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judgment

In the Privy Council.

No. 16 of 1953.

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

UNIVERSITY OF LONDON
1955
26 MAR 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

SAID AJAMI APPELLANT

AND

THE COMPTROLLER OF CUSTOMS RESPONDENT.

38068

CASE FOR THE APPELLANT

1.—This is an appeal from a judgment and order of the West African Court of Appeal dated the 19th February, 1952, dismissing the Appellant's appeal from a judgment of Bairamian, J. in the Supreme Court of Nigeria dated the 19th November, 1951, which dismissed an appeal from a judgment of the Magistrate (Captain Symes) in the Magistrate's Court of Kano dated the 11th August, 1951, whereby the Magistrate gave judgment for the Respondent, who was the plaintiff in the proceedings, for £60,517 6s. 9d. with 20 guineas costs and ordered that the sum of 9,884,500 French Colonial Francs be forfeited to the Respondent.

RECORD
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10 2.—By a claim dated the 18th July, 1951, the Respondent instituted p. 1

THE PRESENT SUIT

claiming a penalty of £61,778 2s. 6d., and the forfeiture of 9,884,500 French Colonial Franc Notes and averring that the Appellant on the 15th day of June, 1951, at Kano did attempt to export the said French Colonial Franc Notes, export of the said goods from Nigeria being prohibited by Section 22 (1) of the Exchange Control Ordinance, 1950, and had thereby contravened Section 125(1) of the Customs Ordinance and incurred a penalty of treble the value of the said goods, to wit £61,778 2s. 6d. and the forfeiture of the said goods.

RECORD

3.—Section 22 (1) of the Exchange Control Ordinance, which follows precisely the terms of the United Kingdom Exchange Control Act, 1947, save that in each case “Nigeria” is substituted for the “United Kingdom” and “the financial secretary” for “the Treasury,” prohibits (*inter alia*) the exportation from Nigeria, except with the permission of the Financial Secretary, 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”

The material Sections of the Exchange Control Ordinance and the Evidence 10
Ordinance are annexed hereto.

p. 2, l. 16

4.—The first witness called on behalf of the Respondent was one Ross, an Assistant Superintendent of Police at Kano, who deposed that on the 15th June, 1951, he made arrangements to search an aircraft at Kano aerodrome. The Appellant, who was one of twelve passengers on the said aircraft, was searched by this witness and the Collector of Customs. His hand luggage was found to contain 3 American dollars and 6,000 French Colonial Francs. The Appellant agreed to forfeit these. The Appellant was then asked to pick out his baggage and put on the table one suit-case and a leather grip which were searched without result. He stated that this 20
was all the baggage he had. The witness then observed a second suit-case which bore a label with the Appellant’s name. The Collector asked the Appellant if it was his and if he would open it and the Appellant produced a bunch of keys and opened the suit-case which was found to contain 9,884,500 French Colonial Francs. The Appellant was taken to the Police Station and charged with the possession of francs contrary to the Exchange Control Regulations. He stated 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.

p. 3, l. 33

5.—The next witness was one Donald Robson Greenway, who gave 30
evidence as follows :—

“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.”

This witness was not cross-examined and no other witness was called to prove that the said notes were legal tender in French West Africa or in any other territory.

6.—The principal issues to be determined in this appeal are as follows :— RECORD

- (a) Whether the Court was entitled to accept the evidence of the said Greenway to the effect that the said notes were legal tender in French West Africa in the absence of any evidence that the said Greenway was learned in French Colonial law or *peritus virtute officii*.
- (b) Whether on its true construction the Exchange Control Ordinance prohibits the exportation from Nigeria of French Colonial Franc Notes or whether it prohibits merely the exportation of notes which are or have at any time been legal tender in the United Kingdom or any part of the United Kingdom or any other territory within the Sterling Area.

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7.—The judgment of the Magistrate included the following passage :—

“ 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.”

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8.—The Appellant’s grounds of Appeal to the Supreme Court of Nigeria included the following :—

“ 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.”

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9.—In the course of his argument before the Supreme Court counsel for the Appellant stated as follows :—

“ 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.”

10.—Bairamian, J. held that “ notes issued by a bank ” might or might not be notes which are legal tender, and the specifying of the notes

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RECORD
 — of the Banque de l'Afrique Occidentale did not necessarily import that they were legal tender. They might be legal tender in French West Africa, but this had to be proved. He further held that there was no provision in the Exchange Control Ordinance to the effect that the testimony of a manager of a branch of a bank authorised under the Ordinance to deal in foreign currency on what was legal tender should be sufficient proof so as to warrant a departure from the ordinary rules of evidence and that the appeal would have to be allowed unless Mr. Greenway was an "expert" witness within the meaning of Sections 56 and 57 of the Evidence Ordinance. 10

p. 12, l. 22 The learned Judge then referred to pages 614-616 in Vol. 13 of Halsbury's Laws of England, 2nd edition, and in particular to the following passage :—

"A witness is not accepted as competent to prove foreign law unless he possesses special knowledge of the subject in question derived from practical experience. Knowledge acquired by study alone is not a sufficient qualification but it is required that a witness should have had experience as judge or practising advocate in a Court in which the foreign law be proved is administered, or have held some office or position in which he has become familiar with it."

