~~P.C.~~
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Judgment
25
1965

IN THE PRIVY COUNCIL

No.5 of 1965

ON APPEAL
FROM THE FIJI COURT OF APPEAL
AND THE SUPREME COURT OF FIJI

B E T W E E N

THE COMPTROLLER OF CUSTOMS — Appellant

- and -

WESTERN LECTRIC COMPANY LIMITED — Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No.5 of 1965

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B E T W E E N

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RECORD OF PROCEEDINGS
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IN THE PRIVY COUNCIL No.5 of 1965

ON APPEAL

FROM THE FIJI COURT OF APPEAL
AND THE SUPREME COURT OF FIJI

B E T W E E N

THE COMPTROLLER OF CUSTOMS Appellant

- and -

WESTERN LECTRIC COMPANY LIMITED Respondent

RECORD OF PROCEEDINGS

NO. 1

CHARGE

In the Magistrate's Court, Lautoka

No.1

Charge
30th September 1963

CRIMINAL PROCEDURE CODE C.P.C. Form No.3

FORM 3 (Section 79)

FIJI)
TO WIT) In the Magistrate's Court LAUTOKA

Case No.780/63.

C H A R G E

(COMPLAINT BY PUBLIC OFFICER)

Statement of Offence (a)

Making a false declaration in an Customs Import Entry Form A produced to an officer of Customs contrary to Section 116 of the Customs Ordinance (Cap.166).

Particulars of Offence (b)

Western Lectric Company Limited carrying on business at Rovouvou Street, Lautoka, in the Colony of Fiji did on the 22nd day of August, 1963, at Lautoka aforesaid make a false declaration

In the Magistrate's Court, Lautoka

No.1

Charge
30th September 1963
continued

in the Customs Import Entry Form A relative to one drum, one case and one cylinder of refrigerating equipment imported by the vessel "Indian Reefer" which arrived at Lautoka on 20th day of August, 1963, and produced the said form to an Officer of Customs, in and for the Colony of Fiji, on which was endorsed the said declaration purporting to confirm that the country of origin for 6 only ¼" 4 Cubic inch Driers was Australia, 4 only dry-eye indicators and 5 only dry-eye cartridges, and 6 expansion valves and 1 sealed motor compressor was United Kingdom liable to duty under the preferential tariff, such declaration being in fact false, contrary to section 116 of the Customs Ordinance (Cap.166), the said 6 only ¼" 4 Cubic inch driers and the said 4 only dry-eye indicators and 5 only dry-eye cartridges being of United States of America Origin, and the said 6 expansion valves and one sealed motor compressor being of Danish origin liable to duty under the general tariff.

(Sgd) D. Wooley
Senior Collector of Customs,
Lautoka.

(Int'd) A.J.F.
Magistrate
Date 30.9.63.

No.2

No.2

PROCEEDINGS

Proceedings
6th December
1963

Koya for Accused.

Charge amended by consent by adding - "For and on behalf of Comptroller of Customs"

Plea - Not Guilty by Counsel.

Hearing 6th December, 1963.

Adjourned - Koya in Legco to 23rd December. 1963.

In the Magistrate's Court, Lautoka

Prosecution Evidence

No.3

Umesh Chandra Devan
23rd December 1963
Examination

PROSECUTION EVIDENCE

NO.3

EVIDENCE OF UMESH CHANDRA DEVAN

23rd December, 1963

Wooley, Senior Collector for Customs.

S. Koya for Defendants.

UMESH CHANDRA DEVAN Sworn Assistant Customs Examiner, Lautoka.

I am in gate office. Entries for goods being imported into the Colony come into my dip.

I check the name of ship and date of arrival. The rotation number. Also the names of owner and agent and authority.

Then I date stamp the entry and pass it on to comparing officer.

Entry I produce came on 22nd August, 1963.

I passed it to comparing officer.

After rejection it was lodged again on 23rd August, 1963.

Apart from warrant number, date stamp and customs officer's signature all that is written on entry was there when I received it.

It was supported by invoices which are now attached to it.

Made Ex. A.

It is signed by Ratilal V. Patel. Know his signature.

Authority shown to me is Section 113 authority given by Western Electric Ltd. for Ratilal V. Patel to act as their agent.

In the Magistrate's Court, Lautoka

Prosecution Evidence

No.3

Umesh Chandra Devan
23rd December 1963
Examination continued

Made Ex. B.

Later on 28th August, 1963 I found another customs entry relating to same goods as Ex. A.

£6.18.4. more duty because goods in first entry were entered as United Kingdom and Australia which attract preferential duty.

Second entry shows Denmark, and U.S.A. which have foreign rates of duty.

CROSS-EXAMINED

Notes and comments on back of Form A. were written by examining officer and comparing officer.

I do not know if they were written in presence of Defendants or their agents.

Cross-examination

Not my duty to assess duty.

I found Form A in my inward dip.

I do not see the goods before getting Form A. I have still not seen goods.

I do not know if Ratilal Patel or Defendants had opportunity to examine the goods before making Form A.

To Court - I do not know the handwriting of A. Hussain of Western Lectric Co. Ltd.

No.4

NO. 4

EVIDENCE OF NANJI VELJI

Nanji Velji
23rd December 1963
Examination

NANJI VELJI, Sworn Customs Officer, Lautoka.

I am examining officer and have to decide whether to release cargo after examination.

Ex. A. I have seen before. I have examined the goods shown on this invoice in presence of Mr. Hussain of Western Lectric and his agent Ratilal V. Patel.

Container in Court has marks corresponding with marks on import entry Ex.A.

Some of articles marked to show they were made in Denmark and U.S.A.

Entries in Ex. A. showed that all had been manufactured in United Kingdom.

As a result of increased tariff on foreign goods £10. 3. 4. was short declared.

CROSS-EXAMINED

I did not personally assess duty on Form A. Import Agent would assess this.

Comparing officer checks his entries. I do not understand what you mean by "assess" when you ask if any customs officer assessed duty.

Ad valorem duty assessment.

I look at the invoice.

I look at invoice again now. It conforms to forms prescribed under Customs Ordinance.

This conforms to Section 140.

I was satisfied that it was a genuine invoice under Section 140.

Ex. A. was accepted by Umesh Chandra and it was passed by Mahendra Singh, as comparing officer.

It appears that he accepted payment of the duty as assessed.

Goods were not released.

I presume goods not opened before entry passed.

I would not think that Defendant or his agent would have had opportunity to look at the goods before making his entry.

We have given permission to importers to open

In the Magistrate's Court, Lautoka

Prosecution Evidence

No.4

Nanji Velji
23rd December 1963
Cross-examination continued

goods before making entries. At direction of Collector. He has allowed it to my knowledge.

This happens almost every second day. I did one this morning for B.P.

For these goods I did examining not the comparing.

I check the goods with the entry.

Comparer checks the entry. Examiner checks the goods.

Entry passed on 26th August, 1963 and I did the examining on 19th September, 1963. Duty paid on 26th August, 1963. I cannot give the reason for delay. I did not call for post entry. Ex. C.

I cannot say who wrote "Made in Denmark" on boxes. Have no personal knowledge where they were manufactured. I have seen articles similar to those in Ex. D. come from New Zealand. This both in Suva and Lautoka.

I cannot say if dryers are manufactured in New Zealand.

Ex. C. was made out on 27th August, 1963. Description on post entry Ex C conforms with origin shown on packets of goods in Ex. D.

Re-examination

RE-EXAMINED

Examination allowed before entry when no documents available. This under Section 65.

Court: If importer does not know country of origin he may apply to collector to open the goods before making his entry.

I have no reason to doubt the printed country of origin. Usual to find such information on all manufactured articles.

Articles originally examined on 27th August 1963 by a junior officer, Suva. They were held in custody as a result and I examined them again later on 19th September, 1963 in presence of Mr. Hussain and Ratilal V. Patel.

Q. Were any of articles released?

Koya: Object. Not arising XX.

Court: Yes:. You asked if marks on boxes were genuine. Reasonable to ask if any goods released.

All items conforming with original invoice were released. Articles showing foreign manufacture on boxes were held.

No.4

Nanji Velji
23rd December 1963
Re-examination continued

NO.5

No.5

EVIDENCE OF RATILAL VILLABHAI PATEL

Ratilal Villabhai Patel
23rd December 1963
Examination

RATILAL VILLABHAI PATEL, Sworn Custom House Agent Lautoka.

I hold a Custom House Agent. I do not employ clerks.

Ex. A. I recognise. I made it out and it is signed by me. Ex. B. is my authority. I recognise handwriting of Ali Hussain who is now sitting in Court.

CROSS-EXAMINED

Cross-examination

I was present at an examination of these goods. They are in Court Ex. D. Ex. C was made out by me and was signed by me.

It is for short payment of duty £6.18.4. Apparently these goods were not according to invoice and customs collector asked for a post entry.

I prepared entry on instructions of collector Vishnu Deo. He said goods had not come out according to the invoice. Extra duty due to foreign country of origin. This on 26th or 27th August. In collector's office. I think Seru was present. It was Seru who told me about it.

I have been agent 10-12 years. Post entries made when customs tell us that extra duty required. A normal thing. I made out Ex. A

In the Magistrate's Court, Lautoka

Prosecution Evidence

No.5

Ratilal Villabhai Patel
23rd December 1963
Cross-examination continued

on the basis of invoice given to me by Mr. Ali Hussain of Western Electric.
To Court: He is a director of Western Electric Co.

I did not see the order he placed with the New Zealand firm. Customs did not ask to see the order. Ex.A and invoice passed on 26th August 1963 and I paid the duty. After entry passed it goes to examining officer. If it does not turn out to be according to invoice they can demand a post entry or one in Court.

I did not examine the goods before making Form A. Seru, a custom's examiner, showed me the goods before I made the Post Entry.

To Court: They asked for post entry. I made one because I wanted to pay duty to clear the goods. I have not paid additional duty. I went to collector to ask what was going on but he said that post entry was no good and case was going to Court.

Post entry is made in accordance with the marks on container. Mr. Hussain was not present when Seru first showed me the goods but I explained the consequences. Ali Hussein was present at subsequent examination before Mr. Balji. Mr. Balji did not mention post entry but we were told that goods not subject to post entry were free. We were asked to leave the post entry goods behind. We were told that other goods would go to Court.

Goods in Ex. D are subject to ad valorem duty. Mahendra Singh as an examining officer accepted Ex. A. and invoice without question. Importers would not know country of origin except according to the invoice. I was surprised when I found that packages have foreign books.

Customs have not asked for the Defendant's order. Goods were detained but I was not given the detention notice.

Re-examination

RE-EXAMINED

When goods examined with Seru Seru took entry to collector's office to see collector. He came back and said a post entry was required.

I was not satisfied so I went to see collector and Mr. Deo told me that a post entry was required. I went and prepared one which I lodged on 28th August, 1963.

Later I was told that Post Entry was no good and matter was going to Court.

I brought goods out of shed myself for the first examination. No I think Mr. Hussein saw them first.

10 Prosecution Case.

NO. 6

PROCEEDINGS

Koya: No case. No admissable evidence where they came from.

Court: Lawfully imported Section 152?

Koya: (i) Nothing illegal about them.

(ii) Court can not look at labels as evidence of origin without authorship of labels being present.

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20 NO.7

RULING

Ruling: This prosecution is for a penalty and Section 152 applies. Prima facie evidence of origin shown on articles themselves. This admissible and Defendants have a case to answer.

Koya: Will call Managing Director.

In the Magistrate's Court, Lautoka

Defence Evidence

No.8

Mohammed Ali Hussain 23rd December 1963 Examination

DEFENCE EVIDENCE

NO.8

EVIDENCE OF MOHAMMED ALI HUSSAIN

MOHAMMED ALI HUSSAIN, Sworn, Manager, Western Lectric Co. Ltd. Lautoka.

Managing Director Western Lectric Co.Ltd. Of my personal knowledge I have no idea of correct country of origin of goods which are subject of this charge.

I imported these goods from New Zealand. Firm called Refrigeration Engineering Co.Ltd. I placed my order in July this year direct. I have dealt with this firm for five or six years. I ordered by letter.

I gave a copy to custom's officer Seru when goods examined. A carbon copy. Mr.Moore was present. It was when goods were examined. I did not specify particular brand of goods. I specified type.

I never saw the goods before giving invoice to my agent Ratilal Patel. We examined goods when I went to take delivery. I saw goods unpacked. I was also present when subsequent examination made.

Seru told me after examination that a post entry would be required. I later wrote to the firm of exporters again. I kept a copy. Put in as Ex. E. I got a reply.

Court: Cannot accept this letter in evidence.

I had no information except what was contained in the invoice of where these goods came from.

Cross-examination

CROSS-EXAMINED

I have paid for these goods through the Bank of New Zealand.

The compressor in Ex. D has "Denmark" stamped on the handle. The Ansell dryer has "Made in U.S.A." on paper pasted to it. Exactly similar compressor and dryer made in U.K. and Australia.

We have had previous shipments from this firm with correctly described origin on the articles.

RE-EXAMINED

I do not personally know where items in Ex. D are correctly described on boxes or invoice. To my knowledge goods of foreign manufactures are made in Australia under licence.

NO. 9

PROCEEDINGS

Koya: Application for adjournment to call Mahendra Singh.

Court: Why?

Koya: Evidence that ship came from New Zealand. I thought Prosecution would call him.

Court: Sufficient if Court recalls one of the other officers on your behalf?

Koya: Thank you.

Nanji Velji recalled by Court.

NO.10

EVIDENCE OF NANJI VELJI (Recalled)

According to all the Shipping documents the Indian Reefer came to Lautoka from New Zealand. From Auckland.

In the Magistrate's Court, Lautoka

NO.11

PROCEEDINGS

No.11

Proceedings 23rd December 1963

Wooley: Section 152 puts onus on Defendants not possible for customs to know where goods came from.

Attorney-General v. Gyani Dass 4 F.L.R. p.202.

Koya: No absolute liability.

Not section 152. Sections 119 and 120 provides for unlawful entry of goods. Nothing in 152 applicable to facts required to be present here. Mens rea cannot be ousted.

Lim Chin Aik v. R. 1963 1 A.E.R. p.228

In this case not within capacity of Defendant to know where goods made.

C.A.V. 6th January, 1964.

No.12

Judgment 6th January 1964

NO.12

JUDGMENT

Defendant company are charged with making a false declaration in a custom import entry form contrary to section 116 of the Customs Ordinance Cap.166.

The following facts given in evidence have not been challenged.

The Defendant Company in accordance with section 113 of the Customs Ordinance authorised Ratilal V. Patel, a custom's house agent, to sign for them any declaration required under the Customs Ordinance and consented in writing that any such declaration should be binding upon them.

The Defendants ordered from a firm in New Zealand a quantity of refrigerator spare parts. They did not order them by special make but by general description.

These parts arrived at Lautoka on the vessel

Indian Reefer from New Zealand and, on Defendants behalf, Ratilal V. Patel made out and signed an Import Entry Form A which was delivered to Customs on 26th August, 1963.

This Form A showed all the equipment to have as its country of origin one of various countries whose products attracted duty at preferential rates.

These goods were examined by customs after the declaration was made. On examination certain of the items were found to be marked or their containers were found to be marked with notices stating that they were made in U.S.A. and Denmark.

Since U.S.A. and Denmark are not countries whose products attract duty at preferential rates Ratilal V. Patel put in a Post Entry for these articles showing an increased amount of duty payable amounting to £6.18.4.

