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28, 1965
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IN THE PRIVY COUNCIL

No. 52 of 1964

ON APPEAL FROM THE SUPREME COURT OF FIJI

(APPELLATE JURISDICTION)

B E T W E E N: JOITABHAI S/O KHODABHAI PATEL

Appellant

- and -

THE COMPTROLLER OF CUSTOMS

Respondent

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CASE FOR THE RESPONDENT

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- 10 1. This is an appeal from a judgment, p.27 1.27
dated the 18th March, 1964, of the Supreme
Court of Fiji in its Appellate Jurisdiction
(Knox-Mawer, Ag. J.), whereby the Respondent's
appeal from a decision of the Acting Senior
Magistrate of Suva, dated the 21st October,
1963, acquitting the Appellant of making a
false declaration in a customs import entry,
was allowed, and the Appellant was convicted
of the offence and fined £50 (with two months'
imprisonment in default of payment). By a
subsequent ruling, dated the 13th April, 1964, p.11 1.25
the learned Judge substituted for the
conviction and sentence an order that there
should be a new trial before another magistrate.
- 20 2. The relevant statutory provisions are:

CUSTOMS ORDINANCE, Cap.166

- 30 116. Should any person make any false
entry in any form, declaration, entry,
bond, return, receipt or in any
document whatever required by or produced
to any officer of customs under this
Ordinance, or should any person
counterfeit, falsify or wilfully
use when counterfeited or falsified,
any document required by or produced to
any officer of customs, or should any
person falsely produce to any such officer
of customs under any of the provisions
of this Ordinance in respect of any goods

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or any vessel any document of any kind or description whatever that does not truly refer to such goods or such vessel, or should any person make a false declaration to any officer of customs under any of the provisions of this Ordinance, whether such declaration be an oral one or a declaration subscribed by the person making it or a declaration on oath or otherwise, or should any person not truly answer any reasonable question put to such person by any officer of customs under any of the provisions of this Ordinance or should any person alter or tamper with any document or instrument after the same has been officially issued or counterfeit the seal signature or initials of or used by any officer of customs for the identification of any such document or instrument or for the security of any goods or for any other purpose under this Ordinance, such person shall on conviction for every such offence, except where a specific penalty is herein provided, be liable to a fine not exceeding two hundred pounds nor less than fifty pounds and in default of payment to imprisonment not exceeding six nor less than two months.

....
152. If, in any prosecution in respect of any goods seized for non-payment of duties or any cause for forfeiture or for the recovery of any penalty or penalties under this Ordinance, any dispute arises whether the duties of customs have been paid in respect of such goods or whether the same have been lawfully imported into the Colony or lawfully unshipped or concerning the place whence such goods were brought, then and in every such case the proof thereof shall lie upon the Defendant in such prosecution and the defendant shall be competent and compellable to give evidence, and any goods of a description admissible to duty seized under any provision of this Ordinance by any customs officer on any vessel or at any place

10 whatsoever in the Colony or within the waters of the Colony shall, in any proceeding before a Magistrate for the forfeiture of such goods or for the infliction of any penalty incurred in respect thereof or on the hearing on appeal of any such case before the Supreme Court, be deemed and taken to be goods liable to and unshipped without payment of duties unless the contrary be proved, and the evidence that any person acting as an officer of customs and in any proceeding relating to customs or undertaken under this Ordinance was duly authorised shall be presumed until the contrary is proved.

....

CRIMINAL PROCEDURE CODE, Cap.9

....

20 335. (1) After the hearing and determination by any magistrate's court of any summons, charge or complaint, either party to the proceedings before the said magistrate's court may, if dissatisfied with the said determination as being erroneous in point of law, or as being in excess of jurisdiction, apply in writing within one month from the date of the said determination, including the day of such date, to the said magistrate's court to state and sign a special case setting forth the facts and the grounds of such determination for the
30 opinion thereon of the Supreme Court.

(2) Upon receiving any such application the magistrate shall forthwith draw up the special case and transmit the same to the registrar of the Supreme Court together with a certified copy of the conviction, order or judgment appealed from and all documents alluded to in the special case and the provisions of section 321 of the Code shall thereupon apply.

....

