Judgment
35, 1954

In the Privy Council.

No. 16 of 1953.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL, LAGOS, NIGERIA

BETWEEN

SAID AJAMI ... ... (*Defendant*) *Appellant.*

AND

THE COMPTROLLER OF CUSTOMS ... (*Plaintiff*) *Respondent.*

RECORD OF PROCEEDINGS

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AND

THE COMPTROLLER OF CUSTOMS ... (*Plaintiff*) *Respondent.*

RECORD OF PROCEEDINGS

No. 1.

Plaintiff's Claim.

In the Magistrate's Court of Nigeria, Kano.

No. 1. Plaintiff's Claim. 18th July 1951.

IN THE MAGISTRATE'S COURT OF NIGERIA.

IN THE MAGISTRATE'S COURT OF THE KANO MAGISTERIAL DISTRICT HOLDEN AT KANO.

Before His Worship, Captain James Dickison SYMES, Magistrate.

This 18th day of July, 1951.

No. KA/355C/1951.

Between

THE COMPTROLLER OF CUSTOMS ... ... *Plaintiff*

and

SAID AJAMI ... ... *Defendant.*

The Plaintiff's claim is for a penalty of £61,778 2s. 6d. and the forfeiture of 9,884,500 French Colonial Franc Notes in respect of the following contravention of the Customs Laws :—

That Said Ajami on the 15th day of June, 1951, at Kano in the Kano Magisterial District, did attempt to export goods, to wit, 9,884,500 French Colonial Franc notes, the export of the said goods

In the Magistrate's Court of Nigeria, Kano.

No. 1. Plaintiff's Claim. 18th July 1951— *continued.*

from Nigeria being prohibited by Section 22 (1) of the Exchange Control Ordinance, 1950, and thereby contravened Section 125 (1) of the Customs Ordinance and incurred a penalty of treble the value of the said goods, to wit, the sum of £61,778 2s. 6d. and the forfeiture of the said goods. Section 230 of Customs Ordinance. Defendant is released with 2 sureties in two amounts of £30,000 each.

(Sgd.) J. D. SYMES.
18.7.51.

Plaintiff's Evidence.

PLAINTIFF'S EVIDENCE.

No. 2. John Fletcher Ross. 9th August 1951.

No. 2.

John Fletcher Ross.

KA/355C/1951. Comptroller of Customs *versus* Said Ajami.

WESTON Crown Counsel for Comptroller of Customs.

F. R. A. WILLIAMS for Defendant.

Claim not admitted.

P.W.1. JOHN FLETCHER ROSS duly sworn on Bible states in English :—A. S. P. Kano, on 15.6.51 acting on information, I made certain dispositions to search an aircraft at Kano aerodrome, at 6.30 p.m. with other police we went to Airport. Plane was on the assembly park, about 120 yards from Terminal buildings, passengers were already on the aircraft. Collector of Customs was present. Baggage was all on board plane was about to take off. I with constables stopped anybody contacting the plane. I entered plane no suspects were allowed to leave plane, and went with constables to Terminal building ; about 12 passengers were detained on plane, one was Defendant who was sitting on starboard side forward. These persons were removed and were put under guard at door of Terminal buildings, they took hand luggage with them. Hand luggage was taken inside.

I and Collector searched Defendant. His hand luggage was 2 K.L.M. bags and brief case. In one was found 3 American dollars and 6,000 French Colonial Francs. Defendant agreed to forfeit these. Collector handed them to me. His person was searched and nothing was found. He remained in lounge until heavy baggage was brought. I saw this baggage brought from plane and stacked in the hall ; later Defendant was asked to pick out his baggage for search he put on the table one suit case and a leather grip ; on request of Collector Defendant produced keys and opened them ; we did not find what we were looking for. I asked Defendant if that was all the baggage he had, he replied yes. He appeared to understand English. He was told to repack and Collector left. I then noticed that near where Defendant was

standing there was a second suitcase similar to that which Defendant had claimed as his, on looking at it. I saw it bore a label on which was Defendant's name ; suitcase tendered and marked Ex. A. I at once informed Collector, we came back together not more than 1½ minutes later, suitcase had disappeared. Collector and I found it on a trolley ready to be reloaded. I had it brought back. Collector asked Defendant if it was his and if he would open it, he produced the same bunch of keys and opened the suitcase ; on top were shirts and trousers, under them bundles wrapped up in newspaper, in the bundles were currency notes which appeared to be French Colonial Francs : Money was collected in presence of Defendant. Next morning money was counted by myself, Collector and another A.S.P. There were 9,884,500 French Colonial Francs. They were packed in a wooden box, and I sealed it. Box was handed to Manager B.B.W.A., and in my presence put in the strong room, I obtained a receipt. I brought box from Bank this morning.

It is the box in Court, Box and 9,884,500 Colonial French Francs tendered and marked Ex. B. (Box and seals opened in Court and (JOHN FLETCHER ROSS)—(DONALD ROBSON GREENWAY) (G. M. MACDONGAL) (R. G. ACTON) found to contain 9,884,500 francs.) Defendant with a surety was taken to police station : Defendant was given bail, after he had been cautioned, and charged with possession of francs *contra* Exchange Control Regulations. He said in answer to a question that the francs were not his, but had been found in his possession and that he had brought them from Lagos. Later Defendant was allowed to take the clothing which had been found in the suitcase. A large number about 3,000 francs were found lying loose in the plane. Defendant later claimed these francs as his and asked why they had not been included in the amount named in the claim against him. I do not know from where Defendant started his journey. He was travelling with a boy about 6 years old. I did not enquire if the name on the suitcase was that of this small boy.

No. 3.

Donald Robson Greenway

P.W.2. DONALD ROBSON GREENWAY : duly sworn on Bible and states in English :—Manager, Barclay's Bank, Kano, in Banking business 32 years, 24 years in Nigeria, I look at these notes, they are to the best of my knowledge, French Colonial Franc notes, *they were legal tender in French West Africa* on 15th June this year. On that day these francs were worth 490 to £1 English note. The English value of 9,884,500 francs is therefore, £20,172.

No cross-examination.

In the Magistrate's Court of Nigeria, Kano.

Plaintiff's Evidence.

No. 4. Gilbert McKinnon MacDongal. 9th August 1951.

No. 4.

Gilbert McKinnon MacDongal.

P.W.3. GILBERT McKINNON MacDONGAL: duly sworn on Bible states in English :—A. S. P. Kano, on 15.6.51 at Kano Airport in the evening, I know Defendant he is Ajami, in his presence I packed French Colonial Francs in two bags, took them to police station and locked them in the safe. Following morning was present when money counted by myself, P.W.1 and Collector of Customs. Money was put in box and sealed. Box is that in Court Ex. B.

No cross-examination.

No. 5. Richard Granleese Acton. 9th August 1951.

No. 5.

Richard Granleese Acton.

P.W.4. RICHARD GRANLEESE ACTON: duly sworn on Bible and states in English :—Collector of Customs and Excise, Kano, was present when Defendant's baggage was searched on night of 15.6.51 at Airport. P.W.1 and I did search. First searched two night bags and brief case, nothing important found. Then searched suitcase and grip, and found nothing. I left the room in which search was going, from what P.W.1 told me I returned, Defendant was repacking his kit, on a trolley I and P.W.1 found a brown suitcase. It is the one in Court. Ex. A. It was taken back I asked Defendant to open it, he with keys from his trouser pocket, unlocked the suitcase, clothing shirts and trousers obviously belonging to an adult and not to a boy of 6 years old, was first found; underneath there were fountain pens, new ones, and a number of packets tied up in newspaper, the packets appeared to contain French Colonial Francs. I said nothing, Defendant said nothing. Francs were packed into 2 bags in presence of Defendant. Next morning at Police Station I with P.W.1 and 3 counted the francs.

No cross-examination.

Case for Comptroller.

Defendant does not give evidence and calls no witnesses.

Judgment on 11/8/51.

(Sgd.) J. D. SYMES,
9.8.51.

No. 6.

Judgment.

In the Magistrate's Court of Nigeria, Kano.

No. 6. Judgment. 11th August 1951.

Case No. KA/355C/1951. Comptroller of Customs *versus* Said Ajami.

This is a claim brought in the name of the Comptroller of Customs against the Defendant for an attempt to export 9,884,500 French Colonial franc notes *contra* Section 125 (1) of the Customs Ordinance.

