

N2LR

IN THE SUPREME COURT OF NEW ZEALAND
NORTHERN DISTRICT
AUCKLAND REGISTRY

No. M.264/71

IN THE MATTER of the Customs Act, 1966

- AND -

IN THE MATTER of a 1969 Holden Monaro
G.T.S. Coupe V8 210
Powerglide S.U.P. Engine
No. KO 422, Chassis No.
HR 50737 M., Registered
No. EF 1632 imported into
New Zealand by Robert
Albert Long of 20 Grove
Road, Devonport, Auckland.

Hearing: 15th March, 1972.

Counsel: Bridger for Collector of Customs.
Dugdale for J. A. Heaven (Papakura) Ltd.
Jenkins for D. C. Wallace.

Judgment: 17 March, 1972.

JUDGMENT OF HENRY, J.

This is an action in rem brought by a Collector of Customs seeking judgment of condemnation in respect of a motor car which is more particularly described in the information. It may conveniently be called "the said motor car". The relevant legislation is the Customs Act, 1966, and the Import Control Regulations, 1964 (S.R. 1964/47). They are respectively later referred to as "the said Act" and "the said Regulations". The primary facts are clear. One, Robert Albert Long (hereinafter called "the said Long") was possessed of overseas funds. He was approached by a representative of a firm of motor dealers, called Paine Bros. (Motors) Ltd., who sought the use of such funds for the importation of a motor car into New Zealand. For the use of such funds Paine Bros. (Motors) Ltd. (hereinafter called "Paine Motors") offered the said Long a premium.

The following steps were then taken, namely:-

- (1) The said Long on January 21st, 1969, signed an agreement to purchase a car of the same description as the said motor car. No price was stipulated except that the deposit was to be something noted

simply as "No Remit" (sic). It seems that this means the amount of overseas funds required for importation on a no-remittance licence.

(2) On January 28th, 1969, the said Long made a declaration under the said Act in support of an application for a licence under the said Regulations to import a car of the abovementioned description.

(3) In this document the said Long declared (inter alia):-

"(a) that these goods are intended solely for my own personal use and not for business use;

(b) that the vehicle will not be sold or otherwise disposed of within a period of one year from the date of registration without the permission of the Collector of Customs; "

(4) On March 3rd, 1969, a permit to import such a motor car was duly issued. The C.I.F. value in New Zealand currency was stated to be \$1,934.

(5) On April 24th, 1969, the said car was duly imported into New Zealand and possession thereof was taken by Paine Motors pursuant to an authority earlier signed by the said Long.

The following financial transactions took place, namely:-

(1) By direction of the said Long a sum of \$1,955 overseas currency was paid in Melbourne as part of the purchase price of the said motor car.

(2) On February 11th, 1960, a Mr. Henes, who had agreed to purchase the said motor car on its arrival, paid to the said Long in New Zealand the sum of \$2,250, thus repaying the said Long and giving him a profit for the use of his overseas funds.

(3) Later when the said motor car was inspected by Mr. Henes it did not correspond with the description as represented by Paine Motors so Mr. Henes called

the deal off.

- (4) The said motor car was then sold to a Mr. D. C. Wallace who paid the full price. This enabled Mr. Henes to be repaid the amount he had previously paid to the said Long.

The following is a description of the mechanics employed to document the transaction so far as concerns the ownership of the said motor car:-

- (1) The said Long signed a form of transfer of ownership in blank.
- (2) On May 7th, 1970, the said motor car was registered in the name of the said Long.
- (3) Paine Motors made out a vehicle invoice in the name of the said Long which purported to record the deal. The price was \$4,139.04 paid as to \$1,958.91, being no-remittance funds, and \$2,180.13 "cash on or "before delivery".
- (4) On May 8th, 1970, the said motor car was transferred into the name of Mr. Wallace by use of the form of transfer previously signed in blank by the said Long. Mr. Wallace paid the price of the car and Mr. Henes had his deposit refunded.

