JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO:11/2001

BEFORE: **THE HON MR. JUSTICE DOWNER, J.A.**
THE HON MR. JUSTICE HARRISON, J.A.
THE HON MR. JUSTICE WALKER, J.A.

REGINA v RAM NAGRANI
N.R. & N. LIMITED

Ian Ramsay, Q.C. and Deborah Martin instructed by Ballantyne, Beswick & Co. for appellants

Brian Sykes and Ann-Marie Feurtado-Richards for Crown

January 28, 29, 30, 31, February 1, 2002 & February 18, 2004

HARRISON, J.A:

Both appellants were convicted in the Resident Magistrate's Court for the Corporate Area (Tax Court) at Sutton Street by His Honour Mr. O Parkin, Resident Magistrate, on January 6, 2000. Each appellant was convicted on 55 informations for breaches under section 210(1) of the Customs Act of being knowingly concerned in the fraudulent evasion of import duties on soya oil imported into Jamaica with intent to defraud and sentenced to pay a penalty of $19,816,664.15 each.

We heard the arguments on this appeal and made the order following:

> N.R. & N. Limited - (By a majority) Appeal against conviction dismissed and conviction affirmed. Appeal against sentence allowed and sentence set aside on each information and in substitution, admonished and discharged on each information.
>
> Nagrani – Appeal dismissed – conviction and sentence affirmed. Appellant to pay $10,000,000.00 forthwith and the balance of $9,861,664.15 on or before May 1, 2002 with two sureties. Sureties and means are to be approved by the Registrar of the Court of Appeal.

The relevant facts are that the appellant company N.R.& N. Limited ("the Company") incorporated on March 22, 1993 was involved in the importation of vegetable oil from Sedca, a company in Costa Rica. The appellant Ram Nagrani managed and operated the appellant company. Between January 1994 and October 1994, the Company imported from Sedca, quantities of vegetable oil in metric tonnes, which were delivered to Jamaica. The company was required to and paid custom duties on the value of the said oil imported.

The system employed for the importation of oil to Jamaica was initiated by an order to Sedca by telephone, fax or in person. The sales manager of Sedca, one Hector Madrigal would conduct the negotiations with the importer in respect of the price of the oil. When

the negotiations were complete Madrigal would hand over the order and the terms of the order to the manufacturing department. The sales invoice is then prepared and signed by one Jose Emanuel Garcia Solano, an employee, and sent along with a duplicate to Cenpro, a Costa Rican government office, which promotes and monitors the export of non-traditional products, such as vegetable oil to third markets such as Jamaica. Cenpro authorises the export by affixing a seal to the invoice and duplicate. The person within Sedca who signs the invoice must be registered with Cenpro.

Madrigal, Solano and Jose Rodriques, the financial controller were officially registered with Cenpro in 1994.

After the original invoice and duplicate are stamped by Cenpro they are sent to the Central Bank of Costa Rica where the order is registered as an export. The Central Bank keeps one of the two original invoices. Jose Garcia would make a photocopy of the invoice stamped by Cenpro and this photocopy is kept in the filing system at the Sedca office. The carrier of the goods is then contacted. The other original invoice along with bill of lading is sent to the client importer by either Garcia or Madrigal, so that the client may take steps to receive, the goods in Jamaica.

Clifton Cassie, customs officer, acting Director of Operations stated, in evidence, that the importer of goods in Jamaica would

receive from the exporter abroad, the invoice for goods and the bill of lading. The shipping agents for the carrier, on getting the bill of lading from the importer would issue a validated bill of lading. The importer would then give the invoice and validated bill of lading to a licensed customs broker with instructions to effect the clearance of the goods.

George HoSang, in evidence stated that he is a licensed customs broker operating as G & D Customs Broker. During the year 1994, he received from the appellant Nagrani, invoices and bills of lading in respect of the clearance of shipment of goods. He had a C78 form prepared, had his number placed on it, and signed it. He said that exhibits 2 to 56 were invoices, bills of lading, permit and C78 forms in respect of goods all cleared by him and delivered to the appellant Nagrani. There was no translation accompanying the invoices, as there would have been if the invoices were in foreign language.