The facts are admitted. Defendant had in his possession 9,884,500 French Colonial francs in a suitcase and he attempted to export them from Nigeria by having them placed on an aircraft of the K.L.M. services en route Kano to Rome and, be it noted, he attempted to hoodwink the Collector of Customs by not claiming the suitcase as his property until it was discovered by a police officer labelled in Defendant's name. Now it is illegal by Section 22 (1) of the Exchange Control Regulations No. 35 of 1950 to export such francs except under Licence from the Financial Secretary. It is not suggested Defendant has such a licence and the offence is therefore proved. Counsel for Defendant submits however that there are two flaws in the proof of the case by the Plaintiff. Firstly that it has not been proved that these francs are legal tender in " any other territory " to use the words in Section 22 (1) of the Regulations, and that such proof is necessary, and can, in fact only be proved by the evidence of an expert in foreign law (Section 56 and 57 of the Evidence Ordinance).

Now these notes were issued by the Banque de L'Afrique Occidentale. Mr. Greenway the Manager of the Kano branch of Barclay's Bank, which Bank is the authorised dealer in foreign currency, and a Manager of great experience in Nigeria, has given evidence that these are genuine notes, and it is surely not suggested by the defence that the Defendant was attempting to export forged notes. I am satisfied that these notes are genuine and that being so I am also satisfied they are legal currency in the country in which they were issued namely French West Africa. I am further satisfied therefore that Defendant was attempting to export notes which are legal tender in " any other territory." This being so it is in my opinion quite unnecessary for expert opinion on foreign law to be given in this Court to prove an obvious fact. This disposes of the first submission. The second can be disposed of even more shortly. Counsel refers to Section 248 (1) of Customs Ordinance and submits that this section which lays down the manner in which valuation of goods for penalty is to be made is impossible of application in the case of currency notes, because duty is not payable on them and the section says value shall be computed together with duty of Customs. These words in the section quite obviously refer to goods on which duty is payable, and as duty is not payable on currency notes they have no application. Value of currency notes is therefore to be computed on the value of the notes without duty. This disposes of the second submission. I find, therefore, for the Plaintiff, the Comptroller of Customs.

In the Magistrate's Court of Nigeria, Kano.

No. 6. Judgment. 11th August 1951—*continued.*

Judgment for Plaintiff.

Original claim is amended to read " £60,517 6s. 9d." being three times the value which is £20,172 8s. 11d.

Judgment therefore for Plaintiff for £60,517 6s. 9d. with 20 guineas costs.

The sum of 9,884,500 French Colonial francs are forfeited to the Comptroller of Customs.

Notice of Appeal given. Stay of execution applied for.

Stay of execution granted on following securities being provided. Two securities one of thirty-five thousand (£35,000) and one of twenty-five thousand (£25,000), sureties being Mohammad Khatoun and M. A. Sharefeddin. Further security passport of Appellant to remain in possession of Emmigration Officer.

(Sgd.) J. D. SYMES,
11/8/1951.

In the Supreme Court of Nigeria, Kano.

No. 7. Notice of Appeal. August, 1951.

No. 7.

Notice of Appeal.

Take Notice that the Defendant-Appellant appeals from the judgment dated the 11th day of August, 1951, in the above proceedings.

And further take notice that his grounds of appeal are (1) The learned trial Magistrate erred in law in finding that the notes in question in this case are legal tender in French Territory when there is no evidence by an expert in French law to support such finding.

(2) The learned trial Magistrate erred in law in holding that the penalty prescribed by the Customs Ordinance applies to the case of attempted exportation of the notes.

(3) Judgment against the weight of evidence.

The address for service of the said Defendant/Appellant within the Judicial Division in which the Magistrate's Court situated is c/o Messrs. Thomas, Williams and Kayode, Solicitors, of 41, Idumagbo Avenue, Lagos.

Dated day of August, 1951.

(Sgd.) THOMAS, WILLIAMS & KAYODE,
Appellant's Solicitors.

In the Supreme Court of Nigeria, Kano.

No. 8. Judge's Notes on hearing of Appeal. 13th & 14th November 1951.

No. 8.

Judge's Notes on Hearing of Appeal.

IN THE SUPREME COURT OF NIGERIA.

IN THE KANO JUDICIAL DIVISION HOLDEN AT KANO.

Before His Lordship Mr. Justice VAHE ROBERT BAIRAMIAN.

Tuesday, the 13th day of November, 1951.

Appeal No. K/44A/1951.

SAID AJAMI v. COMPTROLLER OF CUSTOMS.

F. R. A. WILLIAMS AND KAYODE for Appellant.

WESTON for Respondent.

WILLIAMS: Proceedings for forfeiture and penalty because Appellant was found with paper purporting to be French Colonial francs.

S.22 of Exchange Control Ordinance (No. 35/50): S. 22 (i) (a); S. 34 re enforcement: relevant Part III, regs. 1 and 3 especially.

Proceedings under Reg. 3 taken under S. 125 of Customs Ordinance.

Ground 1: Respondent should have proved notes found were legal tender in French territory. See S. 1 (4) of Exchange Control Ordinance: what is foreign currency is not necessarily "legal tender" what is legal tender must be shown to be such under law of country concerned.

W.A.C.N. Ordinance Cap. 230, S. 5; but for this provision we may use currency notes, but they won't be legal tender. S. 6 of Bank of England, 1833.

Ottoman Bank v. *Chakarian* 1937 4 A.E.R. at p. 580 legal tender is what the law of the country says is legal tender.

Dicey's Conflict of Laws, 6th ed., p. 721.

What is legal tender in a foreign territory must be proved by law of that territory. That law should be proved either by French lawyer or someone who from his position should be presumed to be familiar with that law. The law if in a statute, statute to be produced. Evidence here Greenway's. Judgment "Now these notes were issued, &c." "I am satisfied, &c.": it does not follow that because they are genuine, they are therefore legal tender.

A French lawyer or a banker who worked in French territory or a moneylender who did business there. The point is whether any one of the notes found was legal tender for what is on the face of it. No case under Exchange Control Act, 1947, in England.

Hailsham, Vol. 13, p. 614. "A witness is not accepted foreign law, &c."

In the Supreme Court of Nigeria, Kano.

No. 8. Judge's Notes on hearing of Appeal. 13th & 14th November 1951.— *continued.*

Evidence Ordinance, S. 56 and 57, " persons specially skilled in foreign law " ; no evidence that Greenway was one in French law.

Ground 2. : I cannot argue ; will not.

Ground 3 : Though I agree that the penalty applies under S. 125 (i) of Customs Ordinance it does not follow procedure under it applies to proving breach of Exchange Control Ordinance in exporting. No evidence that he meant to export or where Appellant was going.

I agree the penalty could be claimed under S. 125 (1) but no further.

Re 1st Ground : no question of convenience : Crown would be in difficulty to prove a case ; may be a ground for amending legislation. Coins Ordinance Cap. 33, S. 9.

This ordinance is a penal statute ; before Court can say we have come under it Court must be satisfied Plaintiff has discharged onus placed on him strictly ; whether proceeding civil or criminal, Court will require some quantum of evidence to bring a man within a penal statute.

He Greenway was not a competent witness ; and his evidence was not admissible.

WESTON : On point that Plaintiff adduced no evidence of Defendant's intention to export. Customs Ordinance S. 125 (2) also everything was conceded in Court below ; no cross-examination. Judgment p. 5 " The facts are admitted &c." :—Defendant cannot shift his ground. Ross's evidence. A civil case simpliciter to be decided on preponderance of evidence. 2 K.L.M. bags. It was admitted in Court below that the currency notes were being exported : so says the judgment.

In civil case ; even though a penal matter arises, no greater quantum needed than in civil cases. Phipson, ed. 8th, p. 7.

Cooper & Slade 6 H.L.C. 746. Coins Ordinance says civil proceedings.

Other point : that no evidence these notes are legal tender as Greenway not competent to speak.

I concede what is legal tender is matter of law to be proved by competent witness, but I say it was done. Barclays Bank is authorised dealer in foreign currency : See S. 5 of 35/1950 and Notice No. 172 of 1950—Gazette 9 Nov. 1950 as to what is " foreign currency " includes notes which are legal tender outside Nigeria. Barclays is an authorised dealer in notes which are legal tender outside Nigeria. Law having given power and duty to deal with these notes, hopeless to say Barclays do not know what notes are legal tender outside Nigeria. Greenway manager of Barclays—a corporation which must act through its officers—exercises the powers and has the knowledge vested in Barclays by law : law recognises that corporation acts through its agents. Question : who can give evidence on foreign law ? need not be proved by a lawyer : see Halsbury quotation of other side ; anyone *peritus virtute officii ;* e.g. Governor of Hong Kong (not a lawyer).

