

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL No. 126 of 1973

BEFORE: The Hon. Mr. Justice Luckhoo, Ag.P. (Presiding)  
The Hon. Mr. Justice Swaby, J.A.  
The Hon. Mr. Justice Robinson, J.A.

GEORGE HENRY et al v. R.

R.N.A. Henriques for the appellant.  
Chester Orr, Q.C., Deputy Director of Public  
Prosecutions for the Crown.

May 30, 31; July 31, 1974

LUCKHOO, Ag.P.:

Messrs. Grace Food Processors (Meats Division) Ltd. operate a factory at Paradise in the parish of Westmoreland, Various foodstuffs are manufactured at the factory both for local consumption and for export. These foodstuffs include goods on which an excise duty is imposed by law. By virtue of the Excise Duty Law no excise duty is payable on any goods manufactured in the Island and shipped as stores or exported by the manufacturer thereof. From time to time officers employed in the department of Customs and Excise would visit the factory for the purpose of taking an inventory of the goods manufactured there and generally of seeing to the observance of the relevant regulations made under the provisions of the Excise Duty Law, Cap. 119. There was an arrangement made by and between the Collector-General and the company that where goods manufactured at the factory are to be exported the attendance at the factory of an officer of the department of Customs and Excise would be requested by telephone for the purpose of checking the goods before they left the factory so that when exported a refund of

excise duty paid may be obtained. Simon Forbes, a Senior Collector of Taxes in the department of Customs and Excise attached to the Savanna-la-Mar Collectorate in Westmoreland was one of the officers of that department who would from time to time visit the factory for this purpose and also for the purpose of inspecting the factory to see to the observance of the relevant regulations made under the provisions of the Excise Duty Law, Cap. 119.

On November 22, 1972, there were goods manufactured at the factory which were intended to be sent to Kingston for export. In accordance with the arrangement between the Collector-General and the company Forbes was requested to attend at the factory for the purpose of checking the goods before they left the factory. He did so at 6.30 p.m. on that day. There followed certain incidents which gave rise to charges being brought against certain employees of the company for (i) obstructing Forbes, being an officer employed in the department of Customs and Excise, in the execution of his duty, contrary to s.90 of the Excise Duty Law, Cap. 119; (ii) assaulting Forbes, being an officer employed in the department of Customs and Excise, in the execution of his duty, contrary to s.90 of Cap. 119 as amended by s.24 of the Excise Duty (Amendment) Act, 1971 (No. 17). The persons charged on the first information were the factory manager George Henry, shipping clerk Delroy McGregor and two security guards Clinton Spence and Gerald Grant. Henry, McGregor and Grant were charged on the second information. They were convicted on each of the informations. They now appeal against their convictions on a number of grounds. Informations laid against Henry and Spence for obstructing an officer in the execution of his duty and against Grace Food Processors (Meats Division) Ltd. for refusing admittance to officers of the department of Customs and Excise were dismissed.

The case for the prosecution was to the following effect. On Forbes reaching the factory he was told by McGregor that the goods had already left the factory. Forbes replied that the goods should never have left the factory without a release from Customs. Forbes asked McGregor to be shown "the Excise books that is E 18 and G 2." The E 18 book contains the consignment note to accompany excisable goods removed from a factory. In the G 2 book is the certificate which is issued to the company so that it may reclaim excise duty normally claimed. McGregor accompanied by Forbes went to the factory office. On getting to the office Forbes asked McGregor to call the factory manager Henry. McGregor did so. Forbes then told Henry that he knew that the goods should not have left the factory for export without a proper document from Customs. Henry made no response. Forbes then started to make a notation of the goods that were to be exported on the back of the E 18 form which McGregor had brought him. Forbes told Henry "I am making these notes here on the back of the E 18 and the G 2 and if it is found that the goods were not exported the company will be liable for excise duty on the goods." Henry then told McGregor to take way the books from Forbes. McGregor did so. Henry then opened the office door and told Forbes to get out of the office. Forbes did so and proceeded upon an inspection of the factory. He went to the packing room where <sup>goods</sup> were being packed. While there <sup>the</sup> Security Guards Grant and Spence accompanied by McGregor came <sup>in</sup>. Grant held him in the back of his pants waist <sup>and</sup> told him that he had no right there at that time of the night and that he was going to throw him ahead while McGregor and Spence flanked him on either side. When Forbes asked Grant why he was doing this Grant replied that he was just obeying instructions from the factory manager (Henry). Still being held by Grant and flanked by McGregor and Spence, Forbes was taken through the gateway leading to the factory - a distance of some 5 chains. There he saw Henry who said

