-five pounds (£375).

1st
Defendant's
Exhibits.

"B."

Declaration
as to
goods—
(undated).

The said four (4) bales to be returned to Mr. Tamim or his representative on demand and to ensure delivery I have this day deposited with A. G. Heward-Mills, Attorney for the said A. R. Tamim the sum of three hundred and seventy-five pounds.

- 10 Should this declaration turn out to be incorrect that is to say should the 4 bales be found to contain certain materials other than shirting I agree and undertake to pay the difference between the price of the said 4 bales of shirting and the price of the actual contents.

(Sgd.) S. E. SASSINE.

1st Defendant's Exhibit.

"C." Receipt from Sassine to A. G. Heward-Mills for £1,000 deposit.

"C."

Receipt
from
Sassine to
A. G.
Heward-
Mills for
£1,000
deposit,
19th
November
1945.

- Received from A. G. Heward-Mills, Attorney for A. R. Tamim the sum of one thousand pounds (£1,000) as deposit to secure the return of my car No. CP. 3583 hired by A. R. Tamim from Accra to Lome which
20 said car has been seized by the French Government.

I hereby promise and undertake to refund the aforesaid sum of one thousand pounds (£1,000) at any time to A. G. Heward-Mills, Attorney for A. R. Tamim on delivery of my said car No. CP. 3583 to me in good condition.

Dated at Accra this 19th day of November, 1945.

(Sgd.) S. E. SASSINE,

20.11.45.

Gold Coast Stamp
2d.

Exhibits.

1st Defendant's Exhibit.

1st
Defendant's
Exhibits.

" P " (part of). Part Proceedings, Suit 152/45.

10th December, 1945.

" P. "
(part of)
Part
Proceed-
ings Suit
152/45,
10th
December
1945.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Monday, the 10th day of December, 1945, before Harragin, C.J.

152/45.

A. G. Heward-Mills, etc.

V.

Sassine Elias Sassine.

10

Claim for return of goods or their value and £3,000 for their detention.

Mr. Heward-Mills, Attorney for Plaintiff, present.

Mr. Sawyerr for Defendant.

No appearance of Defendant (appeared later).

Mr. Heward Mills—Issues settled as :

In October 1945 Plaintiff deposited with Defendant cotton goods to the value of £18,000. Such goods to be returned on demand. Several demands both verbal and written have been made and Defendant refuses to return same.

In reply to the last demand Defendant stated that the goods had 20 been seized by the Comptroller of Customs. That there are only 103 bales and not 107 as alleged by Plaintiff.

Mr. Sawyerr applies to have Comptroller of Customs joined as co-Defendant.

Comptroller of Customs replies that as far as this case is concerned he is not interested and should not be joined.

Order—

The Comptroller of Customs be not joined until Court in possession of material facts in the case.

ALBERT GILLIS HEWARD-MILLS, sworn, states :—

30

Barrister Accra. I hold power of attorney from Plaintiff (put in " A "). In or about October this year the Plaintiff made purchases 107 bales of cotton goods and 6 cases of silk from various firms in Accra. The various witnesses will produce the bills. These goods were deposited with Defendant for safe keeping returnable on demand. Several demands were made both written and verbal for return of goods but Defendant failed to do so. At first he promised to return them but in reply to the last demand he wrote on 9/11/45 denying that there were 107 bales alleging only 103 bales and 6 cases of silk but stating that they had been 40 seized by the Comptroller of Customs. Put in " B. " We do not admit that we owe any of the items set out in paragraph 2 of Exhibit " B. " I tender letter dated 24th November 1947 [sic.] from Defendant to me Exhibit " C. "

Cross-examined :

I am satisfied that Comptroller of Customs has seized the goods. I heard before writ issued. I have taken no steps with regard to the goods. I was not interested because I did not know the circumstances under which they were seized. I had interviewed Mr. Conway. After the writ I saw notice in the Gazette regarding seizure. I saw Comptroller of Customs who said he was taking action.

At this stage Mr. Sawyerr again applies for Comptroller of Customs to be joined as Defendant.

10 Mr. Heward-Mills agrees that he should be joined.

Order—

Comptroller of Customs be joined as co-Defendant.

Adjourned 17th December.

(Sgd.) W. HARRAGIN,
C.J.

Exhibits.

1st
Defendant's
Exhibits.
" P."
(part of)
Part
Proceed-
ings
Suit 152/45,
10th
December
1945,
continued.

1st Defendant's Exhibit.

" M." Order for Joinder of the Comptroller of Customs, Suit 152/45.

IN THE SUPREME COURT OF THE GOLD COAST.

Eastern Judicial Division.

20 Divisional Court, Accra.

Suit No. 152/1945.

(Sgd.) WALTER HARRAGIN,
Chief Justice.

A. G. Heward-Mills, As Attorney for and on behalf of
A. R. Tamim - - - - - Plaintiff

v.

Sassine Elias Sassine of Accra - - - - - Defendant.

ORDER FOR JOINDER.

30 UPON APPLICATION made to this Court by Mr. Akilagpa Sawyerr of Counsel for and on behalf of the above-named defendant praying for an Order for the Comptroller of Customs, Accra, to be joined as Co-Defendant herein :

IT IS ORDERED that the said the Comptroller of Customs, Accra, be joined as Co-Defendant in the above cause :

AND THAT a copy of the writ of summons herein be served on the said the Comptroller of Customs, Accra.

Given under my hand and the seal of the said Court at Victoriaborg, Accra, this 10th day of December, 1945.

40

(Sgd.) K. O. QUANSAH,
Registrar, Divisional Court.

" M."
Order for
Joinder of
the
Comptroller
of
Customs,
Suit 152/45,
10th
December
1945.

Exhibits.

1st Defendant's Exhibit.

" P " (part). Part Proceedings, Suit 152/45.

1st
Defendant's
Exhibits.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Monday the 17th day of December, 1945, before Harragin, C.J.

" P. "
(part of)
Part
Proceed-
ings
Suit 152/45,
17th
December
1945.

From page 61.

A. G. Heward-Mills etc.-	- - - -	Plaintiff	
	<i>v.</i>		
Sassine Elias Sassine	- - - -	Defendant	
Comptroller of Customs	- - - -	Co-Defendant.	10

Mr. Heward-Mills attorney for Plaintiff
 Mr. Dove with Mr. Sawyerr for Defendant.
 Mr. Manyo-Plange for Comptroller of Customs.

Mr. Manyo-Plange applies to have the Comptroller of Customs struck out as he took the goods by process of Law and a procedure is set out for the recovery of the goods in such case. No remedy can be against the Comptroller of Customs for the seizure s. 139 of Cap. 132.

Ruling :

The Comptroller of Customs cannot be struck out at this stage as there is no evidence before the Court as to how he came by the goods. 20

Mr. Heward-Mills states that his case is that he handed over the goods lawfully and innocently to the Defendant. That the Defendant either dealt with the goods in such a way as to render them liable to seizure or they were unlawfully seized by the Comptroller of Customs.

Ruling :

This is a new issue which was not disclosed at the first hearing. There shall be pleadings. Statement of claim within 14 days, Statement of Defence within 7 days of Statement of Claim, Reply if any within 5 days.

W. H.



1st Defendant's Exhibit.

"N." Statement of Claim, Suit 152/45.

IN THE SUPREME COURT OF THE GOLD COAST
 Eastern Judicial Division
 Divisional Court, Accra.

Exhibits.

1st
 Defendant's
 Exhibits.

Suit No. 152/1945.

"N."
 Statement
 of Claim,
 Suit 152/45,
 29th
 December
 1945.

Between A. G. Heward-Mills as Attorney for and on behalf
 of A. R. Tamim - - - - - Plaintiff
 and
 10 Sassine Elias Sassine of Accra - - - - - Defendant
 The Comptroller of Customs - - - - - Co-Defendant.

STATEMENT OF CLAIM.

Delivered on the 29th day of December, 1945, by A. G. Heward-Mills—
 Attorney for Plaintiff.

1. The Plaintiff, a Syrian merchant, in or about October, 1945,
 made purchases of 103 bales of cotton piece goods and 6 cases of Rayon
 and Woollen materials from various firms carrying on business in Accra.

2. The aforesaid goods were lawfully imported into the Gold Coast
 by the firms referred to in paragraph 1 supra.

20 3. The Plaintiff handed the aforesaid goods lawfully and innocently
 to the 1st Defendant for safe keeping returnable on demand.

4. Several demands both verbal and written have been made for
 their return but the 1st Defendant has failed to comply with any of such
 demands. In reply to the last demand 1st Defendant by his Solicitor wrote
 stating that the goods had been seized by the 2nd Defendant.

5. That Plaintiff's attorney interviewed the 2nd Defendant in
 connection with the alleged seizure and the 2nd Defendant admitted having
 seized the said goods and stated that he was taking action as the
 1st Defendant had by his Solicitor written to him claiming them and
 30 demanding their return.

6. The Plaintiff has done nothing to warrant seizure of the said goods
 and says that the 2nd Defendant is not entitled to seize them.

7. The Plaintiff further says that 1st Defendant has either dealt with
 the goods in such a way to render them liable to seizure or they have been
 unlawfully seized by the 2nd Defendant.

And the Plaintiff claims the return of the aforesaid goods or their
 value £18,000 and £3,000 damages.

Dated at Accra the 29th day of December, 1945.

(Sgd.) A. G. HEWARD-MILLS,
 Attorney for Plaintiff.

40 The Registrar,
 Divisional Court, Accra.

And to the above-named 1st Defendant
 his solicitor or agent, Accra.