Defendants claim and prosecution deny that this post entry was made at the request of Customs. Since nothing turns on this in my judgment I do not find it necessary to make a finding of fact on this point. The Post Entry is no evidence of origin.

During the course of the hearing the Court ruled that by virtue of Section 152 of the Customs Ordinance the onus of proving that these goods had been lawfully imported rested upon the Defendants.

The Defendants managing director gave evidence that he had no idea of the country origin of the articles in question. He also gave evidence that some foreign firms had arrangements by which their products were made in Australia and New Zealand under licence.

The Prosecution were not able to suggest that the Defendants made the import entries with any guilty knowledge.

On these facts the decision as to whether Defendants should be acquitted or convicted depends on these points.

(i) Does Section 152 apply to thise case and

In the Magistrate's Court, Lautoka

No.12

Judgment 6th January 1964 continued

cast upon Defendants the onus of proving the entries correct?

(ii) Are the foreign markings on the goods prima facie evidence of their origin?

(iii) Is Mens Rea a necessary constituent of this offence.

The prosecution contend that Section 152 of Customs Ordinance applies to this case.

In common with many other sections of the Laws of Fiji this has been copied from similar legislation in the United Kingdom and decided cases on the English Act are helpful in construing the Fiji Ordinance.

In particular in R. v. Fitzpatrick 1948 2 Q.B. p.203 Goddard L.J. in his judgment p.210 that the section applies to two distinct classes of prosecution: (1) in respect of any goods seized for non-payment of duty or any other cause of forfeiture and (2) for the recovery of any penalty under the Customs Acts.

The only difficulty here is to construe what is meant by "any penalty". The English Act, Customs Consolidation Act, 1876, does provide for specific penalties. For instance Section 168, which corresponds to our Section 166, provides for a specific penalty. "Every person so offending shall for every such offence forfeit the penalty of one hundred pounds."

The need for penalties rather than fines in the English Act depends upon the procedure under which revenue cases are dealt with. Such considerations do not apply in Fiji but the wording has, nevertheless, been copied in toto.

The Court can find nothing of specific penalties in our ordinance. Our Section 116 provides "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 not less than fifty pounds."

Unless this fine be a penalty there appears

to be no sense in the word "penalty" in Section 152 at all. Where there is a minimum fine this, one may consider, is indeed a penalty in the ordinary sense of that term.

Having found, as I do, that this prosecution is in respect of penalties under this Ordinance certain provisions must follow.

These provisions are: "If ... any dispute arises whether the duties of customs have been paid in respect of such goods or whether the same have been lawfully imported into the Colony or lawfully unshipped, or concerning the place whence such goods were brought there, and in every case the proof thereof shall lie on the defendants in such prosecution."

On any matter outside these, the ordinary rule as to onus of proof applies. It is for prosecution to prove the facts showing the guilt of the defendant. Any provision negativing the ordinary rule must be strictly construed.

The nearest matter giving specific reference to what has to be proved in this prosecution is "concerning the place whence such goods were brought." No doubt this ordinance was passed before preferential tariffs were in existence. Whatever may have been the need to prove the place whence such goods were brought it cannot be extended to mean what was their country of origin without amendment to the ordinance.

The only matter which can cover the facts of this case in the general are: "whether the same have been lawfully imported into the Colony".

Mr. Koya when first arguing the application of this section when submitting that defendants had no case to answer submitted that this only meant the import of unlawful goods. That is goods that were banned from being imported at all or could only be imported under licence.

The Court suggested to Mr. Koya that such unlawful import was regulated by other ordinance such as the Penal Code or Poisons Ordinance and were not subject to proceedings under the

In the Magistrate's Court, Lautoka

No.12

Judgment 6th January 1964 continued

Customs Ordinance.

Mr. Koya has, in his final address, pointed out that Sections 119 and 120 of the Customs Ordinance do prohibit the import of certain classes of goods.

Section 120 makes provision for peremptory forfeiture without any proceedings but Section 119 does provide for penalties when warlike stores are imported or unshipped.

This certainty strengthens Mr. Koya's argument and the Court has considered the section again in the light of it.

If "unlawfully imported" can have a meaning in its own right rather than a general meaning one would expect to find it as a separate class of subject matter to which the section applies. That is precisely how the section is worded. To give it a wider meaning would make other subject matter - such as whether duty not paid superfluous as such goods would also be unlawfully imported. On reflection the only logical way of looking at the words "unlawfully imported" is to accept the restricted meaning contended for by Mr. Koya.

In this interpretation I find I am supported by such cases on the English section that I can find which, without deciding the point, all seem to refer to goods that should have been licensed before import or brought to a particular port for unloading.

In my opinion no onus of proof is cast upon the Defendant in this case by Section 152.

As to the second point we are left with this. Defendants agent entered certain goods as of United Kingdom, Australian and New Zealand origin. On opening the goods they were found to carry labels indicating manufacture in other, foreign, countries. I think these labels are prima facie evidence of such foreign manufacture and there is no evidence to contradict it.

There are certain matters which are so particularly within the knowledge of a Defendant that once the prosecution raise a prima facie

case by admissable evidence then in the ordinary course of events unless the Defendant can cast some doubt upon that prima facie evidence the case against that Defendant is proved.

Mr. Koya has submitted that the marks upon these articles and their containers are not admissible to show their country of origin. In business it is usual and customary to state the place where goods are made upon manufactured items. I agree that an agent's invoice or even a separate covering letter from the manufacturer himself are probably not admissable evidence of the truth of the facts set out in them without proving their authorship. However, customary marks on the goods and their containers seem to me to be on a different footing. In my view these marks are admissable prima facie evidence of the country of origin.

The Defendants have given no evidence which casts any doubt upon the marks that Court can see on the articles in Ex. D taken from Defendants consignment and indicating that they are of foreign manufacture.

That leaves the last point; whether mens rea is necessary before a conviction can be entered of this offence.

Attorney-General v. Gyani Dass 4 F.L.R. p.202 is authority that Section 62 of the old Customs Ordinance (which is now section 63 of the present Customs Ordinance) is subject to strict liability and no mens rea is needed to be proved.

I can find no direct authority concerning Section 116.

This Court feels that a "false entry" (subject to Section 116) as against a "Wrong entry" (subject to Section 63) implies a degree of knowledge that the latter wording does not imply.

However pursuasive authority outside this Colony does not support this construction.

The words "causing or permitting an invoice to be false" were considered by the English King's Bench in Katen v. West Sussex County Council 20

In the Magistrate's Court, Lautoka

No.12

Judgment 6th January 1964 continued

Cox p.402. Wills J. at p.413 said :

"Now inasmuch as the thing which is described by the article as being false is an invoice, I cannot help thinking that "false" means a thing which tells an untruth, and does not mean anything more than that he is not to permit an invoice with any of these articles sold by him to by untrue in any particular to the prejudice of the purchaser."

The three judges in that case did not agree whether the section they were dealing with required an element of Mens Rea.

An Australian case Dawson v. Jack 1902 28 V.L.R. 634 is not available to me in a full report. However the condensed report in the E. & E.D. vol. 14 p.40 shows it was in relation to a false customs entry in which the Defendant entered wrong particulars without knowing that what he entered was not correct. The Magistrate hearing the case dismissed it but on appeal it was held on that particular section that a false intent was not necessary.

I have also considered the many remarks of a general nature delivered during the Privy Council Decision of Lim Chin Ark v. R. 1963 1 A.E.R. p.223, but I do not find these particulars opposite to the special problem before me now.

With some hesitation and not without some regret it seems to me that in law a guilty knowledge is not an element that has to be proved under this section.

In my judgment then it comes to this.

The burden of proving that these goods were not as declared rests with the prosecution.

There is no evidence of mens rea but this is not necessary.

The prosecution have prima facie evidence of the entry being wrong and defendant has not been able to produce any evidence that might raise a doubt that this prima facie evidence is not correct.

In the Magistrate's Court, Lautoka

No.12

Judgment 6th January 1964 continued

In the circumstances Defendant company is convicted of the offence charged.

(Sgd) A.J. Jeddere-Fisher.

No convictions previously.

Court: Fine £50 or distress.

Koya: Notice intention of appeal.

14 days to pay fine.

(Sgd) A.J.Jeddere-Fisher.

In the Supreme Court of Fiji

No.13

Judgment 19th June 1964

NO.13

JUDGMENT

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No.13 of 1964

BETWEEN:

WESTERN LECTRIC CO. LTD. Appellant

- and -

COMPTROLLER OF CUSTOMS Respondent

JUDGMENT

This is an appeal from the decision of the Senior Magistrate sitting at Lautoka whereby the Appellant Company was convicted of an offence contrary to Section 116 of the Customs Ordinance and fined £50.

The Appellant Company was charged with the

In the Supreme Court of Fiji

No.13

Judgment 19th June 1964 continued

following offence:

" Statement of Offence

Making a false declaration in a Customs Import Entry Form A produced to an officer of Customs contrary to Section 116 of the Customs Ordinance (Cap. 166).

Particulars of Offence

Western Lectric Company Limited carrying on business at Rovouvou Street, Lautoka, in the Colony of Fiji did on the 22nd day of August, 1963, at Lautoka aforesaid make a false declaration in the Customs Import Entry Form A relative to one drum, one case and one cylinder of refrigerating equipment imported by the vessel 'Indian Reefer' which arrived at Lautoka on 20th day of August, 1963, and produced the said form to an officer of Customs, in and for the Colony of Fiji, on which was endorsed the said declaration purporting to confirm that the country of origin for 6 only ¼" 4 Cubic Inch Driers was Australia, 4 only dry-eye indicators and 5 only dry-eye cartridges, and 6 expansion valves and 1 sealed motor compressor was United Kingdom, liable to duty under the preferential tariff, such declaration being in fact false, contrary to section 116 of the Customs Ordinance (Cap. 166), the said 6 only ¼" 4 Cubic Inch Driers and the said 4 only dry-eye indicators and 5 only dry-eye cartridges being of United States of America origin, and the said 6 expansion valves and one sealed motor compressor being of Danish origin liable to duty under the general tariff. "

The appeal is against both conviction and sentence on the following grounds:

"(a) THAT the learned trial Magistrate erred in law in holding that the label marks on the packages and on the goods in question purporting to show the country of their origin were admissible in evidence.

(b) THAT even if the said marks were admissible evidence the learned trial Magistrate erred in holding that there was no evidence to contradict it and in not directing his mind to the provisions of Sections 64 and 140 of the Customs Ordinance, Cap.166, and failed to take into account that the true or correct country of origin of the said goods was contained in the genuine invoice submitted by the exporters and tendered in evidence.

(c) THAT the learned trial Magistrate misdirected himself in law in holding that mens rea was not an essential element to the offence envisaged by Section 116 of the Customs Ordinance.

(d) THAT the sentence is harsh and excessive."

The Appellant Company carries on business at Lautoka and in accordance with Section 113 of the Customs Ordinance authorised one Ratilal V. Patel, a Customs Agent, to clear their goods through Customs on arrival in Fiji. In this authority the Appellant authorised him to sign for them any declaration required under the Customs Ordinance and consented in writing that any such declaration should be binding on the Company.

In July, 1963, the Appellant placed an order on the Refrigeration Engineering Co.Ltd. of Auckland, New Zealand, for a number of items of goods in the normal course of business. The Appellant had been dealing with this firm for a number of years and these goods were ordered by type and not by any particular brand of manufacture.

Three invoices for these goods were received by the Appellant from the Refrigeration Engineering Co. Ltd. setting out particulars of the goods despatched.

The first invoice was dated 22nd July, 1963, and in respect of some of the goods totalling £69.6.9. in value. It gave the country of origin of such goods as "U.K.", "Australia" and

In the Supreme Court of Fiji

No.13

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"N.Z.", respectively.

The item in the charge reading: "6 only ¼" cubic inch Driers", appears in this invoice which gives their country of origin as "Australia".

The second invoice, also dated 22nd July, 1963, and in respect of other items of goods totalling £98.9.3. in value, gave the country of origin of such goods as "U.K." and "Canada", respectively.

The items in the charge reading:

"4 only dry-eye indicators
5 only dry-eye cartridges
6 expansion valves
1 sealed motor compressor"

appear in this invoice which gives their country of origin as "U.K".

The third invoice was dated 7th August, 1963, and is in respect of another item valued at £16.5.0. the country of origin of which was given as "U.K."

I observe that these invoices were made out in New Zealand and the value of the goods was presumably given in them in New Zealand currency. This would account for the apparently different values given in the Customs Entry Forms which are, of course, in Fijian currency.

On the reverse side of each of these three invoices is a combined Certificate of Value and of Origin in the form prescribed by the Schedule of the Customs Duty Ordinance (Cap.167). This is a printed form in which, in each case, the blank spaces have been completed by the Warehouse Manager of the Refrigeration Engineering Co. Ltd. of Auckland, New Zealand. The material part of the Certificate on the reverse of the first invoice reads as follows:

"COMBINED CERTIFICATE OF VALUE AND OF ORIGIN TO BE WRITTEN, TYPED, OR PRINTED ON INVOICES OF GOODS.

I K.M.Horrocks, Warehouse Manager, of

Refrig. Eng. Co. of Auckland, N.Z., manufacturer/supplier of the goods enumerated in this invoice amounting to £68.16.9. hereby declare that I (have the authority to make and sign this certificate on behalf of the aforesaid manufacturer/supplier and that I) have means of knowing and do hereby certify as follows:-

1. That this invoice is in all respects correct and contains a true and full statement of the price actually paid or to be paid for the said goods and the actual quantity thereof.

2. .....

ORIGIN

3(a) That every article mentioned in the said invoice has been wholly produced or manufactured in U.K.
N.Z.
Australia.

3(b) .....

4. .....

5. .....

DATED at Auckland this 24th day of July 1963.

Witness: (Sgd) R. ORGAN.

Signature: (Sgd) K.M.HORROCKS."

The Certificates on the reverse of each of the other two invoices are in similar terms adapted to the goods in these invoices respectively.

On 20th August, 1963, the goods set out in these invoices arrived in Fiji at Lautoka on the vessel "Indian Reefer" which came from Auckland, New Zealand. The Appellant Company handed these invoices to their Customs Agent Ratilal V. Patel with instructions to clear the goods through customs.

On 22nd August, 1963, Mr.R.V. Patel made out,

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in his own hand, the Customs Import Entry Form 'A' in which he listed, in a condensed and abbreviated form, all the items of goods shown on these three invoices. He gave me the country of origin of such goods, the country of origin given in the invoices and declared by the suppliers to be the country of origin n the Certificate on the reverse side of each invoice. He did not examine the goods before making this declaration but relied on the information given in the invoices.

At the foot of this Customs Entry Form 'A', Mr. R.V. Patel completed and signed a declaration in the following terms:

"I declare -

that I am (+ the agent duly authorised by Western Lectric Co.Ltd.) the owner of the goods;

that I enter the goods as of the value and of the description and quantities stated in this entry, and for Home consumption; and

that the particulars as stated in this entry are true and correct in every respect.

RATILAL V. PATEL

Signature: Per R.S. Patel
Date 22.8.63. "

Although the signature appears to be that of "R.S.Patel" no point arises on this because Mr. Ratilal V. Patel admitted in evidence that he himself did in fact sign this declaration.

The Customs Duty payable on these goods was calculated and assessed at the preferential rates applicable to goods of the declared countries of origin on the basis of this declaration.

Mr. R.V. Patel produced this declaration, together with these three invoices in support, to the Customs Authorities and they were admitted in evidence in the Court below collectively

as Exhibit A.

