

~~Re.~~
GM7.G.2

^{judgments}
27, 1965

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

R E C O R D O F P R O C E E D I N G S

T.I. WILSON & CO.,
6, Westminster Palace Gardens,
LONDON, S.W.1.
Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37, Norfolk Street,
LONDON, W.C.2.
Solicitors for the Respondent

207
GM76.2

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INSTITUTE OF ADVANCED
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Judgment
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JOITABHAI s/o Khodabhai Patel Appellant

- and -

THE COMPTROLLER OF CUSTOMS Respondent

RECORD OF PROCEEDINGS

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BUT NOT REPRODUCED

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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

RECORD OF PROCEEDINGS

No. 1

CHARGE

CRIMINAL PROCEDURE CODE

FORM 3 (Section 79)

In the
Magistrate's
Court

No. 1

Charge

2nd October,
1963

10

FIJI }
TO WIT)

In the Magistrate's Court, Suva

Case No. 2419/63

C H A R G E

(COMPLAINT BY PUBLIC OFFICER)

Statement of Offence (a)

20

MAKING a false declaration in a Customs Import
Entry produced to an Officer of Customs, contrary
to Section 116 of the Customs Ordinance, Cap. 166.

Particulars of Offence (b)

JOITABHAI F/N KHODABHAI PATEL, trading as J.K.
PATEL & SONS OF TOORAK ROAD, SUVA, in the Colony
of Fiji, did on 26th day of August, 1963, at Suva
aforesaid, make a false declaration in the Customs

In the
Magistrate's
Court -

No. 1

Charge

2nd October,
1963.

-- continued.

Import Entry, Form A, and produced the said form to an Officer of Customs in and for the Colony of Fiji, in respect of 5 bags corriander seed imported by the ship "HOUTMAN" which arrived at Suva, on 25th August, 1963, in that instead of declaring the origin of the said corriander seed to be MOROCCO he declared it to be INDIA

Sgd. C.E. YONGE (d)
Collector
for Comptroller of
Customs

10

Sworn before me (c)

Sgd. K.P. Sharma
Authorised Justice of the
Peace

Magistrate

L.S.

Date 2nd October, 1963.

- (a) Offence with Ordinance and Section.
- (b) Name or names of accused and brief particulars of offence in ordinary language.
- (c) Strike out if not made on oath.
- (d) Signature of complainant with rank.

20

Note -- This form is for use where there is one count only one or more accused.

No. 2

Proceedings

21st October,
1963.

No. 2

PROCEEDINGS

Before Moti Tikaram, Esq.,
Magistrate, Suva.

21st October, 1963.

30

C.E. Yonge for Comptroller of Customs.

Accused present.

A.D. Patel for Accused.

Charge read and explained.

Plea: It is not true.

In the
Magistrate's
Court

No. 2

YONGE: Prosecution does not intend to prove
intention or guilty mind - Erronecus
sufficient, absolute liability.

Proceedings
21st October,
1963.
- continued.

PROSECUTION EVIDENCE

No. 3

Rahman Ali

Prosecution
Evidence

No. 3

Rahman Ali
Examination

10

1ST Witness for Prosecution - Sworn on Koran in
English RAHMAN ALI s/o Mohamed Ali of Suva,
Customs Officer.

I am employed by the Customs Department
and I am a Senior Customs Examiner.

20

I produce a form given by J.B. Patel on
behalf of J.K. Patel & Sons authorising Raoji Bhai
Joitabhai Patel. Signature of R.J. Patel is on
this form. I obtained this from the Customs House.
The signature of J.K. Patel is familiar to me because
it was signed before me on 10/5/62 - (points to the
signature on form).

On 15/10/63 I visited J.K. Patel and he
confirmed that this was his signature.

PATEL: No objection.

COURT: Authority Form Exhibit "A".

On the import entry A I have with me is
the signature of J.K. Patel.

30

I visited him on 15/10/63 and he confirmed
that this was his signature (identified). J.K. Patel
is the accused in the case (identified).

I produce this entry form A dated 27th
August, 1963 and attached to it are 4 different
invoices.

In the
Magistrate's
Court

Prosecution
Evidence

No. 3

Rahman Ali
Examination
continued.

PATEL: No objection.

COURT: Entry Form A - Bl.

Invoices attached marked B (2) (3) (4)
and (5).

XN (Continued)

The invoice marked B(3) is relevant to
the Entry A(1) - second line.

I have here with me a photostat certi-
fied true copy of the registration certificate
of the firm known as J.K. Patel & Sons. This
shows the accused as the sole registered
proprietor.

10

PATEL: No objection.

COURT: Exhibit "C" (Registration Certificate).

XX PATEL:

Yes, the corriander seeds were imported
by the ship "Houtman".

Yes, it appears that another entry form
shown to me by you.

Yes the accused ordered another lot of
5 bags of corriander seeds.

20

Yes it has accused's signature.

Yes, passed and duty was paid.

released. I do not know if these 5 bags were

YONGE: No objection.

COURT: Entry Form A (35735) dated 27/8/63
together with invoices - Exhibit D(1) and D(2).

XX (Continued)

Yes, Burns Philp (S.S.) Co. Ltd. are
agents for "Houtman".

30

REX: Nil.

Cross
Examination

No. 4

LUKE VAKALIWALIWA

2nd Prosecution Witness Sworn on Bible in English.
LUKE VAKALIWALIWA of Suva of Vese Street, Suva.

In the
Magistrate's
Court
Prosecution
Evidence

No. 4

Luke
Vakaliwaliwa
Examination

10 I am a clerk employed by the Fiji Customs Department. I am the officer appointed by the Comptroller of Customs to receive entry when they are produced to me by the importers or their agents. I stamp the bottom left hand corner of each with a stamp which shows the date and time of receipt. I check certain items on them and then I initial on the bottom right hand corner of each entry and pass the entry to the checking clerk - I recognised Exhibit "B" as amongst the entries I received, by the rubber stamp on the bottom left hand corner and by my initial on the bottom right corner.

20 The signature on the entry is familiar to me. It is J.K. Patel. He is the authorised clerk of J.K. Patel & Sons.

30 I compare the signature on documents from time to time to check whether the signature is that of the importer or the importer's clerk. I check against the authority. In this case I check against Ex. "A". Ex. "A" is signed by J.K. Patel himself as the person authorising. He is the same person as has signed the Customs entry in this case (Ex. B(1)). The accused is himself the authorising clerk and the accused's signature appears on the entry B (1).

XX Nil.

No. 5

ISOA KOROIWUKI

3rd Prosecution Witness - Sworn on Bible in English. ISOA KOROIWUKI of Flagstaff, Suva, Customs Officer.

No. 5
Isao
Koroivuki
Examination

I recall examining corriander seed ex the ship "Houtman", on 20th September, 1963. Exhibit B(1) is the entry against which I checked.

In the
Magistrate's
Court

Prosecution
Evidence

No. 5
Isao
Koroivuki
Examination
- continued.

I have the report of my examination at the back of Exhibit B (1) made at the time. (Read). I passed it in the presence of the importer's agent. The origin declared in Ex. B(1) is India. (Declaration read). Corriander seeds attracts higher duty. Had the seeds been declared of Moroccan origin, a further £3.12.0. would have been assessed. Had I not examined this bag £3.10.0. duty would have been lost. These 5 bags had been packed in double bags. The inner (?) had written -

10

ALBERDAN - A.D. 4152/Corriander,
Favourite Singapore.

right at the base of the inner - produce of Morocco. There are 5 bags in this case. One of these is here. Outside bag has J.K. Patel & Sons, and the inner bag has the mark referred to (shown in Court).

This contained corriander seeds.

PATEL: No objection.

20

COURT: Exhibit E.

This bag has been in custody of the Customs Department at H.M. Bond since time of detention.

XX - PATEL:

Yes, Exhibit D(1) has been lodged.

Yes they are by the same ship. I didn't examine the consignment against this entry.

Yes, I examined 5 bags, I now produce one of these.

30

Yes I detained it because the inside bag says it is the produce of Morocco. I would not have detained it if it had not said so.

Because of the marking on the inside bag I call it the original bag. From the marking on the inside bag I would say that these were filled somewhere else and sent to Singapore.

Cross
Examination

Produce of Morocco is marked at the bottom.
Can't of own knowledge say where filled.

If a Navua rice miller filled a Siam bag
with Navua rice, I would call it Navua rice.

Yes, the only indication that the seeds are
from Morocco is from the bag itself.

Yes the entry has to be presented with the
genuine invoice which must be attached to the
entry.

10

The second item on this invoice -
(Exhibit B(3)) reads - 5 D/bags corriander seeds -
Country origin (1st column) - India.

At the back is the supplier's name and address -
Singapore.

Yes the exporter has declared that the
seeds are of Indian origin.

REX: Nothing either on the outer or inner bag to
declare or show that the origin was India. I have
been examining goods at the wharf for some time.

20

I examine against importer's entry attached to
the genuine invoice.

On occasions I have found description in
manner not in conformity with description (?) on
the goods.

TO COURT: Mostly the goods imported indicate the
country of origin on the container - Not always.

XX: Yes Indian goods have been found to be
contained in containers having U.S.A. markings.

REXN: Nil.

30

No. 6

No. 6

PROCEEDINGS

Proceedings

CASE FOR PROSECUTION21st October
1963Section 201 C.P.C.
Complied with.

PATEL No case to answer.

No evidence of origin.

In the
Magistrate's
Court
Prosecution
Evidence

No. 5

Isaa

Koroivuki
Examination
- continued.

In the
Magistrate's
Court

COURT: In my view the accused has a case to answer; an explanation is called for.

PATEL: I will call the defendant.

No. 6

Proceedings

21st October
1963 - continued

Defence
Evidence

No. 7

Joitabhai
Examination

DEFENCE EVIDENCE

No. 7

JOITABHAI

Accused Sworn on Ramayan in Hindi
JOITABHAI s/o Khoda Bhai of Toorak, Merchants

On 1st of July, 1963, I put an order amongst other things for 5 bags of corriander seeds from Singapore - 5 bags round corriander seed. One variety is round, the other is slender. Again on 24/June, 1963, among other things I place an order for 5 bags of round corriander seeds - Indian. One order was to Chandulal Joshu & Co., and the other to Indo-Malaya Produce Co. My orders are here and the prosecution may examine them. (Produced).

10

Both these consignments arrived by the same ship "Houtman". I receive the invoices and other documents relevant to these orders. I prepared entries in respect of both these consignments and presented them to the Customs.

20

On 30/8/63, 1 bag was released to me because the bag had no markings. On 3/9/63 the Customs examined the other 4 bags - they were also released. I have the receipt in respect of both of these releases. I produce one of these bags released to me - double bags, they contain the mark now appearing - the inside bag has "R.P. Singapore" - no other marks to indicate origin. It contained round corriander seeds. It is the same as contained in Exhibit EX "E".

30

YONGE: There is no evidence to show the (?) of this bag, or in whose possession they have been.

PATEL to COURT: I was endeavouring to put this bag in possession of my client to one of the Prosecution witnesses - but they did not know.

In the
Magistrate's
Court

The description is on the entry form.

Defence
Evidence

No. 7

Jaitabhai
Examination
- continued.

XN. (Cont.) The description is usually put on the original entry by examining officers - and the Customs Department can check. The bag I am now producing to Court - has been in the same condition as it is now - including the cut made by the examining officer. I have not interfered with the sewing.

COURT: D/Bag of corriander seeds produced by accused marked Exhibit "F".