And to the above-named 2nd Defendant
 his solicitor or agent, Accra.

Exhibits.

1st Defendant's Exhibit.

1st
Defendant's
Exhibits.

"O." Defence of Comptroller of Customs, Suit 152/45.

(Title as last.)

"O." Defence of
Comptroller
of
Customs,
4th
January
1946.

Defence delivered the 5th day of January, 1946, by J. S. Manyo-Plange,
Counsel for Second Defendant.

1. The 2nd Defendant seized the goods as being prohibited goods on the 6th November, 1945.

2. The 2nd Defendant on the 8th November, 1945, in pursuance of section 139 of Cap. 132 served Notice of the aforesaid seizure on the Plaintiff by leaving the said Notice at the Avenida Hotel, Accra, then 10 last-known address of the Plaintiff.

3. That the said Notice of Seizure was also published in Gazette No. 72 of 1945.

4. That the Plaintiff did not within one calendar month from the date of the said seizure give notice in writing to the Comptroller that he claims or intends to claim the goods so seized.

5. That as from the 7th December, 1945, the said goods became condemned by virtue of section 139 of Cap. 132 aforesaid.

6. By reason of the premises, the 2nd Defendant contends—

(A) that he is not liable to the Plaintiff ;

20

(B) that the Plaintiff ought not to be admitted to make any claim against the 2nd Defendant in respect of the said goods.

Dated at the Law Officers' Chambers, Accra, this 4th day of January' 1946.

(Sgd.) J. S. MANYO-PLANGE,

Crown Counsel.

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

1st Defendant's Exhibit.

" P " (part). Part Proceedings, Suit 152/45.

13th March, 1946.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Monday, the 13th day of March, 1946, before His Honour Allan Chalmers Smith, Judge.

152/1945.

A. G. Heward-Mills, Attorney, for A. R. Tamim

v.

10

- (1) Sassine Elias Sassine
(2) Comptroller of Customs.

Plaintiff's attorney in person and Mr. Dove.
No appearance 1st Defendant (sends Medical Certificate).
Plange for 2nd Defendant.

Plange : I object to Mr. Dove appearing for Plaintiff as he had already appeared in this action for 1st Defendant.

Dove : Before action brought I was instructed by 1st Defendant on behalf of Plaintiff to make a demand on Comptroller of Customs for the goods which he had seized, the subject-matter of this case.

20 Comptroller replied refusing to return the goods. Plaintiff's attorney then wrote Sassine claiming the goods and Sassine instructed me to reply that Government had seized the goods and he was not responsible.

Later Plaintiff's attorney brought this present suit against Sassine. Sawyerr appeared for Sassine.

Later Comptroller joined as 2nd Defendant. After that, I think, I appeared for Sassine (see Record p. 82). Cites two cases where this was allowed (Records of cases sent for). *Omanhene Amoako Atta v. Omanhene Atifa* 1912 ; *Animle v. Otibo & Konor Mate Kole*.

30 *Plange* : Matter in discretion of Court. Ask adjournment as 2nd Defendant at Legislation Council.

Adjourned to 28th March.

A. C. S.

Exhibits.

1st
Defendant's
Exhibits.

" P. "
(part of)
Part
Proceed-
ings
Suit 152/45,
13th
March
1946.

*Exhibits.*1st
Defendant's
Exhibits." G. "
Cable,
Sassine to
Tamim,
14th
March
1946.

1st Defendant's Exhibit.

" G. " Cable—Sassine to Tamim.

Cables Sous-Marins Francais de l'ouest-Africain

Reception	Via Dakar	Transmission	
Nature du telegramme	Origine Accra	Numero 10	Mots 42
Date 14	Heure 0938	No. Local	

La tamim dakar—

10

Autorisation loutfi vous faut perdre proces envoyez autorisation signee control britannique haut commissaire dakar avant er mars sinon perdre surement process marchandises valent 25000 dependent de moc meme vous on procureur presents consul ami faits salen simon regretterez

Sassine

" H. "
(Part)
Transla-
tion of
" G. "
14th
March
1946.

1st Defendant's Exhibit.

" H " (part). Translation of " G. "

Copy

Cable No. 10

March 14, 1946

LC Tamim Dakar

20

Authority Loutfi makes you lose case Send authority signed British Consul High Commissioner Dakar before March 22 otherwise you definitely lose case Goods valued £25,000 depend on me myself whether you or attorney present. Advice of friend. Act accordingly otherwise will regret.

(Sgd.) Sassine

1st Defendant's Exhibit.

" P " (part). Proceedings to Judgment, Suit 152/45.

28th March, 1946.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, on Thursday the 28th day of March 1946, before His Honour Allan Chalmers Smith, Ag. Chief Justice.

Suit No. 152/45.

Heward-Mills etc.

v.

10

Sassine & Comptroller of Customs.

Plange for Comptroller of Customs.

Plaintiff in person.

Sawyerr for Sassine.

Dove applies to appear for Plaintiff.

Ruled : Mr. Dove cannot now appear for Plaintiff.

Heward-Mills : Asks leave to amend claim in writ to read " 103 bales of cotton " instead of " 107 ", and to amend claim in Statement of claim by substituting £16,184 7. 11 for " £18,000 " appearing therein.

No objection.

20

Amendment allowed.

Heward-Mills : Pleadings have been filed. Section 139 of Cap. 132 Section 5 of 29 of 139.

Court : Should not 2nd Defendant begin.*Plange* submits no.

Heward-Mills : Letter from Dove for Sassine was sufficient notice under section 139.

Ruled : Plaintiff begins.

ALBERT GILLIS HEWARD-MILLS.

30 Practitioner of this Court and the Plaintiff's attorney. Tenders Power of Attorney dated 2nd November, 1945. No objection admitted. Executed in Lome.

Ex. A.

In or about October 1945 A. R. Tamim made purchases of 103 bales cotton goods and 6 cases of silk from firms in Accra. The firms were Paterson Zochonis, E. J. Irani & Brothers, A. Chellaram & Sons, Aouad & Hage, Asafiri & Co., Beyrout Trading Co. Ltd., Bardawil Brothers & C. H. Matouk. Goods had been lawfully imported into the country by the firms mentioned.

He took delivery of them in Accra. These are the invoices for the goods (Tendered, no objection admitted).

Ex. B.

40 The goods were deposited with 1st Defendant for safe keeping, returnable on demand. Sometime later 1st Defendant phoned me and I went to his office. I think it was 6th November. There I met Mr. Conway, Mr. Allen and other customs officers. 1st Defendant told me in Conway's presence that Conway had come to seize the goods.

Exhibits.

1st
Defendant's
Exhibits.

" P. "

(part of)
Proceed-
ings to
Judgment
Suit 152/45,
28th
March 1946
to
1st April
1946.
28th March
1946.

Exhibits. I asked 1st Defendant if he had done anything to make the goods liable to seizure and he said "No." Sassine demanded a receipt from Conway for the goods and Conway refused.

1st
Defendant's
Exhibits.

"P."
(part of)
Proceed-
ings to
Judgment,
Suit 152/45,
28th
March 1946
to
1st April
1946.
continued.

I asked Conway the reason for seizure and he said he was not there for argument and Mr. Sassine could find out later. I told Mr. Conway I was Tamim's attorney. Sassine told Conway, my presence, goods were Tamim's. Conway said to effect he wanted the goods because they were Tamim's property. Goods were then still locked up in Sassine's warehouse.

Later Sassine rang Dove, but before Dove arrived, Sassine under pressure opened the warehouse and Conway and his men got into warehouse 10 and started removing the goods in their packages. I left before they had all been located on the lorries. This happened on the day of the seizure. Sassine said done nothing to render goods liable to seizure and I said Tamim had done nothing. At that time Tamim was in Lome. On 8th November 1945 I wrote letter to Sassine demanding the return of the goods.

Ex. C. This is the letter (Brought to Court by 1st Defendant). No objection admitted. At the time I wrote this letter I knew that the Customs had seized the goods.

Ex. D. Sassine replied by letter from Dove 9th November 1945. (Tendered 20 no objection : admitted.)

Ex. E. I replied to Dove 12th November 1945 (Tendered no objection : admitted). Dove replied 14th November 1945 (Tendered no objection : admitted).
Ex. F.

Following that a writ was issued against Sassine. Application 15th November. Writ served 17th November. On 17th November notice in Gazette about the goods. I saw the notice within 2-3 days. When I saw notice in Gazette I arranged interview with Conway about next day. This would be not later than 21st November. Asked if 1st Defendant had done anything about putting in a claim. Conway 30 showed me Dove's letter to him and his reply. Dove's letter 7th November. Reply 8th November.

Ex. G.

Told Conway Sassine the bailee and I was claiming from Tamim and asked if he wanted a claim from me as attorney for Tamim and he said "No," that he had received notice of Plaintiff's claim already through Sassine and that he would be seeing the Law Officers to take action under section 145 of Cap. 132 as early as possible.

Meantime Conway did nothing and hearing of my case against Sassine came on for hearing and Sassine subpoenaed Conway as witness. I opened case in Court. Conway present. Question rose as to whether he should 40 be joined. Order joinder on 10th December. Pleadings ordered 17th December.

Goods lawfully bought and are not prohibited goods. Tamim still in Lome. Can't get a visa to enter Gold Coast.

Adjourned to 2.30 p.m.

2.30 p.m.

Parties as before, except Mr. Sawyerr, absent with leave.

