

~~GH 492~~

Judgment
35/1954

In the Privy Council.

ON APPEAL

FROM THE WEST AFRICAN COURT OF APPEAL, LAGOS
NIGERIA.

UNIVERSITY OF LONDON
W.C.1.
23 MAR 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

SAID AJAMI (Defendant) *Appellant*
and

THE COMPTROLLER OF CUSTOMS (Plaintiff) *Respondent.*

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Case for the Respondent.

RECORD.

1. This is an appeal from a judgment of the West African Court of Appeal (Sir John Verity, Chief Justice, Nigeria, Olumuyiwa Jibowu, Acting Senior Puisne Judge, Nigeria, and Sir James Henley Coussey, Puisne Judge, Gold Coast) dated 19th February 1952. By this judgment the West African Court of Appeal dismissed an appeal brought by the Appellant from a judgment of the Supreme Court of Nigeria (Mr. Justice V. R. Bairamian) dated 19th November 1951. The judgment of the Supreme Court of Nigeria had dismissed an appeal brought by the Appellant from a judgment given in the Magistrate's Court of Nigeria (Captain James Dickison Symes, Magistrate) dated 11th August 1951. By his judgment the Magistrate had given judgment for the Respondent on a claim made by the Respondent as Plaintiff against the Appellant as Defendant. The Appellant was given leave to appeal to Her Majesty in Council by an order of the West African Court of Appeal made on the 18th August, 1952.

pp. 24-27.

pp. 10-18.

pp. 5-6.

2. By his claim the Respondent claimed against the Appellant a penalty of £61,778 2s. 6d. and the forfeiture of 9,884,500 French Colonial Franc Notes on the ground that the Respondent on the 15th June, 1951, at Kano in Nigeria had attempted to export 9,884,500 French Colonial Notes, of which the exportation was prohibited by section 22 (1) of the Exchange Control Ordinance, 1950, and had thereby contravened section 125 (1) of the Customs Ordinance and had thereby incurred a penalty of treble the value of the notes and had rendered the notes liable to forfeiture. The Magistrate by his judgment ordered the Appellant to pay a penalty of £60,517 6s. 9d. and forfeited the notes to the Respondent.

p. 1.

3. The main question raised by the Appellant in this case was whether the Magistrate was entitled to find that the notes were legal tender in French West Africa.

4. The relevant provisions of the Nigerian Ordinance are set out in an appendix to this case. The effect of the principal provisions is summarised as follows:—

(i) Section 22 (1) of the Exchange Control Ordinance provides that the exportation from Nigeria of any notes of a currency which have at any time been legal tender in any territory outside Nigeria

(ii) Paragraph 1 of Part III of the Fifth Schedule to the Exchange Control Ordinance provides that the enactments relating to the exportation of goods apply in relation to anything prohibited to be exported by section 22 (1) of the Ordinance.

(iii) Paragraph 3 of Part III provides that if any goods prohibited to be exported by section 22 (1) is brought to any port or place for the purpose of being exported, the exporter shall be liable to the same penalty as that to which a person is liable under section 22 (1) to which the Customs Ordinance applies.

(iv) Section 125 (1) of the Customs Ordinance provides that if any person shall bring to any quay or place wharfed or used for exportation, or export, any goods prohibited to be exported or attempt to perform any of these acts, he shall be liable to a penalty of treble the value of the goods and the goods shall be forfeited.

(v) Section 125 (2) of the Customs Ordinance provides that where in any proceedings it is alleged that any goods prohibited to be exported of which is prohibited were dealt with for the purpose of being exported as set out in section 125 (1), the onus of proof that the goods were not dealt with for such purpose shall be on the defendant.

(vi) Section 243 of the Customs Ordinance provides that in any proceedings under the Customs laws the proof that the goods have been lawfully exported, or lawfully put into a motor vehicle, aircraft or ship, shall be on the defendant.

(vii) Section 245 of the Customs Ordinance provides that the averment that the Comptroller has directed that any proceedings under the customs laws shall be instituted "or that any particular penalty should be sued for or levied" or that the offence was committed, or that any proceedings were instituted "within the limits of any port, or in or over Nigeria" shall be deemed sufficient, unless the defendant in any such proceedings shall prove the contrary."

(viii) Section 56 (1) of the Evidence Ordinance provides that where the Court has to form an opinion upon a point of foreign law or of science or art, the opinions upon that point of persons specially skilled in such foreign law or science or art, are relevant facts.