XX (YONGE) I don't place order for Moroccan seeds - I don't know if they are produced in Morocco. I don't know if some importer imported from Morocco.

Cross
Examination

I only know two types of corriander seeds - the round and the slender - the round ones come from India. I select prices for the items I intend to import. The Commission agents tell me the price and I order the cheapest.

When I placed the order the 2nd time the price of corriander seeds had risen up. I always imported Indian corriander seeds and I expected to get Indian seeds. They are Indian. Yes 78/- per cwt. in respect of the bag I produced.

Yes the one produced by the Customs to Court was priced 87/- per cwt.

I made my entry in accordance with the invoice.

I say both lots are from India.

(At request of Court witness produces a sample from Ex. E and a sample from Ex. F.).

(Lot from Exhibit E marked Ex. "G" and lot from Ex. F marked Ex. "H".)

In the
Magistrate's
Court

No. 8

PROCEEDINGS

No. 8
Proceedings
21st October
1963

CASE FOR DEFENCE

- PATEL:
- (1) Criminal prosecution. Court has to be satisfied beyond reasonable doubt that the accused has made a false declaration.
 - (2) Prosecution has to satisfy Court that the seeds themselves are of Moroccan origin. 10
 - (3) For Court to hold that the produce is in fact from Morocco will be going too far.
 - (4) No restriction on use of container of another country.
 - (5) What is there to stop a merchant in Singapore using a Moroccan bag.
 - (6) Stitching on bag Ex. E is mainly from Manilaham. 20
Obvious filling done in Singapore.
 - (7) Both bags contain similar type of seeds.
 - (8) Defendant has followed the genuine invoices and filled in the entry form accordingly and correctly.
 - (9) One suspicion prosecution wishes Court to hold that the seeds are of Moroccan origin. Accused's evidence show seeds to be Indian. 30
 - (10) When two equally possible and logical inference is to be drawn and then the Court must accept the one favourable to the accused.
 - (11) Declaration not false.
-

YONGE:

In the
Magistrate's
Court

No. 8
Proceedings
21st October
1963
- continued.

10

- (1) The problem of bag produced is always a difficult one.
- (2) Produce from reputable firm is re-packed in the same bags from time to time. Bags are a very expensive item and they are used again and again.
- (3) Bag in Court is a very good one.
- (4) Re new binding on Ex. E - possibly the Shipping Co. in Fiji did it.
- (5) Must take cognizance of marks on bag - otherwise work of Customs very difficult.
- (6) Question of knowledge or intention does not arise.
- (7) I concede that that conviction in this case will depend on whether or not the seeds are from Morocco.
- (8) Section 152 - Cap. 166.

20

PATEL:
case.

Section 152 does not apply in the present

No. 9

J U D G M E N T

No. 9

Judgment
21st October
1963

The accused is charged with the following offence (Statement of offence and particulars read).

30

The only evidence before this Court from which it can infer that the coriander seeds imported by the accused is of Moroccan origin, is from the markings on the bag (Exhibit E). It is common ground in this case that the accused ordered the seeds from Singapore and there is no dispute that the bags were in fact shipped from Singapore. There is no expert evidence before the Court to show that the contents

In the
Magistrate's
Court

No. 9

Judgment

21st October
1963

- continued.

of Exhibit E originated from Morocco. The prosecution concedes that in order to found a conviction, the Court will have to hold that the seeds are of Moroccan origin. On the evidence before me I am unable to do that. The importer filled in Customs Entry Form A (Exhibit B (1)) in accordance with the particulars contained in the invoices (B3). In this respect the declaration is neither false nor erroneous. I am aware of the Supreme Court decision which declares that Customs offences such as the present to be one of absolute liability. The factor on which this case revolves is as consistent with error or falsity as with their absence.

10

A conviction in this case would be most dangerous as the Court is not even remotely certain that the contents of the bag Exhibit E are of Moroccan origin. For all it knows they may be of Indian origin and in this respect the accused is supported by the invoice declared to be genuine. This is a criminal trial and the burden of proof lies on the prosecution. No doubt the prosecution is in a difficult position with regard to production of witnesses who might have been useful in establishing the origin of the seeds. However that is besides the point. I am unable to hold that the entry made by the accused is either false or erroneous within the meaning of Section 116 of the Customs Ordinance (Cap. 166). I therefore find the accused not guilty and he is acquitted.

20

30

Sgd. Moti Tikaram
Magistrate
21/10/63.

13.

No. 10

LETTER, COLLECTOR OF CUSTOMS TO
THE CLERK, MAGISTRATE'S COURT

HER MAJESTY'S CUSTOMS

SUVA FIJI.

22nd October, 1963.

No. 10

Letter,
Collector of
Customs to
The Clerk,
Magistrate's
Court

22nd October
1963.

Sir,

I am the complainant in Criminal Case No. 2419/63, the Comptroller of Customs v. Joitabhai s/o Khodabhai Patel, wherein Mr. Joitabhai was acquitted on 21st October, 1963 by the Magistrate, Suva.

Being as I have stated above a party to these proceedings and being dissatisfied with the determination in the above case as being erroneous in point of law, I hereby apply in accordance with the provisions of section 335 of the Criminal Procedure Code in order that a special case may be stated and signed setting forth the facts and grounds of such determination for the opinion thereon of the Supreme Court.

I understand there have been several Supreme Court cases in which it has been mentioned that the person applying for the case should draft it, submit it to counsel for the other party and then submit it to you for the Magistrate, Suva, to decide the final form. In these circumstances I should be grateful if a typed copy of the record could be sent to the Attorney-General so that the case stated may be prepared in his office.

I am,

Sir,

Your obedient servant,

(Sgd.) C. E. Yonge

(C. E. Yonge)

Collector of Customs

The Clerk to the Magistrate's Court,
Government Buildings,
SUVA.

In the
Supreme
Court

IN THE SUPREME COURT OF FIJI

No. 11

No.11

CASE STATED

Case Stated
17th January
1964

Appellate Jurisdiction

Criminal Appeal No.

IN THE MATTER of an Appeal
by way of Case Stated pur-
suant to the provisions of
Section 335 of the Criminal
Procedure Code, Cap. 9.

Between:

10

THE COMPTROLLER OF CUSTOMS

Appellant

and

JOITABHAI (s/o Khodabhai
Patel)

Respondent

CASE STATED

CASE STATED by the Acting Senior Magistrate,
Suva in respect of his adjudication as a First
Class Magistrate's Court sitting at Suva in
Criminal Case No. 2419 of 1963:-

Charge

20

On the 2nd day of October, 1963, a charge was
preferred by the Appellant against the Respondent
that he made a false declaration in a Customs
Import Entry produced to an officer of the
Customs, contrary to section 116 of the Customs
Ordinance (Chapter 166 of the Laws of Fiji).
The particulars of the offence preferred by the
Appellant against the Respondent were as
follows :-

"JOITABHAI f/n Khodabhai Patel, trading as
J.K. PATEL & SONS of Toorak Road, Suva, in
the Colony of Fiji, did on 26th day of
August, 1963, at Suva aforesaid, make a
false declaration in the Customs Import
Entry, Form A, and produced the said form to
an an Officer of Customs, in and for the

30

Colony of Fiji, in respect of 5 bags corriander seed imported by the ship "HOUTMAN" which arrived at Suva, on 25th August, 1963, in that instead of declaring the origin of the said corriander seed to be MOROCCO he declared it to be INDIA."

In the
Supreme Court

No.11
Case Stated
17th January
1964
- continued.

Plea

10

On the 21st day of October, 1963 the Respondent was arraigned in respect of the charge and pleaded not Guilty.

Outline of Prosecution's Case

The Prosecuting Officer in outlining the case for prosecuting stated that the prosecution does not intend to prove intention or guilty mind of the accused and that it was sufficient to prove that the entry was erroneous, the offence being one of absolute liability.

Facts

20

I tried the charge on the 21st day of October, 1963 and found the following facts:-

30

- (a) that the Respondent ordered the corriander seed from Singapore;
- (b) that the bags which contained the corriander seed were shipped from Singapore;
- (c) that the Respondent 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);
- (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) there was no mens rea or carelessness on the part of Respondent;

In the
Supreme Court

No.11
Case Stated
17th January
1964
- continued.

- (f) the stitching on the mouth of bag Exhibit E was partly in Manila ham;
- (g) that the corriander seeds in both bags i.e. Exhibit E and Exhibit F were round.

Evidence

The following is a short statement of the evidence:-

RAHMAN ALI s/o Mohamed Ali, A Senior Customs Examiner, and the first prosecution witness, tendered to the Court the following documents:- 10

- (a) A written authority lodged with the Comptroller of Customs issued by Messieurs J.K. Patel and Sons, authorising the Respondent and one RAOJI BHAI PATEL to act on the Firm's behalf, pursuant to section 113 of the Customs Ordinance. This authority had been signed by the Respondent. The written authority was marked "A" by the Court of Trial, and is annexed hereto. 20
- (b) A Customs Import Entry Form A dated the 26th day of August, 1963 with a declaration endorsed thereon by the Respondent on behalf of J.K. Patel and Sons, declaratory of the truth of the contents of the said Form A. This Import Entry Form A was marked B1 by the Court of Trial, and is annexed hereto. 30
- (c) Four invoices addressed to Messieurs J.K. Patel and Sons, Suva, Fiji, which were annexed to, and reflected in, Exhibit B 1. These invoices were marked by the Court of Trial B2, B3, B4 and B5, and are annexed hereto.
- (d) A photostat, certified true copy of the Registration Certificate of the Firm J.K. Patel and Sons which is registered under the Registration of Business Names Ordinance (Chapter 187). This copy Registration Certificate was admitted in evidence as Exhibit "C", and is annexed hereto. 40

RAHMAN ALI identified the signature on Exhibit A and B1, as the signatures of the Respondent. On the 15th day of October, 1963 the Respondent identified his signatures on Exhibits A and B1, to the witness.

In the
Supreme Court

No.11

Case Stated

17th January

1964

- continued.

LUKE YAKALIWALIWA, the second prosecution witness, deposed that he was a Customs Officer who received and processed Entries which were produced to him by Importers or their agents. The witness identified Exhibit B1 as an Entry which has been produced to him, because it bore both his initials on the bottom right hand corner, and a rubber stamp impression on the bottom left-hand corner. The witness expressed familiarity with the signature on Exhibit B1, namely, J.K. Patel, from a comparison, in the course of his duties, with Exhibit A. The witness deposed that Exhibit A was signed by J.K. Patel himself as the person authorising, and that he was the same person who had signed Exhibit B1.

ISOA KOROIVUKI, the final prosecution witness, deposed that in his capacity as a Customs Officer, he examined the corriander seed from the vessel "Houtman", on the 20th September, 1963, which seed was referred to in Exhibit B1. The witness made a report, contemporaneous with his examination, which he endorsed on the reverse side of Exhibit B1. This report was identified by the witness and read to the Court. The witness further deposed that the bags containing the corriander seed were enveloped in an outer bag; that there was inscribed on the inner bag "ALBERDAN - A.D. 4152/Corriander Favourite Singapore", and at the very base of the bag the legend "Produce of Morocco". The outer bag was marked J.K. Patel & Sons. Both bags were produced to the Court and exhibited as E. In cross-examination the witness agreed that the only indication that the corriander seed was from Morocco was from the markings on the bag which contained it.

Submission of no Case

COUNSEL for the Respondent at the close of the prosecution case submitted that the Respondent should not be called upon to make a defence, as in his submission there was no case to answer.

Ruling

I ruled that there was a case for the Respondent to answer and an explanation was called for.