A. G. HEWARD-MILLS, *examined* :

The Plaintiff has suffered damage by non-delivery of the goods. They would have fetched a high price in Accra when sold retail to other 50

retailers. He has no shop in Accra. My instructions are that he has a big business in Dakar and was going to open up in the Gold Coast. Don't know if he had engaged any premises to open up his business.

No cross-examination 1st Defendant.

Cross-examined Plange for 2nd Defendant :

Got to know Tamim end September or early October 1945. First saw him in company with Sassine. At one time he lived at the Avenida Hotel, Accra. I believe that is where he lived up to the time he left. He left Accra about the end of October. I went to Lome and got the
10 Power of Attorney there.

Might be he left 26th October.

Understood he came to Gold Coast to have a look round to see if he could open business here. Wouldn't be surprised his application for visa was just to visit the Gold Coast. Don't know that he only got immigration permit for 14 days visit. Don't know that Mr. Captan sponsored him. Don't know he arrived 21st August. Don't know if he came by air. I know he applied to extend his visit. I think his application was granted. Don't know extended 2 weeks from 9th September. Don't know Sassine sponsored extension visit. Know application extension made but don't
20 know how many nor how many granted. Don't know he was told 9th September extension was last and he would be prosecuted if he stayed over.

Some of the invoices show the sale dates as 24th and 25th October. Some are undated. Don't know that goods bought after 9th September.

From Zacca Brothers he bought £4,684.5/-. Invoice dated 25th October. Doesn't say if goods paid for or how. I got the invoices before the Customs seized the goods i.e. before 6th November. Mr. Zacca got them for me. It was result of a request from the police. Question raised as to where goods came from and invoices produced to show where
30 they came from.

Mr. Tamim has not given me any invoices. I believe he had paid for all the goods before he left. The invoices show he paid out nearly £15,000 cost for the goods before he left. Don't know if Zacca assisted him in these purchases. Don't know when goods taken to Sassine's warehouse. Understood Sassine's lorries took them. Knew before 2nd November that goods in Sassine's warehouse. I knew Zacca has to some extent been watching interests of Tamim. Zacca did not get Tamim to give me Power of Attorney.

Tamim bought the goods to open business here. Stored them at
40 Sassine's until he was ready for them. Up to 2nd November no dispute between Tamim and Sassine. Before 2nd November got letter and telegraph message from Tamim from Lome to demand the goods from Sassine. I made several verbal demands and each time he promised to hand over the goods. Zacca with me on two occasions when demands made.

When didn't get goods Tamim sent for me to Lome and I got the Power of Attorney. He telephoned me several times. Last intimation of Sassine's lien was in Dove's letter. I think I wrote Tamim that Sassine failed to give over the goods. In consequence he asked me to come to
50 Lome.

Exhibits.
—
1st
Defendant's
Exhibits.
—
" P."
(part of)
Proceed-
ings to
Judgment,
Suit 152/45,
28th
March 1946
to
1st April
1946.
continued.

Exhibits.
 —
 1st
Defendant's
Exhibits.

“ P.”
 (part of)
 Proceed-
 ings to
 Judgment,
 Suit 152/45,
 28th
 March 1946
 to
 1st April
 1946.
continued.

From time I first asked Sassine for goods to when I reported could not get them was about a week. Don't know how long it takes for a letter to go from here to Lome. Wrote ordinary mail. Got instructions to demand goods about a week or 10 days before I went to Lome. I wrote week to 10 days after receipt Tamim's instructions that could not get goods. Then got telephone to come to Lome. Can't say how long after I got message to come to Lome. Might be 3 days. I did get instructions prior to going to Lome.

Don't know Tamim crossed frontier on 27th October.

I left Accra early 2nd November. Message to come a day or two 10
 before. Tamim met me at French frontier. Sassine a transport owner.
 Don't know where he runs his lorries. Don't know he runs lorries to Lagos,
 through Lome.

On 2nd November Tamim told me French had confiscated car in
 which he had gone to Lome. He said it was Sassine's car. He did not tell
 me his money had been confiscated. He told me he had failed to declare
 his money. Didn't say how much or whether it had been confiscated.
 He didn't say £500 had been taken from him. Didn't ask him what had
 happened to the money. Don't know goods bought after Tamim warned
 would get no more extensions. Don't know Zacca deposited goods with 20
 Sassine to be taken to French Territory. Don't know Tamim sent for me
 to get Power of Attorney to get back goods in consequence of Tamim being
 caught by French Customs.

Sassine never raised question of his car until Dove wrote letter.
 Don't know that Tamim telegraphed Zacca to settle with Sassine and take
 over the goods. I was instructed to hand over goods to Zacca to be sold
 when I got them.

Don't know if Tamim had attempted to sell goods before he left me
 on 26th October. Don't know why Power of Attorney given to me instead
 of to Zacca. Don't know Zacca approached Sassine about goods after 30
 telegram. Didn't know Sassine refused to hand over goods to Zacca until
 his claim re car etc. was satisfied.

Sassine alleges Tamim's conduct caused Government to seize the
 goods. I phoned Tamim about this and he denied doing anything. It
 was Zacca who usually phoned for me. Sometimes I phoned Joseph
 William in Lome. He stays at Joseph William's house and when I have
 no interpreter at my end, Joseph William would speak for Tamim.

I was well aware of the facts of the case when I met Conway at Sassine
 on 6th November. On 6th November knew goods being seized. For
 claim against Sassine to be good must show he had done something to make 40
 them liable to seizure. So far as I know Sassine had done nothing but
 transport goods to his warehouse and keep them there.

I asked Comptroller why seizing goods at the time and he said I would
 know later. Later I went to see him and I asked him why he had seized
 the goods and he said because they were prohibited goods. He didn't
 say why the goods were prohibited. He merely referred me to the Gazette
 notice and said would refer to Law Officers and take action.

I did not write to Customs at all as Collector told me he had had a
 written claim from Sassine and it was not necessary for me to put in
 one.

29th March, 1946.

Plaintiff in person.

Sawyerr for 1st Defendant.

Plange for 2nd Defendant.

Heward-Mills applies to amend paragraph 5 of Statement of Claim by adding the following at the end of the paragraph: "The second Defendant not having acted under section 145 of Cap. 132, is estopped from resisting the Plaintiff's claim for the return of the goods."

Plange: This is a plea of law not fact.

10 *Sawyerr*: No objection.

Amendment allowed.

Plange applies to amend 2nd Defendant's defence by adding as paragraph 5A the following:—

"5A. The Defendant does not admit paragraph 5 of the Statement of Claim to the extent that the second Defendant was estopped from resisting the Plaintiff's claim."

Amendment allowed.

A. G. HEWARD-MILLS. (*Cross-examination*) (*contd.*):

20 I applied on Tamim's instructions for visa for Tamim to return to Gold Coast. Telephone instructions I think. Received instructions shortly after I returned from Lome. Less than a week, a day or two after the seizure.

Got reply Government would not allow him to return. Communicated this to Tamim. Don't suppose Tamim had any reason to believe he would be refused visa. Don't know why Tamim went to Lome. Didn't ask him why he wanted to sell off the goods which he had bought. If Tamim intended to return, didn't think it strange he should give me Power of Attorney in the terms therein.

30 I know from what Sassine and Tamim told me that the goods were deposited with Sassine for safe keeping, returnable on demand.

I only know this from information received, not of my own knowledge. Don't know if Tamim had any export licence for these goods. Don't know that £16,000 would be three million francs. Don't know rate of exchange. It is a large amount. Don't know if Tamim had any licence to import currency into Gold Coast.

40 Don't know what money if any, he took out of Gold Coast. Don't know if he had licence to take out money. Don't know where he got the money to pay for the goods. I don't know anything about Tamim's affairs except to get possession of the goods for him. Didn't ask Tamim if any charges or lien had to be discharged to Sassine before he would deliver the goods and he didn't tell me.

If Sassine had made such demands, as he did, I would and did communicate them to Tamim. Communicated Sassine's demand to Tamim on phone. Wrote Tamim once and sent him two cablegrams. Tamim denied Sassine's claim. I drafted the Power of Attorney. Inserted power to sue in Power of Attorney because there had been several demands

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for return of goods and Sassine had made promises which he had not fulfilled, but he had made no claim against the goods until Mr. Dove's letter of 9th November. Didn't ask Tamim if he held Sassine's receipt for the goods or ask to see any such receipt.

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After I returned from Lome I asked Zacca if Sassine gave a receipt for the goods and he said " Yes " but I did not ask to see it. Later I asked Zacca for it and he said he had not got it. Before seizure I had no written admissions from Sassine. I still don't know the reason for seizure. Don't know that goods deposited with Sassine for purpose of exportation. Don't know that is the reason for the seizure. Don't know whether 2nd 10
 Defendant's ground for seizure is true or not.

I can find out from Tamin if he would like to come to Court in this case if he can get a visa. Don't know whether Tamim at Dakar or Lome now.

It was part of my case before 17th December that Sassine had put in a claim to the goods for Tamim but not that Comptroller had failed to comply with the law by not instituting proceedings under section 145 of Cap. 132. All I said was I had seen Comptroller and he had promised to take action.

Comptroller said " He had received Sassine's claim for the return of 20
 Tamim's goods which had been seized from Sassine's possession, that Comptroller was consulting the Law Officers and would take action as soon as possible." I had two interviews. The first I think was after the receipt of Dove's first letter but I am not sure it was before I issued the writ against Sassine but I think it was. The second interview was after I saw Gazette notice. Comptroller said substantially the same things at both interviews.