Clifton Cassie, further stated, that the customs broker having completed the C78 form, he would also prepare a C70A form which would be signed by the importer Nagrani declaring the value of the imported goods. The customs broker in the instant case George HoSang, would lodge the C78 form, the invoice, the validated bill of lading, the C70A form and the permit to import the oil, with the customs officer. The customs invoice inspector would process the documents, by verifying the particulars contained in the C78 form in

respect of the classification of the goods and the duties payable, comparing with the customs tariff, the invoice for evidence of the value of the goods and the bill of lading to confirm that the freight charges are paid. If correct, the C78 is passed for payment, that is, signed by the invoice inspector and his supervisor. The customs broker then takes all the documents to the customs cashier and pays the duty. The cashier collects the duty, endorses the entry assigning a number to it. The original and the duplicate of the invoice he returns to the customs broker. The latter takes the said documents to the wharf where the bill of lading is again validated, then to Customs where the original C78 form, the duplicate invoice and the bill of lading, are compared against the ship's manifest which is struck by the entry of the C78 number on the manifest. The customs officer signs the back of the C78 form and the bill of lading, that the terms of the clearance have been correctly followed. Thereafter, the customs broker presents the documents to the wharf, where the shipping agents present the container to the customs officer who verifies, the container number with the documents.

If all is in order, the customs officer issues a customs release form, and with the documents the wharf representative issues a gate pass after endorsing the bill of lading. The customs broker would take the documents to the customs delivery officer who retains the

duplicate customs release form and gate pass and the wharf officer would release the container to be taken to stripping station, retaining the bill of lading, copy customs release and gate pass. At the Customs stripping station, the customs officer checks the goods in the container against the relevant C78 form and the invoice, and if correct the goods are released to the importer.

The C78 form would contain, inter alia, the name and address of the importer, the name of the supplier, the description of goods, the number of the container, the size and number of packages in the container, the name of the carrier, the name of the vessel, the date of arrival, the classification of the goods, the value and the rate of duty applicable to the imported goods. The duty would be calculated and shown on the C78 by the importer or his authorized agent.

The witness Clifton Cassie identified, together tendered as exhibit 2, the original and copy of the C78 form No. 94-12-000669, invoice No. 918, permit for edible oil dated January 11, 1994 and customs release form. He also identified similar sets of forms as exhibits 3 to 56, which he had extracted from the Customs files in September 1996, at the request of the Revenue Protection Division, and he certified the copies of the said document as being true and correct copies.

Exhibits 2 to 56 were the documents utilized by the appellants to effect the importation of vegetable oil from Sedca in Costa Rica into Jamaica and cleared through customs.

Jose Rodriques who was financial controller of Sedca from 1992 to 1996, came to Jamaica in August 1994, and met with the appellant Nagrani on three occasions, in respect of late payments by the appellant for the vegetable oil exported to the appellant company. At the trial, on being shown exhibit 2, he said that the invoice, part of exhibit 2 did not originate from his company Sedca, because the letterhead on exhibit 2 was computer originated, whereas Sedca's letterhead "has a water based dye." He said that he had been shown, exhibit 2 to 56 in 1996 and he observed and said then that:

> "These are not invoices that originated in Sedca because the prices quoted are not the prices we sold our products at that time. They do not have the signature of any Sedca employee. They do not have the Cenpro seal and the letterhead although similar to ours is not that of Sedca."

In addition the witness Rodriques said, that none of the invoices in exhibits 2 to 56 had the signature of Garcia, as they should have had and Sedca did not then employ anyone in 1994 named "J Torres" who was authorised to sign the said invoices. The price of the oil stated on the said invoices, in the exhibits was $10,000.00 per metric ton. Rodriques said:

"In 1994 Sedca sold oil for not less than $15,000.00 for every metric ton."

The witness Jose Emanuel Garcia Solano, who was export co-ordinator with Sedca in 1994, would prepare and sign the invoices for the export of oil. On the invoices he would place the price of the product, which price and other information are given to him by Madrigal who negotiated the price with the client. The original invoice is sent to the client, after the various processing steps, including the Cenpro seal, but photocopies of each invoice is kept in Sedca's files archives. This witness produced, the 55 copies of the export invoices sent to the appellant company during the period January to October, 1994, tendered together as exhibit 58. The copy invoices, exhibit 58, are all in the Spanish language inclusive of the date, each has the Cenpro stamp on it and they are all signed by the witness Solano. Each copy invoice in exhibit 58, has a number, namely: 0918, 0925, 0954-5, 0962-4, 0970-2, 0984-5, 1008-10, 1051-2, 1121-3, 1136-8, 1140, 1161-3, 1201, 1203, 1267, 1289-91, 1305-7, 1318, 1320-1, 1334-6, 1352, 1387, 1388, 1450, 1463, 1465, 1475, 1502-4, 1542 and 1545. These numbers correspond identically with the invoice numbers on exhibit 2 to 56. However, the corresponding document differs in most other material aspects.

