

IN THE COURT OF APPEAL

R.M. COURT CRIMINAL APPEAL NO. 207/65

BEFORE: The Hon. Mr. Justice Duffus (President)
 The Hon. Mr. Justice Waddington
 The Hon. Mr. Justice Shelley (Acting)

R. vs H U G H J A M E S

Mr. C. Orr for the Crown

Mr. H. Edwards for the appellant

26th January, 1966

WADDINGTON, J.A.,

The appellant was convicted in the Resident Magistrate's Court for the parish of Kingston on the ninth of September, 1965, on an information which charged that he unlawfully did manufacture excisable goods to wit footwear, contrary to the provisions of the Excise Duty Law Chapter 119, Section 20 Sub-section 3. He was fined £25 and costs £8 or three months imprisonment at hard labour.

The facts of the case briefly were, that on the 17th of May, 1965, an Excise Inspector visited premises number 129 Orange Street, Kingston, occupied by the appellant, and there he saw two female attendants and one worker engaged in finishing on a footwear footwear/machine. The appellant was spoken to by the Inspector and he was asked whether he had a licence to manufacture footwear. He said that he had previously held a licence at 72 North Avenue but had removed to smaller premises at 129 Orange Street and he was there waiting to get a suitable place before applying to get another licence. The Excise Officer advised him to apply for a licence, and on the 25th of May, 1965, he returned to the premises and there saw the appellant engaged in cutting out uppers from a model for footwear, and he saw a number of finished footwear - some 13½ pairs - in a box. As a result of that, this Information was laid against the appellant. In his defence, the appellant denied that he was cutting out uppers on the 25th of May, and, as regards the finished footwear, he said that those articles

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had been manufactured at the previous premises in respect of which he held a licence and that duty had accordingly been paid on those articles.

We find it necessary to deal in this appeal only with the last ground of appeal which Mr. Edwards applied this morning to add as one of his grounds of appeal, namely: "that the Information disclosed no criminal offence."

Mr. Edwards submitted that the Information having been laid under Section 20, Sub-section 3 of the Law, which reads:

"No person shall manufacture any excisable goods except pursuant to a licence granted under this section,"

that was a mere prohibition and did not create any offence under the Law. He submitted that the offence was created by Section 24, which reads:

"Any person manufacturing excisable goods contrary to the provisions of this Law shall be guilty of an offence against this Law and on conviction shall be liable to a fine not exceeding one thousand pounds and all machinery, utensils, apparatus, materials and all goods whatsoever found on the premises shall be forfeited."

It appears to us that this contention is sound. It is to be noted particularly, that the prohibition in Section 20, Sub-section 3, refers to the "manufacture" of excisable goods, and it seems to us that that terminology contemplates a completed article which is subject to exercise duty. Section 24, however, appears to embrace all the processes leading up to the manufacture of the completed article by the term "manufacturing" excisable goods, and we are of the view, that the offence charged should have been under this latter section, Section 24.

Mr. Orr submitted that the Information did disclose an offence, but that the Section of the Law which made it an offence i.e. Section 24, had been omitted from the Information

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and that the Court should exercise its discretion under Section 302 of the Resident Magistrate's Law Chapter 179 and amend the Information.

It is our view, that the case in the Court below was conducted on the basis of the words charged in the Information "unlawfully did manufacture excisable goods," and that being so, to amend the Information at this stage to include words which would imply the process of manufacturing would create a hardship on the appellant and possibly lead to a miscarriage of justice. In these circumstances, we think that the appeal should be allowed and the conviction quashed and sentence set aside.