I assumed that Comptroller would take proceedings against Sassine and I intended then to intervene for Tamim, but I said nothing about this to the Comptroller. 30

Comptroller said he had received Sassine's claim and would take action. I am familiar with section 139 and 145 but I am not an expert on the whole ordinance. Don't know Comptroller has 3 years in which to institute proceedings. If a claim made under 1939 the Comptroller must take action. Don't agree no action lies against Comptroller for recovery of the goods within the three years.

Don't agree that my proper remedy against Comptroller is a Mandamus.

Conway's letter to Sassine of 8th November says goods were Tamim's and they cannot be returned to Sassine. Don't know notice of seizure sent to Tamim until I saw it pleaded. 40

Didn't deny it in my Reply. No instructions about it. Made no inquiries about it. Denied receiving the notice in the reply. No denial of notice being sent. Comptroller on 17th did apply to Court to be struck out of the case. Don't remember the grounds he urged. Don't remember telling Court not concerned with Comptroller but if Sassine had done anything to render goods liable to seizure I held him responsible.

I have no information or knowledge of anything which Sassine might have done to enter the goods liable to seizure and I have no evidence to lead on this point.

It was not until after 17th December that I decided to adopt Sassine's letter to establish my claim. Up to this time neither Tamim nor I have put in any written claim to Comptroller under section 139 because I rely on Sassine's letter to him.

Tamim did not tell me that goods carried to and deposited with Sassine for purpose of exportation.

This letter bears Tamim's signature. Letter dated 1st November, 1945. Letter addressed to Sassine.

10 This telegram purports to come from Tamim at Lome addressed to Sassine at Accra dated 3rd November. Not in position to prove Tamim had exportation licence at date goods deposited with Sassine.

Tamim did not explain to me why he wanted to get the goods from Sassine. Can't remember that he said anything that he had bought the goods for export. He said nothing about export licence.

First knew of Exhibit 1 to-day. Got to know of the telegram, Exhibit 2, yesterday. I would have instituted these proceedings even if I had known of the letter Exhibit 1 before, because I understand from the letter he hoped to ship the goods lawfully and not smuggle them.

No cross-examination for 1st Defendant.

20 No re-examination.

PHILIP YOUNIS ZACCA, sworn, states :

Lives in Accra. Manager Beyrout Trading Co. Ltd. a subsidiary of the U.A.C.

I know Tamim, the Plaintiff and Sassine, the Defendant. First met Tamim sometime September 1945. He bought some cotton bales from my store. This is the invoice of the goods. He bought goods from others as well. From Paterson Zochonis, Asafiri & Co., Bardawil Brothers, and other firms in Accra. He paid my firm in cash. West African notes. Bought the goods in October. Can't say if it was 23rd October or not.
30 One transaction.

I was present when he made purchases from other firms. So far as I know they were all cash transactions. He drew the money to pay for the goods from B.B.W.A. Accra.

After buying the goods he sent them all to my firm's wholesale department. I told him I could not keep them indefinitely and asked him to move them elsewhere. He instructed me to hand the goods to Mr. Sassine. Couldn't keep them as it was October and we were expecting our seasonal shipments and we had not got room to keep them. I handed the goods over to Sassine as instructed. I don't know what arrangements he made
40 with Sassine. Tamim in Accra when gave me instructions, but he was in Lome when Sassine took the goods.

Tamim left Accra Friday morning and Sassine took the goods Saturday afternoon. I had nothing more to do with the goods after Sassine took them. Sassine gave me a receipt for the goods, written in Arabic.

A week or ten days later Tamim left Accra I received a telegram from Tamim and a letter also and in consequence I asked Sassine to bring the goods back and Sassine did not give them up immediately pretending that

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Ex. 1.

Ex. 2.

Exhibits. he had an account against Tamim which he wanted settled before he gave up the goods. He gave me verbally some details of the account (A) a claim in regard to a Chevrolet car which had been seized in Lome (B) some transport charges and another item, I think, for money which Sassine claimed to have paid for him.

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I thought that Sassine's claim was very heavy and I did not feel justified in meeting it. Later I asked Sassine for the goods once or twice again and he put me off with promises to give me the goods later.

This all happened before Comptroller seized the goods. After goods seized I had nothing further to do with the matter. 10

Tamim told me he thought goods in Accra much cheaper and more plentiful than the goods in Dakar and he discussed with me about getting money from Dakar to the Bank here to buy goods and would then approach the French Authorities to get an import licence from them and then got them to use their influence to get an export licence here. Failing that he hoped to get a profit from reselling them here as the season was coming on. Evidently he did not succeed at Lome. He got the money from Dakar to buy the goods.

After he got to Lome I got telegram from him and letter that Authority not granted and instructed me to get the goods from Sassine and sell them and pay the money into the Bank. I saw Sassine in consequence. This was before the goods were seized. 20

2.30 p.m. Resumed.

P. Y. ZACCA, Examination (contd.):

I failed to get the goods. Tamim phoned me and I reported the matter to him. After that he told me he had appointed Mills as attorney.

Cross-examined:

First met Tamim in September. Can't say when in September. He bought goods sometime after 15th October. Don't know if he agreed to buy from other merchants before he bought from me or not. 30

The bargains with the other merchants were made during the same period that he arranged to buy from me. He had been bargaining for sometime before: he actually concluded the purchases and paid the money.

I knew he was bargaining to buy goods very soon after I got to know him. I understand that the purpose of his visit was to buy goods. I did not go with him to any other firm for the purpose of buying any goods. He was feeling the market until his money arrived and then he set out to buy. I understood he intended first to get an import licence from French Authorities and then apply for an export licence from here. If he couldn't get the licence he would resell the goods. I don't know how he got the money here. He did it through the Bank. Tamim didn't discuss with me the possibility of getting an export licence from Gold Coast. I have several years' experience of cotton trade in Gold Coast. Sale of cottons is restricted by a monthly quota. This is not because of the scarcity. Some types of cotton goods are in plentiful supply, particularly grey baft. In 1944 a quantity of grey baft was allowed to be sold for export to the cotton merchants in the French Colonies. My firm not concerned in the business. Grey baft mostly sold to French Country people. I don't know of any 40

releases for export of prints and such like, but I know that a good quantity of these goods are sold to people who have come in from French Territory. They do their bargaining in French, and we have a good idea that these goods are being bought to be taken out of the country. I did not sell Tamim any grey baft. Goods sold to Tamim came out of my month's quota. Quota covers wholesale and retail.

Since October there has been an arrangement between Chamber of Commerce and Government that 25 or 30% would be sold wholesale and the remainder retail.

10 Tamim living at Mr. Captan's when I met him. Leading member Syrian Community. Big business in cotton. Tamim didn't buy from Captan.

Don't know who sponsored Tamim with immigration. Tamim stayed with Captan a few weeks and then went to Avenida Hotel. Tamim negotiated to buy goods when he was staying at the Avenida. He started negotiations to buy 15th October. Don't know why Tamim paid in notes and didn't issue cheques. The sellers of the goods issue invoices when Tamim paid for the goods. Later the sellers issued copies of the invoices to the Police. The invoice from my firm in Court is the copy which my firm gave to lawyer Mills. He got copies from the other firms also and I believe the invoices in Court are the ones given to lawyer Mills. I think Tamim on 23rd October. Tamim left Gold Coast next day. Earliest invoice is dated 23rd October. Each firm from which Tamim bought sent the goods to my wholesale Department. Goods had all arrived before he left for Lome.

20

Can't remember when Bardawil and Iranian goods arrived. When goods arrived Tamim had not to my knowledge obtained an export licence. So far as I know he didn't apply before he went to Lome.

30 I didn't issue receipts to sellers who delivered goods at my warehouse as Tamim personally took delivery of the goods at my warehouse. I was also present. Tamim didn't sign for the goods when they were delivered.

When I allowed Tamim to store the goods I did not know how long he would take to get a licence but I made it plain to him that I could only store them very temporarily and he must make other arrangements.

Before he left for Lome he instructed me to hand the goods over to Sassine.

40 About week—10 days after Tamim left got instructions from him to take over goods as he couldn't get permit. Didn't say from whom. I can't produce Tamim's letter or telegram. Don't remember which I got first. Don't remember if I showed telegram to Sassine. I told him about it. Don't remember that telegram was that I was to settle the affair with Sassine. I think it was that I was to settle the account with Sassine. This was before Mills went to Lome. Don't know how long before. I hadn't communicated with Mills before he went to Lome. Tamim phoned me he wanted Mills. He had me Mills before. Tamim told me he wanted a lawyer as attorney to look after his affairs here, about Sassine's account and getting the goods. This was after I had told Tamim couldn't get the goods from Sassine. Tamim phoned me daily and I reported to him. This went on for 4-5 days. When I spoke to Sassine 50 after telegram he said he had also received one same day. Didn't ask

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Sassine for the goods until I got the telegram and then Sassine made his claim, but Sassine had reported to me about the trouble over his car on the Sunday morning after Church. It was 5 or 6 days later that I got the telegram from Tamim. I don't remember making any demand on Sassine for the goods before I got telegram.

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 Ex. 2.

I think Sassine showed me his telegram. This is the telegram. It is dated 3rd November. I reported to Tamim what Sassine claimed and he agreed that the amount was heavy. Can't remember the amount.

I told Mills about telegram from Tamim after I had seen Sassine and heard his demands. Told Mills Tamim asked me to settle Sassine's account. 10
 Can't remember if spoke to Mills about Sassine's demand before Mills went to Lome. It was when I told Tamim of Sassine's demands and he had not delivered the goods Tamim told me he had engaged one Mills to look after his interests.

