Privy Council Appeal No. 5 of 1965

Comptroller of Customs – – – – – – – *Appellant*

v.

Western Lectric Co. Ltd. – – – – – – – *Respondents*

FROM

THE SUPREME COURT OF FIJI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER 1965

Present at the Hearing:
LORD HODSON
LORD UPJOHN
LORD WILBERFORCE
(*Delivered by* LORD HODSON)

This appeal was heard in mid-July after the appeal of *Joitabhai v. The Comptroller of Customs* and raises the same main questions. The appellant is the Comptroller of Customs appealing against (i) a judgment of the Fiji Court of Appeal dated September 4th 1964 whereby certain questions of law reserved by Hammett Ag. C. J. were answered, and (ii) a judgment dated September 11th 1964 whereby in consequence of the answers given in the aforesaid judgment the respondents' appeal from their conviction by the Magistrates' Court at Lautoka on the 6th January 1964 was allowed and their conviction was quashed.

The charge was substantially to the same effect as the charge in the case previously heard, namely that of making a false declaration in a Customs Import entry form contrary to section 116 of the Customs Ordinance. The charge related to miscellaneous articles imported from New Zealand by the vessel " Indian Reefer " which arrived at Lautoka on August 20th 1963. The articles were entered as having either Australia or the United Kingdom as their country of origin and so liable to a preferential tariff whereas it was alleged that the declaration was false, the articles being either of United States of America or Danish origin.

On examination certain of the items were found to be marked with notices stating that they were made in these countries.

Section 116 reads as follows:—

> " Should any person make any false entry in any form, declaration, entry, bond, return, receipt or in any document whatever required by or produced to any officer of customs under this Ordinance, or should any person counterfeit, falsify or wilfully use when counterfeited or falsified, any document required by or produced to any officer of customs or should any person falsely produce to any such officer of customs under any of the provisions of this Ordinance in respect of any goods or of any vessel any document of any kind or description whatever that does not truly refer to such goods or to such vessel, or should any person make a false declaration to any officer of customs under any of the provisions of this Ordinance, whether such declaration be an oral one or a declaration subscribed by the person making it or a declaration on oath or otherwise, or should any person not truly answer any reasonable question put to such person by any officer of customs under any of the provisions of this Ordinance, or should any person alter or tamper with any document or instrument after the same has been officially issued or

counterfeit the seal, signature or initials of or used by any officer of customs for the identification of any such document or instrument or for the security of any goods or for any other purpose under this Ordinance, such person shall on conviction for every such offence, except where a specific penalty is herein provided, be liable to a fine not exceeding two hundred pounds nor less than fifty pounds and in default of payment to imprisonment not exceeding six nor less than two months."

Their Lordships are of opinion for the reasons given in the prior case that the offence of making a false entry is complete on proof of the inaccuracy of the entry without proof of mens rea.

It should be added that it was clear that the respondents had acted innocently. Leaving out of account the marking on the articles there was no evidence that the entry as to the country of origin was false in the case of any of the articles and for the reasons given in the prior case their Lordships are of opinion that such markings must be excluded from consideration as being no more than hearsay.

Section 152 of the Customs Act so far as material reads: " If any disputes arise . . . concerning the place whence such goods were brought, then and in every such case the proof thereof shall lie on the defendant in such prosecution, and the defendant shall be competent and compellable to give evidence . . ."

Their Lordships are of opinion in agreement with Hammett Ag. C. J. that a dispute as to country of origin is not a dispute concerning the place whence the goods were brought.

There was so far as the two cases were originally presented no material difference between them.

In this case however an additional feature appears. The import entry containing the alleged false entry was presented on the 23rd August 1963 signed by an authorised agent of the respondents. The goods were examined on the 27th August 1963 by a customs officer and the marks were discovered. One article had " Denmark " stamped on the handle, another had a piece of paper pasted on it bearing the words " Made in U.S.A." and the other articles were in packets with inscriptions indicating that their origin was either Denmark or the U.S.A. On the same day the authorised agent of the respondents presented a Post Entry form for additional duty in which the place of entry of the goods which formed the subject of the charge was stated to be Denmark or the U.S.A. as the case might be. The managing director of the respondents said he had no knowledge of the origin of the goods apart from what was stated on the invoices received from New Zealand.

The appellant accordingly seeks to restore the conviction of the respondents because of their admission that the origin of the goods had been wrongly declared.

Their Lordships are of opinion that the conviction ought not to be allowed to rest on the admission alone. If a man admits something of which he knows nothing it is of no real evidential value.

The admission made by the respondents' agent was an admission made upon reading the marks and labels on those goods and was of no more evidential value than those marks and labels themselves. A somewhat similar admission was made in the case of *Bulley v. Bulley* L.R. IX Chancery Appeals 739 where an admission was made based on an inference which a solicitor drew from the state of the title to land. Sir George Mellish in rejecting the admission said it is for the Court to judge the worth of the admission.

Their Lordships do not regard the admission here made as of evidential value so as to support the conviction of the respondents.

They will accordingly humbly advise Her Majesty that this appeal be dismissed.

(92634) Wt. 8052/124 75 10/65 Hw.

In the Privy Council

COMPTROLLER OF CUSTOMS

v.

WESTERN LECTRIC CO. LTD.

DELIVERED BY

LORD HODSON

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