Mike Surridge, Director of the Revenue Protection Division, which investigates losses of government revenue, including tax evasion,

spoke to the appellant Nagrani on May 15 1995, in respect of the importation of vegetable oil by the appellant company. The appellant Nagrani said that his sons were the directors:

> "... but they were not concerned with the company as he ran the company."

and that he was responsible for the purchasing and importing for the company. This witness collected from the relevant Customs department, the documents, exhibits 2 to 56 and went with them to Costa Rica in December 1995, where he received then invoices from the witness Rodriques and also other invoices in January 1996 when Rodriques came to Jamaica. On comparing the two sets of documents, it was observed that the price per metric ton of the vegetable oil on the vendor's invoices received from Rodriques (now exhibit 58) namely, US$15,000.00 was one third more expensive than the price, namely US$10,000.00 on exhibits 2 to 56, which were submitted to Customs in Jamaica by the appellants.

The appellant Nagrani, said in evidence that he was not a director, but an employee of the appellant N.R. & N. Limited. During the period January to December 1994 and he and the company were involved in importing oil from Sedca in Costa Rica. He visited Costa Rica many times. He had spoken only to Madrigal in respect of the price of the oil. He had never spoken to the witness Solano, or Rodriques, both of whom speak Spanish only. The invoices in exhibits

Nos: 2 to 56 were all sent to him by Madrigal. He never received any of the invoices in exhibit 58. The invoices in exhibits 2 to 56 were the ones he received from Sedca, and the prices thereon were the prices agreed on by Madrigal and himself. The name "J Torres" was on exhibits Nos: 2 to 56 when he received them and he gave all those documents to George Hosang to take to Customs. He had never received from Sedca any invoices in Spanish. He knew that Customs did not accept invoices in Spanish. He denied that invoices in exhibits 2 to 56 were produced by him or on his instructions, and submitted in order to defraud the Government of Jamaica.

The grounds of appeal were:

> "1.(a) That it was not established during the trial that the Company, N.R. & N. Limited was summoned to attend court and respond to the charges contained in the numerous informations laid against the said Company. This failure to have the Company served and an officer of the company present in order to be pleaded must render the convictions and sentences recorded against the appellant's (company) null and void.
>
> 1.(b) That alternatively the learned Resident Magistrate had no power to impose a sentence of a penalty or fine to be recovered by distress upon conviction for an offence under S. 210 of the Customs Act upon a corporation.
>
> 1.(c) That on a true construction of the Customs Act, Section 210 & 242 among others apply only to natural persons and not artificial personnae such as corporation.

2. That the failure to have the Company through its representative present and answering the several charges deprived the learned trial judge of his basis for determining whether or not the appellant Nagrani was acting under the direction of superior officers of the Company and of thus determining whether or not his conduct made the company criminally responsible and not Nagrani individually.

3. That the failure to so make a determination resulted in the learned trial judge falling into the error of convicting both Nagrani and the unrepresented N.R.N. Limited for conduct which may have been attributable only to former.

4. That the Crown in failing to call a witness Mr. Madrigal who was present in court at material times, failed to prove that the values appearing on the invoice submitted to Customs were false and that there was in fact an evasion of duties.

5. That there was no evidence or no legally acceptable evidence of the value of goods upon which import duties were calculated: That such value can only be lawfully computed by reference to the parameters set out in section 19 of the Customs Act: that is, the price that would be paid by a willing buyer or seller at arms length in the country of import and not the value declared on the invoice as the price paid in the exporting country: That accordingly the sentence cannot stand as the exigible duties were arrived at on a wrong basis and contrary to law."

Miss Martin for the appellants argued that no officer of the appellant company was before the Court representing the appellant, nor was the court so told and therefore there was no jurisdiction in the

Court to decide that the appellant company had been served and was before it and had entered a plea of not guilty. She concluded that the fact that Mr. Danesh Maragh, attorney-at-law, said he was appearing did not give the Court jurisdiction.