On the Friday Tamim came to my bungalow and said goodbye. On Sunday Sassine told me car had been seized and the French had confiscated some francs which Tamim had failed to declare. I also heard some day that some English money were taken from him.

When Tamim phoned me he told me about the car and francs being seized but he denied that any English notes had been taken from him. 20

Instructions were not to take goods and store them, but to take them and sell them and put money in Bank.

When Sassine told me he was going or sending to Lome about his car I gave him the receipt he had given me to deliver to Tamim at Lome. I think this was before I got Tamim's telegram. Don't know whether Tamim even got the receipt. Don't know that goods bought to be smuggled out of the country.

Sassine's business 2nd hand dealer and transport. Transport service between here and Nigeria, through French Togoland. All the goods are such as could have been transported to Lome. Don't know that Tamim 30
 went to Lome to arrange the goods. Don't believe he telegraphed me to take back goods and sell them when the French caught him and he found he couldn't smuggle the goods.

Re-examined—

Don't always get receipt for cash transaction, but would get an invoice if asked for one. I think Tamim did. I suggest that the goods should be sold now.

A. C. S.

30th March
 1946.

30th March, 1946.
 Appearances as before.

40

SAMUEL QUAO ODOI, sworn, states :

Lives Accra. Accountant Posts and Telegraphs, Accra. General Post Office. I produce these two telegrams from General Post Office (Tendered, no objection admitted). Telegram 1st November Tamim to Sassine. Telegram 3rd November Tamim to Zacca.

Exs. H1
 and H2.

Cross-examined—Plange :

The numbers 1 and 3 after “ Lome ” show the dates when they were handed in at Lome.

No cross-examination Sawyerr.

No re-examination.

Heward-Mills draws Court’s attention to the Record of the hearing of the case on 10th and 17th December at pages 60–1 and 80 of this Volume. Court reads the record and takes judicial notice of it.

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Heward-Mills recalled to Court :

10 At the seizure of the goods by the Customs I saw no warrant produced. I did not ask if they had a warrant.

To Plange :

I know of the existence of writs of assistance. I know the Customs have authority to search without warrant, but not to seize goods.

No cross-examination Sawyerr.

No re-examination.

Case for Plaintiff.

Sawyerr : Submits Plaintiff has made no case against 1st Defendant.

20 *Heward-Mills :* I agree no evidence against 1st Defendant. Don’t argue that on evidence 1st Defendant can be held liable to Plaintiff.

Ruled : No case for 1st Defendant to answer.

Judgment 1st Defendant with Counsel’s costs assessed at 25 guineas other costs to be taxed.

Plange—

Submits no case for 2nd Defendant to answer. 2nd Defendant pleaded seized goods as being prohibited goods under the Customs laws. Defence paragraphs 1, 2 and 3.

Notice of seizure in Gazette No. 72 of 1945 p. 557. Notice No. 1592. Stated notice published under section 6 of 29 of 1939.

30 Seizure made under section 5 of No. 29 of 39.

“ 5. If any goods (*b*) are brought any quay or other place, or waterborne, for the purpose of being exported . . . in contravention of an Order under this Ordinance.”

Order contravened was Order 35 of 1940 at p. 511 of 1940 Legislation which prohibited the export of all goods, except passengers’ baggage, except under licence granted by the Comptroller. No. 29 of 1939 is to be construed as one with Cap. 132. Person in control of goods not asked to furnish any proof under section 5 (3) of No. 29 of 1939. Seizure made under section 137 under Writ of Assistance.

40 Section 139 provides that when seizure made if not from proprietor or in his presence notice in writing of seizure and the grounds to the proprietor either personally or by post to last place of abode or business.

Plaintiff has not denied notice sent in his pleading, and must be taken to have admitted it, as Plaintiff was in a position to controvert it, if not

Exhibits. true. All seizures made shall be deemed to be condemned etc. unless the person from who seizure was made or the owner or some person authorised by him shall give notice in writing within one month.

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Sassine wrote to Comptroller within a month. Tamim, the owner, did not, nor anyone authorised by him. Was Sassine a person from such seizure was made. If Sassine was the person from whom goods seized did he give notice that he claimed or intended to claim the articles.

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"Instructed to inquire from you why the said goods were so seized and to ask you for their immediate return . . ."

This cannot be regarded as a "claim" under section 139.

10

If a letter not a claim. Goods are condemned and Plaintiff has no remedy. Only purpose of Sassine' inquiry and demand was to cover himself with regard to Tamim and the answer he got fully covered him.

If Sassine's letter was a claim, it still does not help the Plaintiff in this action. Mandating on Comptroller to take action within a reasonable time. If he takes unreasonable time then Mandamus against Comptroller.

Section 164. Reasonable or probable ground for seizure a bar to more than 2nd damages.

1st April
1946.

1st April, 1946.

Plaintiff in person.

20

Plange for Comptroller of Customs.

Plange : In section 24 Comptroller of Customs can be sued in a certain instance—Section 145 forfeitures, etc., are sued for by Comptroller of Custom "as nominal Plaintiff."

Submits Comptroller of Customs cannot be sued in his office on the facts of this case.

Submits :—

(1) Sassine's letter was not a "claim" under section 139, consequently the goods are deemed to have been condemned and no forfeiture proceedings necessary under section 145.

30

(2) This claim is in trespass and is against the Crown. Crown can't be sued in the name of its officer, or at all.

(3) In Customs cases the Comptroller of Customs is nominal plaintiff on behalf of the Crown, and no general provision for him to be sued, only in certain specific instances which do not apply in this case.

(4) Plaintiff, in his own showing, has not shown that the seizure was unlawful. He must do this before he can succeed on the merits.

Plaintiff admitted that he was in Gold Coast from August until 26th October. On 23rd October he bought large quantity of goods which he hands over to a carrier who operates between Gold Coast and Nigeria, via French Territory.

Plaintiff's case goods bought for resale in Gold Coast and only deposited with Sassine for safe deposit. Later admitted goods for transport. Plaintiff's letter. Telegram to Zacca. Only after Plaintiff left Gold Coast did question of handing goods to Zacca for sale arise.

Plaintiff admits had no export licence nor had applied for one at time deposited goods. No evidence that he had licence to take money out. Evidence that he also took money out without licence.

He had not got export licence from British Authorities because he had never asked for one. Letter written 1st November.

(5) If Plaintiff intended to get licence to export would expect him to apply or at least inquire when he got the money transferred here to buy them.

- 10 *Heward-Mills* : As to whether action maintainable against Comptroller say the Plaintiff originally sued Sassine. Comptroller of Customs joined by order on Sassine's application. No appeal against that order and Court cannot now overrule that order and hold that Comptroller of Customs should not have been joined. Section 164. The seizer is the individual who seizes.

Latter 7/11/45 Dove to Comptroller of Customs and reply 8/11/45 Comptroller of Customs to Dove. "Goods seized by me under the Customs law, etc."

Are goods "prohibited goods."

- 20 For Comptroller of Customs to be entitled to seize the goods there must be evidence that goods are prohibited goods and they were placed in Sassine's store for purpose of exporting them without licence.

Mere suspicion or allegation not sufficient. Plaintiff's letter negatives this. Ex. 1.

I as attorney said did not know whether he had applied or not.

Telegram to Sassine. "Hand over to Zacca. Authorisation 1/11/45 not granted."

- 30 If couldn't get import and export licences he intended to resell locally at a profit. He couldn't lose over the transaction in any event. No evidence of any attempt to smuggle. Goods never moved from Acera.

I contend that Dove's letter of 7th November was a claim under section 139 and that Comptroller of Customs should then have taken proceedings under section 145.

Sassine was person from whom the goods were seized and was also Tamim's agent and could give notice on Tamim's behalf under section 139 in either capacity.

Power of Attorney only to demand goods from and sue Sassine. When Tamim gave Power of Attorney on 2nd November he already knew he could not export them.

- 40 Dove's letter of 7th November to Comptroller of Customs was sufficient notice of Tamim's claim.

Onus on Comptroller of Customs to prove his seizure lawful. Court must assume Tamim acting lawfully. Section 164. Submits only person who can institute proceedings under section 145 is the Comptroller of Customs. Cap. 132.

In section 164 "only person" includes Comptroller of Customs by his title and therefore one can proceed against him. Submits case for Defendant to answer.

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Ruled : No case for Defendant to answer.

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Rule : Comptroller of Customs cannot be sued in the name of his office, on the facts of this case.

Judgment for Defendant with costs assessed at thirty guineas.

" P. "

(Sgd.) A. C. SMITH,
Judge.

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continued.

1st Defendant's Exhibit.

" H " (part). Cable—Sassine to Tamim (and translation).

CABLES SOUS-MARINS FRANCAIS DE L'OUEST-AFRICAIN.

" H. "
(Part) Cable, Sassine to Tamim and Translation, 15th April 1946.

Reception
13120

Via Dakar

Transmission 10

Nature du Telegramme	Origine Accra	Numero 3	Mots 34	Date 15
	Heure 0925			

nlt tamim Dakar

Cable reçu contenu bien note stop premier proces perdu douanes reclame marchandises stop envoyez complete autorisation afin prendre no velle action contre douanes sinon marchandises seront vendues encheres le re courant.

20

Sassine.

(Translation)

COPY.

Cable No. 3.

April 15, 1946.

