

[BOURKE, C.J., and ZEKIA, J.]

SALAH I ALI RIZA, *Appellant*,

v.

THE COMPTROLLER OF CUSTOMS AND EXCISE,  
*Respondent*.

(*Criminal Appeal No. 2225*).

1959  
Feb. 19,  
March 10

SALAH I ALI  
RIZA

v.  
THE COMPTROL-  
LER OF CUSTOMS  
AND EXCISE.

*Customs—Possessing prohibited imports without lawful excuse—  
The Customs Management Laws, 1954, to 1957 section 212  
(1) (b)—Turkish currency notes—The Exchange Control Laws,  
1952 to 1954 section 23 (1) (b)—The exchange Control (Importation  
of Turkish currency Notes) Order, 1957, Notification 925  
in the Cyprus Gazette, Supplement 3, of the 10th October 1957  
p. 902—Whether section 212 (1) (b) covers or not possession on  
entry and arrival at the Customs where there is no guilty intention  
to smuggle and no knowledge of the prohibiting order—The  
Customs Management Laws 1954 to 1957 section 205 (b).*

The appellant was convicted of possessing without lawful authority "prohibited imports" viz. 28,500 Turkish pound notes contrary to the Customs Management Laws, 1954 to 1957 section 212 (1) (b). Turkish currency notes became prohibited imports by virtue of the Exchange Control (Importation of Turkish Currency Notes) Order, 1957, (*supra*) made by the Financial Secretary under The Exchange Control Laws 1952 to 1954, section 23 (1) (b). The appellant, a merchant of Nicosia, returned by air from Beirut to Cyprus. At the Customs Examination Centre he was found to be in possession of 28,500 Turkish pound notes. No permission has been obtained from the Financial Secretary to import the currency in Cyprus. When asked by the Customs Officer whether he had any gold or Turkish currency, the appellant answered: "Turkish currency? Yes". He explained that he had bought it at Beirut in order to send it to his daughters in Turkey who were students there. On those facts the trial court convicted the appellant of the offence of having in his possession prohibited imports without lawful authority contrary to section 212 (1) (b) of the Customs Management Laws 1954 to 1957. It was contended on behalf of the appellant that section 212 (1) (b) does not cover possession on entry and arrival at the Customs, there being no guilty intention necessary to an attempt to smuggle and no knowledge of the relevant prohibiting Order. The section, it was argued, could only relate to possession in circumstances other than those in which the appellant found himself at the Customs in Cyprus. Stress has been laid upon section 205 (b) of the Customs Management Laws, 1954 to 1957, the argument being that the exception provided thereunder would operate in favour of the appellant. Section 205 reads as follows :

1959  
Feb. 19,  
March 10

SALAH ALI  
RIZA

v.

THE COMPTROL-  
LER OF CUSTOMS  
AND EXCISE.

“The following goods shall be forfeited to the Government:

(a) all smuggled goods,

(b) all goods imported in contravention of any prohibition, restriction or regulation excepting only goods the importation of which is prohibited or regulated by Order and which shall have been shipped to be imported without knowledge of the Order by the shipper and before the expiration of a reasonable time for the acquisition of knowledge thereof at the port of shipment, and so that such excepted goods shall, at the discretion of the Comptroller, either be re-exported or be disposed of in such manner as he may approve”.

*Held:* Whatever may be said of the application or non-application of section 205 (b), it has to be borne in mind that the appellant was charged and convicted of the offence of possession without lawful excuse of a prohibited import. The fact is that he was in possession of the currency notes, which were prohibited imports, and, as no one disputes, he had no lawful excuse. We think that the words of section 212 (1) (b) are plain and that, though the effect may appear to be harsh, the appellant was clearly guilty of the offence.

*Appeal dismissed.*

#### Appeal against conviction.

The appellant was convicted on the 19th January 1959 by the District Court of Nicosia (Ch. Pierides, D.J., in criminal Case No. 1/59) of the offence of possessing without lawful excuse prohibited imports i.e. 28,500 Turkish pound notes contrary to section 212 (1) (b) of the Customs Management Laws, 1954 to 1957 and was sentenced to a fine in the sum of £100. He appealed against his conviction.

*Fuad Bey* for the appellant.

*G. Summerfield* for the respondent.

*Cur. adv. vult.*

The facts sufficiently appear in the judgment of the Court which was read by :

BOURKE, C.J. : The appellant was acquitted of the offence of attempting to smuggle into the Colony “prohibited imports”, namely, 28,350 Turkish pounds, contrary to section 216 (1) (b) of the Customs Management Laws, 1954 to 1957. He was, however, convicted on another count of the offence of having in his possession “prohibited imports”, that is, the 28,350 Turkish pounds, contrary to section 212 (1) (b) of the same Law, which reads :—

“Any person who—

(b) without lawful excuse, proof whereof shall lie upon him, has in his possession any smuggled goods or prohibited imports. . . . . is guilty of an offence. . . . .”.