Greenway by reason of his office law assumes he knows what note a legal tender in a foreign country. Not cross-examined as he should have been if his competence was disputed. He said they were legal tender : not denied. (1849) Eng. Rep. 137, p. 727 *Vander Donckt* v. *Thellusson*—proof

of law—headnote. Bill of Exchange of Belgium—hotel keeper—years ago in Brussels—at p. 732. " one of exclusion," " one whose business was to " make himself acquainted *virtute officii* not *domicilii* " " All persons " . are experts . "

Greenway is *peritus virtute officii* because law of Nigeria imposes on him que officer of Barclays authorised dealers, powers and duties presupposing that he knows by virtue of his office what notes are legal tender in other legal territories.

Greenway's evidence not necessary at all but given *ex abundanti cautela.* They prove themselves as notes of legal tender when tendered as an exhibit ; they throw onus of proof on other side. See S. 21 (1) (b) of No. 35/50 (Exchange Ordinance) " notes of a class which . ." Order No. 46/1950, Gazette of 9 November 1950—R.2—Notes of " the Banque de l'Afrique Occidentale." Ordinance authorises Financial Secretary to specify what notes are legal tender in any territory and *omnia præsumuntur rite esse acta.*

The words " which are or have at " apply equally to (a)" notes issued by a Bank " and to (b) notes of any other kind. Words " notes issued by a bank " by themselves are meaningless.

Argument might not be good in a criminal case, but it is in a civil case, where preponderance of evidence is enough.

WILLIAMS : We admitted facts alleged in evidence, but not that the evidence was enough to prove claim. My attitude was that admitting all the facts proved nevertheless Plaintiff did not establish his claim.

Exchange Control Ordinance Fifth Schedule Part III, r. 3. It is this which enables the claim to be made—nor r. 1 thereof. Anything which incurs a penalty is an offence—whether the proceedings be civil or criminal.

As to proof : Evidence S. 137. " Crime " ; this is one. It was up to Plaintiff to prove Greenway was competent as expert. Phipson 8th ed. p. 673. He did not tell us what experience he had of French law.

" Authorised dealer " S. 42 Exchange Ordinance to deal with foreign currency not with what is legal tender in foreign territory ; gave no evidence of his own duties in Bank.

S. 21 (1) (b) " notes " occurs twice—the " or " Government can create any notes as legal tender. If legal tender no need to specify bank notes.

Greenway's evidence is qualified " to the best of my knowledge " he is giving evidence of what Court should decide. Had he given evidence that they were by a certain decree or law. He cannot assume function of judge. No material on what is French law of currency. Taylor on Evidence 12th ed. p. 51, para. 48 evidence on foreign law to be decided by judge only whether or as a fact.

Our case is that there is no evidence at all that these notes were to be exported.

Law may make Barclays an authorised dealer—that does not make Mr. Greenway one.

In the Supreme Court of Nigeria, Kano.

No. 8. Judge's Notes on hearing of Appeal. 13th & 14th November 1951—*continued.*

WESTON : (with consent of Williams) add to p. 673 " provided they " were raised at the trial " re inadmissible.

WILLIAMS : I was reading as to trial by judge alone ; Mr. Weston from judge and jury trial.

C.A.V. Intld. V.R.B.,
J.

14 November.

KAYODE for Appellant ;
WESTON for Comptroller of Customs.

Court invites Counsel to look at Customs Ordinance Sections 222, 227, 243, 244, 245, and inquires whether they wish to say anything, and wish to have time.

Mr. KAYODE : I do not wish to say more. I am not addressing the Court.

Mr. WESTON : I would have wished to address the Court but as the Court suggests to me not to having regard to the fact that Mr. Kayode does not wish me to, I will not press the point.

C.A.V on 19/11/52.

(Sgd.) V R. BAIRAMIAN,
J

The stay of execution continues on same terms as before.

Intld. V.R.B.

No. 9. Judgment. 19th November 1951.

No. 9.

Judgment.

Monday the 19th day of November, 1951

Judgment in SAID AJANI v. COMPTROLLER OF CUSTOMS

This is an appeal by Said Ajami in a civil case brought in the name of the Comptroller of Customs against him in these terms :

Amended to £60,517 6s. 9d. in the Magistrate's judgment. Added in presence of Counsel. Intld. V.R.B. 19.11.51.

" The Plaintiff's claim is for a penalty of " £61,778 2s. 6d. and the forfeiture of 9,884,500 French " Colonial Franc notes in respect of the following " contravention of the Customs Laws :—That Said " Ajami on the 15th day of June, 1951, at Kano in the " Kano Magisterial District, did attempt to export " goods, to wit, 9,884,500 French Colonial Franc " notes, the export of the said goods from Nigeria, " being prohibited by Section 22 (1) of the Exchange " Control Ordinance, 1950, and thereby contravened " Section 125 (1) of the Customs Ordinance and " incurred a penalty of treble the value of the said " goods, to wit, the sum of £61,778 2s. 6d. and the " forfeiture of the said goods."

2. This manner of suing for the penalty is correct in view of paragraphs 1 and 3 of Part III of the Fifth Schedule to the Exchange Control Ordinance, 1950, which in effect extends the word "goods" in the Customs Ordinance to include valuable paper which may not be exported without the permission of the Financial Secretary and assimilates an offence relating to the export of such paper to an offence relating to the export of prohibited goods for which a " civil pecuniary penalty " may be recovered by action in a Magistrate's Court : see Sections 125, 222, 227, 230 and 231 of the Customs Ordinance.

3. Briefly put, the evidence was that the Appellant had in a suitcase on an aeroplane about to take off at the Kano airport the French Colonial Franc notes in question and tried to conceal the fact ; and Mr. Greenway, the manager of Barclays Bank at Kano, testified that

> " they are to the best of my knowledge, French Colonial Franc
> " notes, they were legal tender in French West Africa on 15th June
> " this year."

The Magistrate gave judgment for the Plaintiff, which is attacked on two grounds to this effect—

> (1) that Mr. Greenway was not a competent witness and his evidence was inadmissible ; that it was qualified and that the law was not produced ; and
>
> (2) there was no evidence that the aeroplane was leaving Nigeria and no proof of an attempt to export.

4.—I shall first deal with Crown Counsel's argument that Mr. Greenway's evidence could be dispensed with in view of para. 2 in Order No. 46 of 1950 in the Gazette of 9th November, 1950, specifying the notes of the Banque de l'Afrique Occidentale for the purposes of Section 21 (1) (b) of the Exchange Control Ordinance. Section 21 (1) (b) reads as follows :—

> " The importation into Nigeria of—(b) any such other notes
> " (viz. other than notes of the United Kingdom) as may be specified
> " by order of the Financial Secretary, being notes issued by a Bank or
> " notes of a class which are or have at any time been legal tender in
> " any territory—
>
> " is hereby prohibited except with the permission of the Financial
> " Secretary."

5.—Grammatically the relative clause " which are or have at any time " been legal tender in any territory " is attached and refers to the antecedent " notes of a class." Further, pursuant to Section 45 of the Interpretation Ordinance, the word " or " before the words " notes of a class " should be construed disjunctively and not as implying similarity unless a contrary intention appear. If " notes issued by a Bank " were to be taken to be notes which are legal tender, they would be wholly included in the " notes of a class which are or have at any time been legal tender in any territory"—a construction which makes the words " notes issued by a bank " superfluous

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and otiose. For all these reasons " notes issued by a bank " may or may not be notes which are legal tender, and the specifying of the notes of the Banque de l'Afrique Occidentale does not necessarily import that they are legal tender. They may be legal tender in French West Africa, but this has to be proved.

6.—The learned Crown Counsel also argued that the Manager of a branch of a Bank which is authorised under the Ordinance to deal in foreign currency must be presumed in law to be competent to certify what bank notes are legal tender on the ground that " foreign currency " includes, by virtue of Section 1 (4) (a) of the Exchange Control Ordinance, " any notes of " a class which are or have at any time been legal tender in any territory " outside Nigeria." This argument is not convincing. There is no provision to the effect that the testimony of any such manager on what is legal tender shall be sufficient proof so as to warrant a departure from the ordinary rules of evidence ; and such a departure cannot in my opinion be founded on a mere implication. This appeal would have to be allowed—subject to what I shall say towards the end of this judgment—unless Mr. Greenway was an " expert " witness within the meaning of Sections 56 and 57 of the Evidence Ordinance. His qualifications as an " expert " witness are that he has been, as he says, " in banking business thirty-two years, twenty-four years in Nigeria."