Where a person has committed a summary offence, an information shall be laid and a summons issued for his attendance in court to answer the charge (section 2 of the Justices of the Peace Jurisdiction Act.) A "person" includes a company: (Section 3 of the Interpretation Act).

Where a company is charged with an offence, it must be served with a statement of the particular charge in a summons for its attendance at court on a named date, just like an ordinary person. Its method of service is regulated by section 370 of the Companies Act, which reads:

> "370 A document may be served on a company by leaving it at or sending it by post to the registered office of the company."

Service by post is dealt with in the Interpretation Act. Section 52(1) reads:

> "52-(1) Where any Act authorises or requires any document to be served by post, whether the expression" serve" "give" or "send" or any other expression is used, then, unless a contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and, unless the

> contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Service on a company by post, is specifically described in section 52 (2)(c) of the latter Act. It reads:

> "(c) in the case of a corporate body or of any association of persons (whether incorporated or not), by delivering it to the secretary or clerk of the body or association at the registered or principal office of the body or association or serving it by post on such secretary or clerk at such office."

If therefore a company is in attendance before a court, and answers to a charge, it will be deemed to have been properly summoned and served.

In the instant case 55 informations were sworn to and filed against the appellant company on February 3, 1998.

At the hearing before the learned Resident Magistrate on May 14, 1998 the appellant Nagrani was present and voiced no objection to the effect that the appellant company was not served. Neither did he complain that the company was not before the court or that he did not represent the company. On the contrary, the record discloses that he entered pleas both on behalf of the company N.R. & N. Limited and himself. The record reads:

"Plea: Not guilty – both".

This plea could only have been an oral one by the person Nagrani, the human element, for "both".

In an article entitled *"For the company"* published in the journal Justice of the Peace, Volume 140 on October 23, 1976, the contributor, John Richman, Clerk to the Sheffield Justices, alluded to the general principle of ancient origin that a court had the power to regulate its own proceedings and quoting from ***Simms v More*** [1970] 3 All E.R. 1 said:

> "Justices have always had an inherent power to regulate the procedure in their courts in the interests of justice and a fair and expeditious trial."

He concluded:

> "It is therefore submitted that magistrates' courts possess the power to hear anyone who appears in answer to a summons to a corporation, and who purports to represent that corporation. The court may allow him to mitigate, or indeed to present a defence. If the court is disposed to exercise its discretion in this way, it would first take very great care to ascertain that person's authority. Can he be said to represent the directing mind and will of the corporation? Does he produce some written authority which shows that the corporation expects him to act in an unrestricted way on its behalf? In other words can it be safely said that to all intents and purposes the court would appear to have before it the corporate body itself."
>
> (Emphasis added)

The submissions of Mr. Maragh, attorney-at-law, rather than referring to the fact that it was Nagrani only who was before the court, or specifically, that the appellant company was not before the court, confirmed the statement of plea by the appellant Nagrani, that the appellant company was before the court and pleaded not guilty. He submitted at page 221 of the record:

> "Ram Nagrani and Company have already been charged on the same facts in a competent court – larceny accused Ram Nagrani and Company acquitted custom charges laid 1995 – was held in abeyance until outcome of larceny charge. Defence led to believe these charges depended on outcome of larceny charges.
>
> Cites Criminal Procedure & Practice – Cecelia Hampton.
>
> The court has an inherent jurisdiction to restrain an abuse of process and the purpose of this is to avoid oppression of an accused where the strict principle of autre fois acquit is not applicable.
>
> This is where the prosecution uses the same facts, the same parties, the subject matter; to find a charge different from one the accused was already charged with and acquitted.
>
> Question: What prevented R.P.D. from not concurrently hearing the larceny with these charges?
>
> Herein lies injustice R.P.D. mislead accused.
>
> Charging Ram Nagrani and Company for importation of same goods another means of oppression." (Emphasis added)

The learned Resident Magistrate quite properly concluded that the court had before it "the corporate body itself" and that it was represented by the appellant Nagrani. This decision the learned Resident Magistrate reinforced by his order:

"Trial will proceed against both." (Emphasis added)