NLT TAMIM DAKAR

Cable received contents well noted STOP First case lost Customs claim goods STOP Send full authority so as to take new action against Customs otherwise goods will be sold public auction 22nd instant.

(Sgd.) Sassine.

1st Defendant's Exhibit.

"T5." Letter—Frans Dove to Comptroller of Customs.

26th April, 1946.

The Honourable,
The Comptroller of Customs,
Accra.

Sir,

In the matter of goods of A. R. Tamim
seized by the Comptroller of Customs
on the 6th day of November, 1945.

10

I am instructed by Mr. A. R. Tamim, whose goods were seized in the stores of Mr. S. E. Sassine on the 6th day of November, 1945, and in respect of which seizure I on the instructions of Mr. S. E. Sassine wrote to the Comptroller of Customs on the 7th day of November, 1945, demanding their return which was refused, to request you to take action under section 145 of the Customs Ordinance, Cap. 132 of the Laws of the Gold Coast for the forfeiture of the said goods in order to afford Mr. Tamim an opportunity to establish that the goods were wrongly seized.

20 I am further instructed to give you Notice which I hereby do, that if you do not take such action within the next few days an application will be made to the Supreme Court for a Mandamus to issue in the matter.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) FRANS DOVE,

*Solicitor for A. R. TAMIM.**Exhibits.*1st
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"T5."

Letter,
Frans
Dove to
Comptroller
of
Customs,
26th April
1946.

*Exhibits.***1st Defendant's Exhibit.***1st
Defendant's
Exhibits.***"T6." Letter—Comptroller of Customs to Frans Dove.**H.M. Customs,
Accra.

27th April, 1946.

"T6."
Letter,
Comptroller
of
Customs to
Frans
Dove,
27th April
1946. No. 0738/26.

Sir,

In the matter of goods of A. R. Tamim
seized by the Comptroller of Customs
on the 6th day of November, 1945.

10

I have the honour to acknowledge the receipt of your letter of 26th April, 1946, in connection with the above matter, and to point out that notice of seizure, addressed to Mr. A. R. Tamim, was delivered at the Avenida Hotel, his last known place of abode, on 8th November, 1945, in accordance with Section 139 of the Customs Ordinance (Cap. 132). Notice of seizure was also given by Gazette Notice No. 1592 published in the Gold Coast Gazette dated 17th November, 1945. A written notice of claim was not received from A. R. Tamim, nor from any person authorised by him to make a claim, within the period of one month from the date of seizure allowed by Section 139 of the Customs Ordinance. 20
In the circumstances the goods in question are deemed to be condemned.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) ? ? ?

AG. *Comptroller of Customs.*Frans Dove, Esqr., Barrister-at-Law & Solicitor, Tutu House, P.O. Box 58,
Accra.

1st Defendant's Exhibit.

"Q." Writ and Statement of Claim, Suit 65/1946.

Suit No. 65/1946

Exhibits.
1st
Defendant's
Exhibits.

In the Supreme Court of the Gold Coast, Eastern [Judicial] Division.
Divisional Court holden at Accra.

Between A. R. TAMIM of Dakar by his Attorney
A. G. HEWARD-MILLS - - - - Plaintiff

and

COMPTROLLER OF CUSTOMS - - - Defendant.

"Q."
Writ and
Statement
of Claim,
Suit
65/1946,
Tamim v.
Comptroller
of
Customs,
4th May
1946.

10 To Comptroller of Customs of Accra.

YOU ARE HEREBY COMMANDED in His Majesty's name to attend before this Court at Accra on Tuesday the 21st day of May 1946, at 8.30 o'clock in the forenoon, then and there to answer a Suit by A. R. Tamim of Dakar, by his Attorney A. G. Heward-Mills of Accra against you.

The Plaintiff claims (See attached list).

Sum claimed (A) Judicial Relief
(B) Injunction

Court fees	£4	10	0
Bailiff's fees		1	0

20	Total	£4	11	0
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Issued at Accra the 4th day of May, 1946.

(Sgd.) K. O. QUANSAH,
Registrar, Divisional Court, Accra.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, Accra.

Between A. R. TAMIM of Dakar, by his Attorney
A. G. HEWARD-MILLS of Accra - - - Plaintiff

and

COMPTROLLER OF CUSTOMS of Accra - Defendant.

30 The Plaintiff's claim is for a Mandamus commanding the Defendant to commence the appropriate civil proceedings in the Magistrate's Court, Accra, for the forfeiture of the Plaintiff's goods seized by the Defendant on the 6th day of November 1945 in the store of S. E. Sassine of Accra who was then Bailee of the said goods.

The Plaintiff further claims an Injunction restraining the Defendant, his agents, or servants from selling the said goods without the consent of the Plaintiff's Representative pending the hearing and determination of this action.

STATEMENT OF CLAIM.

40 1. In October 1945, the Plaintiff bought goods in Accra consisting of one hundred and three Bales of cottons and six cases of silk and delivered them to S. E. Sassine for safe-keeping returnable on demand.

Exhibits.
 1st
Defendant's
Exhibits.

2. The said S. E. Sassine kept the said goods in his store at Accra until the 6th of November 1945, when the Defendant entered S. E. Sassine's said store and took away the said goods, alleging that they were prohibited goods.

"Q."
 Writ and
 Statement
 of Claim,
 Suit
 65/1946,
 Tamim v.
 Comptroller
 of
 Customs,
 4th May
 1946,
continued.

3. On the 7th day of November 1945, the said S. E. Sassine from whose possession the goods were seized, demanded from the Defendant a return of the said goods by letter written by his Solicitor Frans Dove dated the 7th day of November 1945, in the following words and figures :

" Frans Dove
 Barrister-at-Law & Solicitor
 Telegrams & Cablegrams :
 ' Dovetail '
 Telephone No. 84

" Tutu House,
 P.O. Box 58, 10
 Accra, Gold Coast.
 7th November, 1945.

" The Honourable,
 The Comptroller of Customs,
 Accra.

" Sir,

Yesterday afternoon Mr. W. E. Conway acting on behalf of the Government seized certain wollen silk and cotton goods consisting of one hundred and three (103) Bales and six (6) cases in the 20
 wholesale store of Mr. S. E. Sassine in Accra and caused them to be moved therefrom.

The above-mentioned goods were bought in the ordinary course of business in stores in Accra by a Mr. A. R. Tamim and deposited with Mr. Sassine for safe-keeping.

I am instructed by Mr. Sassine to enquire from you why the said goods were so seized and to ask you for their immediate return.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) FRANS DOVE,
 Solicitor for S. E. Sassine."

4. In reply to the said letter of the 7th day of November, 1945, the Defendant, on the 8th day of November, 1945, wrote letter in the following words and figures :—

" No. 0738/3

H.M. Customs,
 P.O. Box 68,
 Accra.

8th November, 1945. 40

Sir,

With reference to your letter dated the 7th November, 1945, I have the honour to inform you that the goods which were the

property of Mr. A. R. Tamim were seized by me as prohibited articles under the Customs Laws and that they cannot be returned to your client.

Exhibits.

I have the honour to be,
Sir,

Your obedient Servant,
(Sgd.) W. E. CONWAY,
Comptroller of Customs.

1st
Defendant's Exhibits.

" Q. "
Writ and Statement of Claim, Suit 65/1946, Tamim v. Comptroller of Customs, 4th May 1946, *continued.*

Frans Dove, Esq.,
Barrister-at-Law,
P.O. Box 58,
Accra."

10

5. Between the 9th and 21st November, 1945, the Plaintiff's Attorney interviewed W. E. Conway the then Comptroller of Customs, on two occasions when he the said W. E. Conway admitted that he had received a claim from the said S. E. Sassine on behalf of the Plaintiff, stating that a claim from the Plaintiff's Attorney was not necessary and undertaking to take action under section 145 Cap. 132.

6. The said W. E. Conway did not take action nor has the Defendant under section 145 aforesaid.

7. On the 26th day of April, 1946, Frans Dove as Solicitor for the Plaintiff requested the Defendant to take action under section 145 aforesaid by letter in the following words and figures :—

" Frans Dove
Barrister-at-Law & Solicitor,
Telegrams & Cablegrams :
" Dovetail,"
Telephone :
No. 84.

Tutu House,
P.O. Box 58,
Accra,
Gold Coast.
26th April, 1946.

30

Sir,

In the matter of goods of A. R. Tamim seized by the Comptroller of Customs on the 6th day of November, 1945.

I am instructed by Mr. A. R. Tamim, whose goods were seized in the stores of Mr. S. E. Sassine on the 6th day of November, 1945, and in respect of which seizure I on the instructions of Mr. S. E. Sassine wrote to the Comptroller of Customs on the 7th day of November, 1945, demanding their return which was refused, to request you to take action under section 145 of the Customs Ordinance Cap. 132 of the Laws of the Gold Coast for the forfeiture of the said goods in order to afford Mr. Tamim an opportunity to establish that the goods were wrongly seized.

40

I am further instructed to give you Notice, which I hereby do, that if you do not take such action within the next few days, an application will be made to the Supreme Court for a Mandamus to issue in the matter.

I have the honour to be,
Sir,

Your obedient Servant,
(Sgd.) FRANS DOVE,
Solicitor for A. R. Tamim."

50

Exhibits.
 —
 1st
Defendant's
Exhibits.

“ Q.”
 Writ and
 Statement
 of Claim,
 Suit
 65/1946,
 Tamim v.
 Comptroller
 of
 Customs,
 4th May
 1946,
continued.

