[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

FUAD NADEM EL DJAMAL,

Appellant,

v.

THE CHIEF CUSTOMS OFFICER,

Respondent.

(*Criminal Appeal No.* 2402).

Evidence in criminal cases—Parol evidence to show true nature of transaction—Admissible—Subject to statutory provisions to the contrary, principles relating to evidence in criminal cases are the same as in civil cases.

The appellant was convicted of smuggling a number of wrist watches into Cyprus, contrary to the Customs Management Law, Cap. 315 and Law 26/61, sections 208 (1) (a), 215, and 201(a). The case against him was that on arrival at Cyprus he had in his suit case in the linings of two coats a number of watches which he had failed to declare after he had been asked if he had anything to declare.

The appellant's case was that he had fully declared all the watches on arrival by signing a form headed "Passenger's Baggage Declaration" before his baggage was examined. The trial Court admitted evidence that the said form was signed by the appellant after the examination of his baggage and the finding of the watches and that it purported to serve as a receipt for the goods detained.

Held: Oral evidence regarding the true nature of the transaction which the form signed by the accused purports to cover is clearly admissible.

Statement of the law in Phipson, on Evidence, 9th Ed. pp. 539-540 and 604, *adopted.*

Appeal dismissed.

Appeal against conviction.

The appellant was convicted on the 2.8.61 at the District Court of Nicosia (Criminal Case No. 10684/61) on one count of the offence of smuggling contrary to the Customs Management Law, Cap. 315 and Law No. 26/61, sec. 208 (1) (a), sec.

215 and sec. 20:(a) and was sentenced by Georghiou D.J. to pay a fine of £50 in default 3 months' imprisonment.

A. M. Berberoglou for the appellant.

E. Munir for the Respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgments of the Court:

O' BRIAIN, P.: The appellant in this case was convicted of smuggling a number of wrist watches into Cyprus. The case against him was that on arrival at Nicosia Airport from Beirut he had in his suit-case in the linings of two coats a number of watches and some more concealed in his clothing, which he had failed to declare after he had been asked if he had anything to declare and had in fact declared some other articles.

The appellant's case was that he had fully declared all the watches on arrival.

On the cross-examination of P.W.1, Mr. Berberoglou elicited that accused had signed the form, Form 'C', exhibit 3, which had been filled in by witness. This form is headed "Passenger's Baggage Declaration". Mr. Berberoglou put to the witness a number of questions regarding filling in and signature of this form. In reply to these questions, witness stated that he did not hand the same to the appellant before his baggage was examined. He stated that the form was filled in by him *after* he had examined appellant's luggage and has found the watches and that it purported to serve as a receipt of same. The form was put in as an exhibit at the instance of Mr. Berberoglou. P.W.3 later gave evidence, on the direct, as to the circumstances connected with the filling and signing of this form without any objection by the defence so far as the record goes.

The appellant in his evidence stated that he had declared the watches and signed the form before his suit-case was opened. He said it was not signed by him by way of receipt for detained goods.

It will be seen from above that it was counsel for the defence himself who first led evidence as to the circumstances

in which exhibit 3 was executed. Grounds 3 and 4 in the notice of appeal are as follows:

> "The trial court erred in accepting extrinsic evidence against the contents of exhibit No. 3".
>
> "The trial Court erred in taking into consideration inadmissible evidence".

Mr. Berberoglou contends that the Court was bound to treat this document as a Passenger's Baggage Declaration and nothing else, as appears on the face of it and that parol evidence regarding the circumstances of its making was inadmissible. Apart from the fact, as already mentioned, that he, himself, first led evidence to this matter which, in my opinion of itself, entitled his opponents to go into the matter. Apart from this the law is clear and it is in my opinion correctly summarized and stated in Phipson on Evidence, 9th Edition, pp. 539 - 540:-

> "The intention with which a document is executed will affect its operation and may generally be shown by parol, *e.g.*, a party who joins in it for a specific purpose cannot be treated as joining for a different one (*Re Horsfall*, (1911) 2 Ch.63); so, a deed may be shown to have been signed as a will, or a will not as such, but for some collateral purpose ; or a document to have been executed conditionally as an *escrow*, or as a duplicate, and not a distinct instrument.....
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> So, also, the capacity in which a party signed, e.g., as principal or agent (*Young v. Schuler* 11 Q.B.D. 651; post, 606; and cp. *Lawrie v. Lees*, 7 App. Cas. 19), or as party, or agent, though signed as witness (*Carr v. Lynch*, (1900) 1 Ch.613; *Wallace v. Roe*, (1903) 1 Ir. R. 32); or the purpose, *e.g.*, for indorsement or negotiation (*Gompertz v. Cook* 20 T.L.R. 106), may be proved by parol....."