In the course of their clearance through Customs, certain of the goods were examined. It was then seen that the "Compressor" in the goods had the word "DENMARK" stamped on its handle, and that the "Ansell Dryer" had a paper pasted on it bearing the words "Made in U.S.A." In addition some of the cases containing these goods bore inscriptions indicating that they had been made in Denmark.

On 27th August, 1963, as a result of this examination of the goods, Mr. R.V. Patel completed another Import Entry Form in respect of these particular goods of which the material parts read as follows:

" POST ENTRY FOR ADDITIONAL DUTY ON WT. NO. 14851 OF 26/8/63

Packages No. Type	Description of Goods	Country of origin.	Tariff Item	Value for Duty	Rate of Duty	Duty payable
SHOULD HAVE BEEN:						
1 C/S	Refrigeration Equipment	UK	92	36.13.0	Free	-
"	"	USA	92	19.6.6	15%	2.18.0.
"	"	DENMARK	92	16.7.10.	15%	2. 9.2.
	Cubic Inch Driers	USA	242	6.4. 8.	50%	3. 2.4
PAID AS:-				78.12.0		8. 9.6
1 C/S	Refrigeration Equipment	UK	92	72. 7.4	Free	-
	Cubic Inch Driers	AUST	242	6. 4.8	25%	1.11.2
		TOTAL		78.12.0		1.11.2
		DIFF.		NIL		6.18.4 "

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He admitted in evidence that he himself then completed and signed a second declaration at the foot of this Post Entry Form in the following terms:

"I declare

that I am the Agent duly authorised by Western Lectric Co.Ltd. the owner of the goods;

that I enter the goods as of the value and of the description and quantities stated in this entry, and for home consumption; and

that the particulars as stated in this entry are true and correct in every respect.

RATILAL V. PATEL

Signature: Per R.S. Patel
Date 27/8/63. "

It is not easy to identify the items in the particulars of offence with the items in the Customs Entry Form and declaration dated 22nd August, 1963, which is alleged to be false, nor with the items on the subsequent Post Entry Form and declaration dated 27th August, 1963, because of the condensed and abbreviated manner in which the goods are therein described.

It seems fairly clear that the item: "6 only ¼" 4 Cubic Inch Driers", in the invoice dated 22nd July, 1963, and so described in the particulars of offence are the same as those described in both the Customs Entry Form and declaration dated 22nd August, 1963, and the Post Entry Form and declaration dated 27th August 1963, as "Cubic Inch Driers". I say this by reference in particular to the stated value and classification of this item in these documents.

The Court below apparently held that the goods generally described as "Refrigeration Equipment" in the Entry dated 22nd August, 1963, and the Entry dated 27th August, 1963, in fact were or did include the items in the charge described as:

"4 only dry-eye indicators
5 only dry-eye cartridges
6 expansion valves
1 sealed motor compressor."

No objection was taken to the form of the charge or the description or inclusion of all these goods in the particulars of offence at the trial and the point has not been raised in any of the grounds of appeal. It is clear that since the invoices which were produced with the Customs Entry Forms to the Customs, gave full details of the goods, it was considered by the parties and held by the Court below that the identity of the goods referred to in the charge had been sufficiently proved. As this point has not been taken before me I do not feel called upon to say more than that it is most important and desirable that very careful consideration should be given to these points at the outset in the drafting of the charge in such a case as this, in order to avoid any subsequent confusion.

If there was any error or incomplete description of the goods concerned in the particulars of offence, I am quite satisfied that no one has been misled thereby and that no miscarriage of justice has resulted therefrom.

The position reached on the 27th August, 1963, was therefore, that the Appellant's Customs Agent, Mr. R.V. Patel, admitted after examining the goods, that his declaration dated 22nd August, 1963, was erroneous in that Refrigeration Equipment and Cubic Inch Driers to the value of £78.12. 0. had been wrongly declared as being goods of Australian and U.K. origin and thereby subject to the preferential duty tariff, whereas he now declared that only Refrigeration Equipment to the value of £36.13. 0. was of U.K. origin and that the countries of origin of the rest of the goods were Denmark and U.S.A. and therefore liable to higher rates of duty. As a result of this an additional £6.18.4. Customs Duty was payable by the Appellant Company.

It was the contention of Mr. R.V. Patel and the Appellant Company that this error was made perfectly innocently. He relied on the

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information given by the suppliers of the goods on their invoices which, quite unknown to Mr. R.V. Patel and the Appellant Company, were incorrect. The Appellant's contended they had not been guilty of any offence but merely of a bona fide mistake which could be corrected by the payment of the additional duty involved, which they were quite willing to do.

The Customs Authorities contended that the marking of an erroneous declaration was an offence of absolute liability contrary to Section 116 of the Customs Ordinance (Cap.166) and instituted criminal proceedings accordingly.

The first ground of appeal arises in this way.

The Appellant's Customs Agent Mr. R.V. Patel in his declaration dated 22nd August, 1963, ascertained and declared the country of origin of the goods in question by reference to the invoices and certificate of origin endorsed thereon received from the suppliers of the goods, the Refrigeration Engineering Co.Ltd. of Auckland. When he found that some of the goods were marked or were in containers marked with words indicating a different country of origin he made a second declaration, amending the first, and giving the country of origin by reference to the markings on the goods or their containers.

At the trial, the Court below held that the onus of proof rested on the prosecution to prove that the original declaration was inaccurate in respect of the stated country of origin of the goods set out in the charge. In discharge of this onus of proof the prosecution relied on two things:

Firstly: The second declaration of Mr. R.V.Patel in which he admitted his original declaration was erroneous and that the country of origin of these goods was Denmark and U.S.A. respectively;

and Secondly: The markings on the goods themselves and their containers.

It is clear that the second declaration of Mr. R.V. Patel that the countries of origin of some of the goods were U.S.A. and Denmark, as averred in the charge, was based solely upon the marks he saw and noted on the goods themselves and their containers. He accepted such marks at their face value and acted upon them. Being a Customs Agent it may well be thought he was the best person to understand and interpret the meanings of such marks from his own experience.

The Appellant's first ground of appeal is that the learned trial Magistrate erred in law in holding that the actual marks on the goods, or on labels pasted on the goods, or on the containers of the goods purporting to show the country of origin of the goods were admissible in evidence.

For the Appellant it is submitted that the markings on goods or on the containers of goods are in the nature of hearsay evidence. They are words which were placed there by persons not before the Court and are not admissible in evidence to prove the truth of what they purport to say. It is submitted that such marks should be regarded and treated by the Court as the contents of letters written by third parties found in the possession of an accused. Such letters cannot themselves be used to prove the truth of their own contents. In the alternative it is submitted that if they are admissible in evidence they can only be identified and their significance and meaning can only be explained and interpreted to the Court by some person who is experienced in the usages and customs of international trade and trade marks and an expert in interpreting the meaning of marks on goods and their containers. It is only an expert who can give evidence of the country of origin of goods by reference to such marks and it is not an inference that can or should be drawn by the Court from them without the assistance of an expert on such matters.

For the Respondent reliance is first placed on the decision of my learned brother, Knox-Mawer, Acting Puisne Judge in this Court, in case of the Comptroller of Customs v. Joitabhai (Criminal Appeal No. 11 of 1964). In that

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case he held that the marks in that case, i.e. the words "Produce of Morocco" on the outside of a bag containing corriander seeds, were admissible as prima facie evidence of the country of origin of the contents of the bag.

In the course of that case he referred to the decision of the Court of Appeal for Eastern Africa, Commissioner of Customs v. S.K. Panachand (1961) E.A.C.A. 303.

The point there was whether a statement on the invoice for the goods concerned, which were blankets, that the shipping marks on the blankets included the words "Made in Western Germany" coupled with the certificate on the reverse of the invoice to the effect that the invoice was in all respects correct as to value, was admissible in evidence on the issue of whether or not the country of origin of the goods was Western Germany.

It was held (Corrie, J.A. dissenting) that the invoice itself and the certificate thereon were inadmissible on this issue. It is pertenant to point out that there was no other evidence whatever of what marks there were in fact on the goods themselves.

One of the main grounds for not admitting in evidence the contents of the invoice or the certificate on its reverse side was that the Court was not aware of any legislative sanction for the certificate, or for that matter for the form of the invoice. Different considerations might therefore apply in Fiji where both the form of such an invoice and certificate on its reverse side are in fact obligatory and are prescribed by the Customs Duties Ordinance (Cap. 167), Section 8 and 10.

The learned Vice President in his Judgment said:

> "In certain circumstances the shipping marks might be receivable as evidence in the nature of an admission against an importer, but I do not see how otherwise they can be of any value to establish the origin of goods."

In Yafesi Kinsambwe Lutalo v. R. (1962) E.A.C.A. 52, it was held that the inscription on the label on a sealed bottle was admissible in evidence as to the contents of the bottle. The grounds upon which this ruling was given were not however set out in the Judgment.

From the Judgment of Sir Audley McKisack, C.J. in Emmanuel Mutakayana v. R. (1961) E.A.C.A. 276, it would appear, however, that in the absence of any presumption raised by the statute the inscription on the label of a bottle, even if sealed, would not be admitted as evidence that the contents of the bottle were in fact beer.

I have been unable to find any direct authority by the Courts of East or West Africa or of the Courts in England on this question. This is not perhaps entirely surprising because in England and in East Africa certain presumptions on the matter of the onus of proof are raised against an importer by the Acts of the respective Legislatures which are not raised by the Customs Ordinance (Cap. 166) in Fiji. For example in East Africa the East African Customs Management Act 1952, Section 167, provides:

"In any proceedings under this Act -

(a) it shall not, unless it is expressly so provided, be necessary to prove guilty knowledge;

(b) the onus of proving the place origin of any goods, or the payment of the proper duties, or the lawful importation, landing, removal, conveyance, exportation, carriage coastwise, or transfer, of any goods, shall be on the person prosecuted or claiming anything seized under this Act."

The nearest similar provision in the Customs Ordinance is Section 152, which reads as follows :

"152. If, in any prosecution in respect of any goods seized for non-payment of duties or any other cause of forfeiture or for the recovery of any penalty or penalties under

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this Ordinance, any dispute arises whether the duties of customs have been paid in respect of such goods or whether the same have been lawfully imported into the Colony or lawfully unshipped, or 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; and any goods of a description admissible to duty seized under any provision of this Ordinance by any customs officer on any vessel or at any place whatsoever in the Colony or within the waters of the Colony shall, in any proceeding before a magistrate for the forfeiture of such goods or for the infliction of any penalty incurred in respect thereof or on the hearing on appeal of any such case before the Supreme Court, be deemed and taken to be goods liable to and unshipped without payment of duties unless the contrary be proved, and the evidence that any person acting as an officer of customs in any proceeding relating to customs or undertaken under this Ordinance was duly authorised shall be presumed until the contrary is proved."

It will be seen that this section places on an accused the burden of proving "whence such goods were brought" but not "the country of origin" of such goods.

The Respondent places considerable reliance on the provisions of the Merchandise Marks Ordinance (Cap. 190) in support of the argument that evidence of the marks on goods or their containers is admissible in evidence on the issue of what was the country of origin of the goods.

By Section 2(1) of that Ordinance the term "trade description" means, inter alia,

"Any description, statement, or indication direct or indirect, as to the country in which any goods were made."

By Section 3(1)(b) every person who applies

any false trade description to goods shall ... unless he proves that he acted without intent to defraud, be guilty of an offence .... etc.

Section 5 of this Ordinance reads:

"5(1) A person shall be deemed to apply a trade mark or mark or trade description to goods who -

(a) applies it to the goods themselves; or

(b) applies it to any covering, label, reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale, trade or manufacture; or

(c) places, encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale trade or manufacture in, with or to any covering, label, reel or other thing to which a trade mark or mark so nearly resembling a trade mark as to be calculated to deceive or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connexion with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression 'covering' includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper and the expression 'label' includes any band or ticket.

(3) A trade mark or mark or trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or into or to any covering, label, reel or other thing.

..... "

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I understand that it is first submitted that it should be presumed that the person who applied a trade description to the goods by means of a mark indicating the origin of the goods applied the correct trade description. To presume otherwise would be to presume such a person to be guilty of an offence and this would offend the presumption which the law makes against misconduct (see Best on Evidence 11th Edition p.350).

Secondly, it is contended that marks or trade descriptions on goods or their containers are recognised by law and are the subject of legislation in the Merchandise Marks Ordinance, and should, therefore, be admitted as prima facie evidence of what they themselves say. I appreciate the force of this argument but I do not feel able to accept it.

Marks or trade descriptions indicating the country of origin of goods take many forms. They may be printed or painted on the outside of the container of the goods such as the sack, wrapping case or crate within which the goods are sent, They may be made on labels affixed to such containers or on labels affixed to the goods themselves. On the other hand they may be, in the case of cloth for example, printed on or woven into the fabric of the goods themselves as a part and parcel or apparently as a part and parcel of the process of manufacture. In the case of goods made of metal such as engines, for example, in some instances the goods have words apparently denoting the country of origin embossed on or impressed in the actual metal or as a part of the casting and as such as a part of the process of manufacture of the goods themselves.

I must confess I can find little or no specific judicial authority to support me, but it would offend my common sense to hold that where an article such as an engine casting bears an irremovable mark such as "Made in India" or "Made in England" or "Made in Japan", for example, as a part and parcel or apparently as a part and parcel of the process of manufacture and the goods are admitted in evidence, that the Court must not only ignore, but rule as inadmissible as evidence of the country of origin of

the goods the legend the goods themselves bear indelibly marked upon them. In my opinion such marks are admissible. Once admitted, if the legend of such marks is self-explanatory, it appears to me that it is prima facie evidence of what the legend says. Evidence may well be available and be given to explain, rebut, vary or nullify the effect of the evidence of the marks themselves but that does not affect their admissibility.

Where however marks indicating a country of origin are placed on a label attached to goods or their container or are affixed to the container itself then different considerations arise.

Such marks or labels are not a part and parcel of the process of manufacture of the goods. In my opinion they are not admissible in evidence to prove the truth of what they themselves purport to state, in the absence of any statutory provision making them so admissible.

In the case before me the only goods that bore a mark falling within the class that I have held to be admissible is a "Compressor" which bore the word "Denmark" stamped on its handle. Evidence of the words on the paper pasted to the "Ansell Dryer" and the inscription on the cases containing the goods was not admissible. To this extent therefore the first ground of appeal should, in my view, succeed. This is not, however, very material because in addition to these marks the Appellant's Customs Agent did, after seeing these marks, from his own knowledge and experience apparently know that these goods came from Denmark and the United States of America and so admitted and declared them in his Post Entry on 27th August. On that evidence the Court was entitled to hold as fact, as it did hold, that in the absence of any evidence in rebuttal these goods did come from Denmark and the United States of America, respectively.

The second ground of appeal complains that even if the marks on the goods were admissible in evidence the learned Magistrate erred in holding there was no evidence to contradict them and failing to consider the provisions of Sections 64 and 140 of the Customs Ordinance.

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It is clear from the Judgment of the learned trial Magistrate that he did so hold. What has to be considered is whether there was in fact any evidence to contradict these marks. It is submitted for the Appellant that the invoices and the certificates on the reverse thereof to which I have already referred were admissible in evidence on the issue of what was the country of origin of the goods concerned.