8. On the 27th day of April, 1946, the Defendant wrote in reply letter in the following words and figures :—

“ No. 0738/26

H.M. Customs,
 P.O. Box 68,
 Accra,
 27th April, 1946.

Sir,

In the matter of goods of A. R. Tamim seized by the Comptroller of Customs on the 6th day of November, 1945.

I have the honour to acknowledge the receipt of your letter 10 of 26th April, 1946, in connection with the above matter, and to point out that notice of seizure, addressed to Mr. A. R. Tamim, was delivered at the Avenida Hotel, his last known place of abode, on 8th November, 1945, in accordance with section 139 of the Customs Ordinance (Cap. 132). Notice of seizure was also given by Gazette dated 17th November, 1945. A written notice of claim was not received from A. R. Tamim, nor from any person authorised by him to make a claim, within the period of one month from the date of seizure allowed by section 139 of the Customs Ordinance. In the circumstances the goods in question are deemed 20 to be condemned.

I have the honour to be,

Sir,

Your obedient Servant,

(Sgd.) P. ? ?

Ag. Comptroller of Customs.”

which said letter is a refusal to comply with the demand contained in the letter of the 26th day of April 1946 mentioned in paragraph 7 hereof.

Dated the 3rd day of May, 1946.

(Sgd.) FRANS DOVE,

30

Plaintiff's Solicitor.

The Registrar,
 Divisional Court,
 Accra.

Please issue above summons returnable at an early date.

(Sgd.) FRANS DOVE.

1st Defendant's Exhibit.
 " R. " Defence—Suit 65/1946.

(Title as in " Q ")

DEFENCE.

Exhibits.

1st
 Defendant's
 Exhibits.

" R. "

Defence,
 Suit
 65/1946,
 6th June
 1946.

1. The Defendant contends as a matter of law that the Court has no jurisdiction to entertain this suit inasmuch as it is an action against the Government, and the Governor's fiat has not been obtained.
2. The Defendant contends as a matter of law that the action does not lie against the Comptroller of Customs, he being an officer of the Government, owing no duty to the Plaintiff and only responsible to Government and that neither he nor any other Head of Government Department is liable to be sued in respect of acts or omissions by him as part of the Executive Government.
3. The Defendant contends as a matter of law that he owes no duty to the Plaintiff to take proceedings under section 145 of Cap. 132 of the Laws of the Gold Coast.
5. The Defendant contends that the Comptroller of Customs as such is not liable to be restrained by any injunction of this or any other Court.
6. The Defendant admits that the Plaintiff bought the goods in Accra and delivered them by depositing them in the store of S. E. Sassine, but says that the goods were so deposited for the purpose of exportation out of the Gold Coast without a licence.
7. The Defendant admits paragraph 2 of the Statement of Claim.
8. The Defendant admits paragraphs 3 and 4 of the Statement of Claim, but says that after the letter referred to in paragraph 4 of the Statement of Claim, nothing more was done by S. E. Sassine, that no claim was made under the Customs Ordinance by anybody in respect of the goods seized.
9. The Defendant admits that Plaintiff's Attorney interviewed Mr. W. E. Conway, but denies that Mr. W. E. Conway admitted that he had received a claim from S. E. Sassine on behalf of the Plaintiff, and denies that Mr. W. E. Conway stated that a claim from the Plaintiff's Attorney was not necessary and undertook to take action under section 145 of Cap. 132 of the Laws of the Gold Coast.
10. The Defendant admits paragraph 6 of the Statement of Claim.
11. The Defendant admits paragraphs 7 and 8 of the Statement of Claim.
12. On the 8th of November, 1945, a notice of seizure, addressed to the Plaintiff was delivered at the Avenida Hotel to his last known place of abode in the Gold Coast in accordance with section 139 of the Customs Ordinance, and notice of seizure was also given by Gazette Notice No. 1592 published in Gold Coast Gazette dated 17th November, 1945.

Exhibits.
 1st
Defendant's
Exhibits.
 " R."
 Defence,
 Suit
 65/1946,
 6th June
 1946,
continued.

13. No written notice of claim was received from the Plaintiff nor from any person authorised by him within the period of one month from the date of the seizure.

14. The goods thereby became condemned by operation of law.

15. The Plaintiff with the knowledge that the goods had been seized by the Customs Authorities as prohibited goods, did not challenge the legality of the seizure, but sued S. E. Sassine for the return of the goods or their value and damages.

15(a) Amended by order of Court d/d. 21/8/46.

K. A. K.
 J.

That the Plaintiff cannot be admitted to claim against the Defendant ; 10
 because in the Plaintiff's action against S. E. Sassine for the return of the goods or their value and damages as pleaded in paragraph 15 hereof, the Defendant was joined as co-Defendant in that action. That the action was tried by Justice Smith who on the 1st day of April, 1946, ruled that the Comptroller of Customs cannot be sued in the name of his office and judgment was accordingly entered in the said action for the co-Defendant the Defendant herein and the said judgment still remains in full force and effect.

16. Plaintiff's action against S. E. Sassine failed.

17. The Defendant submits that it was after the failure of the 20
 action against S. E. Sassine that the Plaintiff sought to treat the letter by S. E. Sassine referred to in paragraph 3 of the Statement of Claim as a claim under section 139 of the Customs Ordinance (Cap. 132).

18. By reason of the premises, the Defendant contends as a matter of law that for the reasons hereinbefore appearing among others, this action cannot be maintained, and that the same being prosecuted, as it is, after full notice of the various objections thereto, ought to be dismissed with costs.

Dated at the Law Officers' Chambers, Accra, this 6th day of June, 1946. 30

(Sgd.) J. S. MANYO-PLANGE,

Acting Solicitor-General.

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

1st Defendant's Exhibit.
"S." Reply Suit 65/1946.
(Title as in "Q.")

Exhibits.
1st
Defendant's
Exhibits.
"S."
Reply,
Suit
65/1946,
14th June
1946.

Reply delivered the 14th day of June, 1946.

1. The Defendant's contentions as disclosed in paragraphs 1, 2, 3, 4 and 5 of the Defence are all wrong in law.
2. The Plaintiff joins issue with the Defendant on his Defence.

(Sgd.) FRANS DOVE,
Plaintiff's Solicitor.

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

1st Defendant's Exhibit.
"T2." Ruling in Suit 65/1946.

"T2."
Ruling in
Suit
65/1946,
21st
September
1946.

21st September, 1946.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Saturday, the 21st day of September, 1946, before Korsah, J.

A. R. TAMIM of Dakar by his Attorney, A. G.
HEWARD-MILLS - - - - - Plaintiff

20

V.

COMPTROLLER OF CUSTOMS - - - - - Defendant.

RULING.

Plaintiff's claim is (A) for Mandamus commanding Defendant to commence the appropriate civil proceedings in regard to the Plaintiff's goods which had been seized by the Defendant who purported to act under Cap. 132 section 139 of the Gold Coast Laws, (B) for an injunction to restrain the Defendant, his agent or servants from selling the said goods without Plaintiff's consent.

30 The Statement of Claim asserts that Plaintiff had brought [*sic.*] 103 bales of cotton and 6 cases of silk goods in Accra, and delivered them to S. E. Sassine for safe-keeping returnable on demand. The Defendant had entered the premises of the said S. E. Sassine and removed the said goods alleging that they were prohibited goods as defined by the Customs Ordinance Cap. 132 of the Gold Coast Laws.

Exhibits. Section 139 of Cap. 132 under which Defendant purported to act reads :—

1st
Defendant's
Exhibits.
" T2."
Ruling in
Suit
65/1946,
21st
September
1946,
continued.

" Whenever any seizure shall be made, unless in the possession
" of or in the presence of the offender, master, or proprietor, as
" forfeited under this or any other Ordinance by which Customs
" officers are empowered to make seizures the seizing officer shall
" give notice in writing of such seizure and of the grounds thereof
" to the master or proprietor of the ship or articles seized, if known,
" either by delivering the same to him personally or by letter
" addressed to him and transmitted by post to or delivered at his 10
" last-known place of abode or business if known. And all seizures
" made under the Customs Laws shall be deemed and taken to be
" condemned, and may be sold or otherwise disposed of in such
" manner as the Comptroller may direct unless the person from
" whom such seizures shall have been made, or the master or owner
" thereof, or some person authorised by him, shall within one
" calendar month from the date of seizure give notice in writing
" to the Comptroller that he claims the articles so seized or intends
" to claim them, whereupon proceedings shall be taken for the 20
" forfeiture in section 145. But if any article so seized shall be
" of perishable nature or consist of a horse or other animal, the same
" may by direction of the Comptroller be sold, and, thereof retained
" to abide the result of any claim that may legally be made in
" respect thereof."

It will be observed that the above section of the Ordinance enacts that proceedings shall be taken for the forfeiture and condemnation of such goods as provided in section 145 of the same Ordinance which provides *inter alia* :—

" All duties, and all pecuniary penalties not specifically
" designated fines, and all forfeitures incurred under or imposed 30
" by the Customs Laws, and the liability to forfeiture of any article
" seized under the authority thereof may be sued for, determined,
" enforced and recovered by suit or other appropriate or civil
" proceedings in a Magistrate's Court, which is hereby invested
" with the necessary jurisdiction, in the name of the Comptroller
" as nominal Plaintiff."

Plaintiff's contention is that although he had given notice in writing to the Defendant as required by the provisions of section 139 aforesaid, the Defendant had failed to institute legal proceedings as required by section 145, but wrongfully maintains that the said goods are deemed 40 condemned by operation of law.