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(ix) Section 57 (1) of the Evidence Ordinance provides that where there is a question as to foreign law the opinions of experts who in their profession are acquainted with such law are admissible evidence thereof.

5. The following facts were proved before the Magistrate :—

(i) Shortly before 6.30 p.m. on the 15th June, 1951, the Appellant with other passengers was removed by the Police from an aircraft about to take off at Kano aerodrome. The Appellant's luggage and that of the other passengers was also removed from the aircraft. p. 2, ll. 16-28.

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(ii) The Appellant's luggage removed from the aircraft included a suitcase bearing a baggage label of the K.L.M. airline, dated 15.6.51, and which gave as the passenger's name, that of the Appellant, and Rome as the destination. p. 2, l. 29-
p. 3, l. 7.
p. 14, l. 25.

(iii) This suitcase was opened by the police in the Appellant's presence. It contained clothes belonging to the Appellant and bundles of French Colonial Franc Notes to the amount of 9,884,500 francs. p. 3, ll. 7-12.

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(iv) The Appellant stated to the police that the francs were not his and that he had brought them from Lagos. p. 3, ll. 22-24.

(v) The Appellant had also some hand luggage with him. When this luggage was searched it was found to contain 6,000 French Colonial Francs. The Appellant agreed to forfeit these. p. 2, ll. 29-30.

6. The Respondent called as a witness one Mr. Greenway. He stated that he was the Manager of Barclay's Bank at Kano. He had been for 24 years in banking business in Nigeria. He examined the notes. He said that to the best of his knowledge they were French Colonial Franc notes. He said that they were legal tender in French West Africa on the 15th June, 1951, and that on that day they were worth 490 to £1 English note. This witness was not cross-examined by the Appellant who was represented by Counsel. The Appellant called no evidence. p. 3, ll. 33-40.

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7. On this evidence the Magistrate held that the Respondent's case was proved and he gave judgment as stated in paragraph 2 of this case. p. 5.

8. At the hearing of appeal in the Supreme Court the judgment of the Magistrate was attacked on two grounds. It was said— p. 11, ll. 18-22.

(i) that there was no evidence that the notes were legal tender in French West Africa ; and

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(ii) that there was no evidence that the aircraft in question was leaving Nigeria.

9. Mr. Justice Bairamian rejected each of these contentions for these reasons :—

(i) He held that Mr. Greenway, because of his experience as a banker, was competent to prove that the notes in question were

legal tender in French West Africa. To give such evidence it was unnecessary that the witness should be a lawyer or should be a person who worked in French West Africa.

(ii) He was of opinion that the evidence proved that the Appellant was attempting to export the notes from Nigeria.

(iii) He was of opinion in the alternative that by reason of the provisions of section 245 of the Customs Ordinance the onus was on the Appellant to disprove that which was averred against him, namely that he had attempted to export the notes and that he had incurred a penalty, and that the Appellant had not discharged the 10 onus.

10. In the argument before Mr. Justice Bairamian and in the argument on the appeal to the West African Court of Appeal it was pointed out by Counsel for the Respondent that under the Exchange Control Ordinance the Financial Secretary is empowered to appoint authorised dealers in "foreign currency" (defined by section 1 (4) of the Ordinance as including "any currency other than sterling and any notes of a class "which are or have at any time been legal tender in any territory outside "Nigeria") and that by publication in the *Gazette* of the 9th November, 1950, he had appointed Barclay's Bank as authorised dealers. This point 20 appears to have been brought also to the notice of the Magistrate whose judgment describes the bank as "the authorised dealer in foreign "currency."

11. The following passage in the judgment of Sir John Verity, Chief Justice, gives the reasons for which he rejected the appeal to the West African Court of Appeal:—

"The question for this Court to determine is, therefore, a "simple one: whether upon the evidence it has been shown that "the witness Greenway by virtue of his peculiar knowledge and "experience and by virtue of his office was competent to express 30 "an opinion, not upon some abstruse question of French law, but "upon a question which, while perhaps strictly speaking one of law, "is for all practical purposes a question of everyday fact in banking "and commercial practice, the nature of certain foreign currency.