7.—I have read pages 614–616 in Vol. 13 of Halsbury's Laws of England, 2nd edition, but the only report I have is of *Vander Donckt* v, *Thellusson* (1849), 8 C.B. 812 (in the 1913 edition of the English Reports. Vol. 137, at p. 727). An " expert " witness I gather need not be a lawyer ; he need not be a person who worked in the country of which the foreign law is in question ; and from the above-mentioned case and the final sentence in note (h) on p. 616 of Halsbury I also gather that it is not necessary that they should quote or produce the text of the foreign legislation. From the statement of the law on p. 614 it appears that a witness can testify as an " expert " in foreign law if he has " held some " office or position in which he has become familiar with it."

8.—Here I would quote a passage from the report of *Vander Donckt* v. *Thellusson* (at p. 817—in the English Reports, 1913, at the bottom of p. 729 and top of p. 730) :—

> " The plaintiff called a witness named De Keyser, who stated " that he was a native of Belgium ; that he had formerly carried " on the business of a merchant commissioner in stocks and bills " of exchange at Brussels, but was now an hotel-keeper in London ; " and that he was well acquainted with the Belgian law upon the " subject of bills and notes. On the part of the defendant, it was " objected that M. De Keyser was not an admissible witness to " prove the foreign law, he neither being a lawyer, nor a person " who was bound by reason of his holding any office, to have " a knowledge of the law of Belgium. The learned judge, however, " overruled the objection. The witness then stated, that, by the " law of Belgium, it is not necessary, even though a bill or note

" is made payable at a particular place, that it should be presented " there for payment. Under the direction of the learned judge— " who told them, that, if they believed the law of Belgium to be " as stated by De Keyser, they must find for the plaintiff—the " jury returned a verdict for the plaintiff."

From the above passage it appears that M. De Keyser did not produce any text on the law of Belgium ; also that objection to his being an admissible witness was taken by the Defendant as soon as he stated his qualifications to speak on the law of Belgium. In the case in hand the learned Counsel who defended the Appellant in the Court below did not object to Mr. Greenway or cross-examine him to throw doubt on his competence. Mr. Williams is an able advocate, one of the few who realise that cross-examination is as dangerous as it is useful. His attitude was as follows :

" We admitted facts alleged in evidence, but not that the " evidence was enough to prove claim. My attitude was that all " the facts proved nevertheless plaintiff did not establish his " claim."

The question here is whether Mr. Greenway's evidence was sufficient and adequate to establish that the franc notes in the case were legal tender in French West Africa.

9.—There is a general statement in the judgment of Maule, J., in *Vander Donckt* v. *Thellusson*, that all persons who practice a business or profession which requires them to possess a certain knowledge of the matter in hand are experts so far as expertness is required, which should perhaps be read in the light of the fact that the witness De Keyser had lived and acquired his knowledge in Belgium. But as the notes in Halsbury go to show, this is not indispensable. I have come to the conclusion that that general statement may be taken as valid without qualification, and that Mr. Greenway was competent and admissible as an " expert " witness.

10.—Mr. Williams has submitted that Mr. Greenway's evidence was qualified. I quote the passage again.

" I look at these notes, they are to the best of my knowledge, " French Colonial Franc notes, they were legal tender in French " West Africa on 15th June this year."

It is a record of evidence taken down in narrative form, which should be analysed. The absence of the word " and " after " Franc Notes " suggests this analysis :—

Question : Look at these notes. What are they ?

Answer They are to the best of my knowledge French Colonial Franc notes.

Question : Were they legal tender in French West Africa on 15th June this year ?

Answer : Yes, they were.

I would have written a full stop or semi-colon after " Franc Notes."

In the Supreme Court of Nigeria, Kano.

No. 9. Judgment. 19th November 1951—*continued.*

The Magistrate wrote a comma there, which I think was wrong as a mark of punctuation, as in reading the passage one makes a halt there. Higher up one also makes a halt in reading after " I look at these notes." There too the Magistrate wrote a comma.

I believe my analysis is correct. I do not think that anything can be made out the words " to the best of my knowledge."

11.—To conclude for the moment—I shall come to it again towards the end of my judgment—the discussion of the first ground of appeal : I am not satisfied that it has been established as a valid ground, being of opinion that Mr. Greenway's evidence was sufficient and adequate as proof that the franc notes in the case were legal tender in French West Africa if not on the 15th June, the day they were seized, at any rate before, which is enough for the purposes of Section 22 (1) of the Exchange Control Ordinance.

12.—A—Under the other ground of appeal it was argued that there was no evidence that the Appellant meant to export the notes or where he was going. That was putting it too high.

Appellant said to Mr. Ross that the francs were not his and that he had brought them from Lagos. Surely it was to take them further afield, and a map, which I suppose one may look at—I mean the Government map of Nigeria—under Section 73 (1) (h) and (i) of the Evidence Ordinance—would show that farther afield in the case of a man who came from Lagos and boarded an aircraft at Kano—meant northwards over the desert's wrinkled face of French West Africa.

But there is the evidence afforded by the suitcase containing the notes. Both Counsel appear to have overlooked the fact that it was produced in evidence as Ex. A and that there is tied to its handle a baggage label of the K.L.M. Royal Dutch Airlines with ROME written under NAAR TO, that under NAAM PASS'S NAME the name written is S. AJAMI, and that on the reverse there are written the words KANO and the figures 15/6/51 showing that the Appellant handed the suitcase in at Kano on the 15th June, 1951. It was as I conjecture the information on this label which made the Magistrate say in his judgment that Appellant attempted to export the Franc notes by having them placed on an aircraft of the K.L.M. services en route Kano to Rome. He also had two K.L.M. handbags according to Mr. Ross's evidence. It is not fair to the Magistrate to say that there was no evidence that the Appellant meant to export the notes or where he was going.

B.—I am, however, not overlooking Mr. William's point, that though the proceedings be civil, nevertheless they were for the recovery of a penalty for an offence and that the case should have been proved beyond reasonable doubt. I have given the evidence bearing on the proof that Appellant was attempting to export the notes. It seems to me, however, that the question of the degree of proof required in a case of this kind or the question whether, if proof beyond reasonable doubt is required, such proof was given on behalf of the Comptroller of Customs—it seems to me that these

questions need not be decided if the law has made special provisions applicable to the case in hand which make it unnecessary to answer either of those questions: which brings me to the consideration of the special provisions on proof in the Customs Ordinance.

13.—On behalf of the Appellant it was argued that whilst the penalty applied under Section 125 (1) of the Customs Ordinance, it did not follow that the procedure under it applied to proving a breach of the Exchange Control Ordinance in exporting. This argument runs contrary to para. 1 in Part III of the Fifth Schedule to the latter Ordinance, which applies " the enactments relating to customs " to cases connected with valuable paper.

The word " enactment " is not defined anywhere so far as I can ascertain, though used in a pertinent section in the Evidence Ordinance, namely Section 73 (1) (a), as part of the field covered by Section 72. The word " enactment " must mean anything enacted by the Legislature. For this meaning one may also invoke Section 8 of the Interpretation Act, 1889, by virtue of Section 30 of the Magistrate's Courts Ordinance. The Appellant cannot in my view be exonerated from the burden of proof cast on him by Sections 125 (2) and 243 to 245 of the Customs Ordinance. I shall therefore say something on the words " alleged " in Section 125 (2) and " averment " in Section 245.

14.—With reference to the Plaintiff the word " allege " means to assert as a fact and the word " averment " means an assertion made by him. The Plaintiff has a duty to inform the Defendant of the facts on which he relies as entitling him to his claim, and the method of supplying this information depends on the procedure regulating that method. The procedure will be found in the Magistrates' Courts (Civil Procedure) Ordinance. The Plaintiff puts in a plaint, which is read to the Defendant when they appear before the Magistrate, and the Defendant makes his answer or defence, which is recorded, and then the Magistrate proceeds in a summary way to hear the case " without further pleadings," according to Section 47 (1). This summary procedure is based on the theory that the plaint normally gives the Defendant sufficient information to enable him to make his defence.

The word " defence " means an oral defence equivalent to a defence pleaded in writing. Likewise the " plaint " is equivalent to a statement of claim. This interpretation is borne out by the words " without further pleading." The pleading meant is oral pleading.

This view is fortified by the provisions in sub-section (2) that " The " Court may if it considers it necessary order the parties to state more " fully their respective cases." It goes on to say that in difficult cases in which " pleadings are required " the Court shall report the case for transfer to the Supreme Court. Reference to 0.33, rr. 3 and 4 of the Supreme Court (Civil Procedure) Rules shows that these pleadings may be oral or in writing. This does not in my view affect the meaning of " pleading "

In the Supreme Court of Nigeria, Kano.