In the
Supreme Court

Defence Case

No.11
Case Stated
17th January
1964
- continued.

THE Respondent elected to give sworn evidence but called no witnesses in his defence. He admitted that on the 1st July, 1963 he placed an order with CHANDULAL JOGHU and CO. for five bags of round Corriander Seed from Singapore; that on the 24th June, 1963 he placed a further order with the Indo-Malaya Produce Co. for five bags of round, Indian Corriander Seed; (both of these orders were then made physically available by the Respondent for inspection by the prosecution); that both consignments were transported together to the Colony, by the "Houtman"; that he received invoices and other documents relevant to the two orders; that he prepared Customs Import Entry Forms in respect of both consignments which he presented to Customs; that one consignment was released to him after they were initially detained by Customs; that this consignment of five individual bags containing corriander seed were enveloped in an outer bag; that an inner bag, produced to the Court (Exhibit F) as one of these bags bore the legend "R.P. Singapore", but no other mark to indicate its origin. In cross-examination the respondent stated that he only knew of two types of corriander seeds - the round and the slender - the round ones came from India; that he always imported Indian corriander seeds which were the round variety and that it was Indian corriander seed which he expected to be supplied with; that both the consignments of corriander seed referred to in his evidence came from India, but that the admitted price difference between the price of 87/- per cwt. for the corriander seed contained in Exhibit E and 78/- per cwt. for the seed contained in Exhibit F, was due to a price rise in corriander seed. (At the request of the Court the accused produced for inspection a sample lot from the corriander seed a bag 'E' and a sample lot from corriander seed bag 'F'. The lot from bag 'E' was marked 'G' and the lot from bag 'F' was marked 'H'.)

Addresses

COUNSEL for the Respondent submitted:-

- (1) Criminal prosecution.
Court has to be satisfied beyond reasonable doubt that the Accused has made a false declaration.

- (2) Prosecution has to satisfy Court that the seeds themselves are of Moroccan origin.
- (3) For Court to hold that the produce is in fact from Morocco will be going too far.
- (4) No restriction on use of container of another country.
- (5) What is there to stop a merchant in Singapore using a Moroccan bag.
- 10 (6) Stitching on bag Exhibit E is mainly from Manila ham. Obvious filling done in Singapore.
- (7) Both bags contain similar type of seeds.
- (8) Defendant has followed the genuine invoices and filled in the entry form accordingly and correctly.
- (9) On suspicion prosecution wishes Court to hold that the seeds are of Moroccan origin. Accused's evidence shows seeds to be Indian.
- 20 (10) When two equally possible and logical inferences are to be drawn then the Court must accept the one favourable to the Accused.
- (11) Declaration not false.

In the
Supreme Court
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- continued.

THE PROSECUTING OFFICER for the Appellant submitted:-

- 30 (1) The problem of bag produced is always a difficult one.
- (2) Produce from reputable firm is re-packed in the same bags from time to time. Bags are a very expensive item.
- (3) Bag in Court is a very good one.
- (4) Re new binding on Exhibit E - possibly the Shipping Company in Fiji did it.
- (5) Must take cognizance of marks on bag - otherwise work of Customs very difficult.

In the
Supreme Court

(6) Question of knowledge or intention does not arise.

No.11
Case Stated
17th January
1964
- continued.

(7) I concede that that conviction in this case will depend on whether or not the seeds are from Morocco.

(8) Section 152 - Cap. 166.

COUNSEL FOR THE RESPONDENT argued that Section 152 of Cap. 166 did not apply.

Judgment

AFTER considering the whole of the evidence and the exhibits tendered I delivered a short judgment, the substance of which was as follows:- 10

"The only evidence before this Court from which it can infer that the corriander seeds imported by the accused is of Moroccan origin is from the markings on the bag (Exhibit E). It is common ground in this case that the accused ordered the seeds from Singapore and there is no dispute that the bags were in fact shipped from Singapore. There is no expert evidence before the Court to show that the contents of Exhibit E originated from Morocco. The prosecution concedes that in order to found a conviction, the Court will have to hold that the seeds are of Moroccan origin. On the evidence before me I am unable to do that. The importer filled in Customs Entry Form A (Exhibit B(1)) in accordance with the particulars contained in the invoices (B3). In this respect the declaration is neither false nor erroneous. I am aware of the Supreme Court decision which declares that Customs offences such as the present one to be of absolute liability. The factor on which this case revolves is as consistent with error or falsity as with their absence. 20 30

"A conviction in this case would be most dangerous as the Court is not even remotely certain that the contents of the bag Exhibit E are of Moroccan origin. For all it knows they may be of Indian origin and in this respect the accused is supported by the invoice declared to be genuine. This is a criminal trial and the burden of proof lies on the prosecution. No doubt the prosecution is in a difficult position 40

with regard to production of witnesses who might have been useful in establishing the origin of the seeds. However that is besides the point. I am unable to hold that the entry made by the accused is either false or erroneous within the meaning of section 116 of the Customs Ordinance (Cap. 166). I therefore find the accused not guilty and he is acquitted. "

In the
Supreme Court

No.11
Case Stated
17th January
1964
- continued.

10 IN THE COURSE of delivering judgment I further observed, although I did not then reduce this additional matter to writing, that "At the conclusion of the prosecution's case I ruled that the accused had a case to answer and an explanation was called for. He has given evidence on oath and I am unable to reject his explanation."

I did not rule whether Section 152 of Cap. 166 applied to the instant case or not.

Application for Case Stated

20 ON the 22nd October, 1963, the Appellant notified me that he was dissatisfied with my determination of the case as being erroneous in law, and requested me to state a case herein, pursuant to section 335 of the Criminal Procedure Code (Cap. 9) for the opinion of the Supreme Court of Fiji.

Questions

The questions for the opinion of the Supreme Court are:-

- 30 (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;
- (2) whether Section 152 of the Customs Ordinance Cap. 166 applied to the facts of the instant case?
- 40 (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?

In the
Supreme Court

No.11
Case Stated
17th January
1964
- continued.

- (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.

DATED at Suva this 17 day of January 1964.

10

(Sgd.) MOTI TIKARAM

ACTING SENIOR MAGISTRATE, SUVA.

No. 12

PROCEEDINGS

No.12
Proceedings
7th February
1964

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No. 11 of 1964

IN COURT

Before the Hon. Mr. Justice Knox-Mawer,
Atg. P.J. on Friday the 7th day of February,
1964, at 9-30 a.m.

20

Between:

THE COMPTROLLER OF CUSTOMS

Appellant

and

JOITABHAI s/o KHODABHAI PATEL

Respondent

Mr. Palmer for the Appellant
Mr. A.D. Patel for the Respondent

PALMER:

Question 5
"Section 166". "False"
Cr. Appeal No. 51 of 1961 p.4.
C.J. Patel v. Police F.L.R. Vol.3
p.202 s. 60 is now S.63.

30

Ct. held offence to be one of strict liability - p.205.

In the
Supreme Court

Sternberg 1953/4 Commonwealth L.R.
Vol.88 p. 646.

No.12

Proceedings

7th February
1964

- continued.

"False" meant "contrary to fact".

New Zealand Supreme Ct. - N.Z.L.R.
1962 p.51.

Held: Proof of absence of mens rea -
an answer to offence against a section
which prima facie is one of strict liability.

10

Distinguishable. (1) p.56 & 57.
Turner J. - 1908 Customs Act. 1913
Act - difference.

Clear that Turner, J. placed emphasis
on differences which emerged.

1913 Act - minimum penalty.

Ct.'s more ready to take view that mens
rea is an essential ingredient.

20

Cites - 1958 42 Cr. App. R. 183

Onus of proving absence of mens rea
thrown on accused.

But it still doesn't throw upon the
Crown the onus of establishing mens rea.
But neither is it an offence of strict
liability.

Question (1)

Not a "document" which in law required
proof of authorship.

30

Day 1908 2 K.B. p.333

p.340 This authority is against me.

But Crown view of "labels on parcels"
is that they are not "documents"

supported by Phipson 9th Edn. p.557.

Merely objects to be identified -
i.e. "real evidence" in themselves.

Bag Exhibit E is produced by the prosecution.

Object identified - produce of Morocco.
That label was "prima facie" evidence
of the origin of that bag and its
contents.

40

In the
Supreme Court

No.12

Proceedings

7th February

1964

- continued.

Bag physically identified.

Even if bag is a "document" - legend sufficiently proved to make it prima facie evidence of that bag and its contents.

(1) Original of bag produced at the trial.

(2) Bags - subject matter of charge - enveloped in 2 bags - outer and inner bag - shipment of 5 bags were in fact the property of the respondent. Ex.B(1).

10

(3) 5 bags initially detained by the appellant were the property of respondent constructively in his possession - knowledge of any legend appearing on that bag must be imputed to him.

Admissible as prima facie evidence against respondent.

20

Tendered to prove one fact in issue Q. of origin of seed.

Question of weight of that evidence another matter - but clearly it was prima facie evidence requiring some explanation.

Question (2)

S.152 Customs Ord. (Cap. 166)

Yes. Section did apply.

Seized .. for the recovery of any penalty .. any dispute arises .. concerning the place whence such goods were brought.

30

1st part of section ends at comma after "prosecution"

(only part relevant for purposes of this case).

Recovery .. of penalty - means a fine.

S.112 - "penalty" used interchangeably with word "fine".

A dispute did arise - concerning the place where such goods were brought or ultimately originated.

40

Not only immediate place whence they were brought but also the place of their ultimate origin.

"Place" means "place of origin" or place whence ultimately brought

because the ultimate place of origin is the only place relevant to the determination of tariff. Beyond realm of Comptroller to prove origin.

In the
Supreme Court

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- continued.

Questions 3, 4, 6

(3) Onus of proof imposed is on "balance of probabilities".

10

Only 2 alternatives - balance of probabilities beyond all reasonable doubt.

(4) Respondent hasn't in fact discharged the onus of proof. Respondent was unable to explain the prima facie evidence whether or not those 5 bags originated from Morocco.

20

At the trial he said he'd acted in good faith with a Merchant in Singapore. That he'd ordered corriander seed - Indian variety - which he expected to be supplied with - he could say no more than that he expected it to be of Indian origin.

One could infer from bags themselves that they were re-used bags.
P.6 of Record.

30

Not - having held that prima facie of Morocco origin - could Magistrate say respondent had on balance of probabilities shown not so but of Indian origin.

I am unable to reject - not enough.

R.K.M.

PATEL:

Question 3

Earlier decision of Supreme Court based on meaning of "false" - not on question of penalty.

1962 N.Z. p.51.

40

3 Classes - (1) absolute liability
(2) mens rea to be established by Crown
(3) absence of mens rea established by defence.

In the
Supreme Court

No.12

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1964
- continued.

Here no express provision that it is
an offence of absolute liability.

Retrial can be ordered.

Question (1)

Who wrote this inscription?

Hearsay.

Sack as physical evidence - admissible

That there are words on it - admissible

The truth of those words - inadmissible.

Prasad -v- Comptroller 59 of 61 p.2 -

same consideration applies here.

S.152 Burden of Proof

10

Qn. (2)

Glanville Wm. Proof of Guilt p.184

Shifting of evidential burden

All that it does is to allow jury to

take notice of silence of prisoner.

S.152 - This is not a prosecution for

recovery of any penalty

It is a prosecution for the inflict-

ion of a penalty

not for the recovery of a penalty

because the prosecutor - the

Comptroller - doesn't actually re-

cover the fine. It goes to the

General Revenue of the Crown.

