

J A M A I C A

IN THE COURT OF APPEAL

R. M. COURT CIVIL APPEAL NO. 21/68.

BEFORE: The Hon. Mr. Justice Shelley (Presiding)  
The Hon. Mr. Justice Eccleston  
The Hon. Mr. Justice Fox

BETWEEN: TIMES BAKERY LTD. (APPELLANT)

AND: R E G I N A

Mr. Enos Grant for the Appellant

Mr. G. Andrade for the Crown

May 17, 1968.

SHELLEY, J. A.,

This appeal is from an order made by the Resident Magistrate for Clarendon on information laid under section 47 (1) of the Tax Collection Law, Chapter 375, to recover a penalty imposed under section 94 (2) of the Excise Duty Law, Chapter 119.

Between 20th February, 1967, and 8th May, 1967, the Appellant company purchased Duty Free sugar for use in its baking business. On the 17th May, 1967, an Excise Inspector inspected the Company's records. The Company failed to produce 200 bags "D" grade sugar on demand by the Excise Inspector. Patrick Chen, a Director of the Company, signed on behalf of the Company a document admitting its failure to produce the sugar and consenting to the Collector General mitigating the penalty to which the Company had become liable under section 94 (2) of the Excise Duty Law, Chapter 119. On 3rd June, 1967, the Collector General, by powers under section 106, Chapter 119, imposed a mitigated penalty of £400. The complaint was laid on September 29, 1967.

Two short points are to be decided. Counsel for the Appellant contends that the mitigated penalty imposed by the Collector General is not legal and, therefore, not recoverable because the defendant Company only became liable to a penalty

under section 94 (2), Chapter 119, if it failed to account for or produce the goods within three years from the date of the demand by the Excise Inspector.

Section 94 provides (1) "Where any goods, which are ordinarily liable to duty at a given rate, are allowed by law to be delivered at a lower rate of duty or free of duty x x x x x x x x x x

(b) for use for some special purpose and the goods at any time within three years after the date of delivery have been used for any other than the specified purpose; x x x x x x x x

such goods shall be forfeited, and the person obtaining delivery of such goods, and any person who is knowingly concerned in the use of such goods contrary to such conditions or for some purpose other than that specified or in any way contrary to this section, shall incur a penalty equal to treble the value of such goods, or one hundred pounds, whichever is the greater, unless full duties on such goods have been paid, with the prior consent of the Collector General.

(2) The person to whom any such goods have been delivered shall on demand produce them to any officer or otherwise account for them to the satisfaction of the Collector General within such period of three years referred to in subsection (1) of this section and if he fails to produce such goods or otherwise to account for them he shall incur a penalty equal to treble the value of such goods or one hundred pounds, whichever is the greater"

The short answer to Counsel's first point is that section 94 (1) (b) provides a penalty for using goods for a purpose other than the specified purpose at any time within three years of the date of delivery of the goods for use for a special purpose; such use after three years from the date of delivery does not attract a penalty. Subsection 2 of section 94 makes the person to whom such goods were delivered liable to a penalty for failing to produce them or to account for them on demand of the Collector General made within three years from the date of delivery. The penalty<sup>is</sup> incurred when on demand there is failure to produce or account, not three years thereafter.

The second point taken is that the information in these proceedings is defective in that it was laid under the wrong law, and section, namely, section 47 (1) of the Tax Collection Law because that section does not relate to recovery of

duties or penalties under the Excise Duty Law. In support of this ground learned Counsel relies upon the provisions of section 52 of the Tax Collection Law with special regard to the heading immediately above it, which are:

APPLICATION OF LAW.

52. "The powers and provisions of this Law shall apply to the collection and enforcement of all taxes, duties, and penalties which are or shall be raised or imposed by any law not otherwise specifically providing for the collection of the same"

and section 108 of the Excise Duty Law which provides in sub-

section (1): "Save where otherwise expressly provided, every person guilty of an offence against this Law or of any regulations made thereunder, and every person liable to a fine or to a penalty or to the forfeiture of any article under the provisions of this Law or of any regulations made thereunder may be prosecuted, on the complaint of an Officer, in a summary manner before a Resident Magistrate"

Sub-section (2): "save where otherwise expressly provided all rents, charges, expenses, duties, and other sums of money payable under this Law may be recovered, without limit of amount, in an action in the Resident Magistrate's Court"

Counsel contends that since the Excise Duty Law makes specific provisions for the recovery of penalties under that Law, the Tax Collection Law, because of section 52 thereof, has no application. In other words, once any law contains its own provisions for the collection of duties or penalties it excludes the use of the Tax Collection Law.