To this claim, Defendant has filed a defence in which he admitted the seizure of the goods as alleged by Plaintiff, but contended " that no claim was made under the Customs Ordinance by anybody in respect of the goods seized " although there was correspondence between Plaintiff's solicitor and the Defendant about the goods in which the solicitor informed the Defendant that the goods were the property of Plaintiff, and asked for their immediate return. Defendant however contends that " the goods " thereby became condemned by operation of law."

The Defendant further raised the following points of law in his defence :— *Exhibits.*

(A) The Court has no jurisdiction to entertain the suit inasmuch as it is an action against the Government, and the Governor's fiat has not been obtained. *1st Defendant's Exhibits.*

(B) The action does not lie against Defendant he being an officer of Government owing no duty to Plaintiff. *" T2." Ruling in Suit*

(C) There is no actionable right. *65/1946, 21st*

10 (D) Defendant owes no duty to Plaintiff to take proceedings under section 145 of Cap. 132. *September 1946, continued.*

These pleas are objections in point of law which by rules of Supreme Court, Order 19, Rules 1-3 Schedule 3, shall be raised only by " demurrer " if a defendant intends to ask the Court to dismiss a suit without any answer upon questions of fact being required from him.

Defendant however has now applied under the said Order 19 for the dismissal of the suit ; and when the Court called attention of Defendant's counsel to it, he retorted that he relied on the Court's inherent jurisdiction to dismiss the suit.

20 Until Order 25 of the English Rules of Court was introduced, the practice in English and in such cases was the same as under the local Order 19 and the objections in point of law were raised by " Demurrer ".

Order 25 (*vide* Order 25, r. 2) of the English Rules of Court however abolish demurrer and substituted a more summary process for getting rid of proceedings which show no reasonable cause of action or defence. But even under the English rule it has been held in the case of *Kellaway v. Bury* (1892), 66 L.T.R., page 602, " If the Court sees upon the material " before it, that the cause of action is vexatious and frivolous then and " then only should the Court go to the length of saying that the action " ought to be stopped."

30 Counsel for Defendant contends, that in view of the Defendant's pleas, the Court should dismiss the suit without hearing evidence.

It will be observed that the operative words of section 139 of the Customs Ordinance are mandatory, commanding the Comptroller to take proceedings, in " the person from whom such seizure shall have been " made or the master or owner thereof or some person authorised by him, " shall within one calendar month from the date of the seizure give notice " in writing to the Comptroller that he claims the articles so seized or " intends to claim them ".

40 The purport of this provision is, in my opinion, to subject such seizure to a judicial inquiry thereby giving the claimant the ordinary civil right of appeal to a higher court if dissatisfied with the Magistrate's decision.

In this case the Plaintiff's solicitor contends that his client or his agent had given due notice to the Comptroller ; while the Comptroller admits that he received letters from Plaintiff's solicitor, but disputes that they in fact were notices as required by law. It will be clearly unjust, if the Comptroller were to be the final arbiter whenever there was a dispute about the validity of the Notice given to him for there the Comptroller would be a judge in his own cause.

Exhibits.

1st
Defendant's
Exhibits.

" T2."

Ruling in
Suit
65/1946,
21st
September
1946,
continued.

A Plaintiff may in any action claim a mandamus to command the Defendant to discharge any duty in the fulfilment of which the Plaintiff is personally interested.

In this suit it is alleged that Plaintiff's goods of considerable value have been seized by Defendant; that Plaintiff had given due notice claiming the goods but the Defendant has refused to discharge his duty in the fulfilment of which the Plaintiff is personally interested.

In these circumstances, I am satisfied that the Plaintiff's claim discloses a cause of action, and that it is neither vexatious nor frivolous.

Defendant further contended that Plaintiff could only sue the Crown, 10 and not the Defendant who is a servant of the Crown, and owes a duty only to the Crown. It was held: *Per Cockburn, C.J., in Feather v. R.* 122 Eng. Rep. 1195: The only cases in which Petition of Right is open to the subject, are where the land or good money of the subject have found their way into the possession of the Crown, and the purpose of the petition is to obtain restitution, or if restitution cannot be given, compensation.

But in this case if the contention of the Defendant that the goods are condemned by operation of law is correct then Plaintiff would have no cause of action against the Crown either for restitution or compensation. It follows that the question whether the goods are indeed condemned and 20 therefore forfeited is the first question to be determined, and this is the end which Plaintiff's claim is designed to serve.

In *Boaler v. Holder* (1886), 54 L.T.R. 298: Held: Where a Statement of Claim discloses some ground of action the mere fact the Plaintiff is not likely to succeed on it at the trial is no ground for it being struck out.

In *Fletcher v. London & North Western Rly. Co.*: Held: A Judge has no right to order a non-suit on Plaintiff's opening unless with consent of Plaintiff.

I over-rule the objection, and order that hearing of the case should proceed.

(Sgd.) K. A. KORSAH,
Judge.

1st Defendant's Exhibit.
 "T1." Rulings in Suit 65/1946.

Exhibits.

2nd November, 1946.

In the Supreme Court of the Gold Coast, Eastern Judicial Division, held at Victoriaborg, Accra, on Saturday the 2nd day of November, 1946, before
 Korsah, J.

1st
 Defendant's
 Exhibits.

"T1."
 Rulings in
 Suit
 65/1946,
 2nd
 November
 1946.

Suit No. 65/1946.

A. R. TAMIM of Dakar by his Attorney A. G. HEWARD-MILLS of Accra, Plaintiff

10

V.

COMPTROLLER OF CUSTOMS of Accra, Defendant.

Ruling—

At the close of the case for Plaintiff, Counsel for Defendant submitted that no case has been made out for Defendant to answer and therefore the Court should non-suit Plaintiff on the following grounds:—

1. No notice as required by section 139 of Customs Ordinance was given to the Comptroller.
2. A. G. Heward-Mills the Attorney of A. R. Tamim has no authority to sue or claim the goods from the Comptroller.

20 As regards the 1st point the law provides that the following persons may give notice:

- (A) a person from whom such seizure shall have been made, or
- (B) the matter or owner thereof, of [*sic.*]
- (C) some person authorised by him.

The goods were in the store of S. E. Sassine as custodian thereof when Defendant seized them on 6th November, 1945. On 7th November, 1945, Mr. Frans Dove, Solicitor for S. E. Sassine wrote a letter to the Comptroller and claimed the goods; on 8th November, 1945, the Comptroller replied and refused to return the goods to Sassine. On 9th November, 1945, the
 30 Solicitor interviewed the Comptroller. In the circumstances I hold that there was sufficient notice given to the Comptroller.

As regards the 2nd point, Plaintiff contends that the Power of Attorney Exhibit "E" dated 2nd November, 1945, from Tamim to A. G. Heward-Mills gave him a general power to demand and if necessary to sue for and recover the goods, not only from S. E. Sassine, but from any person who may, without Tamim's authority, be in possession of the goods.

The Power of Attorney was executed 4 days before the goods were seized by the Comptroller; it is therefore evident that Tamim could not have specifically mentioned the Comptroller as one of the persons against
 40 whom the Attorney may institute action for the recovery of the goods. Mr. Heward-Mills has stated on oath that as soon as the goods were seized, he informed Mr. Tamim, who was, and still is out of the Gold Coast, by letters and telephone messages, and that he later discussed the matter with Tamim once in Lome and twice beyond the boundary of the Gold Coast; as his client could not obtain a visa to enter the Gold Coast; on

Exhibits. all these occasions his client verbally confirmed the authority given him and further requested him to continue to act on his behalf, to do everything and take every step to recover the goods.

1st
Defendant's
Exhibits.

I am satisfied that the Power of Attorney is a "general power" expressed in sufficiently wide terms as to enable A. G. Heward-Mills to sue for and recover the goods from any person who may unlawfully or without the consent of Tamim take possession of the goods.

"T1."
Rulings in
Suit
65/1946,
2nd
November
1946,
continued.

I call upon the Defendant.

(Sgd.) K. A. KORSAH,
Judge. 10

Counsel :

Frans Dove for Plaintiff.

Mr. Manyo-Plange, Ag. Solicitor-General, for Comptroller of Customs.

2nd November, 1946.

Mr. Dove for Plaintiff.

Mr. Plange for Defendant.

Ruling read ordering that hearing should proceed and calling on Defendant.

Mr. Plange : States that action under the Customs Ordinance has in fact been instituted in respect of these goods against the Attorney by the Comptroller of Customs, that he has brought this fact to the notice of the Court for the Court to decide whether the proceedings should be stayed pending the hearing of the claim before District Magistrate. In view of the fact that this claim is for Mandamus to order the Comptroller to take action. 20

Mr. Dove : This suit was brought because the Comptroller when requested to do so refused to take the necessary steps, he took such action only after this Court had reserved its ruling in the case. The fact that this action has been taken now is a tardy action of the Comptroller whose refusal to take it compelled Plaintiff to institute this action therefore Plaintiff entitled to costs up to date. 30

By Court : This is a claim for Mandamus to command the Defendant to commence the appropriate civil proceedings in the Magistrate's Court. Now that the action has been taken, the claim is abated, and no order as claimed can be made, but in view of the fact that the seizure took place in November, 1945, and action should have been taken many months ago, and also of the fact that the Comptroller refused to take the necessary steps until this action was instituted, I hold that Plaintiff is entitled to full costs and I order that Plaintiff costs be paid by the Defendant, counsel's costs assessed £52 10s. and rest of costs to be taxed. 40

(Sgd.) K. A. KORSAH,

J.