"Place whence such goods were brought".

If Legislature intended to use the

word "brought" in sense Court argues

why not say "manufactured" or

"originated"

(Lautoka)

Sen. Magistrate - judgment 78 of 63.

S.152.

This Section came before the

Preferential Tariffs

importing of unlawful goods i.e.

goods which couldn't be imported at

all.

20

30

Q. 3 Burden - if it does shift - only

"evidentiary".

Respondent has given explanation.

Shown absence of mens rea.

S.259 English Act.

40

PALMER IN REPLY:

Describes the origin of the bag.

Admissible on describing the bag -

"A Moroccan bag".

From this one can infer prima facie
the origin of the seed in the bag.
N.Z. Case p.55
Section on Revenue Statute
Indent documents -
different considerations apply
Not every provision of a Revenue
Statute - etc.
Proper view is as in Australian case -
S.116 does relate specifically to
Collector of Revenue.
Prasad judgment - distinguishable

C.A.V.

(sgd) R. Knox-Mawer
7.2.64.

In the
Supreme Court

No.12

Proceedings

7th February
1964

- continued.

10

No.13
JUDGMENT

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

No.13
Judgment
18th March
1964

Criminal Appeal No. 11 of 1964

20

B E T W E E N :

THE COMPTROLLER OF CUSTOMS
Appellant

- and -

JOITABHAI s/o Khodabhai
Patel Respondent

J U D G M E N T

30

This is a case stated by the Magistrate's Court
of the First Class, Suva. The respondent was charged
before the Court below with an offence contrary to
section 113 of the Customs Ordinance; the particulars
of which read as follows:-

In the
Supreme Court

Particulars of Offence

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1964
- continued.

"JOITABHAI f/n Khodabhai Patel, trading as J.K. PATEL & SONS of Toorak Road, Suva, in the Colony of Fiji, did on 26th day of August, 1963, at Suva aforesaid, make a false declaration in the Customs Import Entry Form A, and produced the said form to an Officer of Customs in and for the Colony of Fiji, in respect of 5 bags corriander seed imported by the ship "HOUTMAN" which arrived at Suva, on 25th August, 1963, in that instead of declaring the origin of the said corriander seed to be MOROCCO he declared it to be INDIA."

10

It is common ground that the respondent had declared in the relevant Customs Import Entry Form A that the country of origin of the bags of corriander seed was India. It should be observed that the advantage to the respondent of stating the country of origin as India would be that the goods would thereby attract for duty purposes only the lesser (preferential) tariff as against the larger (general) tariff applicable to goods from Morocco, a non-Preference Territory.

20

The bags, having arrived in the Colony, were duly inspected by a Customs Officer. Upon opening same, the Customs Officer discovered that the seed was in fact contained in an inner bag. The inner bag was marked "Produce of Morocco".

30

In his judgment the learned Magistrate held that the appellant had not discharged the onus of proof of establishing that the country of origin of the seeds was Morocco, and hence it could not be held that the declaration on the Import Entry Form was false. The respondent was therefore acquitted.

The first question stated for the opinion of the Supreme Court is:

40

"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."

The learned trial Magistrate held that the marking or "Legend" - "Produce of Morocco" - established a prima facie case against the respondent. The question as to whether he was right in so doing is an exceedingly difficult one. I have not been able to discover any direct authority upon the point. The cases mentioned in Phipson on Evidence 9th Ed. at p. 557, to which learned Crown Counsel referred me, are of little assistance. I would, however, make reference to certain East African cases which I have consulted, viz. Yafesi Kinsambwe Lutalo v. R. (1962) E.A. 52, Emmanuel Mutakayana v. R. (1961) E.A. 276, and The Commissioner of Customs and Excise v. Shah Karamshi Panachand & Co. (1961) E.A. 303.

In Commissioner of Customs and Excise v. Shah Karamshi Panachand & Co. (supra) at p. 306, the learned Vice-President of the East African Court of Appeal stated:-

"In certain circumstances the shipping marks might be receivable as evidence in the nature of an admission against an importer, but I do not see how otherwise they can be of any value to establish the origin of goods."

If the marking on the bags is to be regarded simply as "documentary" evidence, I think it might be receivable as evidence against the respondent upon this basis. On the other hand learned Crown Counsel has urged that the marking, as an exhibit before the Court is, per se, something from which the Court can draw certain inferences; if that is done, the considerations relating to "documentary" evidence, are not, he submits, relevant. The prima facie inferences which the Court may draw therefrom, says learned Crown Counsel, are that the bag originates from Morocco, and by a further necessary inference, so do its contents. To my mind this is a commonsensical view and one which the Courts should adopt if legally permissible. And since I am not persuaded that the law expressly forbids such a view, it is the one which I shall adopt.

Before passing on to the next question, I should mention that I have read in this connection two recent judgments of the Magistrates' Courts. In Comptroller of Customs v. Western Electric Company Limited, (Lautoka Criminal Case No. 780 of 1963) the Lautoka Court held that the foreign markings on the goods

In the
Supreme Court
No.13
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18th March
1964
- continued.

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1964

- continued.

exhibited before the Court were prima facie evidence of their origin. In *Comptroller of Customs v. Bhamubhai*, (Suva Criminal Case No. 3093 of 1963), on the other hand, the Suva Court held the other way. In this latter case, the learned trial Magistrate observed:

"the only evidence purporting to show where the material was manufactured is the markings on it indicating manufacture in Japan. No evidence was adduced, however, to prove that material from Japan is customarily so marked. In my view markings cannot be evidence of the nature, authenticity and general practice with regard to such markings. To hold otherwise would be to admit what is in effect hearsay evidence."

10

While appreciating the argument in support of this latter opinion, I have decided to adopt, with respect, an opposite view.

20

My answer to Question 1 is that the Court below has not erred in law in admitting as prima facie evidence of the origin of the corriander seeds, the "legend" or "marking" appearing on the bag containing the seeds.

The second question is:

"Whether section 152 of the Customs Ordinance Cap. 166 applied to the facts of the instant case?"

Section 152 of the Customs Ordinance (Cap. 166) is as follows:-

30

"If, in any prosecution in respect of any goods seized for non-payment of duties or any other cause of 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 on the defendant in such prosecution, and the defendant shall be

40

In the
Supreme Court
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Judgment
18th March
1964
- continued.

10 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 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 in any proceeding relating to customs or undertaken under this Ordinance was duly authorised shall be presumed until the contrary is proved."

20 In my view, the vital issue here is whether a dispute has arisen concerning "the place whence such goods were brought."

In both of the cases before the Magistrates Courts to which I have already referred, consideration was given to this question. In *Comptroller of Customs v. Bhanubhai* (supra) the learned Magistrate stated:-

30 "... as this section (section 152) places on an accused person a burden which he would not otherwise have to bear, it must be construed strictly and its terms not extended beyond their normal meaning. I consider, therefore, that the phrase "the place whence the goods were brought" cannot properly be construed to mean more than its obvious meaning, i.e. the place whence the importer brought them. This place is not necessarily the place where they originated."

40 In *Comptroller of Customs v. Western Electric Company Limited* (supra) the learned Senior Magistrate also held that no onus of proof was cast upon the defendant in that case by Section 152.

"Any provision" he observed in his judgment, "negating the ordinary rule (as to onus of proof) must be strictly construed. The nearest matter giving specific reference to what has to be proved in this prosecution is

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Supreme Court

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1964

- continued.

(concerning the place whence such goods were brought). No doubt this ordinance was passed before preferential tariffs were in existence. Whatever may have been the need to prove the place whence such goods were brought it can not be extended to mean what was the country of origin, without amendment to the ordinance."

Again, this issue is not an easy one. It is certainly arguable that, as presently drafted, the section does not shift the burden of proof on to the respondent in these circumstances. On the other hand, the Interpretation and General Clauses Ordinance (Cap.1) provides that words in the singular include the plural. Accordingly, the words "concerning the place whence such goods were brought" can be read: "concerning the places whence such goods were brought". It is the appellant's contention that the goods were brought first of all from Morocco to Singapore and thence from Singapore to Fiji. The dispute which has arisen concerns the first of these two "places whence" (the appellant alleges) "these goods were brought". Thus, he contends, section 152 applies. I think this contention is sound. In answer to Question 2 I would hold that Section 152 of the Ordinance did apply to the facts of the instant case.

Question 3 reads:

"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?"

In my opinion the burden of proof which lay on the respondent was "on the balance of probabilities."

Question 4 reads:

"Has the Respondent discharged such burden if any as lay upon him?"

In my opinion the respondent has not discharged such burden of proof as lay upon him.

Question 5 reads :

"What meaning is to be assigned to the word "false" in section 116 of the Customs Ordinance, Cap. 166?"

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Supreme Court

No.13

Judgment

18th March
1964

- continued.

10 I have already held in *Harikisundas Moti Ram and Anor. v. Comptroller of Customs* 7 F.L.R. p. 96, at p. 99, that the word "false" means nothing more than erroneous. I am supported in my view that the Legislature has here created an offence of absolute or strict liability by two other decisions of this Court, namely *C.J. Patel v. Police* 3 F.L.R. p. 202 and *The Attorney-General v. Gyanidas* 4 F.L.R. p. 202.

While my answer to this question will be the same as that given in my earlier decision upon the point, certain other authorities have been cited to me at the hearing of this appeal to which reference should be made.

20 In *D'Audney v. Marketing Services New Zealand Limited* 196 N.Z.L.R. 51, the Supreme Court of New Zealand observed that the provision of a minimum fine in a Statute creating an offence is a compelling consideration strongly favouring the view that the Legislature cannot have intended the offence to be independent altogether of mens rea. Certainly the penalty provided for the offence in question is a matter which must be taken into consideration in deciding whether the offence is one of strict liability. (*R. v. Tolson* (1889) 23 Q.B.D. 168, p. 174). In *R. v. Ewart* (1906) 25 N.Z.L.R. 709, the New Zealand Court of Appeal stated that statutory offences may be divided into three classes:

40 "(1) those in which, following the common-law rule, a guilty mind must either be necessarily inferred from the nature of the act done, or must be established by independent evidence; (2) those in which either from the language or the scope and object of the enactment to be construed, it is made plain that the Legislature intended to prohibit the act absolutely, and the question of the existence of a guilty mind is only relevant for the purpose of determining the quantum of punishment following the offence; (3) those in which, although, from the omission from

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1964

- continued.

the statute of the word 'knowingly' or 'wilfully', it is not necessary to aver in the indictment that the offence charged was 'knowingly' or 'wilfully' committed, or to prove a guilty mind, and the commission of the act in itself prima facie imports an offence, yet the person charged may still discharge himself by proving to the satisfaction of the tribunal which tries him that in fact he had not a guilty mind." 10

In *St. Margaret's Trust Limited v. R.* 42 Crim. App. 183, p. 191, the English Court of Criminal Appeal considered that the Legislature intended the offence under consideration to be one of absolute prohibition "leaving the Court to use its powers to inflict nominal punishment or none at all in appropriate cases." Where, as in the instant case, a substantial minimum penalty is provided, the Fiji Courts cannot of course impose such nominal punishment. Be that as it may, the penalty provided by the section is only one of the considerations of which account must be taken in deciding whether the offence is one of strict liability. I have no doubt that the Fiji Legislature has here provided that an importer must make absolutely certain that every material entry upon Form A is entirely accurate before he (or a person for whose false entry he is criminally responsible) makes it. A minimum penalty of £50 must be imposed by the Fiji Courts regardless of the circumstances, if an entry is discovered to be "erroneous". "Erroneous", it may be remarked, was the meaning given to the word "false" in *S.224 D of the Australian Customs Act 1901/1947* in *Sternberg v. The Queen* (1953) 88 C.L.R. at p. 646. Further support for my view is afforded by reference to other parts of section 116 of the Fiji Customs Ordinance. For example, there is the specific use of the word "wilfully" in respect of another offence created by section 116 (wilfully using a falsified document) where, in considered contra-distinction to the offence under consideration, the Legislature has made "mens rea" an ingredient. 20 30 40

The answer to Question 5 is that the meaning to be assigned to the word "false" is erroneous.