Although the learned Resident Magistrate so ruled initially, the nature of the evidence led subsequently, could have led him, if he thought just, to find that the appellant Nagrani was not in fact authorised to, and did not represent the appellant company. He could, consequently, have reversed his decision. However, the evidence, as it unfolded, confirmed that the appellant Nagrani, was the representative of the appellant company in fact and in law. The prosecution witness Mike Surridge said in examination-in-chief:

> "I told Nagrani I was making enquiries about importations for N.R. & N. Limited. Asked him who were directors of company. This was the first action in the investigation. Nagrani said his two (2) sons were the directors but they were not concerned with the company as he ran the company." (Emphasis added)

Furthermore, although the Articles of Association of N.R. & N. Limited dated February 8, 1993, at the time of filing for the purpose of incorporation, listed the directors as Maresh Nagrani and Rajesh Nagrani, presumably, the sons of the appellant, on June 23, 1994 the appellant Nagrani signed the C70A form as a director. It reads:

> I Ram Nagrani hereby declare that I am the Director of N.R. & N. Limited who is the importer of the goods specified in the attached one invoice dated June 16, 1994 and amounting all to US$11648.00."
> (Emphasis added)

This particular C70A form was a part of exhibit 33 filed in respect of the importation of a quantity of vegetable oil (soya), on invoice No:1291 and C78 entry No: 94-14-011227.

Curiously, the appellant Nagrani, in evidence-in-chief said:

> "Know Company N.R. & N. I am not a Director I am employed by the Company."

and in cross-examination, in contrast, said:

> "About five (5) persons were employed by me when running N.R-N. Limited."
> (Emphasis added)

The nature of this evidence supports the earlier ruling of the learned Resident Magistrate that the appellant company was before the court represented by the appellant Nagrani who pleaded to the charges on behalf of the said company.

Furthermore, although on March 22, 1993 when the appellant company was incorporated the appellant Nagrani was not declared as a director thereof, on June 23, 1994 when he signed the C70A form declaring himself to be a director, the court properly could have and was correct to accept that he was a director of the appellant company.

The appellant company was properly before the court, pleaded through its representative not guilty to the charges, participated in the trial, and was convicted. There is no merit in this ground of appeal.

Grounds 2 and 3. The arguments advanced in respect of ground 1(a) were adopted. These grounds also failed for the reasons stated in respect of ground 1(a)

Ground 1(b)

Mr Ramsay argued that the learned Resident Magistrate had no power either under section 210 of the Customs Act or under section 18 of the Justices of the Peace Jurisdiction Act to order distress as a mode of enforcing a penalty.

Section 210 of the Customs Act provides that every person who is concerned with the importation of any goods with intent to defraud, shall on conviction incur a penalty not exceeding treble the value of the goods, and in default of payment would be liable to be imprisoned for a period not exceeding one month. As to enforcement of a penalty, section 240(1) of the said Act, reads:

> "240.-(1) Subject to the express provisions of the customs laws, any offences under the customs laws may be prosecuted, and any penalty or forfeiture imposed by the customs laws may be sued for, prosecuted and recovered summarily, and all rents, charges, expenses and duties, and all other sums of money whatsoever payable under the customs laws may be recovered and enforced in a

> summary manner on the complaint of any officer."

As an alternative form of sentence, section 242, reads:

> "242. Where any court has imposed a penalty for any offence against the customs laws, and such penalty is not paid, the court may, notwithstanding anything contained in any other enactment, order the defendant who is convicted of such offence, in default of payment of the penalty adjudged to be paid, to be imprisoned, with or without hard labour, for any term not exceeding one year, where the penalty does not exceed one hundred thousand dollars, or five years where the penalty exceeds one hundred thousand dollars."

Learned Queen's Counsel submitted that nowhere in section 18 of the Justices of the Peace Jurisdiction Act is power given to a Resident Magistrate to order distress as a mode of enforcing a penalty. Section 18, inter alia reads:

> "18. Where a conviction adjudges a pecuniary penalty or compensation to be paid, or where an order requires the payment of a sum of money, and by the enactment authorizing such conviction or order such penalty, compensation or sum of money is to be levied upon the goods and chattels of the defendant by distress and sale thereof, and also in cases where, by the enactment in that behalf, no mode of raising or levying such penalty, compensation or sum of money, or of enforcing the payment of the same, is stated or provided, it shall be lawful for the Justice or Justices making such conviction or order, or for any Justice for the same parish, to issue his or their warrant of distress (in the Form (11)(a) or (11) (b) of the First Schedule, as the case may be) for the purpose of levying the same, which said