I am of the opinion that these invoices and certificates were not admissible in evidence on this issue however. It appears to me that such invoices and certificates whilst admissible as prima facie evidence of the value of the goods are otherwise in the same category as letters written by the same person and found in the hands of the Appellant. They should not and cannot, in my view, in the absence of any special statutory authority be treated of themselves as evidence in support of the truth of what they purport to say, concerning the country of origin of the goods.

I have also considered the provisions of Section 64 and 140 of the Customs Ordinance, referred to in the second ground of appeal, which read as follows:

"64. The amount of customs dues payable on any goods which are liable to an ad valorem duty shall, when the genuine invoice and other necessary documents for the said goods are produced to the collector or other proper officer of customs and are accepted by such collector or other proper officer as setting forth the true and real value of such goods, be calculated on the price paid for the said goods by the owner thereof as represented by such invoice. All goods subject to an ad valorem duty shall be treated as exported from the country whence the importing ship brought them unless satisfactory proof be produced that the goods where shipped for this Colony from some other country where the goods were purchased by the importer.

140. In this Ordinance the words 'genuine

invoice' mean the original or duplicate invoice prepared and issued in the country whence the goods mentioned therein were purchased for export to the Colony, and shall show the actual prices paid or to be paid by the importers in the place or country where the same were purchased. In the case of goods consigned to any person in the Colony for sale therein the words 'genuine invoice' mean the original or duplicate invoice prepared or caused to be prepared by the sonsignor, and shall show the actual price at which such goods were saleable in the principal markets of the country whence such goods were exported at the date of shipment of such goods:

Provided that the collector or other proper officer may accept a press copy of any genuine invoice upon such conditions as he shall see fit."

It would appear from the definition of the term "genuine invoice" in Section 140, that the only matter to be considered in deciding whether an invoice is a "genuine invoice" or not is whether the price on the invoice is the true and real value of the goods. The question of whether or not the country of origin of the goods given on the invoice is the true country of origin does not appear to be material.

It is submitted for the Appellant that once an invoice is accepted by the appropriate customs officer, as showing the true and real value of the goods, it is the "genuine invoice" in all respects. This would be to read into Section 140 more than it does in fact say. It is only with the true and real value of goods that a "genuine invoice" under Section 140 is concerned. The question of what is the true "country of origin" is not dealt with by either Section 140 or Section 54 in this connection.

An apparently logical sequence in the case for the Appellant is that whatever may have been the true country of origin of these goods, since the importing ship in fact brought them from New Zealand, they should be charged ad valorem duty at the preferential rate, applicable to goods

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from a preference territory, in view of the last sentence of Section 64, which reads:

> "All goods subject to an ad valorem duty shall be treated as exported from the country whence the importing ship brought them unless satisfactory proof be produced that the goods were shipped for this Colony from some other country where the goods were purchased by the importer."

There was no evidence or proof produced by either the Appellant or the Respondent in the Court below -

> "that the goods were shipped for this Colony from some other country where the goods were purchased by the importer."

The only evidence on this point before the Court below was that these goods were bought in New Zealand and shipped from New Zealand.

I must confess I find difficulty in construing and understanding these provisions of Section 64 where the ad valorem duty is apparently required to be charged on the goods by reference to the country where they were brought and whence the importing ship brought them and not by reference to their country of origin at all. In some respects this section appears to conflict with the obvious meaning and express purpose of the whole of the Customs Duties Ordinance which prescribes differing rates of duty according to the country or origin of goods, irrespective of whence the importing ship brought them.

Section 64 of the Customs Ordinance is a part of an Ordinance passed long before the Customs Duties Ordinance which was first passed in 1929. Section 5 of the Customs Duties Ordinance which authorises the levey of differing rates of duty for goods according to their country of origin was only passed in 1932 and was amended in 1953. To the extent that Section 64 of the Customs Ordinance is repugnant to Section 5 in particular and the provisions of the Customs Duties Ordinance in general, I am of

the opinion that the provisions of the later Ordinance must prevail.

The second ground of appeal must, therefore, also fail.

The third ground of appeal complains that the learned trial Senior Magistrate erred in holding that the offence created by Section 116 of the Customs Ordinance is an offence of absolute liability and that it was not essential for the prosecution to prove mens rea.

Section 116 reads as follows:

"116. 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

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exceeding two hundred pounds nor less than fifty pounds and in default of payment to imprisonment not exceeding six nor less than two months."

The determination of this issue depends largely upon the meaning that should be given to the word "false" in the term "false entry" in the first line of this section.

For the Appellant it is submitted that the word "false" in this section cannot properly be construed as "nothing more than erroneous" but must be construed as "corruptly", or "fraudulently" and as importing a guilty intention or mens rea.

It is contended that it is an established rule of construction to give the same meaning to the same words occurring in different parts of a statute and that this rule must apply within even greater force to the same words occurring in the same section of a statute.

The apparently conflicting cases of Courtauld v. Legh (1869) L.R. 4 Ex 126 and Edinburg Street Tramways v. Torbain (1877) 3 App. Cases 58 are illustrations of how necessary it is to approach this matter with some caution. Nevertheless it would seem that wherever the word "false" appears in Section 116 it should, unless there are good reasons for not doing so, be construed as having the same portent as the words "falsely" or "falsify".

For the Respondent it is contended that the word "false" can only properly be construed as meaning nothing more than "erroneous". In support of this contention, reliance is placed on the decision to this effect of Knox-Mawer, Acting Puisne Judge in this Court, in Harikisundas Motiram and Anor. v. Comptroller of Customs (Criminal Appeal No.51 of 1960). That decision was based largely on the first meaning given to the word "false", used as an adjective, in the Shorter Oxford English Dictionary. The second meaning of this word given in that dictionary is "purposely untrue". In these circumstances I do not feel that very much assistance can be obtained from the dictionary in deciding

the proper meaning of this word in Section 116.

A perusal of Strouds "Judicial Dictionary" and Burrows "Words and Phrases Judicially defined" makes it clear that in a number of judicial authorities the word "false" has been construed to mean either "erroneous" or "purposely untrue" in different contexts.

On the issue of whether "mens rea" should be regarded as essential to the commission of an offence under Section 116 of the Customs Ordinance, the Judgment of Donovan, J. in the St. Margaret's Trust Case (1958) 42 C.A.R. 183 is helpful. After reviewing the decision of Sherras v. De Rutzen (1895) 1 Q.B. 918, which was discussed by the Privy Council in Lim Chin Aik v. Reginam (1963) 1 A.E.R. 223 and Hobbs v. Winchester Corporation (1910) 2 K.B. 471 he referred to p.189 to the Judgment of Kennedy, L.J. in the latter case, indicating agreement therewith, in the following terms:

> "What Kennedy, L.J. is here saying, we think, is that modern statutes create offences where knowledge on the part of an offender is not essential and that accordingly there is no universal prior presumption of mens rea. Each statute must be construed according to its terms and its object. If so construed mens rea is not expressly or by necessary implication excluded it is then that it will be regarded as essential."

He then went on to express the view that the particular penal enactment under consideration in the St. Margarent's Trust Case should receive a literal construction and that it was not necessary for mens rea to be established. After so holding he said:

> "It is true that Parliament has prescribed imprisonment as one of the punishments that may be inflicted for a breach of the Order, and this circumstance is urged in support of the appellant's argument that Parliament intended to punish only the guilty. We think it is the

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better view that, having regard to the gravity of the issues, Parliament intended the prohibition to be absolute, leaving the court to use its powers to inflict nominal punishment or none at all in appropriate cases."

This reasoning is similar to that adopted by Turner, J. in D'Audney v. Marketing Services (N.Z.) Ltd. 1962 N.Z.L.R. 51 where he held that the provision of a minimum fine in a statute creating an offence (the New Zealand Custom Act 1913, Section 46(5)) is a compelling consideration strongly favouring the view that the Legislature cannot have intended that such offence should be one independent altogether of mens rea.

This decision was, however, over-ruled by a majority of the New Zealand Court of Appeal (North and McCarthy,JJ. Gresson, P. dissenting) in Fraser v. Beckett & Sterling Limited and Anor. (1963) N.Z.L.R. 480. The result of these two decisions is that the views on this issue of North and McCarthy, JJ. prevailed over those of Gresson, P. and Turner, J. I must confess I find the views of Gresson, P. and Turner, J. the more acceptable on this issue, but the effective decision of the New Zealand Court of Appeal in Fraser's case, whilst not binding on this Court, is of persuasive authority.

My attention has also been drawn to the decision of Chamberlain v. Fenn (1907) 26 N.Z.L.R. 152. In that case it was held that the offence of making a false declaration under Section 243 of the Customs Laws Consolidation Act 1882 was one of absolute liability and that mens rea was not a necessary ingredient of the offence.

Section 243 of the Customs Laws Consolidation Act 1882 was re-enacted as Section 266 of the New Zealand Customs Laws Act 1908 (Chapter 36 in Volume I of the 1908 Edition of the Consolidated Statutes of New Zealand), which for ease of reference I set out in full:

"266. Every person is liable to a fine of

one hundred pounds who -

(a) In any matter relating to the Customs, or under the control or management of the Minister, makes and subscribes or causes to be made and subscribed any false declaration, or makes or signs any declaration, certificate, or other instrument required to be verified by signature only, the same being false in any particular; or

(b) Makes or signs any declaration made for the consideration of the Minister on any application presented to him, the same being untrue in any particular: or

(c) When required under the Customs Acts to answer questions put to him by the proper officers, does not truly answer such questions; or

(d) Counterfeits, falsifies, or wilfully uses when counterfeited or falsified any document required by the Customs Acts, or by or under direction of the Minister, or any instrument used in the transaction of any business or matter relating to the Customs; or

(e) Alters any document or instrument after the same has been officially issued, or counterfeits the seal, signature, initials, or other mark of or used by any officer or Customs for the verification of any such document or instrument, or for the security of goods, or for any other purpose in the conduct of business relating to the Customs, or under the control or management of the Minister or any officer of Customs:

Provided that nothing in this section shall limit or control the operation of any provision whereby any specific punishment or fine is imposed for any particular offence or default."

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It will be observed that this section bears striking similarities to Section 116 of the Fiji Customs Ordinance.

The facts in Chamberlain v. Fenn (1907) 26 N.Z.L.R. 152 are so nearly on all fours with the facts in this appeal that it is a decision of very strong persuasive authority indeed. Further even Gresson, P. in his dissenting judgment in Fraser's case in 1963, when referring at page 490 to Chamberlain v. Fenn (1907) 26 N.Z.L.R., did so in terms indicating his approval of that decision. Two similar decisions of the Australian Courts are referred to the English and Empire Digest, namely Dawson v. Jack (1902) 28 V.L.R. 634 and Stephens v. Reid & Co. (1902) 28 V.L.R. 82 but I do not have access to the full reports on these cases which were however cited with approval by Cooper, J. in Chamberlain v. Fenn (1907) 26 N.Z.L.R. at p.158.

Granville Williams in his work "Criminal Law - (the General Part)" 2nd Edition at page 260 says:

> "The intention to create strict responsibility ought always to be evidenced by the words of the statute, not guessed at from its social purpose."

In Brend v. Wood (1946) 175 L.T. 307 Lord Gorrard, C.J. said:

> "It is of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind."

From the footnote in Williams at page 252 it appears that this principle was applied by the Privy Council in Srinivas Mall, A.I.R. (1947) P.C. 135, a report to which I do not have access.

This view clearly does have the approval

and authority of the Privy Council however. In the opinion of Lord Evershed in the Privy Council in the Lim Chin Aik case at p.230 he said:

> "Their Lordships have accordingly reached the clear conclusion, with all respect to the view taken in the courts below, that the application of the rule that mens rea is an essential ingredient in every offence has not in the present case been ousted by the terms or subject-matter of the ordinance and that the appellant's conviction and sentence cannot stand."

Applying these principles to the present case, I am, after reading and re-reading this rather long and cumbersom Section 116, not at all satisfied that the terms of the section oust the necessity of establishing mens rea. There is no express provision to this effect in the Fiji Customs Ordinance as there is, for example, in the East African Customs Management Act 1952, Section 167(a) to which I have referred earlier in this Judgment.

Since the Legislature has not used clear and unambiguous language indicating that proof of mens rea is not essential, I am of the opinion that it is an essential ingredient of the offence created by the section, unless it is excluded by the subject-matter of the Statute itself which is a Revenue Ordinance.

In Sherras v. DeRutzen (1895) 1 Q.B.D. at p.921, Wright, J. said:

> "There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."

He then proceeded to define and describe the three principal classes of exceptions to this presumption as follows :

Firstly: Acts which in the public interest

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are prohibited under a penalty. As instances of this he referred to decisions under Revenue Statutes.

Secondly: Public nuisances.

Thirdly: Proceedings which are criminal in form but are really a summary mode of enforcing a civil right.

In the New Zealand case of The King v. Ewart (1905) 25 N.Z.L.R. 709, Williams, J. at page 726 held that Revenue cases were a recognised exception. It is clear that the offence of making a false declaration in Customs Cases has been considered for many years now without question, to be a Revenue case of the type which, by reason of its very subject-matter ousted the presumption that mens rea was an essential ingredient in the offence. I am unable to say that different considerations should apply in Fiji.

In these circumstances, whilst it is clear that the Appellant Company in this case has acted perfectly innocently, I am unable to uphold the third ground of appeal that the Court below misdirected itself that "mens rea" is not an essential ingredient in the offences created by Section 116 of the Customs Ordinance.

For these reasons I am of the opinion that this appeal should be dismissed.

I am informed that there are no less than 35 cases of this nature pending, the trial of which has been deferred until the result of this appeal is known. The legal issues raised in this appeal are of considerable importance and it is most desirable that any uncertainty on these matters should be removed by a decision of the highest judicial tribunal in Fiji, namely the Fiji Court of Appeal. In these circumstances I give my judgment in this appeal subject to the opinion of the Fiji Court of Appeal, under the provisions of the Court of Appeal Ordinance, Section 14.

I do therefore reserve for consideration by the Court of Appeal the following questions of law :

1. To what extent, if any, is the evidence of the markings on goods or on containers of goods or on labels attached to such goods or containers admissible as prima facie evidence of the country of origin of such goods for the purposes of the Customs Ordinance (Cap.166) and the Customs Duties Ordinance (Cap.167)?

2. Is "mens rea" an essential ingredient of the offences created by Section 116 of the Customs Ordinance (Cap. 166)?

3. Did the onus of proof rest on the Comptroller of Customs in this case to prove that the countries of origin declared by the Appellant Company's Agent were not in fact the true countries of origin of the goods concerned, notwithstanding the provisions of Section 152 of the Customs Ordinance?

4. Are the Invoices and Certificates of origin in the form prescribed by the Customs Duties Ordinance admissible in evidence on the issue of what in fact are the countries of origin of goods referred to therein?

5. In the circumstances am I correct in my opinion that this appeal should be dismissed.

(Sgd.) C.J. Hammett.

ACTING CHIEF JUSTICE

SUVA,

19TH JUNE, 1964.

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IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 12 of 1964.

B E T W E E N:

WESTERN LECTRIC CO. LTD. Appellant

- and -

THE COMPTROLLER OF CUSTOMS Respondent

Coram: Mills-Owens, P., Marsack and Briggs, JJ.A.

S.M. Koya for the Appellant

McLoughlin, Solicitor-General, for the Respondent.

JUDGMENT OF MARSACK, J.A.