Question 6 reads:

"Whether this Court has erred in law in acquitting the Respondent, in all the circumstances and facts of the case".

Having regard to my findings set out above it follows that the lower Court has erred in law in acquitting the respondent. The verdict of the lower Court is set aside.

10

The respondent is convicted of the offence charged and fined £50 or in default of payment, two months' imprisonment.

Costs to appellant.

(Sgd.) R. KNOX-MAWER

Acting Puisne Judge

SUVA,

18th March, 1964.

No. 14

R U L I N G

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

20

Criminal Appeal No. 11 of 1964

Between:

THE COMPTROLLER OF CUSTOMS Appellant

and

JOITABHAI s/o Khodabhai Respondent
Patel

R U L I N G

It is now common ground that Question 4 of the Case Stated, being a question of fact and not one

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Supreme Court

No.13

Judgment
18th March
1964
- continued.

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Ruling
13th April
1964

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Supreme Court

No.14

Ruling
13th April
1964
- continued.

of law, could not be answered by the Court, in this particular appeal, and that I had therefore no jurisdiction in those circumstances to convict the respondent.

I am indebted to the learned Attorney-General for the assistance he has afforded upon this question generally, and in particular to his citation of the two authorities R. v. West (1964) 1 Q.B. at p. 15 and R. v. Marshall (1912) 2 K. B. p.362.

10

In relation to the issues of fact, it is now agreed that I acted outside my jurisdiction, in so far as I had no jurisdiction to answer other than questions of law upon this Case Stated. It has, therefore, been both open and necessary for me to exercise a proper jurisdiction (vide R. v. West (supra) at p. 27 where the Court of Criminal Appeal referred to R. v. Marshall "as emphasising the effect of a court purporting to act within its jurisdiction and failing to do so, and then being perfectly open to exercise a proper jurisdiction").

20

Accordingly, in exercise of such proper jurisdiction, the purported conviction and sentence must be regarded as a nullity, and I have ordered that this case be remitted to the Magistrate's Court, Suva, for retrial before another Magistrate. The learned trial Magistrate must disregard my earlier remarks in relation to Question 4 (which, it is now agreed, it was outside my jurisdiction to answer). The Magistrate is, of course, bound by my answers to the other questions of law as stated.

30

(Sgd.) R. Knox-Mawer

ACTING PUISNE JUDGE

SUVA,

13th April, 1964.

ORDER IN COUNCIL GRANTING SPECIAL
LEAVE TO APPEAL

In the
Privy Council

(L.S.)

AT THE COURT AT BUCKINGHAM PALACE

The 10th day of August, 1964

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

No.15
Order in
Council grant-
ing Special
Leave to
Appeal
10th August
1964

MR. BOYD-CARPENTER
SIR EDWARD BOYLE

MR. CARR
MR. THOMAS

10 WHEREAS there was this day read at the Board a
Report from the Judicial Committee of the Privy
Council dated the 27th day of July 1964 in the
words following, viz.:-

20 "Whereas by virtue of His late Majesty
King Edward the Seventh's Order in Council of
the 18th day of October 1909 there was referred
unto this Committee a humble Petition of Joitabhai
s/o Khodabhai Patel in the matter of an Appeal
from the Supreme Court of Fiji Appellate
Jurisdiction between the Petitioner and The
Comptroller of Customs Respondent setting forth
that the Petitioner desires to obtain special
leave to appeal to Your Majesty in Council from
the Judgment of the Supreme Court of Fiji
Appellate Jurisdiction dated the 18th day of
March 1964 whereby the Appeal of the Respondent
was allowed and the Petitioner convicted of the
offence of making a false declaration in a
30 customs import entry contrary to Section 116 of
the Customs Ordinance: And humbly praying Your
Majesty in Council to grant him Special Leave
to appeal from the Judgment of the Supreme Court
of Fiji Appellate Jurisdiction dated the 18th
day of March 1964:

40 "THE LORDS OF THE COMMITTEE in obedience to
His late Majesty's said Order in Council have
taken the humble Petition into consideration and
having heard Counsel in support thereof and in
opposition thereto Their Lordships do this day
agree humbly to report to Your Majesty as their
opinion that leave ought to be granted to the
Petitioner to enter and prosecute his Appeal

In the
Privy Council

No.15
Order in Council
granting Special
Leave to Appeal
10th August
1964

- continued.

against the Judgment of the Supreme Court of
Fiji Appellate Jurisdiction dated the 18th
day of March 1964:

"AND Their Lordships do further report
to Your Majesty that the proper officer
of the said Supreme Court ought to be
directed to transmit to the Registrar of the
Privy Council without delay an authenticated
copy under seal of the Record proper to be
laid before Your Majesty on the hearing of
the Appeal upon payment by the Petitioner
of the usual fees for the same."

10

HER MAJESTY having taken the said Report
into consideration was pleased by and with the
advice of Her Privy Council to approve thereof and
to order as it is hereby ordered that the same
be punctually observed obeyed and carried into
execution.

Whereof the Governor or Officer administering
the Government of the Colony of Fiji for the time
being and all other persons whom it may concern
are to take notice and govern themselves
accordingly

20

E. N. LANDALE

E X H I B I T S

EXHIBIT "A"

AUTHORITY TO R.J. PATEL
TO SIGN CUSTOMS DOCUMENTS

208

C.E.179

COLLECTOR OF CUSTOMS.

SUVA.

In accordance with the provisions of Section
113 of the Customs Ordinance We J.K. Patel & Sons
per.....

10

of Suva in the Colony of FIJI hereby authorise
RAOJIBHAI JOITABHAI PATEL of Suva to sign at the
port of Suva any Declaration, bond, or Security or
other document required under the Customs Ordinance
and We agree and hereby consent that any declara-
tion, bond or security, or other document so
signed shall be valid and bind on us and We
further agree and consent that this authority
shall remain in full force and effect until
notification of withdrawal thereof shall have
been given in writing by us to the Collector of
Customs at the port of Suva.

20

Dated at Suva this 10 day of May, 1962.

Signature Sgd. J.B. Patel

FULL POSTAL ADDRESS J.K. Patel & Sons
Suva Box No. 185 Toorak Road

Specimen Signature:

Sgd. R.J. Patel

L.S.

Exhibits

"A"

Authority to
R.J. Patel to
sign Customs
documents.

10th May 1962.

EXHIBIT "B1"

IMPORT ENTRY

Exhibits

"B1"

Import Entry.

26th August
1963.

The following two photographs have been
allocated Page Nos. 40 and 41.

H.M. CUSTOMS, FIJI — IMPORT ENTRY
 FROM: *SPOKE*
 AGENT: *SELF*

PORT OF: *SUVA*
 SHIP: *HOUTMAN*
 ARRIVED *25. 8 1963*
 OWNER: *J. K. PATEL + SONS.*

M. CUSTOMS
 27 AUG 63 35738
 IMPORT
 PAYMENT FIJI RECEIVED
 ROTATION NO. *63/280*

Per official use	Licence No.	Cabin No.	Marks and Nos.	Package No. Type	Description of Goods	Quantity	Wholesale	Country of Origin	Tariff Item	Value for Duty	Rate of Duty	Duty Payable	Statistical Code
		<i>23/1</i>	<i>J K P SUVA</i>	<i>40</i> Bags	<i>Groundnut w/ shells</i>	<i>4319 lbs</i>	<i>68</i>	<i>Sierra Leone</i>	<i>206</i>	<i>155</i>	<i>8 24/16</i>	<i>35</i>	<i>10 221-01</i>
		<i>23/6</i>		<i>6</i> Bags	<i>Sporthall</i>	<i>7.561</i>	<i>1</i>	<i>Burma</i>	<i>8</i>	<i>54</i>	<i>9 FREE</i>		<i>054-02</i>
		<i>23/4</i>		<i>5</i> Bags	<i>Perriander Seeds</i>								
		<i>23/2</i>		<i>2</i> Bags	<i>Methi Seeds</i>	<i>1183 lbs</i>	<i>14</i>	<i>India</i>	<i>22</i>	<i>50</i>	<i>12 10 24/16</i>	<i>9 17 2</i>	<i>075-X</i>
		<i>23/5</i>		<i>1</i> Bag	<i>Fennel Seeds</i>								
		<i>15/12</i>	<i>J K SUVA</i>	<i>12</i> Bags	<i>Sporthall</i>	<i>71.094</i>	<i>2</i>	<i>Burma</i>	<i>8</i>	<i>101</i>	<i>12 9 FREE</i>		<i>054-02</i>
		<i>8/10</i>	<i>LUXMI SUVA</i>	<i>11</i> Bags	<i>Jewel thall</i>	<i>71.041</i>	<i>10</i>	<i>Burma</i>	<i>8</i>	<i>100</i>	<i>4 7 FREE</i>		<i>11</i>
Total										<i>462</i>	<i>12 7</i>	<i>45 17</i>	<i>UCO</i>
										Wharfrage		<i>12 10</i>	<i>1036</i>
										P. & C. S. Tax		<i>17 7</i>	<i>1036</i>
										Treble Bond Charges			<i>1036</i>
										Total		<i>63 16 10</i>	<i>1036</i>

DECLARATION: I declare that I am the owner of the goods, that I enter the goods as of the value and of the description and quantities stated in this entry, and for home consumption; and that the particulars stated in this entry are true and correct in every respect.

Signature: *J. K. Patel + Sons*
 Date: *26-8-63*

Signature: *see Spoke*
 Date: *2/1/63*

RECEIVED
 H.M. CUSTOMS
 SUVA

RECEIVED
 H.M. CUSTOMS
 SUVA

Fiji Times Print - 2323
 10

EXHIBIT "B2"

INVOICE - 40 BAGS

Exhibits

"B2"

Invoice - 40
Bags.

7th August
1963.

The following two photographs have been
allocated Page Nos. 42 and 43.

INVOICE No. 4055
 INVOICE of 40 FORTY BAGS ONLY.
 by CHANDULAL DOSHI & CO.,
 S. S. "HOUTMAN"
 to SUVA, (FIJI ISLAND)
 by order and for account and risk of Messrs. CHANDULAL DOSHI & SONS, SUVA. (FIJI)
 P. O. Box No. 2187, SINGAPORE-1.

Order Number

Country of Origin	Marks and numbers on Packages	Quantity and Description of Goods.	Current domestic values in currency of exporting country (See para. 3 and 4 of certificate.)	(1) Selling Price to Purchaser.
Origin	Packages		@ Amount	@ Amount
EAST-AFRICA	J K P S U V A	40, Bags, Groundnut With Shells, Best Quality, Cwts. 38-2-7. @ Sh. 72/- Per Cwt CIF Suva. Total Forty Bags Only. Total Sterling Pounds One hundred thirty eight and shilling sixteen and pence six only. Insured with The Ruby General Insurance Co. Ltd. Draft to be Presented through Bank of Baroda, Ltd. Suva. <u>COUNTRY OF ORIGIN: EAST AFRICA</u>	ALL PRICES CIF FIJI CIF SUVA 138.16.6 13.17.8 2.15.6 155.9.8	

Enumerate the following charges and state whether each amount has been included in or excluded from the above current domestic values.