I am of the opinion that the parol evidence in this case was properly admitted. That is the only point in the appeal. There is no substance in it and, in my opinion, this appeal fails and should be dismissed.

ZEKIA, J.: I agree also that the appeal should be dismissed.

VASSILIADES, J.: This is an appeal against conviction which turns mainly on facts.

The appellant was convicted of smuggling 92 wrist watches valued at £184 contrary to the Customs Management Law, Cap. 315, and Law 26/1961, section 208(1) (a), section 215, and section 201(a).

The offence charged was committed by an attempt on the part of the appellant to smuggle these goods, as they were found in his luggage when, according to the prosecution, he was searched in the Customs, after appellant had replied in the negative to the question of the Customs Officer whether he had anything to declare. Concealed in the lining of two coats, the 92 watches in question were found by the Customs Officers.

The appellant arrived as an air passenger from Beyrouth. His case is that he duly declared the goods in question which were in his bag, he says, and not in the lining of the coats. His case rests on his own evidence and on a Customs Form, which his advocate put in evidence through a prosecution witness at the trial, and is now exhibit 3 on the record.

This exhibit is headed "Passenger's Baggage Declaration" and was filled in by a Customs Officer who gave evidence in the case and stated the circumstances under which the form in question was filled in, signed and delivered to the appellant in the Customs. It was intended, he said, to serve as a receipt or voucher for the detention of the goods in question, after they had been seized and detailed, pending the Collector's decision.

The circumstances under which this form was used in this case, are also a question of fact, turning on the testimony of the witnesses who gave evidence on the point; the appellant on the one hand, and the Customs Officers on the other.

The learned trial judge considered that evidence and accepted the version of the prosecution witnesses, rejecting that of the appellant. Oral evidence regarding the nature of the transaction which this exhibit purports to cover, is clearly admissible. And receiving such evidence from both sides, the trial judge found for the prosecution.

It may have been quite wrong for the Customs Officer in question, to use that form as a receipt for the goods detained. It is unfortunate that he did so. But, if in fact the officer acted wrongly or unfortunately in the use of the form,

that fact cannot alter the nature of the transaction for which it was so used. And the trial judge found as a fact that it was used as a receipt after the discovery of the attempt to smuggle the goods described therein ; and not as a declaration for those goods made at the material time. The judge found that the form was used, *after* the offence had already been committed.

There was ample evidence upon which the trial court could make that finding; and no reason has been shown for upsetting it.

Upon this view of the facts, the appeal must clearly fail.

JOSEPHIDES, J.: The main issue before the trial Judge was whether the "passenger's baggage declaration" was made and signed by the accused before or after the articles were seized and detained by the Customs Officers, that is to say, whether the declaration was made before or after the attempt to smuggle the goods.

The trial Judge, after hearing the evidence led by the prosecution and the defence, found that the form of declaration was filled in and signed after the offence had been committed.

Generally speaking, at common law the rules relating to evidence in criminal cases are the same as in civil cases, subject to specific statutory modifications; and according to Phipson on Evidence, 9th Edition, at p.604, "Extrinsic evidence (including, in some cases, direct declarations of intention) is admissible to show the true nature of the transaction, or the legal relationship of the parties, although such evidence may vary or add to the written instrument..... Thus a sale, absolute on its face, may be proved by extrinsic evidence to be a loan on security.....; a conveyance, merely a mortgage.....; an assignment of income, merely an acknowledgment of debt etc. etc".

In this case the trial Judge rightly received the evidence led by the prosecution and on the evidence found that the purported declaration by the accused was not a declaration made by him before the attempt to smuggle the goods, but a receipt given by the Customs Officer after the commission of the offence. For these reasons I would dismiss the appeal.

Appeal dismissed.