> warrant of distress shall be in writing, under the hand of the Justice making the same."
> (Emphasis added)

Offences under the Customs Act are prosecuted either summarily before a Resident Magistrate in the exercise of his special statutory summary jurisdiction or by the Resident Magistrate sitting as two Justices of the Peace, summarily. Summary trials and the enforcements of fines and penalties are governed by the Justices of the Peace Jurisdiction Act. Section 18 expressly, provides, inter alia, that:

> "... where ... no mode of raising or levying such penalty ... or money ... or enforcing the payment ... is stated or provided, it shall be lawful for the Justice or Justices ... to issue his or their warrant of distress." (Emphasis added)

In addition, section 16 of the said Act provides:

> "... or in all cases of conviction upon enactments, hitherto passed whether any particular form of conviction have been therein given or not, it shall be lawful for the Justice or Justices who shall convict to draw up his or their conviction on paper in such one of the forms of conviction (7) (a), (7) (c) in the First Schedule and shall be applicable to such case or to the like effect; ..."

Both forms (7)(a) and (7)(c), specifically in the wording authorise that in default of payment of the penalty, it may be recovered by distress.

Although, in law, a company is a separate entity from its directors, agents or employees, the company can be charged with

having committed an offence, if the act of the agent or employee "directing the mind and will" of the company is authorised by the company and can be attributed to the company: (See ***Meridian Global Funds Management Asia Ltd v Securities Commission*** [1995] 2 A.C. 500). A company may be found not liable for an offence charged, if the act of its employee is not attributable to the company, in that the company had taken effective steps and adopted a system to avoid the commission of offences (***Tesco Supermarkets Ltd. v Nattrass*** [1911] 2 All E.R. 127). In the instant case, the appellant Nagrani's acts, as "director" or "employee" were attributable to the company and therefore his acts were that of the company. The company was clearly liable to be prosecuted and the penalty imposed was properly recoverable by distress. There is no merit in this ground.

Ground 1(c) was not pursued.

Ground 4

Learned Queen's Counsel submitted that the information contained in exhibit 58, as to the price of the oil, was a breach of the best evidence rule and hearsay evidence. This is because the information had been given to the maker of the document, Solano, by Madrigal his superior officer in Sedca. Madrigal, although in attendance at the trial, was not called as a witness and therefore exhibit 58 was inadmissible.

As a general rule, the contents of a document are admissible in evidence by the production of the original by the maker of such document. The authors of ***Cross on Evidence*** 6th edition, at page 600, said:

> "A party relying on the words used in a document for any purpose other than that of identifying it must, as a general rule, adduce primary evidence of its contents. This is often spoken of as the most important survival of the best evidence rule, although it antedates that rule by several centuries. The typical example of primary evidence in the context is the original document."

Secondly, evidence of the contents of a document may also be admissible, where the absence of the original is explained. If however, the purpose of the production of the document is to identify it or to prove that it exists, secondary evidence may be adduced in the absence of the original, after notice to produce was issued. This is original evidence.

However, no notice to produce is required to be issued where from the nature of the proceedings, the original is in the possession of the other party and should be produced. The said authors in ***Cross on Evidence***, at page 606 said:

> "In certain circumstances, service of notice to produce is excused, and a party may adduce secondary evidence of the contents of a document if the original is not produced by his opponent ... (a) case in which there is no need to serve notice to produce is when the

> nature of proceedings is such as to inform a party that he is required to produce the originals of certain documents at the trial. Obvious instances are provided by prosecutions for the theft of a document or driving a motor vehicle without being adequately insured."

In ***Myers v D.P.P.*** [1965] A.C. 1001, it was held that the records of the manufacturers of cars whose engine chassis and cylinders block numbers were recorded on cards by workmen when the cars were originally manufactured, could not be admitted as evidence of their contents at a trial for the theft of these cars. The workmen who compiled such records, and not the keeper of the records, were the proper witnesses. Where however, the document may be classified as a duplicate original, it is admissible as evidence on production by its author.

In the instant case, the witness Garcia Solano, testified that after a client orders the product, he would get the information and prepare an invoice on the computer. He said, at page 247, of the record:

> "My boss will give me information as to the price which depends on negotiation between boss and client."