(a) Marsack,J.A. The appellant company was convicted by the Senior Magistrate sitting at Lautoka of the offence of making a false declaration in a Customs Import Entry Form, the declaration being false with respect to the countries of origin of certain imported goods. The Company appealed to a judge of the Supreme Court and the judge, pursuant to Section 30A of the Court of Appeal Ordinance (Cap.3), reserved certain questions of law for the decision of this Court, expressing the opinion, subject to the determination of such questions, that the appeal should be dismissed.
The points of law reserved are as follows:-

"1. To what extent, if any, is the evidence of the markings on goods or on containers of goods or containers admissible as prima facie evidence of the country of origin of such goods for the purposes of the Customs Ordinance (Cap. 166) and the Customs Duties Ordinance (Cap. 167)?

2. Is mens rea an essential ingredient of the offences created by Section 116 of the Customs Ordinance (Cap.166)?

3. Did the onus of proof rest on the Comptroller of Customs in this case to prove that the countries of origin declared by the Appellant Company's Agent were not in fact the true countries of origin of the goods concerned, notwithstanding the provisions of Section 152 of the Customs Ordinance?

4. Are the Invoices and Certificates of Origin in the form prescribed by the Customs Duties Ordinance admissible in evidence on the issue of what in fact are the countries of origin of goods referred to therein?

5. In the circumstances am I correct in my opinion that this appeal should be dismissed."

The first question, whether the markings on goods imported into Fiji or their containers, are admissible in evidence as prima facie proof of their country of origin, is one of considerable importance. There is no express provision in the Customs Ordinance on the subject, so that the matter falls to be determined in accordance with the general principles of law.

There can be no doubt that the evidence furnished by these marks is hearsay. The person who attached the marks cannot be called in evidence to identify them and to give direct evidence as to the country of origin of the articles so marked. The evidence would, therefore, be admissible only as an exception to what is known as the hearsay rule.

It is certainly true that in many cases, of which R. v. Rice (1963) 1 All E.R. 832 is an example, this type of hearsay evidence has been admitted on the basis of its inherent probability. As far as containers are concerned the degree of inherent probability that the particulars written on them are correct is less than in the case of a name indelibly embossed on the

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article itself, as is the case with one of the articles concerned in the present prosecution. This, however, would affect only the weight of the evidence and not its admissibility. The question asked in the Case Stated is concerned with admissibility only and not with weight. The Judge in the Court below held that indelible marks were admissible in evidence but that those which were not indelible were not.

In my opinion, the question has been finally settled by the judgment of the House of Lords in Myers v. D.P.P. (1964) 1 W.L.R. 145. In that case the Court of Criminal Appeal had held that records of chassis numbers and engine numbers of motor cars entered, in log books kept by the manufacturers, at the time of manufacture were not admissible in evidence to prove that a motor car which bore an irremovable block number had, when it left the words, borne the chassis and engine numbers shown in the records. In the Court of Criminal Appeal it was held that the probative value of these records depended on the circumstances in which the record was maintained and the inherent probability that it would be correct rather than incorrect. This, in the opinion of Their Lordships, was undeniable as a matter of commonsense; but it could not be reconciled with the existing law. (Ibid p.158).

At page 154 Lord Reid says:

"The reason why this evidence is maintained to have been inadmissible is that its cogency depends on hearsay. The witness could only say that a record made by someone else showed that, if the record was correctly made, a car had left the words bearing three particular numbers. He could not prove that the record was correct or that the numbers which it contained were in fact the numbers on the car when it was made. This is a highly technical point, but the law regarding hearsay evidence is technical, and I would say absurdly technical. So I must consider whether in the existing

state of the law that objection to the admissibility of this evidence must prevail."

In the result it was held that that objection to the admissibility of the evidence must prevail. The principle is stated in the headnote at page 146 :

"It was established law that as a general rule hearsay evidence was not admissible, and that authority must be found to justify its reception within some established and existing exceptions to the rule, for to countenance new exceptions thereto would amount to judicial legislation."

The evidence in Myer's case did not, in the judgment of Their Lordships, come within any established and existing exception to the hearsay rule and was accordingly held to be inadmissible.

The reasoning adopted in that judgment is, in my opinion, directly applicable to the question before this Court. The marks on the articles and the containers, whether indelible or otherwise, are definitely hearsay. The person producing the articles or the containers cannot prove that the statements incorporated in the markings are correct. No direct evidence is available to prove that the articles were in fact produced or manufactured in the country indicated by the markings on the containers or on the article itself. The person who actually made the marks was not - and as a matter of practical possibility - could not be called to give evidence as to their being made and as to the truth of what they represented.

At the hearing the Solicitor-General referred to certain East Africa cases in which markings on containers were held to be prima facie evidence of the country of origin of the contents. It is, however, doubtful if those decisions can stand in view of the judgment of the House of Lords in Myers' case. It was further contended for the Crown that the marks in question in this case amounted to public documents and as such were admissible as one

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of the recognised exceptions to the hearsay rule. In my opinion this argument is not tenable. A similar point was raised in Myers' case but was rejected on the ground that no record can be classed as a public record within the exception unless it is open to inspection by at least a section of the public.

To make these marks admissible in evidence to show the country of origin, they would have to come within one of the established exceptions to the hearsay rule. In my opinion they do not fall within any of the recognised exceptions, though undoubtedly the Courts have from time to time admitted a good deal of such evidence on the ground of its inherent probability. Since the decision of the House of Lords in Myers v. D.P.P. further extensions to the hearsay rule, however well they may accord with commonsense and practical usefulness, will, it appears, no longer be permitted.

In my opinion, therefore, the answer to question 1 in the Case Stated should be : the evidence of the markings on goods or on containers of goods, or labels attached to them, is inadmissible as evidence of the country of origin.

The practical inconvenience that may be caused by such a ruling can easily be overcome by an express provision in an amendment to the Customs Ordinance. That, however, is a matter for the Legislature and not for this Court.

The second question is whether mens rea is an essential ingredient of the offences created by Section 116 of the Customs Ordinance. This is a matter of considerable difficulty. The Solicitor-General relies principally on the decision of Cooper J. in Chamberlain v. Fenn (1907) 26 N.Z.L.R. 152. In the course of his judgment at p.157 the learned judge says :

> "Where in laws relating to the revenue, acts are prohibited under a penalty, the mere commission of those acts subjects the offender to the penalty

although no guilty mind existed: Davies v. Harvey L.R. 9 Q.B. 433".

The case of Davies v. Harvey cited as authority for that proposition does not fully support the dictum of Cooper J. However, there is a most forthright declaration as to the law on this subject by Williams J. in the earlier New Zealand case of R. v. Ewart (C.A.) 25 N.Z.L.R. 709 at p.726. The learned judge is there discussing exceptions to the general rule that mens rea is an essential component of every criminal offence. He proceeds :

> "Revenue cases are a recognised exception. Revenue statutes are for the protection of the revenue. If the effect of a prohibited act is injurious to the revenue the fact that it was done by a mistake or accident is immaterial."

It is, however, to be noted that the judgment in R. v. Ewart, which was a majority decision, was concerned only with a prosecution under the Offensive Publications Act and no statement of the law regarding the revenue cases was necessary for the determination of the question before the court.

With respect I am of opinion that the statement of the law quoted from the judgment of Williams J. is strictly obiter and is not fully warranted by the reported decisions. I have been unable to find any authority, whether binding on this Court or of persuasive force, which lays down that in no case of offences under revenue statutes is mens rea an essential ingredient.

What is usually regarded as locus classicus on this subject is the dictum of Wright J. in Sherras v. De Rutzen (1895) 1 Q.B.D. at p.921:

> "There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter

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with which it deals, and both must be considered".

Although this goes further than the authority quoted by Wright J. in support of it, namely Nichols v. Hall, 8 C.P. 322. yet it has been approved and followed in a great many cases, notably by the Privy Council in Lim Chin Aik v. R. (1963) 1 All E.R. 223. A little further on in his judgment Wright J. says that the class of acts which form exceptions to the mens rea rule are those which are not criminal in any real sense but are acts which in the public interest are probited under a penalty. He then proceeds at p.922 :

> "Several such instances are to be found in the decisions on the revenue statutes, e.g. Attorney-General v. Lockwood, 9 M. & W. 378."

The judgment in Attorney-General v. Lockwood contains no specific ruling such as that of Williams J. in R. v. Ewart (supra) to the effect that mens rea is not necessary in respect of offences under the revenue statutes. There is, however, a general statement as to the construction of statutes by Alderson B. at p. 168 :

> "The rule of law, I take it, upon the construction of all statutes, and therefore applicable to the construction of this, is, whether they be penal or remedial, to construe them according to the plain, literal, and grammatical meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the act, or to some palpable and evident absurdity. Now, that being the rule upon which we are to construe statutes, let us apply that rule to the statute before us."

There is no doubt that the old doctrine that mens rea was a necessary ingredient in all criminal offences has become greatly modified in modern times, though possibly not to the extent indicated by Kennedy L.J. in Hobbs

v. Winchester Corporation (1910) 2 K.B. 471. At p. 483 that learned judge says :

> "I think there is a clear balance of authorities that in construing a modern statute this presumption as to mens rea does not exist .. It is impossible now, as illustrated by the cases of R. v. Prince and R. v. Bishop, to apply the maxim generally to all statutes and the substance of all the recorded cases is that it is necessary to look at the object of each Act that is under consideration to see where and how far knowledge is of the essence of the offence created."

This judgment was considered by the Court of Criminal Appeal in R. v. St. Margaret's Trust Ltd. (1958) 2 All E.R. 289 where at page 293 it was stated :

> "What Kennedy L.J. is here saying, we think, is that modern statutes create offences where knowledge on the part of the offender is not essential, and that accordingly there is no universal prior presumption of mens rea. Each statute must be construed according to its terms and its objects. If, so construed, mens rea is not expressly or by necessary implication excluded, it is then that it will be regarded as essential."

In Lim Chin Aik v. R. (supra) at p.228 Lord Evershed quoted with approval the judgment of Lord Du Parcq in Srinivas Mall Bairolia v. King Emperor (1947) I.L.R. 460 in which he accepts as correct the statement of the law in the passage cited from the judgment of Wright J. in Sherras v. De Rutzen (supra), and also the dictum of Lord Goddard in Brend v. Wood (1946) 62 T.L.R. 462 at p.463:

> "It is in my opinion of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind".

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There is, in my respectful opinion, an admirable statement of the present position of the law in the judgment of McCarthy J. in Fraser v. Beckett & Sterling Ltd. (C.A.) (1963) N.Z.L.R. 480 at p.496 :

> "For myself, I doubt whether the last phase of the battle between the two schools of thought has yet been fought, and it may well be that it is more in conformity with the spirit of the common law to insist upon proof of mens rea unless there is a clear indication that proof is to be dispensed with".

A similar view is taken by Gresson P. in the same case at p.485 :

> "The effect of the authorities is that where the statute imposes what is apparently an absolute prohibition an absence of guilty knowledge may or may not be a defence. It must in every case depend on the wording and purpose of the particular statute. There are many cases which exemplify that principle and which exemplify also the difference of judicial opinion there has been in applying the principle."

Further in the course of his judgment Gresson P. states that he proposed to be guided by what was said by Dixon J. in Proudman v. Dayman (1943) 67 C.L.R. 536:

> "Indeed there has been a marked and growing tendency to treat the prima facie rule as excluded or rebutted in the case of summary offences created by modern statutes, particularly those dealing with social and industrial regulation. But although it has been said that in construing a modern statute a presumption as to mens rea does not exist ... it is probably still true that, unless from the words, context, subject-matter or general nature of the enactment, some reason to the contrary appears, you are to treat honest and reasonable mistake as a ground of exculpation even from a summary offence."

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I have been at some pains to examine the authorities on this difficult question in view of the differences of judicial opinion which have been manifest in the cases cited and many others. In the result I reach the conclusion that though there are in modern times classes of statutes in which offences are created with absolute liability, so that the prosecution has not to prove mens rea, it is still essential to look at the statute itself to decide whether or not the Legislature intended to impose absolute liability and, if such were the intention, whether or not it was made clear in the statute itself. I do not think it possible to say that all statutes affecting the revenue belong automatically to the class in which mens rea is excluded as an essential ingredient of the offences specified thereunder.

It, therefore, becomes necessary to examine carefully the wording of Section 116 of the Customs Ordinance, under which this prosecution was brought, to see if it leads to the necessary inference that the person charged is under an absolute liability even if he acted innocently and with full belief on reasonable grounds that his declaration was true.

There is one factor which, though not decisive, is, in my opinion, relevant and requiring to be taken into account. That is the provision for a minimum penalty of £50 which, at the time the Ordinance was first passed in 1881, represented a very heavy penalty indeed. In the New Zealand case of Ecclesfield v. Chilman (1893) 11 N.Z.L.R. 719, Denniston J. in considering a section of a statute under which there was a similar minimum penalty said at p.721 :

> "It would require very clear language to justify the conclusion that the Legislature intended to create a liability to such a punishment in a case where there might be no guilty mind, or even no negligence or carelessness."

In D'Audney v. Marketing Services (N.Z.) Ltd. (1962) N.Z.L.R. 51, Turner J. attached great weight to the principle enunciated by

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Denniston J. in Ecclesfield v. Chilman. In Fraser v. Beckett & Sterling Ltd. (supra) the New Zealand Court of Appeal, however, held that Turner J. had been in error in placing so much reliance upon it. McCarthy J., in the course of his judgment in that case, expressed the view that the existence of a minimum monetary penalty is an important matter to be taken into consideration but did not in Fraser's case outweigh the other factors involved in that particular case. With respect I agree that the fact that a minimum monetary penalty has been fixed under a statute is not conclusive, but it is none the less a matter to be taken into account in construing the section under which the prosecution is brought.

Lord Evershed in Lim Chin Aik v. R.(supra) draws a distinction between those statutes which regulate particular activities for the public welfare, such as those concerning the sale of food and drink, in which it has frequently been inferred that the Legislature had intended that such activities should be carried out under conditions of strict liability, and other statutes in respect of which different considerations apply. At page 228 he says :

> "But it is not enough in their Lordships' opinion merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the regulations. Unless this is so, there is no reason in penalising him, and it cannot be inferred that the Lesislature imposed strict liability merely in order to find a luckless victim."

Applying that principle to the present

case it is relevant to ask what the importer could have done, directly or indirectly, to promote the observance of the regulations. He had acted in strict bona fides on a declaration sent to him by the exporter from whom he had ordered the goods. There was no reason for him even to suspect that full reliance could not be placed on the truth of that declaration. It was suggested by the Solicitor-General, in the course of his argument, that the importer could have satisfied himself as to the contents of the case by opening it before he made the declaration. In my opinion, there was no obligation on his part to do anything of the sort; and from a practical point of view the taking of such precautions by all importers in respect of all packages arriving in the port of Suva would lead to such delays that the clearing of the wharves in reasonable time would become impossible.

The question for determination is then whether Section 116 is so worded as to impose an absolute liability on the importer in conditions such as those outlined above. I do not think it is. To impose such a liability would, in my view, need words establishing beyond doubt the fact that the liability of the person charged was absolute and that the Ordinance was intended to punish those who acted innocently as well as the guilty. If such had been the intention of the Legislature it would have been easy to say so. It would have needed only a few words added to the section to provide that belief on the part of the person charged on reasonable grounds in the truth of his declaration would be no defence to the charge if the declaration were in fact erroneous. Such words appear, for example, in the East African Customs Management Act 1952, Section 167(a) which reads:

> "In any proceedings under this Act, it shall not, unless it is expressly so provided, be necessary to prove guilty knowledge."

