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Judgment 28/1965

IN THE PRIVY COUNCIL No. 5 of 1965

ON APPEAL FROM

THE FIJI COURT OF APPEAL AND

THE SUPREME COURT OF FIJI

B E T W E E N :-

THE COMPTROLLER OF CUSTOMS Appellant

- and -

WESTERN LECTRIC COMPANY, LIMITED Respondents

CASE FOR THE APPELLANT Record

1. This is an appeal (i) from a judgment of the Fiji Court of Appeal (Mills-Owens, P., Marsack and Briggs, JJ.A.) dated the 4th September, 1964, whereby the Court of Appeal answered certain questions of law reserved by Hammett, Ag. C.J. in a judgment of the 19th June, 1964; and (ii) from a judgment, dated the 11th September, 1964, of the Supreme Court of Fiji in its appellate jurisdiction (Hammett, J.), whereby, in consequence of the answers given in the said judgment of the Fiji Court of Appeal, the Respondents' appeal from their conviction by the Magistrates' Court at Lautoka on the 6th January, 1964, of making a false declaration in a customs import entry form contrary to section 116 of the Customs Ordinance, was allowed and the conviction was quashed. Pp.48 - 68 P.47 Pp.19 - 47 Pp.68 - 70 Pp.12 - 19

2. The following are the relevant statutory provisions:

CUSTOMS ORDINANCE, CAP. 166

116. Should any person make any false entry in any form, declaration, entry, bond, return, receipt or in any document whatever required by or produced to any officer of customs under this Ordinance, or should any person counterfeit, falsify or wilfully use when counterfeited or falsified, any document required by or produced to any officer of customs or should any person falsely produce to any such officer of customs under any of the provisions of this Ordinance in respect of any goods or of any vessel any document of any kind or description whatever that does not truly refer to such goods or to

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

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152. 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 disputes arise 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 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 shipped 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 authorized shall be presumed until the contrary is proved.

3. The Respondents were accused, under section 116 of the Customs Ordinance, of making a false declaration in a Customs Import Entry Form at Lautoka on the 22nd August, 1963, in that they had declared the country of origin of 6 driers, 4 dry-eye indicators, and 5 dry-eye cartridges as Australia whereas they were of United States of America origin, and in the same form had declared the country of origin of 6 expansion valves and one motor compressor to be the United Kingdom whereas they were of Danish origin. (Goods originating in Australia and the United Kingdom are liable only to a preferential tariff, whereas goods originating in the United States of America and Denmark are liable to duty under the general tariff.)

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Pp.1 & 2

4. The trial took place on the 23rd December, 1963 in the Magistrate's Court at Lautoka. The evidence called before the Magistrate shewed that a Customs Import Entry Form (ex.A) had been presented on the 23rd August, 1963, signed by an authorised agent on behalf of the Respondents, which declared that the country of origin of all goods set out in the form was the United Kingdom. Invoices from a New Zealand shipper had been attached to the form, stating the origin of the goods to be the United Kingdom. These goods had been landed from a ship arriving from New Zealand, and on the 27th August, 1963 had been examined by a customs officer. Of those goods, one compressor had "Denmark" stamped on the handle, an Ansell drier had a piece of paper pasted upon it bearing the words "Made in U.S.A.", and the other articles were in packets with inscriptions indicating that their origin was Denmark or the U.S.A. respectively. On the 27th August, Mr. R.V. Patel, the authorised agent of the Respondents, had completed and presented another customs entry form (ex.C), in which the place of origin of the goods which formed the subject of the charge had been stated to be Denmark or the U.S.A. respectively. The difference between the preferential tariff and the general tariff on these goods had been £10.3.4. Mr. Patel said that the second form was completed at the request of the Customs authorities, but the officer who examined these goods said he had not called for it. Mr. Hussain, the managing director of the Respondents, said that he had no knowledge of the origin of the goods, apart from what was stated in the invoices he had received from New Zealand. A customs officer had told him, he said, that a second entry form would be required.

P.3 1.19
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P.3 11.27-31
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P.5 1.3
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P.9 1.4
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P.10 1.7
p.10 1.30
P.10 1.25

5. The learned Magistrate convicted the Respondents and imposed a fine of £50. He delivered his judgment on the 6th January, 1964. He recited the facts and held that section 152 of the Customs Ordinance was not

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P.12
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P.16 l.38 applicable to the case. The labels on the goods were prima facie evidence of foreign manufacture, and this prima facie evidence had not been displaced by the

P.17 l.24- P.18 l. 36 Respondents. Mens rea, the learned Magistrate held, was not a necessary ingredient of the offence charged.