The Information alleges that the said Long committed two offences, namely:-

- (1) That in the declaration made on the 28th day of January, 1969, by the said Robert Albert Long in respect of his application for the said no-remittance permit he knowingly made a false declaration or statement for the purpose of obtaining the said permit in that he stated and declared that the said motor vehicle was intended solely for his own personal use.
- (2) That the said no-remittance permit was issued subject to an express condition that the said motor vehicle would not be sold or otherwise disposed of by the said Robert Albert Long until the expiry of twelve months from the date on which the said motor vehicle was first registered in New Zealand.

If either or both of these offences be proved then, subject to certain arguments which will later be dealt with, the said motor car shall be forfeited in terms of Section 48 (11) of the said Act. By Section 274 such forfeiture relates back to the date of the offences. By Sections 276, 278 and 280 of the said Act, the said motor car may, if so forfeited, be seized and condemned as forfeited. Such seizure has been effected and the sole question now is whether or not this Court ought to make an order for the condemnation of the said motor car as forfeited.

It is clear beyond any possible doubt that the said Long knowingly made a false declaration for the purpose of obtaining the said permit to import the said motor car. I refer to the statement that the said motor car was intended solely for his own personal use and not for business use. The said Long never at any time had any intention to use the said motor car. His clear intention was to make the said application for a licence to import the said car so that it could be sold by Paine Motors to some other person at such a price that the said Long would make a profit on the overseas funds he made available as above stated. This is an offence by reason of Section 48 (9)(a) of the said Act.

The above-mentioned offence is sufficient to support seizure and condemnation, but this is again subject to certain arguments of Counsel for two interested parties. This argument is later dealt with. The said Long in his said declaration undertook that the said motor car would not be sold or otherwise disposed of within a period of one year. The permit to import the said motor car contained (inter alia) the following condition, namely:-

" This permit is issued subject to the following conditions:

- (1) That the vehicle will not be sold or otherwise disposed of by the permit holder until the expiry of twelve months from the date of first registration in New Zealand without the prior permission of the Collector of Customs;

"

This condition was imposed by virtue of the authority of Regulation 12 (1) of the said Regulations. There is no occasion to consider the true meaning of "sold" in the said condition. This for the reason that clearly enough the said Long either sold or was a party to a "disposal" of the said motor car. Both matters come within the prohibition. Undoubtedly his concurrence was necessary to pass title and he clothed Paine Motors with authority to effect the sale to such person as they should nominate provided only that the sum of \$2,255 was paid to him. This, subject again to arguments later dealt with, was an offence as defined by Section 48, sub-section (7)(b) of the said Act.

Counsel for the two interested parties who appeared in the proceedings put forward three submissions. They were:-

- (1) That the said Regulations ceased to have any force or effect on January 1st, 1967, when the said Act came into force.
- (2) That the said condition as to sale or other disposal within one year has not been proved to be a valid condition of the issue of the said licence to import the said motor car.
- (3) That, even if the contention in (2) above is wrong, a breach of the said condition has not been established.

I turn to the question whether or not the said Regulations continued in force after the said Act came into operation. Section 48 (6) of the said Act provides as follows:-

" 48. (6) All Orders in Council in force at the commencement of this Act prohibiting the importation of any goods into New Zealand shall be deemed to have been made under this section, and shall continue in force accordingly until revoked. "

The argument is that the said Regulations are not comprehended in the term "All Orders in Council". This contention is based

on Section 4 of the Acts Interpretation Act, 1924, which, in its relevant parts, reads as follows:-

" 4. In every Act

"Order in Council" means an Order made by the Governor-General in Council:

"Regulations" means regulations made by the Governor-General in Council: "

The said Regulations were made under Section 309 of the Customs Act, 1913, which reads:-

" 309. (1) The Governor-General may by Order in Council make regulations under this Act prescribing all matters which by this Act are required or permitted to be prescribed, or with respect to which regulations are necessary or convenient for giving effect to this Act, or for the conduct of any business relating to the Customs.

(2) Whenever the term "prescribed" is used in this Act with respect to any matter, the Governor-General may by Order in Council make regulations with respect to that matter. "

The said Regulations are headed thus:-

" BERNARD FERGUSSON, Governor-General
ORDER IN COUNCIL

At the Government Buildings at Wellington this
6th day of April 1964

Present:

The Right Hon. Keith Holyoake, C.H., Presiding
in Council.