"There can be no doubt that in the course of twenty-four "years banking experience in Nigeria the witness has had 'peculiar "means of knowledge' on this subject and it is equally beyond "doubt that as the manager of a branch of a duly authorised dealer "in foreign currency he is called upon to engage in 'the performance "of important and responsible public duties' in relation to such 40 "currency, and 'in connection with them and in order to discharge "them properly he is bound to make himself acquainted with "this subject'."

It is respectfully submitted that this appeal should be dismissed for the following (among other)

REASONS

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- (1) BECAUSE it had been proved by the Respondent that the Appellant had attempted to export the notes in question from Nigeria.
 - (2) BECAUSE it had been proved by the Respondent that the notes were legal tender in French West Africa.
 - (3) BECAUSE on all material points there are concurrent findings of fact against the Appellant in all the Courts below.
 - (4) FOR the reasons given by the Magistrate.
 - (5) FOR the reasons given by Mr. Justice Bairamian.
 - (6) FOR the reasons given by Sir John Verity, Chief Justice.

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D. A. GRANT.

APPENDIX

Exchange Control
Ordinance.
No. 35 of 1950.

EXCHANGE CONTROL ORDINANCE.
No. 35 of 1950.

* * * * *

1.—(4) In this Ordinance—

- (a) the expression “foreign currency” does not include any currency or notes issued by the West African Currency Board or under the law of any part of the scheduled territories but, save as aforesaid, includes any currency other than sterling and any notes of a class which are or have at any time been legal tender in any territory outside Nigeria and any reference to foreign currency, except so far as the context otherwise requires, includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank 10

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5. Except with the permission of the Financial Secretary no person shall do any of the following things in Nigeria, that is to say—

- (a) make any payment to or for the credit of a person resident outside the scheduled territories ; or
(b) make any payment to or for the credit of a person resident in the scheduled territories by order or on behalf of a person resident outside the scheduled territories ; or 20
(c) place any sum to the credit of any person resident outside the scheduled territories :

Provided that where a person resident outside the scheduled territories has paid a sum in or towards the satisfaction of a debt due from him, paragraph (c) of this section shall not prohibit the acknowledgment or recording of the payment.

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22.—(1) The exportation from Nigeria of—

- (a) any notes of a class which are or have at any time been legal tender in the United Kingdom or any part of the United Kingdom or in other territory ; and 30
(b) any postal orders ; and
(c) any gold ; and
(d) any of the following documents (including any such document which has been cancelled), that is to say—
(i) any certificate of title to a security and any coupon ; and
(ii) any policy of assurance ; and
(iii) any bill of exchange or promissory note expressed in terms of a currency other than sterling ; and

(iv) any document to which section four of this Ordinance applies not issued by an authorised dealer or in pursuance of a permission granted by the Financial Secretary ;
and any document certifying the destruction, loss or cancellation of any of the documents aforesaid ; and

Exchange Control
Ordinance,
No. 35 of 1950
—continued.

(e) any such articles exported on the person of a traveller or in a traveller's baggage as may be prescribed

is hereby prohibited except with the permission of the Financial Secretary.

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34.—(1) The provisions of the Fifth Schedule to this Ordinance shall have effect for the purpose of the enforcement of this Ordinance.

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42.—(1) In this Ordinance except so far as the contrary is expressly provided or the context otherwise requires the following expressions have the meanings hereby assigned to them, that is to say :—

“ authorised dealer ” means in relation to gold or any foreign currency, a person for the time being authorised by the Financial Secretary to act for the purposes of this Ordinance as an authorised dealer in relation to gold, or, as the case may be, that foreign currency ;

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FIFTH SCHEDULE.

PART III.

IMPORT AND EXPORT.

1.—(1) The enactments relating to customs shall, subject to such modifications, if any, as may be prescribed to adapt them to this Ordinance apply in relation to anything prohibited to be imported or exported by any of the provisions of Part IV of this Ordinance except with the permission of the Financial Secretary as they apply in relation to goods prohibited to be imported or exported by or under any of the said enactments and any reference in the said enactments to goods shall be construed as including a reference to anything prohibited to be imported or exported by any of the provisions of the said Part IV except with the permission of the Financial Secretary.

(2) References in this paragraph to the enactments relating to customs shall be taken as including references to section 25 of the Post Office Ordinance.

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3. If anything prohibited to be exported by any provision of the said Part IV is exported in contravention thereof, or is brought to a quay or other place, or water-borne, for the purpose of being so exported, the exporter or his agent shall be liable to the same penalty as that to which a person is liable for an offence to which the customs Ordinance applies.