40 340. (1) The Supreme Court shall (subject to the provisions of the next succeeding section) hear and determine the question or questions of law arising on the case stated, and shall thereupon reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the magistrate's court with the opinion of the

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Supreme Court thereon, or may make such other order in relation to the matter, and may make such order as to costs, as to the Court may seem fit, and all such orders shall be final and conclusive on all parties.

(2)

341. The Supreme Court shall have power if it thinks fit -

- (a) to cause the case to be sent back for amendment or restatement, and thereupon the same shall be amended or restated accordingly and judgment shall be delivered after it has been so amended or restated; 10
- (b) to remit the case to the magistrate's court for rehearing and determination with such directions as it may deem necessary.

p.1. 3. The Appellant was charged that, while trading as J.K. Patel and Sons, on the 26th August, 1963, he made a false declaration on the Customs Import Entry, Form A, and produced it to a customs officer, in respect of five bags of corriander seed imported by the ship "Houtman" in that instead of declaring the origin of the said corriander seed to be Morocco he declared it to be India, contrary to Section 116 of the Customs Ordinance. 20 30

pp.3-11 4. The Appellant was tried before Mr. M. Tikaram, Acting Senior Magistrate, at Suva on the 21st October, 1963. The details of the evidence given for the prosecution and by the Appellant appear from the case stated to the Magistrate, who at the end of the hearing acquitted the Appellant. p.12 l.32

p.13 5. At the Respondent's request, the Acting Senior Magistrate on the 17th January, 1964 stated a case for the opinion of the Supreme Court. The Case Stated set out the charge against the Appellant, his plea of not guilty, and the following findings of fact: 40

- (a) that the Appellant ordered the corriander seed from Singapore;
- (b) that the bags which contained the

	corriander seed were shipped from Singapore;	<u>Record</u>
	(c) that the Appellant correctly engrossed the Customs Import Entry Form A (Exhibit B1 in the court of trial) in accordance with the particulars contained in the invoice referable to the purchase of the corriander seed (Exhibit B3 in the court of trial);	p.40 p.44
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	(d) that the only evidence before the Court that the corriander seed was of Moroccan origin was the markings on the bags which contained the seed;	
	(e) that there was no <u>mens rea</u> or carelessness on the part of the Appellant;	
	(f) that the stitching on the mouth of the bag, Exhibit E, was partly in Manila hemp;	
20		
	(g) that the corriander seeds in both bags, i.e. Exhibit E and Exhibit F, were round.	
	6. The Case Stated then summarised the evidence. That given for the prosecution included:	
	(a) Rahman Ali, a Senior Customs Examiner, produced a Customs Import Entry Form A dated the 26th August, 1963, Exhibit B1, the subject matter of the charge. This the witness identified as having been signed by the Appellant, who had also acknowledged his signature. To this form were annexed four invoices, Exhibits B2-5. Exhibit B1 stated the country of origin of five bags of corriander seed as India.	p.16 p.16 1.24 p.40 pp.42-49 p.40
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	(b) Luke Vakaliwaliwa, a Customs Officer, said that the Appellant had produced to him Exhibit B1, which was signed by the Appellant.	p.17 p.17 1.10
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	(c) Isoa Koroivuki, a Customs Officer, said that he examined the corriander seed from the "Houtman", mentioned in Exhibit B1, on the 20th September, 1963. He had made a note on the back	p.17 p.17 1.22

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p.17 1.25
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of Exhibit B1 that the goods were packed in double bags, the outer of which were very frail and contained marks as in the invoices: the inner bags appeared to be the original packages, and were marked - "ALBERDAN - A.D. 4152/ CORRIANDER, FAVOURITE SINGAPORE", and "PRODUCE OF MOROCCO" at the bottom. An inner bag was introduced as Exhibit E. In cross-examination, the witness agreed that the only indication that the corriander seed was from Morocco was the markings on the bag which contained it. 10

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p.17 11.41- 7. After a submission that there was no case to answer had been rejected, the Appellant had given evidence. He said he had given two orders, each for five bags of round corriander seed, on the 24th June, 1963 and the 1st July, 1963 respectively. 20

p.18 1.12 Both consignments had arrived on the "Houtman".
p.18 11.17- One consignment had eventually been released to him, of which he produced one double bag (Exhibit F), the inner bag marked "R.P. Singapore". This bag had contained round corriander seed, the same as was contained in Exhibit E. In cross-examination, he said that he only knew of two types of corriander seed - round and slender - the round ones came from India: that he always imported Indian seeds, and that that was what he had expected to receive: both consignments referred to in his evidence came from India, and the difference in price was due to a price rise between the dates of his orders. 30