No. 9. Judgment. 19th November 1951— *continued.*

in sub-section (1) of Section 47 in the Magistrates' Courts (Civil Procedure) Ordinance, for this reason, namely, that there are no written pleadings in the Magistrate's Court. It does happen sometimes that the same word is used in not quite the same sense in the same section, and the sense in each case has to be gathered from the context. In the Magistrate's Court the plaint is the Plaintiff's pleading as his statement of claim ; the oral defence is the Defendant's pleading ; and if more oral statements are made they are the further pleadings of the parties.

15.—I have also to observe that under Section 13 (1) of the Magistrates' Courts (Civil Procedure) Ordinance the plaint must state " the substance of the action " and under sub-section (2) the Court should refuse to entertain a plaint which on the face of it " discloses no cause of action." This provision is analogous to the power of a judge under R. 19 in 0.33 to strike out any pleading on the ground that it discloses no cause of action, viz. a statement of claim in which the facts alleged or averments made do not suffice as a foundation for the claim made against the Defendant.

16.—It is worth contrasting the record of the claim in this case (copied out above) with the ordinary endorsement of a claim for a penalty on a writ as given in the English Supreme Court Rules in Appendix A, Part III, Section II, which reads " The Plaintiff's claim is 1. for penalties under the Statute. "

See also Chitty's King Bench Forms (1947) at p. 46 " The Plaintiff's claim is—" and Penalties on p. 50. In the words of R. 2 in Order III, it is not essential to set forth the precise ground of complaint. In claiming a penalty it appears that all that is needed is to state merely that a certain sum is claimed as a penalty incurred by the Defendant under a certain Statute. There is no need to tell him how or why the penalty was incurred.

17.—There is of course the other case of a special endorsement under 0.111, r. 6, which makes the writ rank generally as a " pleading " within the definition of the term in Section 225 of the 1925 Judicature Act. There are forms in Appendix C, Sections IV to VII, which may be looked at : (in Chitty's at p. 55). I believe I am right in saying that the information given in the record of the claim in the case in hand is like a special endorsement. It states how and why the claim to the penalty arose.

18.—In conclusion, I am in no doubt that the words " alleged " and " averment " in Section 125 (2) and Section 245 of the Customs Ordinance apply to the claim preferred in this case. If they do not, then those enactments become so much waste paper.

19.—The Legislature aims at preventing the mischief of goods or paper valuable to its economic welfare going abroad, and has sought to leave no loophole of escape. If a passenger on an aircraft has with him any such notes as had the Appellant, he has a duty under Section 243 to prove that he put

them there lawfully ; the Comptroller of Customs is absolved by Section 244 from the duty under the general rules of evidence of proving guilty knowledge ; Section 125 (2) makes it sufficient if he alleges that such goods or notes were dealt with for the purpose of exportation as set out in Section 125 (1) ; and pursuant to Section 245 :

> " The averment . that any particular penalty should be recovered . or that any act was done in Nigeria shall be deemed sufficient, unless the Defendant in any such case shall prove the contrary."

All these provisions create presumptive proofs in favour of the Comptroller of Customs, and shift the onus from him to the Defendant in order to prevent evasions of the mischief aimed at. They are special departures from the general rules for the purposes of proceedings under the Customs Ordinance which the Court has a duty to apply. I am aware that the case, though civil, relates to a penalty for an offence. But even in criminal cases there are instances of presumptive proof ; for example the making of counterfeit current gold or silver coin is a felony punishable with imprisonment for life under Section 147 (1) of the Criminal Code ; however, Section 147 (2) states that where a person has ten unfinished coins in his possession the Court may presume that he has made them unless he proves the contrary.

20.—The special provisions on the burden of proof in the Customs Ordinance remind me of the provisions in Section 30 of the Crown Lands Ordinance, which puts the burden of proof that the occupation was authorised on the Defendant and makes an averment that any land is Crown Land sufficient without proof unless the Defendant prove the contrary : and the Court is bound under Section 29 to grant recovery of possession if the Defendant fails to prove an absolute right or title to the possession of the land.

Under the Customs Ordinance an averment that any particular penalty should be recovered, as I said earlier or that any act was done in Nigeria, shall be deemed sufficient unless the Defendant proves the contrary. Here we have in the record of the claim both these averments—that

> " Said Ajami on the 15th day of June, 1951, at Kano did attempt to export and incurred a penalty "

In my view the case clearly falls within Section 245 and the averment that that act was done by the Defendant at Kano or that the penalty should be recovered needs no proof. It is superfluous therefore to discuss the range of the weapon furnished by Section 125 (2). Whether under that or under Section 245 the onus was on the Appellant to exonerate himself from the penalty by proving the contrary of what was alleged or averred—in simple English of what was asserted against him. Thus the gap (if any) in the evidence is filled by operation of law ; and the question of what degree of proof was needed or whether the case was proved beyond reasonable doubt does not arise in the case.

In the Supreme Court of Nigeria, Kano.

No. 9. Judgment. 19th November 1951—*continued.*

21.—There is finally one more point to mention. Looking at the back of one of the franc notes in evidence I find the following words in capitals, which read as follows :—

> " L'article 139 du Code Penal punit des travaux forces a perpetunite ceux qui auront contrefait ou falsifie les billets de banques autorisees par la loi."
>
> In English this means : Article 139 of the Criminal Code punishes with hard labour for life those who shall have counterfeited or falsified notes of banks authorised by the law.
>
> (" shall " added in presence of Counsel.
>
> (Intld.) V R. B.)

I think this furnishes evidence on the franc notes themselves that they were legal tender under the law of French West Africa and puts the case beyond any doubt. I had not the franc notes with me when writing this judgment over the week-end, and that is why I am mentioning this point now.

22.—In conclusion I am of opinion that the Appellant is not entitled to a reversal of the Magistrate's decision under either of his grounds of appeal. His appeal is therefore dismissed.

(Sgd.) V R. BAIRAMIAN,
Judge.

No. 10. Judge's Notes on hearing of Motion for Leave to Appeal. 19th & 20th November 1951.

No. 10.

Judge's Notes on Hearing of Motion for Leave to Appeal.

19 November, 1951.

MR. KAYODE for Appellant.

MR. WESTON for Customs.

Judgment read dismissing the appeal.
Franc notes and label of suitcase shown to both Counsel.
Crown Counsel asks for costs. Kayode does not object.
Costs allowed at twelve guineas.

(Sgd.) V R. BAIRAMIAN,
J.

IN CHAMBERS.

KAYODE : I apply for leave to appeal as per motion.

WESTON : I think he has a right to appeal but I have no objection to leave on security being given (*a*) for payment of the judgment debt, and (*b*) that Appellant appear to go to gaol if the judgment debt is not satisfied, and (*c*) that his passport remain impounded.

KAYODE : I agree to those terms, though I do not think the question arises on an application for leave.

COURT : If leave is needed it is 'granted hereby and in granting it I impose the terms (*a*), (*b*) and (*c*) the same security to cover both (*a*) and (*b*), to be given forthwith if Appellant is to be at liberty : the security to be until the appeal is determined by Court of Appeal. If the terms are fulfilled there will be liberty to apply for stay.

(Sgd.) V R. BAIRAMIAN.

19 November, 1951.

10 20th November, 1951.

In Chambers.

KAYODE for Ajami.

WESTON for Comptroller of Customs.

(1) Both state that security cannot be furnished and agree that he be committed to prison until such time as security is furnished or the amount is paid or the Court of Appeal otherwise orders, for one year.

COURT : An order is made in those terms to be drawn up.

(2) Both Counsel that the label may be removed from the suit case Ex. A and kept with the franc notes taken out of the box, and sent

20 to the Court of Appeal.

COURT : The Registrar will be so directed.

On Counsel's joint suggestion and agreement I initial the label and the franc notes and date them and I hand them to the Registrar.

With the like agreement leave to appeal is given on condition that the grounds of appeal are filed within a month, that £10 are deposited for record within seven days, and that the appeal is prosecuted with diligence.

(Sgd.) V R. BAIRAMIAN,
J.

30 20.11.51.

20.11.51.

Said AJAMI ;

R. G. ACTON, Officer of Customs, Kano.

The order is communicated and read out and explained to Said Ajami, who is committed to prison on the terms in the order. Copy herein and initialled.

(Sgd.) V R. BAIRAMIAN,
J

In the West African Court of Appeal, Lagos.

No. 11. Notice and Grounds of Appeal. 30th November 1951.

No. 11.

Notice and Grounds of Appeal.

CIVIL FORM 1

IN THE WEST AFRICAN COURT OF APPEAL.