The importation of Turkish pounds, being notes issued by a Bank or of a class which are or have at any time been legal tender in Turkey, is prohibited by virtue of section 23 (1) (b) of the Exchange Control Laws, 1952 to 1954 and an Order made thereunder by the Financial Secretary published in the Cyprus Gazette of 10th October, 1957, which reads as follows:—

“In exercise of the powers vested in me by paragraph (b) of sub-section (1) in section 23 of the Exchange Control Laws, 1952 and 1954, I, the Financial Secretary, hereby order as follows:—

2. Notes of a class which are, or have at any time been, legal tender in Turkey are hereby specified as notes the importation into the Colony of which is prohibited under section 23 of the Exchange Control Laws, 1952 and 1954, except with the permission of the Financial Secretary.

3. There shall be exempted from the provisions of section 2 of this Order the importation into the Colony on the person of or in the baggage of a traveller to the Colony in any ship or aircraft from some place outside the Colony of notes of the class specified in the aforesaid section not exceeding one hundred and fifty Turkish pounds”.

The appellant, a merchant of Nicosia, returned by air to Cyprus from Beirut on the 24th September, 1958. At the Customs Examination Centre at Lloyd George Square in Nicosia he was found to be in possession of 28,500 Turkish pounds. No permission had been obtained from the Financial Secretary to import the currency into the Colony and in the absence of such permission it was held by the trial court that there was no lawful excuse for possession of the notes. That conclusion as to no lawful excuse has not been questioned in argument on this appeal and indeed it was stated by Fuad Bey for the appellant that he felt in no position to submit that lawful excuse was disclosed on the evidence.

We find no substance in the submission that it was not established on the evidence that the notes were of such a class as to fall within the terms of the prohibition effected by the Order made by the Financial Secretary. Undoubtedly the onus rested with the prosecution, but apart from anything else there was the evidence of the admissions of the appellant that the notes were Turkish currency and money. He elected to give no evidence on his own behalf but in a brief statement chose to stand by what he had said to the Customs Officials at the Customs Centre. Asked by the Customs Officer Orhan Bairaktar whether he had any gold or Turkish currency, he answered, “Turkish currency? Yes. I have also in my brief case”. He explained that he had bought the “Turkish money” at Beirut in order to send or

1959  
Feb. 19,  
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SALAH ALI  
RIZA

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THE COMPTROL-  
LER OF CUSTOMS  
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1959  
Feb. 19,  
March 10

SALAH ALI  
RIZA  
v.  
THE COMPTROL-  
LER OF CUSTOMS  
AND EXCISE.

take it to his daughters in Turkey who were students there. We think there was sufficient evidence to establish that the notes were of the circulating monetary medium of Turkey and that in the absence of any attempt to dispute this the District Judge was entitled to reach the finding he did that the notes were Turkish currency and as such were legal tender in that country.

It is also argued that the notes were not "imported" into the Colony and that the appellant in possession at the Customs Centre did not have them "in his possession" within the meaning of or for the purposes of the provisions under which he was convicted. He had, in short, committed no offence. It is contended that section 212 (1) (b) does not cover possession on entry and arrival at the Customs, there being no guilty intention necessary to an attempt to smuggle and no knowledge of the relevant prohibiting Order. The section, it is said, could only relate to possession in circumstances other than those in which the appellant found himself at the Customs after entering the Colony.

The Law governing Customs applies in relation to anything prohibited to be imported under any of the provisions of Part IV of the Exchange Control Law, 1952, by virtue of Part III of the Fifth Schedule of that Law. The Order of the Financial Secretary with which we are concerned was made under section 23 (1) (b) which is a provision in Part IV of the Exchange Control Law, 1952. There is no dispute that the Customs Management Law, 1954, is applicable. Without prejudice to the applicability of the Customs Management Law, 1954, a Customs Officer is, in virtue of paragraph 4 of the Fifth Schedule to the Exchange Control Law, 1952, entitled to seize anything declared and produced which is prohibited to be imported by any of the provisions of Part IV of that Law except with the permission of the Financial Secretary. In fact the notes in the possession of the appellant were seized.

Turning to the Customs Management Laws, 1954 to 1957 stress has been laid upon section 205 (b). Section 205 reads :

"The following goods shall be forfeited to the government :  
(a) all smuggled goods, (b) all goods imported in contravention of any prohibition, restriction or regulation, excepting only goods the importation of which is prohibited or regulated by Order and which shall have been shipped to be imported without knowledge of the Order by the shipper and before the expiration of a reasonable time for the acquisition of knowledge thereof at the port of shipment, and so that such excepted goods shall, at the discretion of the Comptroller, either be re-exported or be disposed of in such manner as he may approve".

It is submitted that in all the circumstances the exception provided for thereunder would operate in favour of the appellant, and that it cannot therefore logically or in reason be the effect of the law that he must be regarded as having committed the offence of which he was convicted under section 212 (1) (b).

But whatever may be said as to the application or non-application of section 205 (b), it has to be borne in mind that the appellant was charged and convicted of the offence of possession without lawful excuse of a prohibited import. The fact is that he was in possession of the currency notes, which were a prohibited import, and, as no one disputes, he had no lawful excuse. We think that Crown Counsel is correct in contending that the words of section 212 (1) (b) are plain and that though the effect may appear to be harsh, the appellant was clearly guilty of the offence.

In the opinion of this Court the appeal must be dismissed.

*Appeal dismissed.*

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