The learned Judge then referred to *Vander Donckt v. Thellusson* (1849) 20 8 C.B. 812 and arrived at the following conclusion :—

p. 13, l. 20 "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 30 qualification, and that Mr. Greenway was competent and admissible as an 'expert' witness."

p. 14, l. 5 The learned Judge further held that nothing could be made out of the words in the said Greenway's evidence "to the best of my knowledge." The judgment also included the following passage :—

p. 18, l. 1 "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 due Code Penal punit des travaux forces
 " 'a perpetunite ceux qui auront contrefait ou falsifie les 40
 " 'billets de banques autorises 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. RECORD

“ (‘ shall ’ added in presence of Counsel.

“ (intld. V.R.B.) ”

10 “ I think this furnishes evidence on the franc note 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.”

11.—The grounds of appeal to the West African Court of Appeal p. 20, l. 23
 included the following :—

“ (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 caes are legal tender in French
 “ territory.”

20 “ (2) The learned Judge misdirected his mind when in p. 21, l. 27
 “ 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 ’.”

12.—The principal judgment in the West African Court of Appeal was
 delivered by Sir John Verity, the Presiding Judge, and included the
 following passages :—

“ It is conceded by the Respondent that the prohibition p. 25, l. 16
 “ extends only to notes which are or have been legal tender and
 “ the point is, therefore, one of substance.”

* * * * *

30 “ 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.

40 “ There can be no doubt that in the course of twenty-four p. 26, l. 33
 “ years banking experience in Nigeria the witness has had

RECORD

“ ‘ 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 ’.”

p. 31
 p. 34, l. 20 13.—Conditional Leave to Appeal to Her Majesty in Council was
 granted on the 15th April, 1952, and final leave on the 18th August, 1952.

14.—The Appellant respectfully submits that this Appeal should be 10
 allowed with costs throughout and that the judgment of the West African
 Court of Appeal should be set aside and judgment entered in his favour
 for the following, amongst other

REASONS

- (1) BECAUSE all the Courts below were wrong in holding that
 on the evidence the witness Greenway should be accepted as
 an expert witness.
- (2) BECAUSE there was no evidence that the witness Greenway
 was an expert within the meaning of Sections 56 and 57 of
 the Evidence Ordinance. 20
- (3) BECAUSE in the absence of expert evidence of French law
 there was no evidence that the notes in question were legal
 tender in any territory whatsoever.
- (4) BECAUSE there was no evidence to support the finding of
 the Magistrate and the West African Court of Appeal that
 Barclay's Bank was “ an authorised dealer in foreign
 currency.”
- (5) BECAUSE there was no sufficient evidence to support the
 Magistrate's finding that the said notes were genuine notes.
- (6) BECAUSE the Magistrate was wrong in holding that because 30
 the notes were genuine they were “ legal currency ” in French
 West Africa and that it was unnecessary for an expert opinion
 on foreign law to be given.
- (7) BECAUSE Bairamian, J. was wrong in holding that a person
 who had had no experience as a Judge or practising advocate
 of the foreign law to be proved and who was not *peritus*
virtute officii and was not shown to have acquired his
 knowledge in the country concerned could nevertheless be
 accepted as competent to prove foreign law.

- (8) BECAUSE Bairamian, J. was wrong in holding that the words on the back of the notes in question furnished any evidence that such notes were legal tender in French West Africa.
- (9) BECAUSE the West African Court of Appeal were wrong in holding that in the course of twenty-four years' banking experience in Nigeria the witness Greenway had had "peculiar means" of knowledge of French Colonial law.
- 10 (10) BECAUSE there was no evidence to support the finding of the West African Court of Appeal that the witness Greenway was the manager of a branch of a duly authorised dealer in foreign currency and was called upon to engage in "the performance of important and responsible public duties" in relation to such currency and that "in connection with them and in order to discharge them properly he is bound to make himself acquainted with this subject."
- (11) BECAUSE the West African Court of Appeal were in holding that the evidence of the witness Greenway sufficient to establish that the notes were legal tender.
- 20 (12) BECAUSE on its true construction the Exchange Control Ordinance does not prohibit the exportation from Nigeria of French Colonial Franc Notes.

DINGLE FOOT.

ANNEXURE

EXCHANGE CONTROL ORDINANCE

An Ordinance to confer powers, and impose duties and restrictions, in relation to gold, currency, payments, securities, debts and the import, export, transfer and settlement of property, and for purposes connected with the matters aforesaid.