Exchange Control
(Amendment)
Ordinance 1951.

EXCHANGE CONTROL (AMENDMENT) ORDINANCE 1951.
AN ORDINANCE TO AMEND THE EXCHANGE CONTROL ORDINANCE 1950.
(27th September 1951.)

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2. Sections 1, 4, 24, 27 and 42 of the Exchange Control Ordinance, 1950 (hereinafter referred to as the principal Ordinance), are hereby amended by inserting immediately after the word "sterling" wherever it occurs therein the words "or West African currency".

3. Sub-paragraph (iii) of paragraph (d) of sub-section (1) of section 22 of the principal Ordinance is hereby amended by deleting the word "sterling" and substituting therefor the words "that of a scheduled territory and payable otherwise than within the scheduled territories."

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5. Sub-section (1) of section 42 of the principal Ordinance is hereby amended by deleting the definition of the word "gold" and substituting therefor the following definition—"gold" means gold coin, gold bullion or "raw gold" as that expression is defined in the Gold Trading Ordinance ;'

Customs Ordinance.

CUSTOMS ORDINANCE.

Chapter 48.

CUSTOMS.

AN ORDINANCE RELATING TO CUSTOMS.
(1st February 1946.)

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125.—(1) If any person shall put on board any aircraft or ship, or put off or put into any vessel to be water-borne to any aircraft or ship for exportation or use as stores, or bring to any aerodrome, customs area, quay, wharf or any place whatever in Nigeria for exportation or use as stores, or export any goods prohibited to be exported, or any goods the exportation of which is restricted, contrary to such restriction, or attempt to perform or be knowingly concerned in the performance of any of the aforesaid acts, he shall (except as otherwise provided in section 119) incur a penalty of treble the value of such goods or five hundred pounds, whichever shall be the greater ; and all such goods shall be forfeited.

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(2) Where in any proceedings it is alleged that any goods the exportation of which is prohibited or restricted were dealt with for the purpose of exportation as set out in sub-section (1), the onus of proof that such goods were not dealt with for such purpose shall be on the defendant.

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PART XIV.

PROOF IN PROCEEDINGS.

243. In any proceedings under the customs laws, the proof concerning the place from whence any goods shall have been brought, or that the proper duties have been paid in respect thereof, or that the same have been lawfully imported, removed, delivered or exported, or lawfully put into or

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out of any aircraft or ship, or lawfully transferred from one aircraft or ship to another aircraft or ship, shall lie on the defendant or the person claiming anything seized, as the case may be.

244. On the hearing or trial of any cause or matter under the customs laws, it shall not be necessary to prove guilty knowledge unless otherwise expressly enacted; but the onus of disproving the same shall be on the defendant.

245. The averment that the Comptroller has directed or requested that any proceedings under the customs laws shall be instituted, or that any particular penalty should be sued for or recovered, or that any goods thrown overboard, staved, or destroyed, were so thrown overboard, staved or destroyed to prevent seizure, or that any person is an officer, or that any person was employed for the prevention of smuggling, or that the offence was committed, or that any act was done within the limits of any port, or in or over Nigeria, or, where the offence is committed in any port or place in Nigeria, the naming of such port or place in any proceedings, shall be deemed sufficient, unless the defendant in any such case shall prove the contrary.

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EVIDENCE ORDINANCE.

Evidence Ordinance.

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Chapter 63.

AN ORDINANCE TO CONSOLIDATE, DEFINE AND AMEND THE LAW OF EVIDENCE.

[1st June 1945.]

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56.—(1) When the court has to form an opinion upon a point of foreign law, native law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, native law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts.

30 (2) Such persons are called experts.

57.—(1) Where there is a question as to foreign law the opinions of experts who in their profession are acquainted with such law are admissible evidence thereof, though such experts may produce to the court books which they declare to be works of authority upon the foreign law in question, which books the court, having received all necessary explanations from the expert, may construe for itself.

(2) Any question as to the effect of the evidence given with respect to foreign law shall, instead of being submitted to the jury, in the case of trial with a jury, be decided by the judge alone.

In the Privy Council.

ON APPEAL

*from the West African Court of Appeal,
Lagos, Nigeria.*

BETWEEN

SAID AJAMI *Appellant*

AND

**THE COMPTROLLER OF
CUSTOMS** *Respondents*

Case for the Respondent

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