"You Mr. Customs Man I going to report you and when I through with you, you don't have a fucking job leave." Later that night Forbes contacted Mr. Errol Woods, Senior Collector of Taxes, and made a report to him as to what had occurred at the factory. With Woods he returned at 7.45 p.m. to the factory. At the factory gate Woods spoke with Spence and Grant and told them of the report Forbes had made to him. Woods requested to be allowed to enter the factory to inquire about the incident. Spence declined to allow him to enter the factory unless directed to do so by Henry. Woods asked that Spence telephoned Henry. Spence left. Forbes spoke to Grant producing identification and requested to be allowed to enter the factory - Grant declined to do so saying that those were his instructions from the manager (Henry). Spence returned and said that the manager was not at home. Three or four minutes later Henry arrived and Woods told him that he had got a report from Forbes and that he come to investigate it and complained that his guard had refused to let him enter the factory. Henry then drove away. When cross-examined Forbes said that it was McGregor who held him by the pants waist while Grant and Spence flanked him. The discrepancy between his evidence given in chief and in cross-examination as to the name of the person who had held him by the waist was sought to be explained by Forbes saying that when he went to the factory he did not know all the defendants by name. Forbes denied the suggestion that he was intoxicated when he went to the factory. The case for the defence was to the following effect. Forbes arrived at the factory at 6.15 p.m. on November 22, 1972 in answer to a request from Henry that goods intended for export be checked before they left the factory. When Forbes arrived his attire was disarranged. He appeared to be unsteady on his feet. He was told that he was late as request had been made for the attendance before 4.30 p.m. of an officer of the department. Forbes then said that he heard that the truck had already left with the goods and that no truck was to leave the compound without his permission. He was told that the

trucks were still on the compound and that they were loaded. He said that he was not interested in inspecting the goods because he was told that the goods had already left. He then asked that the E 18 and G 2 books be produced. Forbes wrote on the last duplicate in the G 2 book. He also wrote in the E 18 book. While writing in the G 2 book he put the wrong time and stamped the wrong date. He wrote the words "No release" in both books to indicate that he had not inspected the goods and therefore he was not issuing his certificate for refund of the duty payable. Forbes was speaking in a very slurred manner and Henry told him he was drunk and should leave. Henry left the office and told two guards Grant and Ramsey to escort Forbes off the premises. They did so. McGregor was not there that evening. Henry told Forbes that he was not to come on the compound drunk again because it was not the first time that he had come there drunk. Forbes made no reply and went away. He was not obstructed nor assaulted by anyone in the execution of his duties. The defendants were cross-examined in relation to the contents of photostats of signed reports they were alleged to have made to the General Manager of the factory in connection with the incident. The photostats were tendered and admitted in evidence after objection taken to their admissibility on the ground that notice to produce the originals was never served by the prosecution. In convicting the defendants on the informations charging them with obstructing Forbes in the execution of his duty and with assaulting Forbes in the execution of his duty the learned resident magistrate acted upon the contents of the photostats in rejecting the testimony of the defendants given at their trial. The question of admissibility of the photostats forms one of the grounds of appeal - ground 4 - taken before us and may conveniently be dealt with first. It was submitted on behalf of the appellants that the contents of the photostats could not become admissible evidence unless and until notice to produce the

original statements were first given and they were not produced, the photostats being, it was contended, in the nature of copies of the original statements. In this connection it may be observed that this pre-requirement of a notice to produce is but one of those legal technicalities which so many members of the legal profession in Jamaica are wont to deplore as impeding the due administration of justice and in respect of which judges and magistrates are criticised for recognising and applying so often when it is in the interest of the criticisers clients to do so. What is a photostat? In the case of a document it is a direct facsimile reproduction, of the contents of the document by means of photographing the document. It differs from a copy of a document in that a copy is made by the transcription of the contents of the document and the accuracy of the transcription being vouched for only by way of a comparison of the original contents with the transcribed contents. It differs from the photographic reproduction of a document made by the use of a negative in that such a reproduction can be retouched and so rendered an inaccurate reproduction of the original document. Once there is no suggestion that photostat contains omission of matter contained in the original document there can be no question as to the accuracy of what appears in the photostat being that which appears on the original. In the instant case it was not suggested that in the photostats admitted in evidence there was any omission of material contained in the original documents. The photostats **though** copies of the original documents were admissible on production as being direct facsimile reproductions of the original statements when the appellants, being persons who could speak of their accuracy accepted that they were photostats of the original statements. The further and different question of the weight to be attached to the contents of the photostats arose when the appellants denied making some of the statements attributed to them. These denials related

not to the accuracy of the photostats but to the accuracy of what appeared in the original statements. We are of the view that the submission on this on this ground fails.

