Privy Council Appeal No. 16 of 1953

Said Ajami - - - - - - - - - - - *Appellant*

v.

The Comptroller of Customs - - - - - - *Respondent*

FROM

THE WEST AFRICAN COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH NOVEMBER, 1954

Present at the Hearing:

LORD MORTON OF HENRYTON
LORD KEITH OF AVONHOLM
MR. L. M. D. DE SILVA

[*Delivered by* L. M. D. DE SILVA]

This is an appeal from a judgment of the West African Court of Appeal dated the 19th February, 1952, dismissing an appeal from a judgment of the Supreme Court of Nigeria dated the 19th November, 1951. The Supreme Court had by its judgment dismissed an appeal from a judgment in the Magistrates Court in favour of the respondent dated the 11th August, 1951.

The respondent who is the Comptroller of Customs of Nigeria claimed in the Magistrates Court of Nigeria 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 appellant had on the 15th June, 1951, attempted to export the said notes, the exportation of which was prohibited by section 22 (1) of the Exchange Control Ordinance, 1950. On this appeal the appellant does not dispute that he attempted to export 9,884,500 notes from Nigeria on the said 15th day of June, 1951. It is further not disputed that the respondent is entitled to succeed in this appeal if it is held that the said section of the Exchange Control Ordinance prohibited the exportation of the said 9,884.500 notes.

Section 22 (1) prohibits the exportation amongst other things of:—

> " 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 any other territory."

It is not disputed on this appeal that French West Africa comes within the meaning of the word " territory " in section 22 (1) quoted above.

It is contended by the appellant that the evidence led by the respondent in the Magistrate's court did not establish a fact sought to be proved in, and held to be proved by, the courts in Africa namely that the notes in question were legal tender in French West Africa on the 15th June, 1951. This is the sole point raised by the appellant and the sole point for decision by their Lordships.

It was necessary to call an expert to prove that the francs were legal tender in West Africa on the 15th June, 1951, and the expert evidence

called by the respondent was that of one Mr. Greenway. The whole of his evidence given in examination-in-chief consisted of the following:—

> "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."

He was not cross-examined and no evidence was led by the appellant to contradict what he said. After the respondent had closed his case the appellant did not give evidence, nor was any evidence led on his behalf.

The appellant concedes that Mr. Greenway is a credible witness but contends that upon the facts deposed to by him he cannot be regarded in law as a competent expert witness. It is further contended that even if it be held that Mr. Greenway was competent to give evidence as an expert, he has so qualified his evidence that it cannot be regarded as proving the facts sought to be established.

It has been argued strenuously that upon a matter which involves a question of law no person who is not a professional lawyer could be regarded as a competent expert. Their Lordships do not agree. In the case of *Vander Donckt* v. *Thellusson* (1849), 8 C.B. 812 at p. 814 it was held that a person who though not a lawyer, had become conversant with a point of foreign law by "carrying on a business which made it his interest to take cognisance" of the point, was a competent witness on that point. Their Lordships share this view. A number of other cases were cited to their Lordships which, although they contain observations relevant to the facts of each case do not, in their Lordships' view, qualify in any way the principle stated in the case referred to above. Their Lordships do not propose to refer to each of these cases separately. A principle which emerges from them considered together is that not only the general nature, but also the precise character of the question upon which expert evidence is required, have to be taken into account when deciding whether the qualifications of a person entitle him to be regarded as a competent expert. So the practical knowledge of a person who is not a lawyer may be sufficient in certain cases to qualify him as a competent expert on a question of foreign law.

Their Lordships observe that there is nothing opposed to the views they have expressed above in the relevant statute law of Nigeria which is to be found in sections (56) and (57) of the Evidence Ordinance of Nigeria and is to the following effect:—

> "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.
>
> (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."

The Ordinance enacts that the evidence of a person "specially skilled" on a point of foreign law is admissible as expert evidence. The knowledge

which entitles a person to be deemed "specially skilled" on some points of foreign law may, in their Lordships' opinion, be gained in appropriate circumstances by a person whose profession is not that of the law.

In the case before them their Lordships have to be satisfied on two points before they can regard Mr. Greenway as competent. Firstly that he conducted a business which made it his interest to take cognisance of what notes were legal tender in French West Africa. Secondly that he did in fact take cognisance of what notes were legal tender in that country.

It would have been prudent for the respondent to have led evidence more clearly directed to establishing both these points. As the recorded evidence is very much compressed their Lordships have had some difficulty in arriving at a conclusion.

It appears from a notification in the Gazette of the 9th November, 1950 that Barclays Bank had been appointed an "authorised dealer in foreign currency" within the meaning of that term in the Exchange Control Ordinance (No. 35 of 1950) of Nigeria. It is also clear from sections 5 and 42 (to which their Lordships do not think it necessary to make detailed reference) of that Ordinance that dealings in foreign currency could normally be conducted only by an "authorised dealer".

It is difficult to imagine that an "authorised dealer" would not keep himself informed as to the notes that were legal tender in French West Africa, an adjoining territory, unless special circumstances existed which rendered it unnecessary for him so to do. No such special circumstances have been proved or even suggested in the evidence in the case.

It was suggested by counsel for the appellant that the Gazette had not been properly produced in the Courts below as there is no note in the record of the occasion when this was done. There is however a reference to the fact that Barclays Bank was an authorised dealer in the judgment of the Magistrates Court, and a reference to the Gazette itself in the judgment of the Court of Appeal. Their Lordships are of the view that the Gazette was properly before the Courts in Africa although no entry has been made in the record of its production.

Counsel for appellant argued with force that although it has been shown that Mr. Greenway was a manager of a branch of Barclays Bank it has not been shown that as part of his duties he kept in such close touch with the currency of French West Africa as to make him competent to give the evidence which he did give. After anxious consideration their Lordships are of the opinion that the argument should not be accepted.

Mr. Greenway is a manager of a branch of Barclays Bank in Nigeria and has been in banking business for thirty-two years, twenty-four years of which have been spent in Nigeria. He has been regarded without challenge by the courts below as a credible witness, and he must also be regarded as a person with a sense of responsibility. Therefore the opinion which he has expressed cannot be the result of mere conjecture. It has been suggested by counsel for the respondent that upon a fair view of the evidence as a whole it must be presumed that Mr. Greenway was speaking from adequate personal experience. This suggestion their Lordships accept.

It has also been contended that the use of the words "to the best of my knowledge" by Mr. Greenway so qualified his evidence as to render it of no probative value. Their Lordships do not agree. The meaning of the words mentioned could be best appreciated by the judge who saw the witness and heard the evidence given and the qualification cannot be said to deprive the witness's evidence of all probative value. No attempt was made by the appellant to contradict what Mr. Greenway said and their Lordships are of the view that his evidence must be held to have established the facts to which he deposed.

For the reasons given their Lordships are of the opinion that it must be held that Mr. Greenway was a person who in the course of his business had to, and did, keep in touch with current law and practice with regard

to notes that were legal tender in French West Africa. They are of the opinion that the notes of which exportation was attempted, must be held to be notes which were legal tender in French West Africa on the 15th June, 1951. They will therefore humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the respondent the costs of this appeal.

(39139) Wt. 8082—847 120 11/54 D.L.

In the Privy Council

SAID AJAMI

v.

THE COMPTROLLER OF CUSTOMS

DELIVERED BY Mr. L. M. D. de SILVA

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