6. The Respondents appealed from this conviction to the Supreme Court, and the appeal was heard by Hammett,

Pp.19 - 47 Ag.C.J. on the 29th May, 1964. On the 19th June, 1964 the learned Judge dismissed the appeal, subject to the

P.47 opinion of the Court of Appeal upon certain questions which he reserved.

7. The learned Judge set out in his judgment the

P.20 charge and the effect of the evidence given in the Court below, which he summarized as follows :-

P.27 l1.28-43 "The position reached on the 27th August, 1963 was, therefore, that Appellants' Customs Agent, Mr. R.V. Patel, admitted, after examining the goods, that his declaration dated 22nd August, 1963 was erroneous in that Refrigeration Equipment and Cubic Inch Driers to the value of £78.12.0. had been wrongly declared as being goods of Australian and U.K. origin and thereby subject to the preferential duty tariff, whereas he now declared that only Refrigeration Equipment to the value of £36.13.0. was of U.K. origin and that the countries of origin of the rest of the goods were Denmark and U.S.A. and therefore liable to higher rates of duty. As a result of this an additional £6.18.4. Customs Duty was payable by the Appellant Company."

P.29 l.12 8. Hammett, Ag.C.J. said that the first ground of appeal raised the question whether the Magistrate was entitled to look at the marks on the goods, or on

P.34 l.19- P.35 l.20. their containers, as evidence of the country of origin. He held that marks irremovably made on goods as part of the process of manufacture, e.g. words embossed on, or impressed in, a metal casting, were so admissible, but marks on labels attached to goods, or to their containers, were not. In the present case, therefore,

P.35 l.21 only the word "Denmark" stamped on the handle of the compressor constituted admissible evidence. The

P.35 l.29 inadmissibility of the marks on the labels, or the containers, of the other objects was not, however, material, in view of the admissions made by the Respondents' agent, apparently from his own knowledge and experience, in the second form on the 27th August. On that evidence the Court had been entitled to hold that the goods in question did come from Denmark and the United States of America respectively. There had been no admissible evidence to the contrary, since the

invoices and certificates attached to the original Customs Import Entry Form were not admissible to show the country of origin of the goods.

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9. The learned judge then held, after considering a number of authorities, that mens rea was not an essential ingredient in the offences created by section 116 of the Customs Ordinance because of the subject matter of the statute, which was a revenue Ordinance. It was clear that the Respondents had acted perfectly innocently, but the learned Magistrate had not misdirected himself in holding mens rea not to be an essential ingredient.

P.39 l.5 - P.46 l.28
P.45 l.23
P.46 l.22

10. Hammett, Ag.C.J. accordingly held that the appeal should be dismissed. However, there were no less than 35 cases pending, awaiting the result of the appeal, and the legal issues raised were of considerable importance. He therefore gave his judgment subject to the opinion of the Court of Appeal upon the questions of law which he reserved.

P.46 l.29
P.46 ll.31-43.

11. The points of law reserved by the learned Judge were as follows :-

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1. To what extent, if any, is the evidence of the markings on goods or on containers of goods or on labels attached to such goods or containers admissible as prima facie evidence of the country of origin of such goods for the purposes of the Customs Ordinance (Cap.166) and the Customs Duties Ordinance (Cap.167)?

2. Is mens rea an essential ingredient of the offences created by section 116 of the Customs Ordinance (Cap.166)?

3. Did the onus of proof rest on the Appellant in this case to prove that the countries of origin declared by the Respondents' Agent were not in fact the true countries of origin of the goods concerned, notwithstanding the provisions of section 152 of the Customs Ordinance?

4. Are the Invoices and Certificates of Origin in the form prescribed by the Customs Duties Ordinance admissible in evidence on the issue of what in fact are the countries of origin of goods referred to therein?

5. In the circumstances, am I correct in my opinion that this appeal should be dismissed?

12. In the Court of Appeal (Mills-Owens, P., Marsack

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and Briggs, JJ.A.) judgment was given on the 4th September, 1964.

P.48 P.49 11.21-28. P.49 1.29 P.50 1.11 P.52 1.23

13. Marsack, J.A., who delivered the first judgment said that there was no express provision in the Ordinance as to whether marks on goods imported into Fiji, or on their containers, were admissible to prove the country of origin of the goods, so the question had to be decided by reference to general principles of law. There was, he thought, no doubt that the evidence furnished by the marks in the present case was hearsay, and so could only be admissible as an exception to the hearsay rule. The question, in the learned Judge's view, had been finally settled by the House of Lords' decision in Myers v D.P.P. (1964), 1 W.L.R. 145, the reasoning of which was, in his opinion, directly applicable to the present case, as the person who had made the marks in the present case had not been called to give evidence as to the truth of what they represented. The marks did not come within any of the established exceptions to the hearsay rule. The answer to the first question reserved, in Marsack, J.A.'s view, was that the markings on the goods or their containers or labels attached to them, were inadmissible as evidence of the country of origin.