It is a well known rule that a statute is to be construed as to give meaning to every part, and also in construing a statute one must be guided by the intention of the Legislature. With these rules in mind, we will now examine some sections of the law which, in our view, give a clear indication how section 52 of the law should be interpreted.

By section (1) the law is titled THE TAX COLLECTION LAW.

By section 2 (1) "The words "Tax" or "Taxes" as used in this law shall include quit rents and all taxes, rates, duties, and fees payable under any Law to the Collector or Assistant Collector of Taxes for any parish"

(2) "All rates levied or imposed, or hereafter to be levied or imposed, under or by virtue of any law of this Island, shall be deemed to be taxes within the meaning of this Law."

Under the heading "ENFORCEMENT OF TAXES" section 24 provides that the Collector of Taxes may assess taxes and add a penalty when no return in respect of the duties or taxes imposed by any law of this Island as shall be by such law required, shall be made to the Collector of Taxes.

Section 25 gives the Collector of Taxes authority to distrain: "If any person making a return of the duties or taxes imposed upon him by any law, shall not therewith pay the said duties or taxes."

Section 28 provides: "In addition to the other remedies given by this law or any other law relating to taxes, the Collector of Taxes or Assistant Collector of Taxes, may proceed for the recovery of any amount claimed for any taxes, and for the penalty thereon, in a Resident Magistrate's Court, and such proceedings may be brought in the name of such Collector of Taxes, or Assistant Collector of Taxes, who shall describe himself by his name and office -----"

Section 47 (1) under heading "RECOVERY OF PENALTIES; FORFEITURES AND TAXES" provides: "All penalties and forfeitures imposed by this law, or by the Licence and Registration Duties Law or the Property Tax Law, or by any other Law in force for raising and imposing duties or taxes, may be recovered, and all taxes, duties, and arrears required to be paid to the Collector of Taxes, and not paid to him pursuant to the provisions of this law, or other such laws as aforesaid, as well as the penalty thereon, may, instead of the process of distress hereinbefore directed, also be recovered in a summary manner in the parish wherein such offence or default was committed, or the offender or defaulter resides; and, in case of nonpayment, may be enforced by distress and sale of the offender's or defaulter's goods, or imprisonment not exceeding three months, unless such penalty, taxes, duties, arrears, and costs shall be sooner paid, and may be enforced under the provisions of any law in respect to summary proceedings, and the forms of any such law, or other laws, may be adapted to meet the requirements of this law or other law as aforesaid; the taxes, duties, and arrears, and the surcharge, and any penalty attaching to such nonpayment, may be included in, and recovered in one proceeding, notwithstanding

any provision in any law relating to summary proceedings providing to the contrary."

Section 48 says: "Nothing in any law relating to summary proceedings shall preclude the Collector of Taxes or Assistant Collector of Taxes from proceeding by distress, or under the provisions of the preceding section for the recovery of the said taxes, duties, arrears, and surcharge, at any time until full payment shall have been made to the Government of this Island for the same."

Section 108 (1) Chapter 119, of the Excise Duty Law recited above is a provision "relating to summary proceedings."

One clear intention of the Legislature emerges from the above provisions, namely, to provide machinery for collecting, enforcing, and recovering taxes, penalties, forfeitures and other payments connected therewith payable under any law. It is clear also that the interpretation of section 52 contended for by learned Counsel for the Appellant would make nonsense of sections 24, 25, 28, 47 and 48.

In the case of Regina v Alfred Chin, 7 J.L.R. 126, brought to enforce penalties imposed under the Excise Duty Law, Sir Colin McGregor, C.J., delivering the judgment of the Court said at page 128:

"Upon his failure to pay these penalties, the Collector General was entitled to take steps to recover them. He could do so either under section 108 (1) of the Excise Duty Law or under the Tax Collection Law, Chapter 375, section 47."

Counsel argues that that statement was obiter since the information in that case was laid under section 108 (1), Chapter 119. We agree that it was obiter and, if we may say so respectfully, we think it was a correct statement.

We hold (1): that section 52, Chapter 375, of the Tax Collection Law, is not to be interpreted as saying that law applies only to the collection and enforcement of taxes, duties and penalties raised or imposed by any law not otherwise specifically providing for the collection of the same;

(2): that a penalty incurred under section 94 of the Excise Duty Law, Chapter 119, is recoverable by proceedings under section 47 of the Tax Collection Law, Chapter 375.

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The appeal is, therefore, dismissed.