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p.20 1.10 8. The Case Stated set out the judgment of the Acting Senior Magistrate, in which he said that the only evidence as to the origin of the corriander seeds was the marking on the bag. It was common ground that the Appellant ordered the seeds from Singapore and that they had been shipped from Singapore. On the evidence before the Court, the Magistrate was unable to hold that the seeds were of Moroccan origin. He said that the Customs Entry Form A was in accordance with the invoices, and in this respect neither false nor erroneous. For all he knew, the seeds might have been of Indian origin, and in this respect the Appellant was supported by the invoice. The Magistrate was unable to hold that the entry made by the Appellant 40

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p.21 1.8

	was either false or erroneous within the meaning of Section 116 of the Customs Ordinance. The Appellant was acquitted.	<u>Record</u>
	9. The Case Stated concluded by setting out the questions for the opinion of the Supreme Court, as follows :	pp.21-22
10	"(1) Whether this Court has erred in law in admitting as evidence of the origin of the corriander seed the legend appearing on the bag (Exhibit E) containing the seed;	p.21 1.28- p.22 1.9
	(2) Whether Section 152 of Customs Ordinance Cap. 166 applied to the facts of the instant case?	
20	(3) If it did apply what was the nature and extent of the burden of proof which lay on the Respondent, i.e. evidentiary burden, or burden of proof on balance of probabilities or burden of proof beyond reasonable doubt?	
	(4) Has the Respondent discharged such burden if any as lay upon him?	
	(5) What meaning is to be assigned to the word "false" in Section 116 of the Customs Ordinance, Cap. 166?	
	(6) Whether this Court has erred in law in acquitting the Respondent, in all the circumstances and facts of the case?"	
30	10. The Case Stated was considered by Knox-Mawer, Ag. J. sitting in the Supreme Court in its Appellate Jurisdiction, on the 7th February, 1964. A reserved judgment was delivered by the learned Judge on the 18th March, 1964, whereby he allowed the appeal and convicted the Appellant.	pp.22-27 p.27 1.27
40	11. After setting out the offence charged and the result of the proceedings in the Magistrate's Court, the learned Judge considered the questions raised by the Case Stated. The first question, as to the admissibility of the markings on the bag, was, he said, exceedingly difficult. The magistrate had considered that the markings on the bag constituted a <u>prima facie</u> case against the Appellant. The learned Judge	p.28 p.28 1.39- p.29 1.41

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- considered that the markings went further than being merely "documentary" evidence; they were an exhibit, and therefore something per se from which the Court could draw inferences. The prima facie inference to be drawn was that the bag originated from Morocco, and by further necessary inference the origin of the contents was the same. This common sense view was not expressly forbidden by the law, and the learned Judge proposed to adopt it. 10
- p.30 1.21 The answer to the first question was therefore that the Court below had not erred in law in admitting, as prima facie evidence of the origin of the seed, the marking on the sack.
- p.31 1.19- 12. On the second question, the vital issue
p.32 1.30 was the meaning and application of the words, "the place whence such goods were brought", in Section 152 of the Customs Ordinance. The Interpretation and General Clauses Ordinance provided that words in the singular included the plural, so 'place' in section 152 could be read as 'places'. In the present case, the goods had, the prosecution contended, been brought first from Morocco to Singapore, then from Singapore to Fiji. The dispute was about the first of these two 'places whence' these goods 'were brought', so section 152 did apply to it. This answered the second question. The answer to the third question was that the burden of proof which lay upon the Appellant was "on the balance of probabilities". 20
- p.32 1.37 13. The learned Judge answered Question 4 in these words: 30
- p.32 1:41 "In my opinion the respondent has not discharged such burden of proof as lay upon him". 40
- p.33 1.5 14. As to Question 5, the learned Judge
p.34 1.47 said that he had in an earlier case decided the meaning of "false" in Section 116 of the Customs Ordinance to be no more than "erroneous". He was still of that view. The fact that there was under section 116 a minimum penalty of £50 was only one of the factors to be considered in determining whether there was absolute 50
- p.34 1.18

liability for a wrong entry in a customs document. Consideration of the whole Section showed that the legislature did intend that liability to be absolute.