Pursuant to section 46 of the Customs Act 1913 and (in relation to regulation 17 of these regulations) section 312 of that Act, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations. "

It is clear from the above that the said Regulations are "Orders in Council". But they are merely a species of Order in Council and not, as Counsel contend, a genus of a kind differing from Orders in Council. The use of the word "Regulations" in the Acts Interpretation Act, 1924, was not for the purpose of creating two separate, distinct, and exclusive forms of Orders in Council. This is shown by the definition of "Act" which includes regulations, and therefore the word "regulations" must be defined. By so defining

regulations the term can be used in both Statutes and Regulations to specify Orders in Council which promulgate regulations. There still may be Orders in Council which are not regulations and which are not included in the term "regulations" when it is used. It is false logic to argue that regulations cease to be Orders in Council by reason only that it has been found either necessary or convenient to define a particular type of Order in Council which is commonly used for the special purpose of enacting legislation subordinate to the principal enactment. This contention fails.

The next submission is that the said condition as to sale or other disposal within one year has not been proved to be a valid condition of the issue of the said licence to import the said motor car. The power to impose conditions is, by Regulation 12, vested in the Minister, which term means the Minister of Customs. The permit in question purports to be issued "pursuant to the Import Control Regulations, 1964". The document is signed by a person who is described as an "authorised officer". By Regulation 14 it is provided as follows:-

" 14. Pursuant to section 11 of the Customs Act 1913, the Minister may from time to time by writing under his hand delegate to any licensing officer all or any of his powers under the foregoing provisions of these regulations. "

Section 11 of the Act of 1913 is now replaced by Section 9 of the said Act. By sub-sections (1) and (4) of Section 9 of the said Act it is enacted:-

" (1) The Minister may from time to time, either generally or particularly, by writing under his hand, delegate to any officer of Customs all or any of the powers (except this present power of delegation) exercisable by him under the Customs Acts.

(4) Every officer of Customs purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation. "

An investigating officer of the Customs Department swore that the document headed "permit to import goods", which contained the said condition, was a permit issued pursuant to the application and declaration made in that behalf by the said Long. This, in conjunction with the form of the document and its manner of execution, satisfies the Court that the authorised officer who signed the document was purporting to act pursuant to delegated powers. I find accordingly that the said condition was proved to have been validly imposed on the permit which authorised the importation of the said motor car. The matter also appears to be covered by the operation of Section 299 (1), but I do not make a specific finding on that.

The last point taken is that a breach of the said condition has not been proved in that it has not been established that the disposal of the said motor car was without the prior permission of the Collector of Customs. Strangely enough, whilst the information alleged the commission of a breach of this condition, it did not particularise the breach except as to sale or disposal within the prohibited period. It did not specify the absence of permission to do so. The said Long, who was called, was not asked this question. However, it is plain from his evidence that he expected the said motor car to remain in his name for the stated period but that he would take no steps for its disposal to the third person contemplated by the arrangement made. It is also a plain inference that the said Long had no dealings with the said motor car other than to receive cheques from Mr. Henes, which cheques repaid the overseas currency he made available and gave him the premium he had bargained for. The clear inference from all the evidence is that no such permission was given. This ground also fails.

I find accordingly that -

- (1) The said Long committed both of the offences alleged in the information.

- (2) The said motor car duly became "forfeited goods" under the said Act.
- (3) The said motor car was properly seized as forfeited goods; and
- (4) The Collector has proved that he is entitled to entry of judgment of condemnation of the said motor car.

There is judgment accordingly and the parties who appeared are ordered to pay costs in the sum of \$75.00, together with witnesses' expenses and Court disbursements to be fixed by the Registrar.

Solicitors:

Crown Law Office, Auckland, for Collector of Customs.

Kensington, Haynes & White, Auckland, for J. A. Heaven
(Papakura) Ltd.

Turner, Hopkins & Partners, Auckland, for D. C. Wallace.