One of the cases cited during the argument was Irving v. Gallagher reported in Queensland Law Journal 1903, p.21. In this case it was held that in a prosecution under a somewhat

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similar section to that concerned in the present case proof of mens rea was not necessary. In the course of his judgment Power J. at P.125 said :

> "If entries are made at the Custom House whereby the consignee pays a lower rate of duty than that for which he is properly liable, it is evident that the revenue may suffer to exactly the same degree whether the error be made with intent to evade payment of duties or through carelessness, or possibly inadvertence. The means of supplying accurate information is peculiarly within the knowledge of the consignee, and the burden of furnishing a correct statement is, therefore, not unreasonably placed upon him. If he fails to do so, he cannot escape liability by alleging or proving that he had no fraudulent intention. His action speaks for itself whether designed or undesigned."

In the present case, however, it would not be correct to say that the means of supplying accurate information is peculiarly within the knowledge of the consignee. Until the container was opened - and possibly not even then - his only source of information was the declaration supplied by the New Zealand exporter, and no action on his part short of an examination of the contents of the container would have enabled him to ascertain that the declaration of the exporter was in fact erroneous.

It is true that in that portion of Section 116 under which the charge was brought the offence is that of making a false declaration and the word "wilfully", which is used elsewhere in this section, does not apply in this part of it. It has been argued in many cases that the use of the word "wilfully" or "knowingly" in one place in a statute and its omission in another indicates that in the latter case the state of mind of the person charged is immaterial. I do not think that the omission of the word in this part of Section 116 can have that effect. This has been recognised in a number of cases: see

Ecclesfield v. Chilman (supra) and Lim Chin Aik v. R. at p.230. I therefore conclude that the answer to question 2 should be that mens rea is an essential ingredient of the offences created by Section 116 of the Customs Ordinance (Cap.166).

It is perhaps not enough to say merely that mens rea is an essential ingredient of an offence under Section 116. There is also the question whether the onus lies on the prosecution to prove mens rea, or whether this is the type of case in which there is a presumption of mens rea, but one which can be negatived by evidence on the part of the defendant. In R. v. Prince L.R. 2 C.C.R. 154, Lord Esher (then Brett J.) refers to cases such as this where the absence of the word "knowingly" does not prevent the accused person from proving that the mens rea to be prima facie inferred from his doing the prohibited acts, did not in fact exist. In Ewart's case it was held that an act might very well, upon the true construction of the statute, be made in itself prima facie to import a guilty mind, but as to which the presumption arising from the doing of the act might be rebutted by evidence adduced by the person charged. The principle was stated in a somewhat more direct manner by Day J. in Sherras v. De Rutzen (supra) where he held that the omission of the word "knowingly" in a penal statute merely shifted the onus of proof from the prosecution to the defence so that it lay upon the defence to prove the absence of mens rea. It may, however, be doubtful whether the class of case referred to in Ewart and the judgment of Day J., can still be considered good law, in view of the express statement by Lord Evershed in Lim Chin Aik v. R. (supra) when referring to Sherras v. De Rutzen, at p.227 :

> "The question of onus does not, as already stated, arise in the present case. Their Lordships think it right, however, to say that they should not be thought to assent to the proposition of Day J."

This would seem to be essentially a case in which the mere performance of the act alleged, that is the making of a false declaration,

In the Fiji Court of Appeal

No.14

Judgment 4th September 1964
(a) Marsack J.A. continued

might be held prima facie to import mens rea but that the presumption of it could properly be rebutted by evidence on behalf of the defendant.

This, however, does not, in my view, affect the answer which should be given to the second question in the Case Stated. That question concerns merely the point as to whether mens rea is an essential ingredient of the offence. It does not relate to the burden of proof of mens rea or whether there can be any prima facie presumption of it from the nature of the act alleged.

For reasons which I have already given, I am of opinion that mens rea is an essential ingredient of offences under Section 116.

The third question asked in the Case Stated refers to the onus of proof with regard to the countries of origin. The answer to this question, in my opinion, is not necessary for the determination of the case before the Court, and this was conceded by both counsel appearing before us. In these circumstances this Court, in my view, should not be called upon to answer it.

Turning now to the fourth question, namely whether invoices and certificates of origin in the prescribed form are admissible as evidence as to the true countries of origin of the goods concerned. Here again, the strict application of the hearsay rule would prevent the documents being used to establish the truth of the statements therein contained. This would, however, be subject to a recognised exception to the rule against hearsay, in that the documents would be admissible against the party producing them to show his knowledge of their contents, his connection with or complicity in the transactions to which they relate, or his state of mind with reference thereto. As is stated in Phipson on Evidence, 10th Edition, para. 768 :

> "They will further be receivable against him as admissions (i.e. exceptions to the hearsay rule) to prove the truth of

their contents if he has in any way recognised, adopted or acted upon them".

That, in my view, represents the only way in which the invoices and certificates of origin are admissible in evidence on the issue of what in fact are the countries of origin of the goods referred to. In other words, they are not evidence in themselves that the goods originated from the countries specified in the certificates. They may, in certain circumstances, be admissible as against the party producing them. The Customs officers as an administrative matter may, and no doubt frequently do, accept the invoices and certificates of origin as a basis upon which customs duties may be calculated. This does not, however, mean that if a dispute arises as to the country of origin of any particular article the invoices and certificates of origin are admissible, even as prima facie evidence of the truth of the statements contained therein.

As to the fifth question, the answer should, in my opinion, be in the negative. The learned Judge of the Court below states :

"It is clear that the Appellant Company in this case has acted perfectly innocently."

That being so, in view of the opinion expressed in this judgment that mens rea is an essential ingredient in the offence with which the company was charged, the company should not, in my view, have been convicted.

CHARLES C. MARSACK (Signed)
JUDGE OF APPEAL

SUVA
4th September 1964

(b) Mills-Owens,P.

JUDGMENT OF MILLS-OWENS, P.

Having had the advantage of reading the judgment of Marsack, J.A., I agree with his conclusions on all five questions. With respect to questions 1 and 2, however, I would wish to state how the matters of admissibility and mens rea, respectively, present themselves to me.

In the Fiji Court of Appeal

No.14

Judgment 4th September 1964

(b) Mills-Owens P.

continued

There would appear to be a point of distinction between the present case and Myer's case in that Myer's case was concerned with the admissibility of records made at second-hand; the records produced in court were in fact compiled by clerks from information, record cards, supplied by workmen who were not called to give evidence to substantiate that the cards truly represented the relevant identification marks on the motor car engines. On that ground alone the records produced in court were inadmissible as hearsay. In the present case the original articles, the goods and their containers, were produced in court, and undoubtedly, they were admissible as 'real' evidence.

The question is to what extent did they afford proof, as a matter of admissibility. No doubt some articles produced as real evidence prove themselves, for what they obviously are, or appear to be. In other cases a court would have to be assisted by expert evidence to understand the nature or purpose of a particular object. The articles we are concerned with proved themselves, by their mere production, as objects bearing particular marks or words. But, and here as it appears to me is the crux of the matter, it does not follow that the truth of the marks or words was thereby established, even on a prima facie basis. That would be so only if the marks or words were writings or documents which proved themselves, a position which would arise only if they fell within one of the recognised exceptions to the hearsay rule, as, for example, public documents. This distinction is between proving the existence of the marks or words and proving their veracity as statements of origin.

The distinction may appear artificial, and it is tempting to regard the marks or words which, in the case of one article, are indelibly embossed, as forming part of the real evidence. But I do not think this is permissible - it remains a case where the marks or words constitute 'documents' sought to be adduced to prove themselves, in breach of the hearsay rule.

I have been unable to discover any modern authority precisely in point. The subject of

real evidence seems to be disregarded by many writers on the subject of evidence. The well-known case of R. v. Hunt (1820) 2 B. & Ald. 566 is not of direct assistance. There the main question was whether banners carried by a mob should have been produced in court to prove they they bore certain words of sedition or incitement to violence, and it was held that the viva foce evidence of an eye-witness to recount the words was admissible, without notice to produce, and sufficient proof except in so far as the jury might think that his memory or perception was at fault. So here, it would appear, the marks or words on the goods and containers might have been proved by the evidence of a witness. The case of Hunt has, however, been criticised in more than one respect (vide R. v. Hinley 1 Cox 12). In any event it does not deal precisely with the point now in issue. In my view the marks or words are clearly hearsay.

On the point of mens rea also we are without direct authority on the construction to be placed on section 116 of the Customs Ordinance. The exception made by Wright, J. in Sherras v. De Rutzen (supra) with respect to 'revenue offences' is not, and no doubt was never intended to be, definitive. Prima facie, 'revenue cases' would cover a large field, but it could very well be that the learned judge had in mind cases such as possession of uncustomed goods, or of forged stamp dies, or forged stamps, and similar cases. His reference to the case of Attorney-General v. Lockwood would suggest so, as that was a case of possession of an article prohibited to a brewer. In such cases mens rea would have lain in the intention to possess, which was what was prohibited, not an intention to make thereof a particular fraudulent use.

Section 116 is obviously based on section 168 of the Customs Consolidation Act, 1876. A comparison may usefully be made with decisions on the Food and Drugs Act, 1875, in which the language of one of the sections is close to that in the case before us. Thus in Derbyshire v. Houliston (1897) 1 Q.B. 772, the Defendant was charged under a section which

In the Fiji Court of Appeal

No.14

Judgment 4th September 1964

(b) Mills-Owens P. continued

provided that: "Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him" was to be guilty of an offence. It was argued that 'false' meant no more than untrue, but the court rejected it. Wright J., one of the judges, referred to his own decision in Sherras v. De Rutzen and concluded that a charge of giving a false warranty implied the existence of a guilty mind.

A comparison may also be made with the cases under the Fertilisers and Feeding Stuffs Act, 1893: Korton v. W. Sussex C.C. (1903) 72 L.J.K.B. 514, and Laird v. Dobell (1906) 1 K.B. 131, where, in each case, on a charge of causing or permitting to be given, to a purchaser of fertiliser, and invoice which was false in a material particular, it was held, although not without judicial doubts, that absence of personal knowledge of the falsity on the part of the defendant was no defence. In my view, a distinction may be drawn between those cases and Derbyshire v. Houliston in that, on the language of the Act of 1893 and having regard to the nature of the subject-matter and surrounding circumstances, strict liability was almost certainly intended.

Derbyshire v. Houliston has also been compared with cases such as Chajutin v. Whitehead (1938) 1 K.B. 506 (possession of an altered passport) where the defence did not even submit that it was necessary to prove a criminal intent. But it would appear that mens rea in the particular context of the aliens Order would have meant an intention to use the passport as altered, which, as Hewart, L.C.J. said, would mean re-writing the Order. The conviction rested on the conscious possession of an altered passport, which was all that the Order required. The same may be said, in my view, of cases such as R. v. Cohen (1951) 1 K.B. 505, and Sambasivam v. P.P. Malaya (1950) A.C. 465, where the required mens rea lay in the conscious possession of prohibited articles.

In English and Scottish Co-operative etc. Society Ltd. v. Odhams Press Ltd. (1940) 1 K.B. 440, the issue was whether the trial judge was

correct, in a claim for defamation, in leaving to the jury the question whether a headline appearing in a newspaper was defamatory. The headline read: "False Profit Return Charge" All three members of the Court of Appeal expressed the view that this implied fraudulent conduct on the part of the plaintiff company. Although a decision on a civil matter it is valuable as indicating the attitude of the court to a charge involving falsity.

As it appears to me, in cases such as the present case, it is not enough to say that the revenue may suffer to the same degree whether the false declaration be made fraudulently, negligently, or inadvertently. That may be a sound reason for legislating to include innocent misstatements, but it does not in itself warrant a construction of strict liability. If the doctrine of mens rea remains, as it undoubtedly does, a canon of the law (Lim Chin Aik v. R. (supra)), it is not possible to say, a priori, that a particular offence falls into a particular category of subject-matter in respect of which mens rea is not required. The first approach must surely be to the terms of the enactment.

I do not find section 116 of the Customs Ordinance couched in terms of strict liability. The relevant words are: "makes a false declaration", not, for example, "fails to make a true declaration". If one were to say of a person that he had made a false declaration on oath could it be said that there was no imputation of dishonesty? Any less than if one had said that he had told a lie? The section appears to me to envisage a conscious misrepresentation or suppression, and thus to require the mental intention not merely to make a declaration (which happens or turns out to be untrue) but to make it as a false declaration. I would, therefore, respectfully adopt the view expressed by Wright, J. in Derbyshire v. Houliston (supra), where he said that the charge of giving a false warranty implied the existence of a guilty mind.

The addition of the words: "fraudulently", or "with intent to defraud", would not I think

In the Fiji Court of Appeal

No.14

Judgment 4th September 1964

(b) Mills-Owens P. continued

have supplied anything which is not already implicit in the section. The use of the word "wilfully" in one part of the section was, I think, deliberate, and consistent with an intention on the part of the Legislature throughout to punish dishonest conduct, rather than to make a distinction between one form of offence under the section and others thereunder.

For these reasons I agree with the conclusion of Marsack, J.A. on questions 1 and 2 submitted to us. I would not wish to add anything to what he has said on the remaining questions.

H. MILLS-OWENS (Signed)
PRESIDENT.

(c) Briggs, J.A.

JUDGMENT OF BRIGGS J.A.

I have had the advantage of reading the judgments of the President and Marsack J.A. in this case. I agree with the conclusions on all the five questions submitted to the Court reached in those judgments.

GEOFFREY BRIGGS (Signed)
JUDGE OF APPEAL.

In the Supreme Court of Fiji

No.15

Judgment 11th September 1964

NO.15

JUDGMENT.

IN THE SUPREME COURT OF FIJI

Appellate Jurisdiction

Criminal Appeal No.13 of 1964.

BETWEEN:

WESTERN LECTRIC COMPANY LTD. Appellant

- and -

COMPTROLLER OF CUSTOMS Respondent

JUDGMENT

On 19th June, 1964, I gave judgment in this

appeal subject to the opinion of the Fiji Court of Appeal on certain points of law.

The Fiji Court of Appeal gave its opinion on these points of law on 4th September, 1964, Under the provisions of section 30A of the Fiji Court of Appeal Ordinance it is now my duty to make such order conformable with the decision of the Court of Appeal as may be necessary.

The first ground of appeal reads :

"THAT the learned trial Magistrate erred in law in holding that the label marks on the packages and on the goods in question purporting to show the country of their origin were admissible in evidence."

The Fiji Court of Appeal has held that such marks are not admissible in evidence and this ground of appeal must, therefore, be upheld.

The second ground of appeal reads :

"THAT even if the said marks were admissible evidence the learned trial Magistrate erred in holding that there was no evidence to contradict it and in not directing his mind to the provisions of sections 64 and 140 of the Customs Ordinance, Cap.166, and failed to take into account that the true or correct country of origin of the said goods was contained in the genuine invoice submitted by the exporters and tendered in evidence."

The Fiji Court of Appeal has held that the contents of these invoices are not admissible in evidence on the issue of what was the true or correct country of origin of the goods. The appeal on this ground cannot, therefore, be upheld.

The third ground of appeal reads :

"THAT the learned trial Magistrate misdirected himself in law in holding that mens rea was not an essential element

In the Supreme Court of Fiji

No.15

Judgment 11th September 1964 continued

to the offence envisaged by section 116 of the Customs Ordinance."

The Fiji Court of Appeal has held that mens rea is an essential element of the offences created by section 116 of the Customs Ordinance and this ground of appeal must, therefore, be upheld.