Charge	Amount in Currency of Exporting Country	State if included
inland freight (rail or canal) and other charges to the dock area, including inland insurance.		ALL INCLUDE.
labour in packing the goods into outside packages.		"
value of outside packages.		"
if the goods are subject to any charge by way of royalties, state all particulars of Royalties below:—		"

COUNTRY OF ORIGIN
 21-1-1962
 J. K. P.
 S. U. V. A.
 CHANDULAL DOSHI & CO.

Chandulal Doshi & Co.
 Proprietor.

1381
 AUSTRALIA, CYPRUS for goods other than sugar molasses and manufactured tobacco UNION OF SOUTH AFRICA, NEW ZEALAND, NEWFOUNDLAND, JAMAICA, BARBADOS DOMINICA, TRINIDAD, FIJI, GRENADA, BRITISH GUIANA, ST. LUCIA, ST. VINCENT, GOLD COAST. CHANDULAL DOSHI & CO. SINGAPORE

Combined Certificate of Value and of Origin, to be Written, Typed or Printed on Invoices of Goods for Exportation to the British Dominions as above for goods entitled to be entered under the British Preferential Tariff

(1) Manager, chief clerk, or as the case may be, of (2) Name of firm or company. (3) Name of city or country. (4) These words should be omitted where the manufacturer or supplier himself signs the certificate.

I, (1) CHANDULAL D. DOSHI., of (2) CHANDULAL DOSHI & CO., of (3) P. O. Box No. 2187, SINGAPORE-1. supplier of the goods enumerated in this invoice amounting to SGD\$1,136-16-06., hereby declared that I [(4) have the authority to make and sign this certificate on behalf of the aforesaid supplier, and that I] have the means of knowing and do hereby certify as follows:—

VALUE

- That this invoice is in all respects correct, and contains a true and full statement of the price actually paid or to be paid for the said goods, and the actual quantity thereof.
- That no different invoice of the goods mentioned in the said invoice has been or will be furnished to anyone; and that no arrangement or understanding affecting the purchase price of the said goods has been or will be made or entered into between the exporter and purchaser or by anyone on behalf of either of them, either by way of discount, rebate, compensation, or in any manner whatever, other than as fully shown on this invoice, or as follows: (5)
- That the domestic values shown in the column headed "Current Domestic Values" are those at which the above-mentioned firm or company would be prepared to supply to any purchaser for home consumption in the country of exportation, and at the date of exportation, identically similar goods in equal quantities at (6) Port of shipment subject to _____ per cent. cash discount, and that such values include the cost of outside packages (if any) in which the goods are sold in such country for domestic consumption.
- That the said domestic value includes any duty leviable in respect of the goods before they are delivered for home consumption, and that on exportation a drawback of remission of duty amounting to has been allowed by the revenue authorities in the country of exportation.

ORIGIN

[Delete whichever of 5 (a) or 5 (b) is not applicable. If 5 (a) is used, delete 6 and 7; if 5 (b) is used, insert required particulars in 6 and 7]

- | | |
|---|--|
| <p>5. (a) That every article mentioned in the said invoice has been wholly produced or manufactured in (7) <u>EAST AFRICA</u></p> | <p>5. (b) That every article mentioned in the said invoice has been either wholly or partially produced or manufactured in (7) _____</p> |
|---|--|

(7) "United Kingdom" or name of other part of British Dominions.

- As regards those articles only partially produced or manufactured in (7) _____
 - That the final process or processes of manufacture have been performed in that part of the British Dominions.
 - That the expenditure in material produced in (7) _____ and _____ labour performed in (7) _____, calculated subject to qualifications hereunder, in each and every article is not less than one-fourth of the factory or works cost of such article in its finished state

7. That in the calculation of such proportion of produce or labour of the (7) _____ none of the following items has been included or considered:—

Manufacturer's profit, or remuneration of any trader, agent, broker, or other person dealing in the articles in their finished condition; royalties; cost of outside packages or any cost of packing the goods thereinto; any cost of conveying, insuring or shipping the goods subsequent to their manufacture.

ALL INCLUDED.

" Dated at SINGAPORE this 7TH day of AUGUST, 1965. 19
 " Witness: [Signature] Signature: [Signature]

EXHIBIT "B3"

INVOICE - 14 PACKAGES

Exhibits

"B3"

Invoice - 14
Packages.

7th August
1963.

The following two photographs have been
allocated Page Nos. 44 and 45.

INVOICE No. 420 UNION OF SOUTH AFRICA NEW ZEALAND DOMINICA TRINIDAD and TOBAGO
 SINGAPORE, 1963.
 INVOICE of (14) FOREIGN PACKAGES ONLY shipped
 by **CHANDULAL DOSHI & CO.,** P. O. Box No. 2187, SINGAPORE-1.
 per **S. S. "HOYTMAN"** to **SUVA, (FIJI)**
 by order and for account and risk of **RAJESH K. BHANU SUVA, (FIJI)**
 the above current domestic value-

Country of Origin	Marks and numbers on Packages	Quantity and Description of Goods.	Current domestic value in currency of exporting country (See para. 3 and 4 of certificate.)	Selling Price to Purchaser
			@ Amount	@ Amount
BURMA	J K P S U V A	6, D/Bags Tupperall Best, Cwts, 11-0-24.	Sh. 87/-	ALL PRICE CIP FIJI.
		Per Cwt. CIP Suva.....		£. 48-15-08.
INDIA	---dc---	5, D/Bags Corriander Seeds, Cwts, 5-0-17.	Sh. 87/-	
		Per Cwt CIP Suva.....		£. 22-08-02.
INDIA	---dc---	2, D/Bags Methi Seeds Best, Cwts, 4-0-18.	Sh. 75/-	
		Per Cwt CIP Suva.....		£. 15-12-01.
INDIA	---dc---	1, D/Bags Fennel Seeds Best, Cwts, 1-1-0.	Sh. 115/-	
		Per Cwt CIP Suva.....		£. 7-03-09.
		14, Packages only.		Total..... £. 93-19-08.
Total Fourteen Packages only.				CIP SUVA
Total Sterling Pounds Ninetythree and shilling Nineteen and pence eight only.				
Insured with The Ruby General Insurance Co Ltd.				
Draft to be presented through Bank of Baroda Ltd. Suva.				

ORIGIN

48. 18. 8 ✓ 45. 4. 10 ✓
 4. 17. 7 ✓ 4. 10. 8 ✓
 19. 6. 1 ✓ 18. 2 ✓

54. 12. 9 ✓ 50. 12. 10 ✓

T. 56

183 lbs

Chandulal Doshi & Co.
 Proprietor.

Enumerate the following charges and state whether each amount has been included in or excluded from the above current domestic values.

	Amount in Currency of Exporting Country	State if included
Cartage to rail and or to docks.....		ALL INCLUDED.
Inland freight (rail or canal) and other charges to the dock area, including inland insurance.		
Labour in packing the goods into outside packages.		
Value of outside packages.		
If the goods are subject to any charge by way of royalties, state full particulars of Royalties below:—		

MADE AT SINGAPORE
 C. No. 2419/63
 Cgc. Joyik Bhan

B 3

2/19/63

APPROVED BY THE DIRECTOR GENERAL OF CUSTOMS

181
1891
AUSTRALIA, CYPRUS for goods other than sugar molasses and manufactured tobacco UNION OF SOUTH AFRICA, NEW ZEALAND, NEWFOUNDLAND, JAMAICA, BARBADOS DOMINICA, TRINIDAD, FIJI, GRENADA, BRITISH GUIANA, ST. LUCIA, ST. VINCENT, GOLD COAST.

Combined Certificate of Value and of Origin, to be Written, Typed or Printed on Invoices of Goods for Exportation to the British Dominions as above, for goods entitled to be entered under the British Preferential Tariff

I, (1) CHANDULAL D. DOSHI, of (2) CHANDULAL DOSHI & CO.,

(1) Manager, chief clerk, or as the case may be, of (3) P. O. Box No. 2187, SINGAPORE-1, supplier of the goods enumerated in this invoice
 (2) Name of firm or company.
 (3) Name of city or country.
 (4) These words should be omitted where the manufacturer or supplies himself signs the certificate.
 amounting to _____, hereby declared that I [(4) have the authority to make and sign this certificate on behalf of the aforesaid supplier, and that I] have the means of knowing and do hereby certify as follows:—

VALUE

1. That this invoice is in all respects correct, and contains a true and full statement of the price actually paid or to be paid for the said goods, and the actual quantity thereof.

2. That no different invoice of the goods mentioned in the said invoice has been or will be furnished to anyone; and that no arrangement or understanding affecting the purchase price of the said goods has been or will be made or entered into between the exporter and purchaser or by anyone on behalf of either of them, either by way of discount, rebate, compensation, or in any manner whatever, other than as full

(5) Particulars of any special arrangement.

shown on this invoice, or as follows: (5) _____

3. That the domestic values shown in the column headed "Current Domestic Values" are those at which the above-mentioned firm or company would be prepared to supply to any purchaser for home consumption in the country of exportation, and at the date of exportation, identically similar goods in equivalent quantities at (6) Port of shipment subject to _____ per cent. cash discount, and the

(6) "Warehouse," "factory," or port of shipment

such values include the cost of outside packages (if any) in which the goods are sold in such country for domestic consumption. exclude _____

4. That the said domestic value includes any duty leviable in respect of the goods before they are delivered for home consumption, and that on exportation a drawback of remission of duty amounting to _____ has been allowed by the revenue authorities in the country of exportation. will be _____

ORIGIN

[Delete whichever of 5 (a) or 5 (b) is not applicable. If 5 (a) is used, delete 6 and 7; if 5 (b) is used insert required particulars in 6 and 7]

5. (a) That every article mentioned in the said invoice has been wholly produced or manufactured in (7) BURMA - INDIA

5. (b) That every article mentioned in the said invoice has been either wholly or partially produced or manufactured in (7) _____

(7) "United Kingdom" or name of other part of British Dominions.

6. As regards those articles only partially produced or manufactured in (7) _____

(a) That the final process or processes of manufacture have been performed in that part of the British Dominions.

(b) That the expenditure in material produced in (7) _____ and labor or _____ performed in (7) _____, calculated subject to qualifications hereunder, in each and every article is not less than one-fourth of the factory or works cost of such article in its finished state

7. That in the calculation of such proportion of produce or labour of the (7) _____ none of the following items has been included or considered:

Manufacturer's profit, or remuneration of any trader, agent, broker, or other person dealing with the articles in their finished condition; royalties; cost of outside packages or any cost of packing the goods thereinto; any cost of conveying, insuring or shipping the goods subsequent to their manufacture.

Dated at SINGAPORE this 7TH day of AUGUST, 1963.

Witness: _____ Signature: _____

EXHIBIT "B4"

INVOICE - 12 BAGS

Exhibits

"B4"

Invoice - 12
Bags.

6th August
1963.

The following two photographs have been
allocated Page Nos. 46 and 47.

Subject to Singapore Jurisdiction

62, Market Street, P. O. Box 494.

Cable: "ANOOP" BAPULAL BROS. Exporters, Importers & Commission Agents.