1.—(1) Except with the permission of the Financial Secretary no person other than an authorised dealer, shall, in Nigeria, buy or borrow any gold or foreign currency from or sell or lend any gold or foreign currency to, any person other than an authorised dealer. 10

Except with the permission of the Financial Secretary, no person in the scheduled territories, other than an authorised dealer, in Nigeria, do any act which involves, is in association with or is preparatory to buying or borrowing any gold or foreign currency from, or selling or lending any gold or foreign currency to, any person outside Nigeria.

(3) Where a person buys or borrows any gold or foreign currency in Nigeria, or being a person resident in the scheduled territories does any act which involves, is in association with or is preparatory to the buying or borrowing of gold or foreign currency outside Nigeria he shall comply with such conditions as to the use to which it may be put or the period for which it may be retained as may from time to time be notified to him by the Financial Secretary. 20

(4) In this Ordinance—

(a) the expression “ foreign currency ” does not include any currency or notes issued by the West African Currency Board or under the law of any part of the scheduled territories but, save as aforesaid, includes any currency other than sterling and any notes of a class which are or have at any time been legal tender in any territory outside Nigeria and any reference to foreign currency, except so far as the context otherwise requires, includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank ; and 30

(b) the expression “ the scheduled territories ” means the territories specified in the First Schedule to this Ordinance, so, however, that the Financial Secretary may at any time by or amend the said Schedule, either by the addition or exclusion of territories or otherwise, and the said expression shall be construed accordingly.

21.—(1) The importation into Nigeria of—

(a) any notes of a class which are or have at any time been legal tender in the United Kingdom or any part of the United Kingdom ; and

(b) any such other notes 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 ; and

10 (c) any certificate of title to any security, including any such certificate which has been cancelled, and any document certifying the destruction, loss or cancellation of any certificate of title to a security,

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

(2) In this section the expression “ note ” includes part of a note and the expression “ security ” includes a secondary security.

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

(a) any notes of a class which are or have at any time been legal tender in the United Kingdom or any part of the United Kingdom or in any other territory ; and

20 (b) any postal orders ; and

(c) any gold ; and

(d) any of the following documents (including any such document which has been cancelled), that is to say—

(i) any certificate of title to a security and any coupon ; and

(ii) any policy of assurance ; and

(iii) any bills of exchange or promissory note expressed in terms of a currency other than sterling ; and

30 (iv) any document to which section four of this Ordinance applies not issued by an authorised dealer or in pursuance of a permission granted by the Financial Secretary ;

and any document certifying the destruction, loss or cancellation of any of the documents aforesaid ; and

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

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

(2) In this section, the expression "note" includes part of a note, the expression "security" includes a secondary security and the expression "coupon" shall be construed in accordance with the meaning of "security."

23.—(1) The exportation of goods of any class or description from Nigeria to a destination in any such territory as may be prescribed is hereby prohibited except with the permission of the Financial Secretary, unless the Comptroller of Customs is satisfied—

(a) that payment for the goods has been made to a person 10 resident in Nigeria in such manner as may be prescribed in relation to goods of that class or description exported to a destination in that territory, or is to be so made not later than six months after the date of exportation ; and

(b) that the amount of the payment that has been made or is to be made is such as to represent a return for the goods which is in all the circumstances satisfactory in the interest of Nigeria :

Provided that the Financial Secretary may direct that, in cases to which the direction applies, paragraph (a) of this sub-section shall have effect as if for the reference to six months 20 there were substituted a reference to such longer or shorter period as may be specified in the direction, or as if the words " or is to " be so made not later than six months after the date of exportation " were omitted.

(2) For the purpose of satisfying himself in the case of any goods as to the matters specified in sub-section (1) of this section, the Comptroller of Customs may require the person making entry of the goods for export to deliver to the collector or other proper officer together with the entry such declarations signed by such persons as he may require, and where any such declaration has been so required the goods shall not be 30 exported until it has been delivered as aforesaid.

(3) Where the Comptroller of Customs is not satisfied in the case of any goods as to the matters specified in paragraph (b) of the said sub-section (1), he shall give his reasons to the person making entry of the goods for export and shall take into consideration any representations made by him.

(4) Any reference in this section to the destination of any goods includes a reference to the ultimate destination thereof.

FIRST SCHEDULE.

THE SCHEDULED TERRITORIES.

- 1.—The fully self-governing countries of the British Commonwealth except Canada.
- 2.—Any colony under the dominion of His Majesty.
- 3.—Any territory administered by the government of any part of His Majesty's dominions under the trusteeship of the United Nations.
- 4.—Any British protectorate or British protected state.
- 5.—The Irish Republic.
- 10 6.—Iraq.
- 7.—Iceland.
- 8.—Burma.
- 9.—Jordan.

EVIDENCE ORDINANCE.

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
20 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
30 case of trial with a jury, be decided by the judge alone.

In the Privy Council.

No. 16 of 1953.

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

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BETWEEN
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CASE FOR THE APPELLANT

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