

Aboul Rachanan Tamim and another - - - - - Appellants

v.

Comptroller of Customs - - - - - Respondent

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 27TH JUNE, 1951

Present at the Hearing:

LORD SIMONDS
LORD NORMAND
LORD OAKSEY

[*Delivered by* LORD OAKSEY]

This is an appeal from the judgment of the West African Court of Appeal which affirmed a judgment of the Supreme Court of the Gold Coast which reversed a judgment of the Court of the District Magistrate, Accra, dismissing the claim of the respondent for the forfeiture of certain textile goods, and the imposition of penalties.

All three courts have found as a fact that the appellants were guilty of bringing certain cotton goods to a place for the purpose of export from the Gold Coast without a licence. The district magistrate dismissed the case against the appellants on a construction of the Import, Export and Customs Powers (Defence) Ordinance 1939 which is no longer contended for by the appellants in view of the decision of their Lordships' Board in *Attorney General for Palestine v. Fakhry Ayyas* [1947] A.C. 332 that export by land as well as by sea is prohibited.

Mr. Blackledge in an able argument has contended, on behalf of the appellants, firstly that the magistrate had no jurisdiction to try the case as he did without pleadings; secondly that the goods were not at the time of seizure being exported within the meaning of section 5 (1) (b) of the Import, Export and Customs Powers (Defence) Ordinance 1939; thirdly that in any event at the time of seizure the appellants had abandoned any intention of exporting the goods and that in such circumstances the seizure was illegal; and lastly that the concurrent findings of fact that the appellants intended to export the goods and were exporting them without a licence were not justified by the evidence.

The material sections of the Ordinances in question are as follow:—

" The Import, Export and Customs Powers (Defence) Ordinance, 1939. No. 29 of 1939.

Section 3.—(1) The Governor may by order make such provisions as he thinks expedient for prohibiting or regulating, in all cases or any specified classes of cases, and subject to such exceptions, if any, as may be made by or under the order, the importation into or exportation from the Gold Coast or any specified part thereof, or the carriage coastwise or the shipment as ships' stores, of all goods or goods of any specified description.

* * * * *

Section 5.—(1) If any goods—

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

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

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

"The Export (Restriction) Order (No. 35), 1940.

(1) No goods of any description whatsoever other than passengers' baggage shall be exported from the Gold Coast except under licence granted by the Comptroller of Customs. It shall be within the absolute discretion of the Comptroller of Customs to grant or withhold such licence and to impose such terms and conditions as he may think fit in respect of the grant thereof."

"The Customs Ordinance.

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

* * * * *

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

"The Courts Ordinance," Third Schedule. Order 25.

1. Suits shall ordinarily be heard and determined in a summary manner without pleadings; but, where it appears to the Court (for reasons recorded in the minutes) that the nature and circumstances of any case render it expedient in the interests of justice to do so, the Court may order the plaintiff to file a written statement of his claim (called the petition), and may likewise order the defendant to file a written answer or statement of his defence. The filing of a petition shall not necessarily involve, unless the Court so directs, that an answer shall also be filed. The order may be made at any stage of a suit, either before or at the hearing."

Their Lordships do not find it necessary to state the facts in detail. They are satisfied that there was ample evidence to support the findings of the three courts that the appellants were engaged in exporting the goods in question without a licence and they see no reason to differ from those findings.

Their Lordships are also of opinion that there is no substance in the appellants' other contentions.

By Order 25 of the third schedule to the Courts Ordinance suits shall ordinarily be heard without pleadings, and by section 145 of the Customs Ordinance fines and forfeitures may be sued for, determined, enforced and recovered by suit in a magistrate's court and the ordinary civil procedure shall apply to such proceedings. It was therefore the ordinary and regular procedure for the magistrate in the present case to try the suit against the appellants upon the writ of summons without pleadings as he did, and there is nothing in section 145 (1) and (3) which made it irregular for him to do so.

Mr. Blackledge also argued that in having the goods moved from Zacca's warehouse to Sassine's premises there was no evidence of exportation but as the courts below were all of opinion that the goods were moved to Sassine's premises for the purpose of being exported their Lordships are of opinion that the goods were brought to that place for the purpose of being exported within the meaning of section 5 (1) (b) and that the appellants who both took part in bringing them there were exporters within the meaning of the section.

Lastly their Lordships are of opinion that a person is liable to the prescribed penalty and to forfeiture of the goods if he takes part in bringing prohibited goods to a place for the purpose of export even if before seizure of the goods he abandons his intention to export them.

No case was cited to their Lordships deciding that in such a case as the present the person intending to export prohibited goods has a *locus pœnitentiæ*.

Their Lordships will therefore humbly advise His Majesty that this appeal ought to be dismissed. The appellants must pay the costs of the appeal.

In the Privy Council

ABOUL RACHANAN TAMIM AND ANOTHER

v.

COMPTROLLER OF CUSTOMS

DELIVERED BY LORD OAKSEY

Printed by His Majesty's Stationery Office Press,
DRURY LANE, W.C.2.

1951