NOTICE OF APPEAL.
(Rule 12)

Suit No.

Between

THE COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

SAID AJAMI ... ... *Defendant/Appellant.*

TAKE NOTICE that the Defendant being dissatisfied with the decision of the Supreme Court of Kano contained in the Judgment of His Lordship Mr. Justice Bairamian dated the 19th day of November, 1951 and having obtained special leave to appeal dated 19th November, 1951 doth hereby appeal to the West African Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5.

2.—Whole Judgment.

3.—GROUNDS OF APPEAL :

(1) The learned Judge erred in law in affirming the Judgment of the learned trial Magistrate when there is no admissible evidence or competent witness to prove that the notes in question in this case are legal tender in French territory.

(2) The learned trial Judge erred in Law in holding there was any averment by the Comptroller of Customs that the Defendant " did attempt to export goods " when no pleadings were ordered in the said case.

(3) The learned trial Judge erred in Law in dismissing the appeal when the trial Magistrate had no jurisdiction in the matter.

(4) Judgment is against the weight of evidence.

4.—The relief sought from the West African Court of Appeal :

That the Judgment of the Court below be set aside and for any further and other orders as the Court may deem fit in the circumstances.

5.—Person directly affected by the Appeal:

Name.	Address.
The Comptroller of Customs.	Customs and Excise Dept. Kano.

Dated at Lagos this 30th day of November, 1951.

Sgd. THOMAS, WILLIAMS & KAYODE,
Appellant's Solicitors.

Filed at 1 p.m. today.
Filing £5. 0s. 0d.
Service 1s. 6d.
Mileage 1s. 6d.

£5. 3s. 0d.

C. R. No. A028079 of 3.12.51.
Sgd. BANJOKO,
Registrar.

No. 12.

Supplementary Grounds of Appeal.

CIVIL FORM 1

IN THE WEST AFRICAN COURT OF APPEAL.

NOTICE OF APPEAL.
(Rule 12)

Suit No. WACA 3684.

Between

THE COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

SAID AJAMI ... ... *Defendant/Appellant.*

SUPPLEMENTARY GROUNDS OF APPEAL.

5.—The learned Judge misdirected his mind when in paragraph 21 of his Judgment, he attaches such a great importance to the words on the back of one of the franc notes that he comes to the conclusion that those words put the case " beyond any doubt."

Dated at Lagos this 28th day of January, 1952.

Sgd. ALAKIJA & ALAKIJA,
Appellant's Solicitors.

Filing £6.
Pd. on C. R. No. A474496/36/29.1.52 (Intld.) M.I.S.

In the West African Court of Appeal, Lagos.

No. 13. Judge's Notes on Hearing of Appeal. 8th February 1952.

No. 13.

Judge's Notes on Hearing of Appeal

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.

Friday, the 8th day of February, 1952.

Before Their Lordships

SIR JOHN VERITY, Chief Justice, Nigeria, Presiding Judge.
OLOMUYIWA JIBOWU, Acting Senior Puisne Judge, Nigeria.
SIR JAMES HENLEY COUSSEY, Puisne Judge, Gold Coast.

BATE for Respondent.

SIR ADEYEMO ALAKIJA (with WILLIAMS & OMOLOLU) for Appellant.

ALAKIJA: Appeal against decision of Supreme Court in Appellate Jurisdiction.

Ground 1. In *re the Goods of Whitelegg* (1899) P. 267.
Sussex Peerage (1844) 11 Clark & Finnelly (8 E.R. 1034).
Wilson v. *Wilson* (1903) P. 157.
Cooper King v. *Cooper King* (1900) P. 65.
Banford v. *Banford* (1918) P. 14.
Francois Vander Donckt v. *Thellusson* 137 E.R. 727, on which Judge relied, modified by above cases.

Expert knowledge must be shown in evidence before admitted as expert witness.

Evidence in present case—p. 2.

No examination of Greenway—but none necessary—evidence does not show *prima facie* expert knowledge.

Burden is on Plaintiff. Onus does not shift to Defendant.

Ottoman Bank v. *Chakarian* (1937) 4 A.E.R. at p. 580.

Currency notes must be shown to be legal tender—determined by law of the country.

Question therefore one of law. Dicey's Conflict of Law, 6th Edition 701.

What is foreign currency is a matter of law.

McKenzie v. *Gordon* 1867 7 N.S. Reports (CAN) (See Digest Vol. 22, page 626).

Professional or practical.

No assertion at page 3 of his experience of French law of currency.

Todd & Shand v. *Kidd* (1854) 19 Beav. 582. 52 E.R. p. 476.

Cartwright v. *Cartwright and Anderson* (1878) 26 W.R. 684. It is not enough for witness to say " I am a Bank Manager " nor " I have 24 years " banking experience in Nigeria." It is essential he should state that in the course of his business he has had to study the question of currency and laws of the currency.

Ground 2. Customs Ordinance Cap. 48, Section 125.
Plaintiff must prove purpose of exportation before onus shifts to Defendant.

Ground 3 abandoned.

Ground 4. Judgment in Supreme Court, page 10. Magistrate's decision, page 5.

Ground 5 (by leave—Bate not objecting).

Judgment in Supreme Court, page 18, para 21.

French language not interpreted.

BATE : Greenway an expert—admitted under Sections 56 and 57. Evidence Ordinance Cap. 63. Phipson 8th Edition p. 378 para. 8 special study *and experience.* Page 382.

Professional lawyer is holder of official situation requiring and implying legal knowledge.

No requirement that witness not a lawyer must prove more than he not qualified.

Question of fact as to his knowledge.

Greenway so qualified—" virtute officii " Banker of 32 years experience, 24 in Nigeria. Manager of Barclay's Bank—appointed dealers in foreign currency.

" Authorised dealer."

Exchange Control Ordinance 1950.

Section 2 definition of authorised dealer Section 5 (4)—" foreign currency."

Bank as authorised dealers not through agent, i.e. Managers. Nigeria bounded on 3 sides by French West African Colonial territory. Experience may therefore be inferred from evidence—even though witness not clearly examined thereon. Inference from common knowledge is adequate.

Sussex Peerage case—

Vander Donckt's case : as such commercial usage as law—like present case—non-professional witness accepted as expert on bills of exchange in Brussels. Cas. Cit. page 1102.

In re *Dost Aly Khan* (1881) 6 P.D. p. 6.

Cooper King v. *Cooper King.*

Canadian case *Kennedy* v *Gordon* distinguishable.

Production of Notes raises presumption of legal tender nothing on face of them to negative this—and no evidence to the contrary.

Appellant endeavouring to get 9,000,000 out of country clandestinely—obviously for use as currency.

Evidence Ordinance Cap. 63, Section 59.

Customs Ordinance Cap. 48, Section 243 and 245.

Section 243 Onus on Appellant to show that notes were lawfully put into aircraft.

Section 245—Averment shifts onus to Defendant.

Claim on p. 1 of record is sufficient averment to place upon Defendant onus of proving notes not legal tender. If evidence as to legal tender insufficient it is supplied by (1) surrounding circumstances ;

In the West African Court of Appeal, Lagos.

No. 13. Judges Notes on Hearing of Appeal. 8th February 1952—*continued.*

(2) Sections 243 and 245 of Customs Ordinance. Matter is of commercial usage not law and witness well qualified to give evidence thereon.

SIR ADEYEMO on special points.

Phipson 8th Edition page 673.

Inadmissible evidence as to be rejected whether objecting to or not.

WILLIAMS, in reply :

Greenway's experience in banking not disputed.

Question not as to whether notes were currency notes not whether legal tender—this is a matter of law.

Bank of England Act 1833, Section 6.

Vol. 1 Halsbury's Statutes—notes 532 Bank of England notes not legal tender in Scotland till 1924.

Notes may be in current use but not legal tender.

Bank Manager—not necessarily particular officer dealing with foreign currency—may have an expert in the Bank to do so.

Foundation that he has such special knowledge not laid.

Exchange Control Ordinance 1950—Section 148.

Evidence. Ordinance Cap. 63, Section 56—" specially skilled."

Section 57—" in their profession." Customs Ordinance Cap. 48, Sections 243 and 245 do not apply. Exchange Control Ordinance 1950. 5th Schedule Part III, Section 1.

Section 1 does not apply Customs Ordinance as to procedure—or proof.

If Sections 243 and 245 do apply. Claim not properly averred. " French Colonial Franc notes " not sufficient averment of prohibited article under Exchange Control Ordinance—do not aver that they are legal tender. If Greenway's evidence is inadmissible then there is no averment of any officer and nothing for Defendant to disprove.

C.A.V

No. 14. Judgment. 19th February 1952.