The result is, therefore, that the decision of the Court below cannot be upheld because -

(a) there was no admissible evidence before the Court that the countries of origin declared in the Customs Entry Form A were not the true countries of origin of the goods concerned;

and (b) the prosecution failed to establish any "mens rea" on the part of the appellant company.

The appeal is, therefore, allowed. The conviction is quashed and the sentence is set aside.

HAMMET J.
Puisne Judge

SUVA,
11th September, 1964.

In the Privy Council

No.16

Her Majesty's Order in Council Granting Special Leave to Appeal 24th March 1965

NO.16

HER MAJESTY'S ORDER IN COUNCIL GRANTING SPECIAL LEAVE TO APPEAL

AT THE COURT AT BUCKINGHAM PALACE

The 24th day of March, 1965

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT — CHANCELLOR OF THE DUCHY OF LANCASTER

MR. JAY — MR. WIGG.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 8th day of March 1965 in the words following viz. :-

In the Privy Council

No.16

Her Majesty's Order in Council Granting Special Leave to Appeal 24th March 1965 continued

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of The Comptroller of Customs in the matter of an Appeal from The Fiji Court of Appeal and The Supreme Court of Fiji between the Petitioner and Western Lectric Company Limited Respondents setting forth that the Petitioner desires to obtain special leave to appeal to Your Majesty in Council (i) from a Judgment of the Fiji Court of Appeal dated the 4th September 1964 whereby the Court of Appeal answered certain questions of law reserved by the Supreme Court of Fiji in a Judgment of the 19th June 1964 and (ii) from a Judgment dated the 11th September 1964 of the Supreme Court of Fiji in its appellate jurisdiction whereby in consequence of the answers given in the said Judgment of the Fiji Court of Appeal the Respondents' Appeal from their conviction by the Magistrates' Court at Lautoka on the 6th January 1964 of making a false declaration in a customs import entry form contrary to Section 116 of the Customs Ordinance was allowed and the conviction was quashed: And humbly praying Your Majesty in Council to grant him special leave to appeal from the said Judgment of the Fiji Court of Appeal dated the 4th September 1964 and the said Judgment of the Supreme Court of Fiji dated the 11th September 1964 and further or other relief :

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondents Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Fiji Court of Appeal dated the 4th day of September 1964 and against the Judgment of the Supreme Court of Fiji dated the 11th day of September 1964:

In the Privy Council

No.16

Her Majesty's Order in Council Granting Special Leave to Appeal 24th March 1965 continued

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Governor or Officer administering the Government of the Colony of Fiji for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

E X H I B I T S

"A"

INVOICES AND IMPORT ENTRY FORMS

(SEE PHOTOSTAT COPIES ANNEXED)

Exhibits

"A"

Invoices and Import Entry Forms

A	UK	Canada	Canada
	30-1-7	29-5-8	5-8-0
	33-14-0		
	63.15.7	29.5.8	5.8.0
Art	11-7	4-11	11
	64-7-2	29-10-7	5-8-11
[illegible]	6-8-9	2-19-1	10 11
	12-11	5-11	1.1
	6.6	3.0	7
	71-15-4	32-18-7	6-1-6
Ins	12-0	5.4	1.0
	£72.7.4	£33-3-11	£6.2.6

	UK	Aust	UK	[illegible]	NZ	Aust
	10-2-0	5-10-0	28-3-4	8-8-9	6-6-0	10-16-8
Art	1-10	11	4-11	1-6	1-1	1-10
	10-3-10	5-10-11	28-8-3	8-10-3	6-7-1	10-18-6
	1-0-5	11-1	2-16-10	17.0	12.9	1-1-10
[illegible]	2-1	1-1	5-8	1 8	1-3	2.2
	1.0	7	2-10	10	8	1 1
	£11-7-4	£6-3-8	£31-13-7	£9-9-9	£7-1-9	£12-3-7
Ins	1.10	1.0	5.2	1.6	1.2	2.0
	£11.9.2	£6.4.8	£31.18-9	£9-11-3	£7-2-11	£12-5-7

A

A

AUCKLAND,
NEW ZEALAND, 22 - 7 - 19 63.

H.M. CUSTOMS
26 AUG 63 14851
IMPORT
PAYMENT FIJI RECEIVED

M/s. Western Lectric Ltd.,

Box 210, Lautoka, FIJI.

Bought of Refrigeration Engineering Co. Ltd.,

Order No. Air Letter. Box 12072, Penrose, AUCKLAND.

Country of Origin	Marks and Numbers	Quantity	Description of Goods	Selling Price to Purchaser	Amount
U.K.	WL / LAU	2	lbs. 1/16" Silfoss Rods.(per lb)	2. 11. 9	5. 3. 6.
"	"	2	" 1/8" " "	2. 9. 3	4.18. 6.
Australia	"	6	only 1/4" 4 cubic Inch Driers	18. 4	5.10. 0.
U.K.	"	130	lbs Arcton 6 refrigerant	4. 4	28. 3. 4.
"	"	3	only AE1 7 Watt fan motors	2. 16. 3	8. 8. 9.
N.Z.	"	12	" 8" fans, 6 bladed aluminium	7. 6	4.10. 0.
"	"	3	" Realcold fan motor stands	12. 0	1.16. 0
Australia	"	60	" 1/2" x 1/4" Copper pipe saddles	3	1. 5. 0
"	"	100	" 5/8" x 3/8" " " "	3	1. 5. 0
"	"	100	" 3/4" x 5/8" " " "	3	1. 5. 0
"	"	100	" 1/4" " " "	1½	12. 6
"	"	100	" 3/8" " " "	2	16. 8
"	"	100	" 1/2" " " "	3½	1. 9. 2
"	"	100	" 5/8" " " "	5	2. 1. 8
"	"	100	" 3/4" " " "	5	2. 1. 8
				Addition incorrect	£68.16. 9.
				Correct	£69. 6. 9

Above items all for commercial Refrigeration purposes only.

Enumerate the following charges, and state whether each amount has been included in or excluded from the selling price to purchaser:—

	Amt. in Currency of Exporting Country.	State if included in above Selling Price to Purchaser
1. Cartage to rail and/or docks.	To follow	No.
2. Inland freight (rail or canal) and other charges to the dock area, including inland insurance.	Nil	No.
3. Labour in packing the goods into outside packages.	Nil	No.
4. Value of outside packages.	Nil	No.
5. If the goods are subject to any charge by way of royalties. (State full particulars of royalties below.)	Nil	No.

Note: (1) If all the goods shown in the invoice have the same country of origin, such country need not be shown in a separate column, provided it is clearly indicated in a conspicuous place on the invoice, e.g., "Country of Origin," England.

(2) Goods admissable under the British Preferential Tariff should not be shown on the same invoice as goods of Foreign origin.

COMBINED CERTIFICATE OF VALUE AND OF ORIGIN TO BE WRITTEN, TYPED, OR PRINTED ON INVOICES OF GOODS.

I (1) KMHorrocks.Warehouse Manager of (2) Refrig.Eng.Co. of (3) Auckland, N.Z. manufacturer/supplier of the goods enumerated in this invoice amounting to £68. 16. 9. hereby declare that I (4) (have the authority to make and sign this certificate on behalf of the aforesaid manufacturer/supplier and that I) have means of knowing and do hereby certify as follows:—

1. That this invoice is in all respects correct and contains a true and full statement of the price actually paid or to be paid for the said goods and the actual quantity thereof.

2. That no arrangements or understanding affecting the purchase price of the said goods has been or will be made or entered into between the said exporter and purchaser or by anyone on behalf of either of them by way of discount rebate, compensation, or in any manner whatever other than as fully shown on this invoice, or as follows (5).

ORIGIN

(Delete whichever of 3 (a) or (b) is not applicable. If 3 (a) is used delete 4 and 5. If 3 (b) is used insert required particulars in 4 and 5).

3. (a) That every article mentioned in the said invoice has been wholly produced or manufactured in (6) U.K. N.Z. Australia.

3. (b) That every article mentioned in the said invoice has been either wholly or partially produced or manufactured in (6)

4. As regards those articles only partially produced or manufactured in (6)

(a) That the final process or processes of manufacture have been performed in that part of the British Dominions.

(b) That the expenditure in material produced in (6) and/or labour performed in (6) calculated subject to qualifications hereunder in each and every article is not less than one half of the factory or works cost of such article in its finished state. (See note).

(Note:—)In the case of goods which have at some stage entered into the commerce of or undergone a process of manufacture in a foreign country only that labour and British Empire material which is expended on or added to the goods after their return to the United Kingdom or other part of the British Empire shall be regarded as the produce or manufacture of the United Kingdom or other part of the British Empire in calculating the proportion of labour and material in the factory or works cost of the finished article.)

5. That in calculation of such proportion of produce or labourer of the (6) none of the following items has been included or considered:—

"Manufacturer's profit or remuneration of any trader, agent, broker or other person dealing in the articles in their finished condition; royalties; cost of outside packages or any cost of packing the goods thereinto, and cost of conveying, insuring or shipping the goods subsequent to their manufacture."

Dated at Auckland this 24th day of July 19 63.

Witness R. Organ

Signature K.M.Horrocks

---

(1) Here insert manager, chief clerk, or as the case may be.

(2) Here insert name of firm or company.

(3) Here insert name of city or country.

(4) These words shall be omitted where the manufacturer or supplier himself signs the certificate.

(5) Here insert particulars of any special arrangement.

(6) Insert "United Kingdom" or name of other part of British Dominions.

AUCKLAND,
NEW ZEALAND, 22 - 7 - 19 63.

M/s. Western Lectric Ltd.,

Box 210, Lautoka, FIJI.

H.M. CUSTOMS 14851 2 AUG 63 IMPORT FIJI RECEIVED PAID

Bought of Refrigeration Engineering Co. Ltd.

Order No. Air letter. Box 12072, Penrose, AUCKLAND.

Country of Origin	Marks and Numbers	Quantity	Description of Goods	Selling Price to Purchaser	Amount
U.K.	WL LAU	6	only 1401 Ranco pressure switches	2.2.6.	12. 15. 0.
"	"	2 —	" Dry-eye ¼" liquid indicator	2.0.6.	4. 1. 0.
"	"	2 —	" " " ⅜" " "	2.3.3.	4. 6. 6.
"	"	3 —	" " " T12 Cartridges	1.10.5	4. 11. 3.
"	" 30.1.7	2 —	" " " T20 "	2. 3.11	4. 7. 10
Canada	"	4"	50' coils ½" soft copper tube	2.11. 3.	10. 5. 0
"	" 29-5-8	4"	" " ⅝" " " "	1.15. 9	7. 3. 0.
"	" 9.5.80	4"	" " ⅞" " " "	1. 7. 0	5. 8. 0.
"	"	1"	" " 1⅛" " " "	3.11. 8	3. 11. 8
"	"	1"	" " 1⅜" " " "	2.18. 0	2. 18. 0
"	"	3"	(6' lengths ¾" OD., HD Tube) per Ft	2. 3	5. 8. 0.
U.K.	"	1" —	¼ HP Sealed motor compressor	19. 0. 0	19. 0. 0.
"	"	3"	⅓ ton thermostatic expansion valves	2. 9. 0	7. 7. 0.
"	" 38-14-0	3" —	2/3 ton " " "	2. 9. 0.	7. 7. 0.
					£98. 9. 3.

Above items all for commercial refrigeration purposes only.

Auck./Laut. Frt. on:—

1 Drum Refrigeration Equipment
1 C/s Copper Tubes
1 Cylinder Refrigerant Freon 6
} NZ£1-12-5

UNION STEAM SHIP CO. OF N.Z. LTD. per pro Lautoka

Enumerate the following charges, and state whether each amount has been included in or excluded from the selling price to purchaser:—

	Amt. in Currency of Exporting Country.	State if included in above Selling Price to Purchaser
1. Cartage to rail and/or docks.	to follow	No.
2. Inland freight (rail or canal) and other charges to the dock area, including inland insurance.	Nil	No.
3. Labour in packing the goods into outside packages.	Nil	No.
4. Value of outside packages.	Nil	No.
5. If the goods are subject to any charge by way of royalties. (State full particulars of royalties below.)	Nil	No.

Note: (1) If all the goods shown in the invoice have the same country of origin, such country need not be shown in a separate column, provided it is clearly indicated in a conspicuous place on the invoice, e.g., "Country of Origin," England.

(2) Goods admissable under the British Preferential Tariff should not be shown on the same invoice as goods of Foreign origin.

THE SUPREME COURT CERTIFIED TRUE COPY REGISTRAR

COMBINED CERTIFICATE OF VALUE AND OF ORIGIN TO BE WRITTEN, TYPED, OR PRINTED ON INVOICES OF GOODS.

I (1) KMHorrocks, Warehouse Manager of (2) Refrig.Eng.Co. of (3) Auckland, N.Z.

manufacturer/supplier of the goods enumerated in this invoice amounting to £98. 9. 3.

hereby declare that I (4) (have the authority to make and sign this certificate on behalf of the aforesaid manufacturer/supplier and that I) have means of knowing and do hereby certify as follows:—

1. That this invoice is in all respects correct and contains a true and full statement of the price actually paid or to be paid for the said goods and the actual quantity thereof.

2. That no arrangements or understanding affecting the purchase price of the said goods has been or will be made or entered into between the said exporter and purchaser or by anyone on behalf of either of them by way of discount rebate, compensation, or in any manner whatever other than as fully shown on this invoice, or as follows (5).

ORIGIN

(Delete whichever of 3 (a) or (b) is not applicable. If 3 (a) is used delete 4 and 5. If 3 (b) is used insert required particulars in 4 and 5).

3. (a) That every article mentioned in the said invoice has been wholly produced or manufactured in (6) U.K. Canada

3. (b) That every article mentioned in the said invoice has been either wholly or partially produced or manufactured in (6)

4. As regards those articles only partially produced or manufactured in (6)

(a) That the final process or processes of manufacture have been performed in that part of the British Dominions.

(b) That the expenditure in material produced in (6) and/or labour performed in (6) calculated subject to qualifications hereunder in each and every article is not less than one half of the factory or works cost of such article in its finished state. (See note).

(Note:—)In the case of goods which have at some stage entered into the commerce of or undergone a process of manufacture in a foreign country only that labour and British Empire material which is expended on or added to the goods after their return to the United Kingdom or other part of the British Empire shall be regarded as the produce or manufacture of the United Kingdom or other part of the British Empire in calculating the proportion of labour and material in the factory or works cost of the finished article.)

5. That in calculation of such proportion of produce or labourer of the (6) none of the following items has been included or considered:—

"Manufacturer's profit or remuneration of any trader, agent, broker or other person dealing in the articles in their finished condition; royalties; cost of outside packages or any cost of packing the goods thereinto, and cost of conveying, insuring or shipping the goods subsequent to their manufacture."

Dated at Auckland this 24th day of July 19 63.

Witness R. Organ

Signature K Horrocks

---

(1) Here insert manager, chief clerk, or as the case may be.

(2) Here insert name of firm or company.

(3) Here insert name of city or country.

(4) These words shall be omitted where the manufacturer or supplier himself signs the certificate.

(5) Here insert particulars of any special arrangement.

(6) Insert "United Kingdom" or name of other part of British Dominions.

AUCKLAND,
NEW ZEALAND, 7/8/ 1963.

H.M.CUSTOMS
26 AUG 63 14851
IMPORT
PAYMENT FIJI RECEIVED

M Western Lectric Ltd.,

Box 210, Lautoka, FIJI.