The first ground of appeal taken in the grounds of appeal filed on behalf of the appellants was that the learned resident magistrate erred in law by rejecting the submission on behalf of the appellants that there was a failure on the part of the prosecution to prove that the factory entered by the complainant Forbes was a factory as defined by s.2 of the Excise Duty Law, Cap. 119. The information laid against the appellants having been for alleged breaches of the provisions of s.90 of that Law. There was in our view ample evidence both oral and documentary from which it could reasonably be inferred that the company's premises at Westmoreland were licensed under the Excise Duty Law for the manufacture of excisable goods and would thus constitute a factory within the meaning of that term in the Excise Duty Law. The very presence of Forbes on the premises at the request of the company's officer and the purpose for which his presence was requested that evening bore ample testimony to this fact. **This** first ground of appeal therefore fails.

The second ground of appeal was that the evidence described that the complainant Forbes did not enter the factory by virtue of powers vested in him under s.59 (1) (2) of Cap. 119 but was merely an invitee and as such became a trespasser when he failed to leave the premises within a reasonable time after being requested so to do and was no longer acting in the execution of his duty. The short answer to this submission is that the complainant Forbes was in attendance at the factory at the material time under and by virtue of the provisions of s.88 of Cap. 119 and not merely as an invitee. The provisions of s.88 of Cap. 119 are as follows -

"No excisable goods shall be removed from a factory or (in the case of goods permitted or required to be warehoused) from any warehouse, until all fees, charges, and other amounts payable thereon under this Law or any regulations made thereunder have been paid, or secured to the satisfaction of the Collector-General."

It was the complainant's duty to see that the provisions of that section were observed and this necessitated his presence at the factory.

The third ground urged was that the finding of the learned resident magistrate that the complainant was obstructed and also assaulted in the execution of his duty by the respective appellants is not supported by the evidence. It was contended that there was no evidence that Forbes was prevented from doing anything and further that when he went to where the workers were packing picnic hams it formed no part of his duties as an excise officer to observe that process. We have had the opportunity of inspecting the documentary exhibits in this matter and it is apparent to us that while Forbes was able to correct the date stamp on the G 2 forms he was given no such opportunity to do so on the E 18 forms. Instead the E 18 form book was taken away from him and he was ordered off the premises. He was thus prevented from carrying to a completion a necessary task in relation to the goods sent from the factory to Kingston that evening. This was evidence which the learned resident magistrate could properly accept, as he did, in support of the information charging the appellants with obstructing Forbes in the execution of his duty. In respect of the information charging the appellants with assaulting Forbes in the execution of his duty it was also observed that in examination in chief Forbes spoke of Grant holding him by the pants waist and McGregor and Spence flanking him whereas in cross-examination he spoke of McGregor holding him by the pants waist and Grant and Spence flanking him. In re-examination Forbes' attention was

directed to this discrepancy and he pointed to Grant as the person who had held him and pushed him off the premises explaining that he did not know all the appellants by name on the day when he was ejected from the premises. The entry of the complainant upon the premises was authorised by s.88 as well as by the wide powers given under s.59 of Cap. 119. He was lawfully there in the first instance and the action on the part of the appellants to induce - to use a neutral word - the complainant to leave the premises on the appellants' own account was not in any way connected with his going off to observe the process of packaging of hams. The learned resident magistrate accepted the complainant's version as to how and by whom he was put off the premises and there was accordingly ample evidence to support this finding on the information charging the appellants with assaulting Forbes in the execution of his duty.

The fourth ground of appeal related to the admissibility of the photostats of the written reports made by the appellants to the General Manager of the factory. This ground has already been dealt with.

The fifth ground of appeal related to the severity of the sentences imposed on the appellants Henry and Grant. It was urged that the fact that the finding by the learned resident magistrate that "Forbes was not fully himself when he entered the factory but not so drunk as not to know what he was doing" should militate in favour of the appellants in so far as sentence was concerned and a less severe penalty should have been inflicted on the appellants Henry and Grant. On the charge of obstruction the appellant Henry was fined \$500 in default imprisonment for a period of 6 months at hard labour and the other appellants were admonished and discharged. On the charge of assault the appellant Grant was fined \$200 in default imprisonment for a period of 3 months at hard labour and the other appellants were admonished and discharged. Mr. Henriques sought to impress upon us that the complainant's handwriting in the relevant documents in the G 2 and E 18 books showed that

the complainant was in no fit state at that time to undertake his duties as an excise officer and was very much the worse for drink. We have examined the relevant entries and handwriting of the complainant and were otherwise impressed. We observed the close attention to detail paid by the complainant in making the entries in those books and consider that this could hardly be the work of a man the worse for drink to the extent suggested by Mr. Henriques. We are of the view that the sentences imposed by the learned resident magistrate were not unduly severe having regard to the circumstances of the case.

The remaining grounds of appeal were abandoned at the hearing of the appeal.

**In** the result we are unable to conclude that there is any sufficient reason for disturbing the appellants' convictions and sentences.

The appeal is dismissed and the convictions and sentences are affirmed.