No. 14.

Judgment.

IN THE WEST AFRICAN COURT OF APPEAL.

HOLDEN AT LAGOS.

Tuesday the 19th day of February, 1952.

Before their Lordships

Sir JOHN VERITY, Chief Justice, Nigeria, Presiding Judge.
OLUMUYIWA JIBOWU, Act. Sen. Puisne Judge, Nigeria.
Sir JAMES HENLEY COUSSEY, Puisne Judge, Gold Coast.

JUDGMENT.

Delivered by Sir JOHN VERITY, Presiding Judge.

This is an appeal from a decision of Bairamian, J. dismissing an appeal from a Judgment in the Magistrate's Court in an action in which the

Comptroller of Customs sought to recover penalties amounting to £60,517 6s. 9d. in respect of an alleged attempt by the Defendant therein to export certain goods, described in the claim as " French Colonial Franc Notes," the export of which is prohibited by Section 22 (1) of the Exchange Control Ordinance 1950 thereby contravening Section 125 (1) of the Customs Ordinance Cap. 48.

The Magistrate gave Judgment for the Comptroller and the Defendant appealed to the Supreme Court. His appeal was dismissed and he has now appealed to this Court.

The most important of the grounds of the appeal is that the learned Judge erred in affirming the Judgment of the Magistrate where there is no admissible evidence that the notes in question are legal tender in French territory. It was further submitted that there is no averment that they are legal tender such as might have been sufficient to evoke the provision (if applicable) of Section 245 of the Customs Ordinance.

It is conceded by the Respondent that the prohibition extends only to notes which are or have been legal tender and the point is, therefore, one of substance.

In the claim these notes are described simply as " French Colonial Franc Notes " and there is no averment that they are legal tender. This averment should no doubt have been made but its omission from the claim is not necessarily fatal, nor indeed does the argument on behalf of the Appellant go so far, for it is not contended that if it were established that in point of fact the notes were legal tender that would not be sufficient. This the Comptroller sought to establish by the testimony of a witness, Greenway, who averred that he was the manager of Barclays Bank, Kano, and that he had 32 years' experience of banking business, 24 years being in Nigeria. He then proceeded to testify that to the best of his knowledge the notes are French Colonial Franc Notes and that they were legal tender in French West Africa on the material date.

No objection was taken at the time to the admissibility of this evidence nor was the witness cross-examined either as to his qualifications or opinion, but it is now submitted on behalf of the Appellant, as it was contended in the Supreme Court, that the question whether the notes were or were not legal tender is a question of foreign law and that the witness Greenway was not shown to be so qualified therein as to render admissible his opinion as that of an expert witness.

On behalf of the Respondent it is contended that the facts that the witness has no less than 24 years' banking experience in Nigeria, bounded as it is on three sides by French Colonial territory and that Barclays Bank of which he is a branch manager is a duly authorised dealer in foreign currency are sufficient *prima facie* to show that the witness is sufficiently qualified to express an expert opinion on this particular question.

A great many authorities were cited by Counsel for the Appellant on the question of the admission of expert evidence on foreign law. These authorities go no further, I think than to establish two principles : firstly, that the witness must be, as is prescribed by Section 56 of our Evidence

In the West African Court of Appeal, Lagos.

No. 14. Judgment. 19th February 1952— *continued.*

Ordinance, " specially skilled " in the subject upon which he expresses an opinion and, secondly, that it is for the Court to determine whether in each case the particular witness is shown to have such special skill. Within the framework of these general principles it is possible to find such extreme illustrations as that in which an hotel keeper who had formerly carried on business as a merchant commissioner in stocks and bills of exchange in Brussels was admitted to give evidence as to the law of Belgium relating to such matters (*Vander Donckt* v. *Thellusson* 137 E.R. page 727) or in *Shand* v. *Kidd* (52 E.R. page 476) where the affidavit of a gentleman describing himself as a " solicitor practising in the Supreme Courts of Scotland " was not acted upon by the Master of the Rolls on the question as to what was the law of Scotland in relation to funds affected by a settlement.

It is clear, I think, that the test must always be the knowledge and experience of the particular witness and whether the evidence justifies the conclusion that he is "specially skilled" within the meaning of the Evidence Ordinance, which means no more than he has special knowledge, training or experience in the matter. in question.

In judging of this skill it is to be borne in mind that there are factors other than direct evidence of personal experience which may properly be considered. In the *Sussex Peerage* case (8 E.R. 1034) it was held that a Roman Catholic bishop holding the office of coadjutor to a Vicar-apostolic in England, is, by virtue of that office, to be considered as a person skilled in the matrimonial law of Rome. In that case the Attorney-General submitted that the witness was " clearly not a professional lawyer " and added " to render his evidence admissible he must have some peculiar means " of knowledge, as from office, for instance." The Lord Chancellor then observed " he comes within the description of person *peritus virtute officii*," and Lord Langdale said " The witness is in a situation of importance; he is engaged in the performance of important and responsible public duties; and connected with them and in order to discharge them properly he is bound to make himself acquainted with this subject of the law of marriage. It is impossible to say that he is incompetent."

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 an opinion, not upon some obstruse problem of French law, but upon a question which, while perhaps strictly speaking one of law, is for all practical purposes a question of every day 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 currency, and " in connection with them and in order to " discharge them properly he is bound to make himself acquainted with this " subject."

In my view therefore the evidence of this witness was rightly admitted and was sufficient to establish the averment that the notes were legal tender. In these circumstances I do not consider it necessary to enter upon consideration of the other grounds of appeal, all of which must fail if my views as to the first ground are correct and I would therefore dismiss the appeal with costs.

(Sgd.) JOHN VERITY,
Chief Justice, Nigeria.

I concur.

(Sgd.) O. JIBOWU,
Act. Sen. Puisne Judge, Nigeria.

I concur.

(Sgd.) J. HENLEY COUSSEY,
Puisne Judge, Gold Coast.

No 15.

Order.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.

Suit No. K/44A/1951.
W.A.C.A. 3684.

On Appeal from the Judgment of the Supreme Court, Kano Judicial Division.

Between

THE COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

SAID AJAMI ... ... *Defendant/Appellant.*

Tuesday, the 19th day of February, 1952.

UPON READING the record of appeal herein and after hearing Sir Adeyemo Alakija (with him Mr. F. R. A. Williams and Mr. O. O. Omololu) of counsel for the Appellant and Mr. E. E. Egbuna, Crown Counsel of Counsel for the Respondent.

IT IS ORDERED that the above appeal be and is hereby dismissed with costs of £10 10s. payable by the Appellant to the Respondent.

L.S.

(Sgd.) JOHN VERITY,
Presiding Judge.

(Sgd.) W. H. HURLEY,
Deputy Registrar.

In the West African Court of Appeal, Lagos.

No. 16. Motion for Leave to Appeal to Privy Council. 8th March 1952.

No. 16.

Motion for Leave to Appeal to Privy Council.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS.

W.A.C.A. 3684.

Between

THE COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

SAID AJAMI ... ... *Defendant/Appellant.*

MOTION ON NOTICE UNDER ARTICLE 3 (A) OF THE PRIVY COUNCIL ORDER IN COUNCIL, 1930.

TAKE NOTICE that this Honourable Court will be moved on Tuesday, the 15th day of April, 1952, at the hour of 9 o'clock or so soon thereafter as Counsel can be heard on behalf of the above-named Appellant for an Order Granting Leave to Appeal to His Majesty's Privy Council from the Judgment of this Honourable Court delivered on the 19th day of February, 1952, and in the meantime for a Stay of Execution of the said Judgment and for such further or other Orders as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 8th day of March, 1952.

(Sgd.) THOMAS, WILLIAMS & KAYODE,
Solicitors to the Appellant.

ON NOTICE TO THE RESPONDENT.

Motion	£10
W.A.C.A. Certificate ...	2
	£12

Pd. on C.R. No. A557975/7 of 11/3/52. Intld. I.F.

In the West African Court of Appeal, Lagos.

No. 17. Affidavit in Support of Motion. 11th March 1952.

No. 17.

Affidavit in Support of Motion.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS.

W.A.C.A. 3684.

Between

THE COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

SAID AJAMI ... ... *Defendant/Appellant.*

AFFIDAVIT.

I, CLAUDIUS PHILLIPS, Yoruba, British Protected Person, Clerk of No. 41, Idumagbo Avenue, Lagos do hereby make oath and say as follows :—

1.—That I am a clerk engaged in the Chambers of Messrs. Thomas, Williams & Kayode Solicitors for the Appellant in this case.