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15. Having regard to the findings already made, the answer to Question 6, the learned Judge said, must be in the affirmative. The Appellant was to be convicted of the offence charged and fined £50, or two months' imprisonment in default of payment.

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p.35 1.9

16. On the 26th March, 1964, Knox-Mawer, Ag. J. in Chambers informed the parties that he had received a memorandum from the Acting Senior Magistrate, pointing to certain features in the evidence in favour of the Appellant and saying that, if he had been specifically asked, he (the Magistrate) would have found on the balance of probabilities that the Appellant had shown that the origin of the seeds was India. The learned Judge said that, if he had known that this was the Magistrate's view of the evidence, his answer to Question 4 would have been that the Appellant had discharged the onus of proof on the balance of probabilities, and he would not have recorded a conviction.

17. After an adjournment and further argument, the learned Judge gave a ruling on the 13th April, 1964, by which, with the agreement of counsel for the Appellant, he remitted the case for rehearing by a different Magistrate. He said that in answering Question 4 of the Case Stated he had acted outside his jurisdiction, which in such cases was limited to answering questions of law. Accordingly, it remained open to him to exercise the proper jurisdiction. The purported conviction and sentence were a nullity, and the case would be sent back for rehearing in the light of the answers given to the questions of law in the Case Stated.

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18. The Respondent respectfully submits that, except the answer to Question 4, the answers given by Knox-Mawer, Ag.J. to the questions raised by the Case Stated were correct, and the appeal against the judgment should be dismissed. It is respectfully submitted, both on

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general principles and also in the context of the Customs Ordinance and the Customs Duties Ordinance, that the marking on the bag produced in evidence was properly admitted as part of the real evidence in the case, and it was the duty of the Magistrate to consider what inferences should properly be drawn from such evidence. The Respondent submits that the proper inference was that the bag, and therefore its contents, originated in Morocco. There was accordingly a prima facie case for the Appellant to answer, and by his evidence he failed to answer it. The Respondent respectfully submits, furthermore, that, once a question arose as to the origin of the seed, Section 152 of the Customs Ordinance applied, and the onus of proving the origin of the seed lay upon the Appellant, upon the balance of probabilities. 10 20

19. The Respondent respectfully submits that the word "false" in the part of Section 116 of the Customs Ordinance creating the offence with which the Appellant was charged, was properly decided by the learned Judge to import absolute liability. It is respectfully submitted that consideration of the whole of the Section, in its context in the Ordinance, shows that such an interpretation was intended, and this is an offence for which absolute liability was imposed by the legislature. 30

20. The Respondent respectfully submits that it was beyond the jurisdiction of the learned Judge to answer Question 4 in the Case Stated, and his answer to that question was accordingly void. The conviction and sentence passed by him, therefore, were also void. It is respectfully submitted that the jurisdiction properly vested in the Court remained to be exercised, so that the order for rehearing made in the learned Judge's ruling of the 13th April, 1964 was a proper order made within his jurisdiction, and should not be disturbed. 40

21. The Respondent respectfully submits 50

that the judgment of Knox-Mawer, Ag.J. of the 18th March, 1964 was right and should be affirmed (except the conviction and sentence of the Appellant and the answer given to Question 4 of the Case Stated), that the ruling of the 13th April, 1964 was right, and that this appeal should be dismissed for the following (among other)

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R E A S O N S

- 10 1. BECAUSE the markings on the sack (Exhibit E) were properly considered as part of the real evidence:
2. BECAUSE there was a prima facie case established against the Appellant:
3. BECAUSE the case involves a dispute about the place whence the seed was brought within the meaning of section 152 of the Customs Ordinance:
- 20 4. BECAUSE the charge against the Appellant did not involve mens rea :
5. BECAUSE of the other reasons in the judgment and ruling of Knox-Mawer, Ag.J.

J.G. Le Quesne

Mervyn Heald

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B E T W E E N :-

JOTABHAI S/O KHODABHAI PATEL

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- and -

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CASE FOR THE RESPONDENT

CHARLES RUSSEL & CO.
37 Norfolk Street,
London, W.C.2.

Solicitors for the Respondent