UNITED STATES OF AMERICA, AUSTRALIA, CYPRUS, NEW ZEALAND, HONGKONG, JAMAICA, BARBADOS, DOMINICA, TRINIDAD, THE GRENADA, BRITISH GUIANA, ST. LUCIA, ST. VINCENT & THE GRENADINES, GUYANA, CHAMA.

Invoice No. 163/63

SINGAPORE, 6th August 1963

Combined Certificate of Value and of Origin to be Written Type or Printed in Invoice of Goods for Exportation to the British Dominions and Colonies and other Countries. Shipped

for goods of SINGAPORE. to Messrs. J.K. Patel & Sons of Suva (Fiji) to be shipped per HOUTMAN via BAPULAL BROS. Order Nos: L1977

Printed by L. V. Press Co., Ltd., Singapore.

Country of Origin	Marks and numbers on packages.	QUANTITY AND DESCRIPTION OF GOODS	Current domestic values in currency of exporting country. (See para 3 and 4 of certificate.)		Selling Price to purchaser
			Amount	Amount	

Burma	J K SUVA	12 D/bags, Toordali Cwt: 21-03-13 83/- per cwt of Suva			£ 90-14-11
<p>Stg. Pounds: Ninety Sh. Fourteen & Pence Eleven Only:</p> <p>Draft Nos: 163/63 for 1121-10-0</p> <p>Bill sold to: The Mercantile Bank Ltd. 24/9/63</p> <p>Insured for 11310</p> <p>Cofe. Jorik Bhai</p> <p>84</p>					
<p>BAPULAL BROS.</p> <p>E. & O. E.</p>					

Handwritten calculations: 90.14.11, 97.9.6, 1.16.4, 101.2-9

Enumerate the following charges and state whether each amount has been included in or excluded from the above current domestic value:	Amount in Currency of Exporting country.	State if included
(1) Cartage to rail and/or to docks		
(2) Inland freight (rail or canal) and other charges to the dock area, including inland insurance		
(3) Labour in packing the goods into outside packages		
(4) Value of outside packages		
(5) If the goods are subject to any charge by way of royalties		

State full Particulars of Royalties below:—

The supplier or manufacturer, as the case may be, shall insert opposite each article described on the invoice and in the columns headed "Current Domestic Values" and "Selling Price to Purchaser" the gross value or price thereof, and at the end of or in the body of the invoice the rates of discount or the allowance (if any) granted or permitted by him on such or similar goods.

Combined Certificate of Value and of Origin, to be Written, Typed or Printed on Invoices of Goods for Exportation to the British Dominions as above.
for goods entitled to be entered under the British Preferential Tariff

- (1) Here insert Manager, Chief Clerk or as the case may be.
- (2) Here insert name of firm or Company.
- (3) Here insert name of city or country.
- (4) These words should be omitted where the manufacturer or supplier himself signs the Certificate.

I, **A.R. DESAI** (1) Proprietor or manager.
 of (2) **BAPUL BROS.** of (3) **Singapore.**
 manufacturer or suppliers of the goods enumerated in this invoice amounting to **100=14=11**

hereby declare that I (4) have the authority to make and sign this certificate on behalf of the aforesaid **manufacturer or suppliers** and that I have the means of knowing and I do hereby certify as follows:—

VALUE

- 1. That this invoice is in all respects correct and contains a true and full statement of the price actually paid or to be paid for the said goods, and the actual quantity thereof.
- 2. That no different invoice of the goods, mentioned in the said invoice has been or will be furnished to anyone and that no arrangements or understanding affecting the purchase price of the said goods have been or will be made or entered into between the said exporter and purchaser or by anyone on behalf or either of them either by way of discount, rebate, compensation or in any manner whatever other than as fully shown on this invoice, or as follows:— (5).....
- 3. That the domestic value shown in the column headed "Current Domestic Values" are those at which the above mentioned firm or company would be prepared to supply to any purchaser for home consumption in the country of exportation and at the date of exportation identically similar goods in the usual wholesale quantities, at (6)..... subject to..... per cent. cash discount, and that such values include the cost of outside packages if any, in which the goods are sold in such country for domestic consumption.
- 4. That the said domestic value includes any duty leviable in respect of the goods before they are delivered for home consumption, and that on exportation a drawback or remission of duty amounting to..... ^{has been} _{will be} allowed by the revenue authorities in the country of exportation.

ORIGIN

(Delete whichever of 5 (a) or 5 (b) is not applicable. If 5 (a) is used delete 6 and 7. If 5 (b) is used insert required particulars in 6 and 7).

- 5. (a) That every articles mentioned in the said invoice has been **wholly** produced or **manufactured** in (7) as stated on the reverse side.
- 5. (b) That every article mentioned in the said invoice has been either **wholly or partially** produced or manufactured in (7).....
- 6. As regards those articles only partially produced or manufactured in (7).....
 - (a) That the final process or processes of manufacture have been performed in that Country.
 - (b) That the expenditure in material produced in (7)..... and/or labour performed in (7)..... calculated subject to qualification hereunder, in each and every article is not less than one-fourth of the factory or works cost of such article in its finished state. (See note below).

7. That in the calculation of such proportion of produce **and/or labour** of the (8) **none** of the following items has been included or considered:—

Manufacturer's profit or remuneration of any trader, agent, broker, or other person "dealing in the articles in their finished condition; royalties; cost of outside packages "or any cost of packing the goods thereinto; any cost of conveying, insuring or "shipping the goods subsequent to their manufacture."

NOTE—In the case of goods which have at some stage entered into the commerce of, or undergone a process of manufacture in a foreign country, only that labour and material which is expended on, or added to the goods after their return to the United Kingdom shall be regarded as the produce or manufacture of the United Kingdom in calculating the proportion of United Kingdom labour and material in the factory or works cost of the finished article.

Dated at SINGAPORE this **6th** day of **August** 1963.

Signature **A.R. DESAI**

(7) Insert name of country.

(8) Insert name of country.

EXHIBIT "B5"

INVOICE - 11 BAGS

Exhibits

"B5"

Invoice - 11
Bags.

7th August
1963.

The following two photographs have been
allocated Page Nos. 48 and 49.

FORM OF INVOICE

SINGAPORE, 7th August 19 63

*INVOICE of **11 (Eleven) Bags only.**

Consigned by **B. G. GOHEL & SONS, 96-A, Market Street, Singapore-1.**

to Messrs. **J.K. Patel & Sons,** of **G.P.O Box No.185, SUVA.**

to be shipped by S. S. "**HOUTMAN**"

INVOICE No. **2019/122**

Order Received No. _____

Country of Origin	Marks and numbers on Packages	Quantity and description of goods	Selling price to purchaser*	
			Amount	
BURMA	LUXMI SUVA	11 (Eleven) D/Bags Taver Dhall "Stag" Brand weighing nett Cwts.20-3-7 @ Shs.86/- per Cwt Cif Suva,.....	£. shs. d	89- 9- 10
<u>STERLING POUNDS EIGHTY NINE SHILLINGS NINE AND PENCE TEN ONLY.</u>				
<u>INSURED WITH MESSRS. EDWARD LUMLEY & SONS (M) LTD.</u>				
OUR DRAFT NO.2019/122 IN FAVOUR OF MERCANTILE BANK LTD. TO BE PRESENTED THROUGH: THE BANK OF NEW ZEALAND, SUVA.			89- 9- 10 ✓ 8-18-11 ✓ 1-15-10 ✓	
" WE HEREBY CERTIFY THAT THE PARTICULARS MENTIONED HEREIN ARE TRUE & CORRECT "			100-4-7 ✓	
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> <p style="margin: 0;">71.041</p> <p style="margin: 0;">S. Luce No 2419/63</p> <p style="margin: 0;">cgc Jajita Phai</p> <p style="margin: 0;">85</p> <p style="margin: 0;">24.10.63. No 7</p> </div>				

Enumerate the following charges and state whether each amount has been included in or excluded from the above selling price to purchaser:—

(1) Sea Freight INCLUDED IN THE ABOVE

(2) Marine Insurance INCLUDED IN THE ABOVE

B. G. GOHEL & SONS,

Reddy

SCHEDULE II

Combined Certificate of Value and of Origin to be written, typed or printed on Invoice of goods for exportation to the Colony.

(1) Here insert Manager, Chief Clerk, or as the case may be.
(2) Here insert name of firm or company.
(3) Here insert name of city or country.
(4) The words between brackets should be omitted where the manufacturer or supplier himself signs the Certificates.

I, **B. G. GOHEL** (1) **PROPRIETOR**
of (2) **B. G. GOHEL & SONS** of (3) **SINGAPORE**
manufacture supplier of the goods enumerated in this invoice, amounting to 4.59 x 10 hereby declare that I (4) have the authority to make and sign this certificate on behalf of the aforesaid manufacture supplier and that I have the means of knowing and do hereby certify as follows:-

VALUE

- 1. That this invoice is in all respects correct and contains a true and full statement of the price actually paid or to be paid for the said goods, and the actual quantity thereof.
- 2. That no different invoice of the goods mentioned in the said invoice has been or will be furnished to anyone; and that no arrangements or understanding affecting the purchase price of the said goods has been or will be made or entered into between the said exporter and purchaser, or by anyone or behalf of either of them either by way of discount, rebate, compensation or in any manner what ever other than as fully shown on the Invoice, or as follows (5) _____
- 3. The F.O.B. value shown includes any purchasing or agents' commission the cost of packages and packing for export, carriage to the port of shipment, and all other expenses incidental to placing the goods on board ship.

ORIGIN

delete whichever of 4 (a) or 4 (b) is not applicable. If 4 (a) is used, delete 5 and 6; If 4 (b) is used insert required particulars in (5 and 6)

- (a) That every articles mentioned in the said Invoice has been *wholly* produced or manufactured in 4 (a) BURMA
- 4. (b) That every article mentioned in the said Invoice has been either *wholly* or partially produce or manufactured in 4 (b) _____
- 5. As regards those articles only partially produced or manufactured in 5 (b) _____
 - (a) That the final, process or processes of manufacture have been performed in that part of the Empire.
 - (b) That the expenditure in material produced in 5 (b) _____ labour performed in and/or 5 (b) _____ calculated subject to qualifications hereunder, in each and every article is not less than 25%, 50% or 75%", as the case may be according to the provisions of the Preferential Tariff Regulations, 1938) of the factory or works costs of such article in its finished state. (See Note below)
- 6. That in the calculation in such proportion of produce or labour of the (6) _____ none of the following items have been included or considered:—
 - "Manufacturer's profit or remuneration of any trader, agent broker or other person dealing in the articles in their finished condition; royalties; cost of outside packages or any cost of packing the goods thereinto; any cost of conveying, insuring, or shipping the goods subsequent to their manufacture."

NOTE:—In the case of goods which have at some stage entered in the commerce of or undergone a process of manufacture in a foreign country only that labour and material which is expended on or added to the goods after their return to the Empire Country shall be regarded as the produce manufacture of the Empire Country in calculating the proportion of Empire Country labour and material in the factory or works costs of finished article.

Dated at SINGAPORE this 7TH day of AUGUST 1963.

Witness M.S. Rajan

For **B. G. GOHEL & SONS**
Rajin

(5) Here insert particulars of any special arrangement.

(4a) and (4b) Insert which part of the Empire.

(5a) Insert which part of the Empire.

(5b) Insert which part of the Empire.

(6) Insert which part of the Empire.

EXHIBIT "C"

APPLICATION for registration under Business
Names Ordinance and Certificate of
Registration

Business Name No. 3392

Registration of Business Names Ordinance (Cap.172)

FORM 1.

Reference to Subsequent Registration No.....