2.—That I am conversant with the facts in the above mentioned matter.

3.—That on the 19th day of February, 1952 Judgment was delivered in the above matter by the West African Court of Appeal.

4.—That the said Appellant is dissatisfied with the said Judgment and desires to Appeal to His Majesty's Privy Council and in the meantime ask for a Stay of Execution of the said Judgment.

5.—That the application is brought under Article 3 (a) of the West African (Appeal to Privy Council) Orders in Council 1949.

6.—That the matter in dispute is over £60,000.

(Sgd.) C. PHILLIPS.

Sworn to at the Supreme Court Registry, Lagos, this 11th day of March, 1952.

Before me,

(Sgd.) M. E. OJOMO,
Commissioner for Oaths.

In the West African Court of Appeal, Lagos.

No. 18.

Judge's Notes on Hearing of Motion.

No. 18. Judge's Notes on Hearing of Motion. 15th April 1952.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.

Tuesday, the 15th day of April, 1952.

Before their Lordships

Sir STAFFORD WILLIAM POWELL FOSTER SUTTON, President.
Sir JAMES HENLEY COUSSEY, Justice of Appeal, Gold Coast.
JOSEPH HENRI MAXIME DE COMARMOND, Senior Puisne Judge, Nigeria.

MOTION.

Mr. WILLIAMS moves.

Mr. EGBUNA for Respondent.

Conditional leave granted on following terms :—
Costs fixed at £5 5s. 0d. to abide court. Application for stay withdrawn.

(i) That the Defendant/Appellant do enter into good and sufficient security to the satisfaction of the Court in the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him Final Leave to appeal or of the appeal being dismissed for non-prosecution or of Her Majesty-in-Council ordering the Appellant to pay the Respondent's costs of the appeal ;

(ii) That the Defendant/Appellant do deposit in Court the sum of £50 for the preparation of the Record of Appeal, and for the despatch thereof to Her Majesty's Privy Council ;

(iii) That the Defendant/Appellant do give Notice of Appeal to the Respondent.

Intld. S. F. S.,
P.

15.4.52.

No. 19.

Order granting Conditional Leave to Appeal to Privy Council.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.

Suit No. K/44A/51
W.A.C.A. 3684

Between

COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

10 SAID AJAMI ... ... *Defendant/Appellant.*

(L.S.)
(Sgd.) S. FOSTER SUTTON,
President.

Tuesday the 15th day of April, 1952.

UPON READING the application herein and the affidavit sworn on the 11th day of March, 1952, filed on behalf of the Appellant and after hearing Mr. F. R. A. Williams of Counsel for the Appellant, asking leave to withdraw the application for a stay of execution:

IT IS ORDERED that Conditional Leave to appeal in the above matter to Her Majesty's Privy Council be granted to Said Ajami, Defendant/
20 Appellant, upon fulfilment within three months from the date hereof, of the following conditions namely:—

(i) That the Defendant/Appellant do enter into good and sufficient security to the satisfaction of the Court in the sum of £500 for the due prosecution of the appeal and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting him Final Leave to appeal or of the appeal being dismissed for non-prosecution, or of Her Majesty-in-Council ordering the Appellant to pay the Respondent's costs of the appeal;

30 (ii) That the Defendant/Appellant do deposit in Court the sum of £50 for the preparation of the Record of Appeal, and for the despatch thereof to Her Majesty's Privy Council;

(iii) That the Defendant/Appellant do give Notice of the appeal to the Respondent.

AND THE COURT doth direct that the costs of this application fixed at £5 5s. shall abide the event of the appeal.

(Sgd). W H. HURLEY,
Deputy Registrar.

In the West African Court of Appeal, Lagos.

No. 20. Motion for Final Leave to Appeal to Privy Council. 2nd July 1952.

No. 20.

Motion for Final Leave to Appeal to Privy Council.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS.

W.A.C.A. 3684.

Between

COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

SAID AJAMI ... ... *Defendant/Appellant.*

MOTION ON NOTICE.

TAKE NOTICE that this Honourable Court will be moved on Thursday the 14th day of August, 1952, at the hour of 9 o'clock or so soon thereafter as Counsel can be heard on behalf of the above-named Appellant for an order for FINAL LEAVE to appeal to Her Majesty's Privy Council and for such further or other Orders as this Honourable Court may deem fit to make in the circumstances.

Dated at Lagos this 2nd day of July, 1952.

(Sgd). THOMAS, WILLIAMS & KAYODE,
Solicitors to the Appellant.

Motion	£2
W.A.C.A.	
Cert.	£2
	£4

Pd. on C.R. No. 74364/11 of 4/7/52

Intld. I. F.

No. 21. Affidavit in Support of Motion. 4th July 1952.

No. 21.

Affidavit in Support of Motion.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS.

W.A.C.A. 3684.

Between

COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent*

and

SAID AJAMI ... ... *Defendant/Appellant.*

AFFIDAVIT.

I, CLAUDIUS PHILLIPS, Yoruba, British Protected Person, Clerk of No. 41, Idumagbo Avenue, Lagos, do hereby make oath and say as follows :—

1.—That I am a clerk engaged in the Chambers of Messrs. Thomas, Williams and Kayode Solicitors to the Defendant/Appellant in the above-mentioned matter.

2.—That I am conversant with the facts of the above-mentioned matter.

3.—That Conditional Leave to Appeal in the above matter was given on the 15th day of April, 1952.

4.—That all the conditions imposed have been fulfilled.

(Sgd.) C. PHILLIPS.

Sworn to at the Supreme Court Registry, Lagos, this 4th day of July, 1952.

Before Me,

(Sgd.) J. T. AKIN GEORGE,
Commissioner for Oaths.

Oath 4/– Pd. on C.R. No. 74488/94 of 4/7/52 (Intld) I. F.
Filing 2/– Pd. on C.R. No. 74364/11 of 4/7/52 (Intld) I. F.

6/--

No. 22.

Judge's Notes on Hearing of Motion for Final Leave to Appeal to Privy Council.

IN THE WEST AFRICAN COURT OF APPEAL,
HOLDEN AT LAGOS, NIGERIA.

Monday the 18th day of August, 1952.

Before His Lordship,
ROBERT VAHE BAIRAMIAN, Puisne Judge, Nigeria.
Sitting as a Single Judge of the Court.

W.A.C.A. 3684.

F. R. A. WILLIAMS applying in

Comptroller of Customs v. *Said Ajami* on behalf of Said Ajami for final leave to appeal to H.M. Council from the W.A.C.A. Judgment. Affidavit in.

Fatayi Williams, Crown Counsel, has no objection ; he agrees that the conditions have been fulfilled.

Final leave granted.

(Sgd.) V R. BAIRAMIAN,
J.

In the West African Court of Appeal, Lagos.

No. 23. Order granting Final Leave to Appeal to Privy Council. 18th August 1952.

No. 23.

Order granting Final Leave to Appeal to Privy Council.

IN THE WEST AFRICAN COURT OF APPEAL.
HOLDEN AT LAGOS, NIGERIA.

Suit No. K/44A/1951.
W.A.C.A. 3684.

Application for Final Leave to appeal to Her Majesty's Privy Council from the Judgment of the West African Court of Appeal.

Between

COMPTROLLER OF CUSTOMS ... ... *Plaintiff/Respondent* 10

and

SAID AJAMI ... ... *Defendant/Appellant.*

L.S. Monday the 18th day of August, 1952.

Sgd. V. R. BAIRAMIAN,
Presiding Judge.

UPON READING the application herein and the affidavit sworn on the 4th day of July, 1952, filed on behalf of the Appellant and after hearing Mr. F. R. A. Williams of Counsel for the Appellant and Mr. Fatayi Williams of Counsel for the Respondent.

IT IS ORDERED that Final Leave to appeal to Her Majesty's Privy 20 Council from the Judgment of this Court dated the 19th day of February, 1952, be and is hereby granted to the Appellant.

(Sgd). W. H. HURLEY,
Deputy Registrar.

In the Privy Council.

No. 16 of 1953.

ON APPEAL FROM THE WEST AFRICAN COURT OF APPEAL, LAGOS, NIGERIA.

BETWEEN

SAID AJAMI ... (*Defendant*) *Appellant*

AND

THE COMPTROLLER OF CUSTOMS ... (*Plaintiff*) *Respondent.*

RECORD OF PROCEEDINGS

HATCHETT JONES & CO.,
110 Fenchurch Street,
London, E.C.3,
Solicitors for the Appellant.

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

GEO. BARBER & SON LTD., Printers, Furnival Street, Holborn, E.C.4, and Cursitor Street, Chancery Lane.
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