Bought of Refrigeration Engineering Co. Ltd.,

Order No. Back Order.

Box 12072, Penrose, AUCKLAND.

Country of Origin	Marks and Numbers	Quantity	Description of Goods	Selling Price to Purchaser	Amount
U.K.	Addressed As above	1	only calibrated refrigeration charging cylinder		£16.5.0.
					16-5-0 ✓
				Frt.	2-11 ✓
					16-7-11 ✓
					1-12-10 ✓
				Packg	3.3 ✓
					1-8 ✓
					18-5-8 ✓
			Above for commercial refrigeration purposes only.	Ins	3.0 ✓
					18.8.8 ✓

Enumerate the following charges, and state whether each amount has been included in or excluded from the selling price to purchaser:—

	Amt. in Currency of Exporting Country.	State if included in above Selling Price to Purchaser
1. Cartage to rail and/or docks.	To follow	No.
2. Inland freight (rail or canal) and other charges to the dock area, including inland insurance.	Nil	No.
3. Labour in packing the goods into outside packages.	Nil	No.
4. Value of outside packages.	Nil	No.
5. If the goods are subject to any charge by way of royalties. (State full particulars of royalties below.)	Nil	No.

Note: (1) If all the goods shown in the invoice have the same country of origin, such country need not be shown in a separate column, provided it is clearly indicated in a conspicuous place on the invoice, e.g., "Country of Origin," England.

(2) Goods admissable under the British Preferential Tariff should not be shown on the same invoice as goods of Foreign origin.

COMBINED CERTIFICATE OF VALUE AND OF ORIGIN TO BE WRITTEN, TYPED, OR PRINTED ON INVOICES OF GOODS.

I (1) KMHorrocks. Warehouse Manager. of (2) Refrig.Eng.Co. of (3) Auckland. N.Z.

manufacturer/supplier of the goods enumerated in this invoice amounting to £16.5.0.

hereby declare that I (4) (have the authority to make and sign this certificate on behalf of the aforesaid manufacturer/supplier and that I) have means of knowing and do hereby certify as follows:—

1. That this invoice is in all respects correct and contains a true and full statement of the price actually paid or to be paid for the said goods and the actual quantity thereof.

2. That no arrangements or understanding affecting the purchase price of the said goods has been or will be made or entered into between the said exporter and purchaser or by anyone on behalf of either of them by way of discount rebate, compensation, or in any manner whatever other than as fully shown on this invoice, or as follows (5).

ORIGIN

(Delete whichever of 3 (a) or (b) is not applicable. If 3 (a) is used delete 4 and 5. If 3 (b) is used insert required particulars in 4 and 5).

3. (a) That every article mentioned in the said invoice has been wholly produced or manufactured in (6) U.K.

3. (b) That every article mentioned in the said invoice has been either wholly or partially produced or manufactured in (6)

4. As regards those articles only partially produced or manufactured in (6)

(a) That the final process or processes of manufacture have been performed in that part of the British Dominions.

(b) That the expenditure in material produced in (6) and/or labour performed in (6) calculated subject to qualifications hereunder in each and every article is not less than one half of the factory or works cost of such article in its finished state. (See note).

(Note:—)In the case of goods which have at some stage entered into the commerce of or undergone a process of manufacture in a foreign country only that labour and British Empire material which is expended on or added to the goods after their return to the United Kingdom or other part of the British Empire shall be regarded as the produce or manufacture of the United Kingdom or other part of the British Empire in calculating the proportion of labour and material in the factory or works cost of the finished article.)

5. That in calculation of such proportion of produce or labourer of the (6) none of the following items has been included or considered:—

"Manufacturer's profit or remuneration of any trader, agent, broker or other person dealing in the articles in their finished condition; royalties; cost of outside packages or any cost of packing the goods thereinto, and cost of conveying, insuring or shipping the goods subsequent to their manufacture."

Dated at Auckland this 7th day of August 19 63.

Witness W J Tate Signature K M Horrocks

(1) Here insert manager, chief clerk, or as the case may be.

(2) Here insert name of firm or company.

(3) Here insert name of city or country.

(4) These words shall be omitted where the manufacturer or supplier himself signs the certificate.

(5) Here insert particulars of any special arrangement.

(6) Insert "United Kingdom" or name of other part of British Dominions.

REGISTRAR

SEC: 27

H.M. CUSTOMS, FIJI—IMPORT ENTRY A

Port of: Lautoka. Ship: Indian Reefer From: Auckland Arrived 20/8/1963

Owner: Western Lectric Co. Ltd Agent: Rotation No.: 63/106

RATILAL V. PATEL

For Off. Use	Lic. No.	Cock. No.	Marks and Nos.	Packages No.	Packages Type	Description of Goods	Quantity	Wharfage		Country of Origin	Tariff Item	Value for Duty			Rate of Duty	Duty Payable			Statistical Code
		10/29	WL LAU.	1	Drum	refrigeration Equipment	Tons 0.090	.	9	UK	92	12	7	4	Free				716-12
		30	✓	1	C/S	Copper tubes coils	Tons 0.050	.	3	Canada	92	33	3	11	✓				✓
		30A	✓	1	Cylinder	✓ ✓ ✓	Tons 0.006	.	6	✓	130	6	2	6	25%	1	10	8	682-x ~~699-x~~
						Electrodes				UK	242	11	9	2	25%	2	17	4	663-x
			EXAMINE			Cubic inch driers				Aust	242	6	4	8	25%	1	11	2	899-x
						Acetone & Gas				UK	54	31	18	9	25%	7	19	8	512-x
						refrigeration Equipment	Tons 0.010			✓	92	9	11	3	Free	.		.	716-12
						~~Copper pipes saddles~~	0.060			NZ	92	7	2	11	✓	.	.	.	716-12
						Copper pipes saddles	0.075			Aust	92	12	5	7	✓	.	.	.	716-12
						Charging Cylinder	1			UK	114	18	8	8	✓	.		.	699-21

1.6

For Official Use

I declare:—
that I am *the Agent duly authorized by Western Lectric Co. Ltd the owner of the goods:
that I enter the goods as of the value and of the description and quantities stated in this entry, and for home consumption; and
that the particulars as stated in this entry are true and correct in every respect.

RATILAL V. PATEL

Signature: Pr. K. Bali Date 22/8/63

*Strike out if entry made by owner.

TOTAL	208 14 9	DUTY	13 18 10	U.C.O.
		Wharfage	1 6	I.C.O.
		P.C.S.T. 3 3/4 % on £190.6.1	7 2 9 ~~7 16 8~~	
		Treble Bond Charges		C.O.
		TOTAL	21 3 1 ~~21 17 0~~	M.O.

R. V. Patel

Please see me re last line

[signature] 27/8

(1)

E/O

Please examine for Tariff Classfn and Origin

[signature] 23/8

(2)

Collector,

ACE 23/8/63

1 Drum marked as entered, opened + examined found to contain

2 only Dry Eye. 1/4" Liquid indicator
2 " " " 3/8" " "
3 " " " T12. Cartridges
2 " " " T20 " "
} Country of Origin shown to be U.S.A.

6 only 1/4" 4 Cubic Inch Driers shown to be of ~~DENMARK~~ USA.
6 only } 3" 1/3 ton thermostatic expansion valve } Country of Origin shown to be DENMARK
{3" 2/3 ton " " "

1/4 H.P. Sealed motor compressor. Country of Origin shown DENMARK ~~U.S.A.~~

T. I correct as entered Goods detained.

27/8/63

[signature] ACE. 0900hrs 27/8/63

~~Goods detained~~. 1 Case + Cylinder opened + examined found to contain goods as invoiced. Satisfied. Release

[signature] ACE. 0900hrs. 27/8/63.

(3)

A.C.N.R.

Please see (2). Wrong declaration of Country of origin. May I please have your instructions.

COLLECTOR OF CUSTOMS
[initial] 27/8/63
LAUTOKA

(5)

All items except items enumerated on the left received. [signature] for western [illegible] 19/9/63

(4)

Goods received in the presence of Importer. "Hussein" + [illegible] Patel. Drum Re-examined. Satisfied as to report on left. All items except those enumerated on left released vide Gate pass # 1664.

[signature] 19/9/63. 15

SEC: 27

H.M. CUSTOMS, FIJI—IMPORT ENTRY

A

Port of: Lautoka Ship: Indian Reefer From: Auckland Arrived 20/8/1963

Owner: Western Electric Co Ltd Agent: RATILAL V. PATEL Rotation No.: 63/106

H.M. CUSTOMS
26 AUG 63 14851
IMPORT
PAYMENT FIJI RECEIVED

For Off Use	Lic. No.	Cock. No.	Marks and Nos.	Packages No.	Packages Type	Description of Goods	Quantity	Wharfage	Country of Origin	Tariff Item	Value for Duty			Rate of Duty	Duty Payable			Statistical Code
		10/29	WL / Ltka	1	Drum	refrigeration Equipment	Tons 0.090	9	UK	92	42	7	4	free	.	.	.	716-12
		30	✓ ✓	1	c/s	copper tubes coils	Tons 0.050	3	Canada	92	33	3	11	✓	.	.	.	✓
		30A	✓ ✓	1	Cylinder	✓ ✓ ✓	Tons 0.106	6	✓	130	4	2	6	25%	1	10	8	682-x ~~677-x~~
						Electrodes			UK	[illegible]	11	9	2	25%	2	17	4	663-x
						cubic inch driers			Aust	[illegible]	6	4	8	25%	1	11	2	899-x
						Acetylene & Gas			UK	54	31	18	9	25%	7	19	8	512-x
						refrigeration Equipment	0.010		✓	92	9	11	3	free	.	.	.	716-12
						~~copper pipe saddles~~	0.010		NZ	92	7	2	11	✓	.	.	.	716-12
						copper pipe saddles	0.015		Aust	92	12	5	7	✓	.	.	.	711-12
						Charging cylinder	1		UK	114	15	9	8	✓				699-215
								1.6		TOTAL	2[illegible]3	14	9	DUTY	13	18	10	U.C.O.

Wharfage		1	6	I.G.O.
P.C.S.T. 3[illegible]% on 196 6 1	7 (~~7~~)	2 (~~16~~)	9 (~~3~~)	
Treble Bond Charges				C.O.
TOTAL	21 (~~21~~)	3 (~~17~~)	1 (~~0~~)	M.O.

For Official Use

RECEIVED 22 AUG

RECEIVED

I declare:—

that I am (*the Agent duly authorized by Western Electric Co Ltd) the owner of the goods:

that I enter the goods as of the value and of the description and quantities stated in this entry, and for home consumption; and

that the particulars as stated in this entry are true and correct in every respect.

Signature: RATILAL V. PATEL Date 23/8/63

*Strike out if entry made by owner.

Exhibits

"B"

Authority under Section 113 of Customs Ordinance 18th December 1960

"B"

AUTHORITY UNDER SECTION 113
OF CUSTOMS ORDINANCE

EXHIBIT "B"

TO THE COLLECTOR OF CUSTOMS,
LAUTOKA.

In accordance with the provisions of Section 113 of the Customs Ordinance We WESTERN LECTRIC CO. LTD.
(Please print in block capitals)
of LAUTOKA in the Colony of FIJI hereby authorise
RATILAL V.PATEL of LAUTOKA to sign at the port of LAUTOKA any Declaration, bond, or Security or other document required under the Customs Ordinance and I/We agree and hereby consent that any declaration, bond or security or other document so signed shall be valid and binding on me/us and I/We further agree and consent that this authority shall remain in full force and effect until notification of withdrawal thereof shall have been given in writing by me/us to the Collector of Customs at the port of LAUTOKA.

DATED at LAUTOKA this 18th day of December, 1960.

WESTERN LECTRIC CO. LTD.

Signature (Sgd) ?

FULL POSTAL ADDRESS: 21 G.P.O. BOX
LAUTOKA, FIJI.

EXHIBIT "C"

H.M. CUSTOMS — FIJI - IMPORT ENTRY — Arrived 20.8.63 Rotation No.63/106

SHIP: INDIAN REEFER — FROM: AUCKLAND — AGENT: RATILAL V. PATEL.

PORT OF: LAUTOKA
OWNER: WESTERN LECTRIC CO.LTD.

Exhibits

"C"

Post Import Entry for Additional Duty 27th August 1963

For Official Use	Licence No.	Docket No.	Marks & Nos.	Packages No. Type	Description of Goods	Country of Origin	Tariff Item	Value of Duty	Rate of Duty	Duty Payable	Statistical Code
		POST ENTRY FOR ADDITIONAL DUTY ON WT.NO. 14851 OF 26/8/63									
		SHOULD HAVE BEEN:									
	WL/LAU		1 C/S	)	Refrigeration Equipment	UK	92	36.13.0	Free	-	716-12
				)	"	USA	92	19. 6.6	15%	2.18.0	"
				)	"	DENMARK	92	16.7.10	15%	2. 9.2	"
				)	Cubic Inch Driers	USA	242	6.4. 8	50%	3. 2.4	899-X
								78.12.0		8. 9.6	
		PAID AS:-									
			1 C/S	)	Refrigeration Equipment	UK	92	72. 7.4	Free	-	716-12
				)	Cubic Inch Driers	AUST	242	6. 4.8	25%	1.11.2	899-X
						TOTAL		78.12.0		1.11.2	
						Diff.		NIL		6.18.4	U.C.O.

For official use

I declare -
that I am the Agent duly authorised by WESTERN LECTRIC CO.LTD. of the goods;
that I enter the goods as of the value and of the description and quantities stated in this entry, and for home consumption; and
that the particulars as stated in this entry are true and correct in every respect.

(Sgd) RATILAL V. PATEL

Signature Per R.S. Patel
Date: 27/8/63.

Wharfage	I.G.O.
P.& C.S.Tax	C.O.
Treble Bond Charges	M.O.
Total £6.18.4.	

"E"

LETTER WESTERN LECTRIC CO.LTD. TO REFRIGERATION ENGINEERING CO.LTD.

EXHIBIT "E"

Exhibits

"E"

Letter Western Lectric Co. Ltd. to Refrigeration Engineering Co. Ltd. 11th September 1963

11th September, 1963.

The Manager,
Refrigeration Engineering Co.Ltd.,
P.O. Box 12072,
Penrose,
AUCKLAND.

Dear Sir,

We received our consignment of spares on last Matua and on Customs Examination for country of origin they found all different origin on different parts such as dehydrators U.S.A. compressor Denmark and so on.

On your certified invoice all mark U.K. and Canada copper tube well thats correct.

As you know the Customs Certified Invoice has to be certified very correctly as we have to pay different rates of duty on different country of origin which is very important.

It may be different in your country but we have to abide by our Governments ruling.

All our goods are held in Bond waiting for the controllers decision whether he will prosecute or ask us to pay the extra rate of duty will advise you accordingly.

However, as far as we concern its a very serious offence to make a false declaration on the invoice.

Please advise all your staffs concerning that it should not happen future.

Will you please forward us an invoice for Calibrated Regrigeration charging cylinder.

Yours faithfully,

.....

IN THE PRIVY COUNCIL No.5 of 1965

ON APPEAL
FROM THE FIJI COURT OF APPEAL
AND THE SUPREME COURT OF FIJI

B E T W E E N

THE COMPTROLLER OF CUSTOMS — Appellant

- and -

WESTERN LECTRIC COMPANY LIMITED — Respondent

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37, Norfolk Street,
London, W.C.2.
Solicitors for the Appellant