10 APPLICATION FOR REGISTRATION
BY AN INDIVIDUAL.

Registration
Fee
10s.

R.R. No.98770

I, the undersigned, hereby apply for registration pursuant to the provisions of the Registration of Business Names Ordinance, and for that purpose furnish the following statement of particulars:-

- | | | |
|----|--|----------------------------------|
| | 1. The business name | J.K. PATEL & SONS |
| | 2. The general nature of the business | Wholesale & Retail Storekeeper |
| 20 | 3. The principal place of business | Amy Street, Suva. |
| | 4. The present Christian name (or names) and surname of the individual | JOITABHAI F/N
KHODABHAI PATEL |
| | 5. Any former Christian name (or names) or surname of the individual | - |
| 30 | 6. The nationality of the individual | Br. Indian |
| | 7. The nationality of origin of the individual, if not the same as the present nationality | - |

Exhibits

"C"

Application for registration under Business Names Ordinance and Certificate of Registration.

24th October 1955.

- Exhibits
"C"
Application for registration under Business Names Ordinance and Certificate of Registration.
24th October 1955 - continued.
8. The usual residence of the individual Amy Street, Suva.
9. The other business occupation (if any) of the individual ?
10. The date of the commencement of the business if the business was commenced after 28th November 1923. 24th October, 1955. 10
11. Any other business name or names under which the business is carried on. No.

Dated this 24th day of October, 1955.

Sgd. J.K. PATEL
Registered 24 Oct 1955 at 3 pm. Signature
L.S.

Sgd. T. Mackey
Assistant Registrar
General

Lodged by Mr. Joitabhai,
Suva.
Date 24/10/55 3 p.m.

20

Registration of Business Names Ordinance (Cap. 172)
FORM 6.

Original. No. of Certificate 3392

CERTIFICATE OF REGISTRATION

I hereby certify that a statement applying for registration furnished by J.K. Patel & Sons of Amy Street, Suva, Wholesale & Retail Storekeeper pursuant to section 4 of the abovementioned Ordinance was registered on the Twenty-fourth day of October, 1955

30

Dated the Twenty-fourth day of October, 1955.

L.S. Sgd. T. Mackey
Assistant Registrar-General

A CERTIFIED TRUE COPY L.S.
Sgd. T. Mackey
ASST. REGISTRAR-GENERAL.

EXHIBIT "D1"

IMPORT ENTRY

Exhibits

"D1"

Import Entry.

24th August
1963.

The following photograph has been
allocated Page No. 52.

H.M. CUSTOMS
 27 AUG 63 35735
 IMPORT
 PAYMENT FIJI RECEIVED

H.M. CUSTOMS, FIJI—IMPORT ENTRY A
 Arrived 25 / 8 / 1963
 Rotation No.: 63/260

H.M. CUSTOMS, FIJI—IMPORT ENTRY A
 From: SUVA
 Agent: J. K. LAYEL & SONS

Ship: HOUKAWA
 Port of: SUVA
 Owner: J. K. LAYEL & SONS

For Off. Use	Lic. No.	Cock. No.	Marks and Nos.	Packages No. Type	Description of Goods	Quantity	Wharfage	Country of Origin	Tariff Item	Value for Duty	Rate of Duty	Duty Payable	Statistical Code	
		20/28	J K P SUVA	6 Bags	Football	1,363	- 1	Burma	6	53 11 1	Free	-	054-202	
		20/29		5 "	Gorriander Seeds	448-lbs	- 10	India	22	17 18 5	2 1/2 lb	3 14 8	075-X	
		20/30		1 "	Betelnut	224-lbs	- 3	Malaya	20-b	8 1 4	"	1 17 4	051-07	
		20/31		1 "	Mustard Seeds	203-lbs	- 3	Burma	22	8 8 5	"	1 13 10	075-X	
		20/32		2 c/s	Almonds	112-lbs	- 4	India	20-b	33 7 2	20%	6 5 5	051-07	
					MAGISTRATE'S COURT, SUVA. Case No. 24/1963 Cg C. V. Jeyka. Khan. EXHIBIT "D1" Date 26.10.63									
TOTAL										119 6 5	DUTY	13 11 3	U.C.O.	
										Wharfage		- 2 8	I.G.O.	
										P.O.S.T.	3%	4 9 6		
										Treble Bond Charges		-	C.O.	
TOTAL												18 3 5	M.O.	

I declare:—
 that I am (the Agent duly authorized by) the owner of the goods:
 that I enter the goods as of the value and of the description and quantities stated in this entry, and for home consumption; and
 that the particulars as stated in this entry are true and correct in every respect.

Signature: *J. K. Layel & Sons*
 Date: 24-8-63

Strike out if entry made by owner.

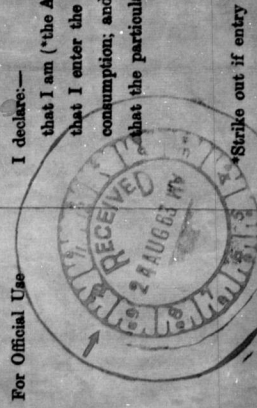


EXHIBIT "D2"

INVOICE - 15 PACKAGES

Exhibits

"D2"

Invoice - 15
packages.

7th August
1963.

The following two photographs have been
allocated Page Nos. 53 and 54.

Invoice No. 140/63 PLACE & DATE, 7th August, 19 63.
 INVOICE of 15. FIFTEEN PACKAGES. Shipped
 by INDO-MALAYA PRODUCE CO. of SINGAPORE
 per S.S. "HOUTMAN" to SUVA. (FIJI)
 by order and for account and risk of MESSRS. J.K. PATEL & SONS, SUVA. (FIJI)

the above current domestic value:—
 Supplied by Basrai Bros. Stationers Spore & K.L. 4000 20.10.61

COUNTRY of Origin	Marks & Nos. of Packages	Quantity and Description of Goods	Current Domestic Values in Currency of Exporting Country (See para. 3 & 4 of certificate)		Selling prices to purchaser	
			@	Amount	@	Amount
BURMA	J K P	6. D/Bags TOOR DALL STAG Cwts. 11.1.0				
	S U V A	@Sh.85/- per Cwt.....	Stg.£.	47.16.03		
INDIA		5. " CORRIANDER SEEDS " 4.0.0				
		@Sh.80/- per Cwt.....	" "	16.00.00		
MALAYA		1. D/Bag BETELNUTS Cwts. 2.0.0. (Whole)				
		@Sh.72/- per Cwt.....	" "	7.04.00		
BURMA		1. " POLISHED MUSTARD SEEDS. Cwts. 1.3.7				
		@Sh.83/- per Cwt.....	" "	7.10.05		
INDIA.		2. Cases ALMONDS WITHOUT SHELL. Cwts. 1.0.0				
		@Sh.560/- per Cwt.....	" "	28.00.00		
		15. Packages..	Total.....	Stg.£.	106.10.08	

(Sterling Pounds Onehundred six and shillings ten and pence eight only)

ALL THE ABOVE PRICES ARE C.I.F. SUVA.

INDO-MALAYA PRODUCE CO.
R. C. Parikh
 Proprietor.

MAGISTRATE'S COURT, SUVA
 Case No. 249/63
 C. of C. IV *Tovito Mar*
 EXHIBIT D2
 Date 21.10.63
 Magistrate

13131
 SINGAPORE

Enumerate the following charges, and state whether each amount has been included in or excluded from and consigned to order,

	Amount in Currency of exporting Country.	State if included
(1) Cartage to rail and to docks or		
(2) Inland freight (rail or canal) and other charges to dock area, including inland insurance		
(3) Labour in packing the goods into outside packages		
(4) Value of outside packages		
(5) If the goods are subject to any charge by way of royalties, state full particulars of royalties below:—		

ALL INCLUDED.

(SEE OVER)

24

AUSTRALIA, CYPRUS ^{for goods other than sugar} UNION OF SOUTH AFRICA,
molasses and manufactured tobacco
 NEW ZEALAND, NEWFOUNDLAND, JAMAICA, BARBADOS, DOMINICA,
 TRINIDAD, FIJI, GRENADA, BRITISH, GUIANA, ST. LUCIA, ST. VINCENT,
 GOLD COAST.

Combined Certificate of Value and of Origin, to be Written, Typed or Printed on
 Invoices of Goods for Exportation to the British Dominions as above.
 for goods entitled to be entered under the British Preferential Tariff

I, (1) RAMANLAL C PARIKH (PROPRIETOR) of (2) INDO MALAYA PRODUCE CO.,
SINGAPORE ~~MANUFACTURER~~ ^{supplier} of the goods enumerated in this invoice,
 (3) STG. £.106.10.08d amounting to _____ hereby declared that I [(4) have the authority to
 (4) These words should be omitted where the manufacturer or supplier himself signs the certificate. make and sign this certificate on behalf of the aforesaid manufacturer and that I] have the means
 (5) Particulars of any special arrangements. supplier of knowing and do hereby certify as follows:—
 VALUE

1. This invoice is in all respects correct, and contains a true and full statement of the price actually paid or to be paid for the said goods, and the actual quantity thereof.

2. That no different invoice of the goods mentioned in the said invoice has been or will be furnished to anyone; and that no arrangement or understanding affecting the purchase price of the said goods has been or will be made or entered into between the exporter and purchaser or by anyone on behalf of either of them, either by way of discount, rebate, compensation, or in any manner whatever, other than as fully shown on this invoice, or as follows: (5) _____

3. That the domestic values shown in the column headed "Current Domestic Values" are those at which the above-mentioned firm or company would be prepared to supply to any purchaser for home consumption in the country of exportation, and at the date of exportation, indentially similar

(6) "Warehouse," "factory" or port of shipment. goods in equal quantities at (6) _____
 subject to _____ per cent. cash discount, and that such values include the cost of outside packages exclude (if any) in which the goods are sold in such country for domestic consumption.

4. That the said domestic value includes any duty leviable in respect of the goods before they are delivered for home consumption, and that on exportation a drawback of remission of duty amounting to _____ has been allowed by the revenue authorities in the country of will be exportation.

ORIGIN

[Delete whichever of 5 (a) or 5 (b) is not applicable. If 5 (a) is used, delete 6 and 7; if 5 (b) is used, insert required particulars in 6 and 7]

5. (a) That every article mentioned in the said invoice has been wholly produced or manufactured in (7) BURMA, INDIA & MALAYA
 5. (b) That every article mentioned in the said invoice has been either wholly or partially produced or manufactured in (7) _____

(7) "United Kingdom" or name of other part of British Dominions. manufactured in (7) _____

6. As regards those articles only partially produced or manufactured in (7) _____

(a) That the final process or processes of manufacture have been performed in that part of the British Dominions.

(b) That the expenditure in material produced in (7) _____ and labour performed in (7) _____ or calculated subject to qualifications hereunder, in each and every article is not less than one-fourth of the factory or works cost of such article its finished state _____

7. That in the calculation of such proportion of produce or labour of the (7) _____ none of the following items has been included or considered:—

Manufacturer's profit, or remuneration of any trader, agent, broker, or other person dealing in the articles in their finished condition; royalties; cost of outside packages or any cost of packing the goods thereinto; any cost of conveying, insuring or shipping the goods subsequent to their manufacture.

Dated at Singapore, this 7th day of August, 1963.

Witness: [Signature] Signature: R. C. Parikh

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

R E C O R D O F P R O C E E D I N G S

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
LONDON, S.W.1.
Solicitors for the Appellant

CHARLES RUSSELL & CO.,
37, Norfolk Street,
LONDON, W.C.2.
Solicitors for the Respondent