P.52 1.34 P.62 1.14 P.59 1.21 P.62 1.17 P.62 1.26 P.63 1.22

14. The learned Judge then considered whether mens rea was an essential ingredient of the offence charged. He concluded that it was, holding that mens rea was not excluded as an essential ingredient from all offences created by revenue statutes, and section 116 was not so worded as to impose absolute liability. For the determination of the case there was, he said, no need for the Court of Appeal to consider the incidence of the onus of proof and the correct application of section 152 of the Customs Ordinance. Turning to the fourth question, the learned Judge held that the invoices and certificates were not in themselves evidence of the places of origin of the goods, but might be admissible in certain circumstances as admissions against the party producing them. As it had been found that the Respondents had acted innocently, the Respondents should not, Marsack, J.A. concluded, have been convicted.

P.63 1.35 - P.64 1.15 P.64. 1.16

15. Mills-Owens P. said he agreed with the conclusions of Marsack, J.A. However, he considered on the question of admissibility that Myers v D.P.P. was distinguishable, because in the present case the goods themselves and their containers were admissible as real evidence, and had been produced in court. The production of the goods and their containers, however,

in the learned President's view, did not provide even prima facie evidence of the truth of the marks or words on them. On the question of mens rea, he did not think it possible to say a priori that an offence affecting the revenue fell into a category in which mens rea was not required. On the wording of section 116 he concluded that the offences under that section required proof of mens rea.

Record P.67 ll.11-26.

16. Briggs, J.A. agreed with the conclusions reached in the other two judgments on the questions submitted to the Court.

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17. In accordance with the answers given by the Court of Appeal to the questions reserved, the Respondents' conviction was quashed by Hammett, J. on the 11th September, 1964.

P.68 P.70

18. The Appellant respectfully submits that the answers given by the Court of Appeal to the first and second questions submitted to it were incorrect, the third question submitted should have been answered in favour of the Appellant (i.e. 'no'), and the conviction of the Respondents should not have been quashed.

19. The first question turns upon the nature of the evidence afforded by the production of the goods and their containers. The Appellant respectfully submits, both on general principles and also in the context of the Customs Ordinance and the Customs Duties Ordinance, that these articles, bearing the marks they did, were admissible, and afforded prima facie evidence, not hearsay but real, of the origin of the goods. In the absence of contrary evidence, this evidence was rightly accepted by the learned Magistrate. In the alternative, as Hammett J. found, admissions were made by the Respondents' agent which provided sufficient evidence to support the charge.

20. The Appellant respectfully submits that the offence charged against the Respondents was an absolute offence, and did not require proof of mens rea. Both the wording of section 116, and the nature of the offence, indicate that, upon proof that an untrue declaration has been made, the offence is established.

21. With reference to the third question reserved, the Appellant respectfully submits that the prosecution in this case was for the recovery of penalties under the Customs Ordinance, and the dispute about the countries of origin of the goods was a

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dispute 'concerning the place whence such goods were brought' within the meaning of section 152 of that Ordinance. The burden therefore rested on the Respondents of proving that the countries of origin were those specified in the original Customs Import Entry Form (ex.A), and this they failed to prove.

22. The Appellant respectfully submits that the judgment of the Fiji Court of Appeal of the 4th September, 1964 and the judgment of the Supreme Court of Fiji of the 11th September, 1964 should both be set aside, the conviction of the Respondents should be restored and this appeal should be allowed for the following (among other)

R E A S O N S

1. BECAUSE the markings on the goods and their containers were properly considered as part of the real evidence:

2. BECAUSE in any event the Respondents had admitted that the origin of the goods had been wrongly declared:

3. BECAUSE there was a prima facie case established against the Respondents:

4. BECAUSE the case involves a dispute about the place whence the goods were brought within the meaning of section 152 of the Customs Ordinance:

5. BECAUSE the charge against the Respondents did not involve mens rea:

6. BECAUSE of other reasons given by Hammett, Ag. C.J. in his judgment of the 19th June, 1964.

J. G. LE QUESNE

MERVYN HEALD.

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CASE FOR THE APPELLANT

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