The computer calculates the figures, but he verifies it on a calculator. The original invoice has two carbon copies. He signs the invoice after checking it. Also, at page 248,he said:

> "Once have order in hand I would prepare invoice, send order to plant and having received goods I would sign invoice –both original and copies – send invoice to Central Bank Costa Rica for them to sign the Export Form."

He did, in addition, say:

> "I prepare invoice and make three photocopies ... I sign the three photocopies send them to Cenpro ... Cenpro seal is affixed and returned to me ..."

Of exhibit 58, he said:

> "I see my signature on these invoices. Familiar with a Company named N.R.N. Limited. It was a Company that we were exporting our products to Jamaica. What is on the invoice is oil. Oil is a product we trade in. We sell to N.R.N. Limited. I prepared these in respect of sales to N.R.N. Limited. The invoices are numbered consecutively.
>
> This document is No: 0918 – Invoice. This is a photocopy document. I photocopied it. The original is at Customs and Cenpro. This document has the Cenpro seal on it. The original from which I made this copy placed it in archives at Office of Company."
>
> "(These) (exhibit 58) are the documents from the archives ... The documents were never altered since they were made and placed in the archives".

This witness also said that he "personally sent the invoices for the goods to N.R. & N." There was therefore no necessity for the prosecution to call Madrigal as a witness.

The invoices, exhibit 58 were clearly admissible on two bases. Firstly, they were duplicate originals, made by the witness Garcia Solano, prepared and signed by him. They were therefore his documents and he could properly give evidence of their contents.

In ***R v Wayte*** (1983) 76 Cr. App. Report 110, even a photocopy of a copy was accepted as admissible in evidence. Secondly, they were admissible as original evidence, in proof of the fact of the nature of the invoices sent to the appellants, who were in possession of the original. Exhibit 58 was proof that, the original invoices sent to the appellants:

(a) were written in Spanish and not English;

(b) quoted a price of $15,000 per metric ton and not $10,000;

(c) were signed by "Garcia Solano" and not "J Torres";

(d) were prepared on paper with a water based dye letterhead and not computer generated;

(e) had the Cenpro stamp on each.

By contrast, the invoices, exhibits 2 to 56 were written in English, without any translation to indicate that they were received originally in Spanish. The price per metric ton was $10,000. They were signed by "Torres" a non-employee and unauthorised signatory, had no Cenpro stamp on them, and were prepared on paper with computer created letterheads.

I agree with Mr Sykes, for the Crown, that the fact that exhibits 2 to 56 had similarly corresponding serial numbers as those on exhibit 58, that the logos were false, that the price was falsified by the substitution of US$10,000 instead of US$15,000, and that the signatures were false, with no Cenpro stamp, are indicators that the appellants received the originals, exhibit 58. They falsified the documents by the production of exhibits 2 to 56. That was ample evidence to prove that there was an evasion of customs duties. There is no merit in this ground.

Ground 5

Mr Ramsay argued that there was no admissible evidence of the value of the goods as the value contained in exhibit 58 was hearsay. The normal price as ascertainable under the provisions of section 19 of the Customs Act was not proven and therefore the duties properly payable were not correctly arrived at.

Section 19 of the Act stipulates the basis of ascertainment of the prices on which customs duty is payable. The evidence of witness Clifton Cassie, customs officer, is that the customs duty payable by the importer is calculated from the documents submitted by the customs broker for the importer. These documents were all examined and properly processed by Customs and the duties paid. In all the

circumstances, Customs accepted the price quoted on the invoices exhibits 2 to 56 as the "normal price".

The charges before the learned Resident Magistrate, as submitted by Mr Sykes, were the evasion of customs duties, evidenced by the submissions of false documents to Customs fraudulently, with intent to defraud. The witness Solano, the maker of exhibit 58 in Spanish, verified that the sale price of the oil was US$15,000.00 per metric ton. Exhibits 2 to 56 were accepted by the learned Resident Magistrate as forged documents submitted by the appellants, declaring that the price per ton was US$10,000.00, without any indication that it was a translation from Spanish into English, albeit fraudulently. Customs, having accepted the price on the false invoices, exhibits 2 to 56 and having calculated the duties thereon, there existed a proper basis for the learned Resident Magistrate to find what was the normal price of the goods, and that the appellants had committed the offences charged sufficient to impose the proper sentence which he did. There is no merit in this ground.

For these reasons we dismissed the appeals and made the orders stated.