

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

file

M.156/84

BETWEEN TERENCE CAMPBELL COOPER

Appellant

AND CUSTOMS DEPARTMENT

Respondent

M.789/84

IN THE MATTER of an appeal from a  
determination of the  
District Court at  
Auckland

BETWEEN COLLECTOR OF CUSTOMS  
(Michael Gordon Howley)

Informant

AND TERENCE CAMPBELL COOPER  
of 126 Vincent Street,  
Auckland

Defendant



Hearing: 13th December, 1984

Counsel: Mr Gotlieb for Cooper.  
Miss Shine for Collector of Customs

Judgment: 19 DEC 1984

---

JUDGMENT OF SINCLAIR, J.

---

There are two sets of proceedings before the Court in relation to an incident involving one Terence Campbell Cooper who is described as an actor. The first set of proceedings is in respect of two convictions entered against Cooper under the provisions of S.240 of the Customs Act 1966, the first being in relation to a charge of obscene language to Sandra Grazia Rizzi, an Officer of Customs, and a charge of threatenin

language to Henry Anthony Cozzi, also an Officer of Customs. In respect of both charges Cooper was convicted; on the obscene language charge he was fined \$150 and on the threatening language charge was fined \$100.

The second set of proceedings is a Case Stated which arises out of the same set of circumstances and that relates to a charge that Cooper, otherwise than by force, did wilfully obstruct Sandra Grazia Rizzi in the exercise of the duties conferred on her by the Customs Act 1966.

The Case Stated shows that Cooper arrived at the Auckland International Airport from Sydney at about 3 p.m. on the 16th April, 1983. Customs Officer Rizzi was processing passengers from that flight through the orange lane of the baggage hall at the airport when Cooper approached the counter. He handed to the Customs Officer a passenger declaration and he was asked some standard questions. The Customs Officer inspected a camera lens for which Cooper had produced an export certificate. During the search the Customs Officer examined Cooper's wallet and had a look at a number of receipts. One of them was a visa receipt which the Customs Officer had difficulty in making out as the writing was unclear. Cooper was then asked by the Customs Officer what the receipt related to and he shouted: "I won't bloody tell you. It is none of your bloody business. I will not tell you how I spend my money when I am away."

The Case Stated discloses that the Customs Officer was reduced to tears and had to stop the baggage search, leaving the area for some minutes to compose herself. It was subsequently ascertained that the receipt in question was not for goods, but in respect of some charges incurred at a restaurant.

The District Court Judge determined as follows:

"1. THE Defendant arrived in New Zealand on an overseas plane on 16 April 1983.

2. CUSTOMS Officer Rizzi conducted a search of the Defendant's Wallet.

3. CUSTOMS Officer Rizzi located a receipt in the Defendant's wallet and made enquiries of the Defendant concerning the receipt.

4. THE receipt was in respect of a restaurant rather than goods.

5. I concluded that the nature of the enquiries being made by Customs Officer Rizzi in respect of the said receipt was such that it was doubtful whether she was carrying out the execution of her duty as she had no lawful authority to make enquiries about receipts unless they were for receipts for goods purchased overseas.

6. I further concluded that if the evidence had been clear that the receipt was in respect of goods which the Defendant had purchased overseas then the expressions used by the Defendant at the time would have amounted to wilful obstruction."

After having set forth those matters in the Case Stated the District Court Judge then posed the following two questions for the opinion of this Court:

"1. DID the enquiries of Customs Officer Rizzi relating to the receipt which subsequently turned out to be in respect of nondutiable goods, fall within the scope of the provisions of Section 214 of the Customs Act 1966 providing for the detention and search of any person reasonably suspected of unlawfully carrying any dutiable, restricted, uncustomed, or forfeited goods?

2. IF the answer to question one is 'yes', could I have reasonably arrived at only one conclusion, namely, that the Defendant wilfully obstructed Customs Officer Rizzi in the exercise of the duty conferred on her by the Customs Act? "

During the hearing of the appeal and the Case Stated there was no challenge to the fact that the language in

question and as alleged in the informations and the Case Stated had been used by Cooper. To say the least of it on this occasion Cooper was boorish, obscene, uncouth and a complete disgrace.

In relation to the convictions which were entered it was the contention of Cooper's counsel that a charge of obscene or threatening language could be laid under the provisions of the Customs Act 1966 only when the Customs Officer concerned was engaged in investigating a breach or suspected breach of the Customs Act 1966 and where the person concerned was attempting to conceal goods which would be subject to duty or was attempting to evade the payment of proper duty.

Section 240 of the Customs Act 1966 appears in Part XI of the Statute which relates to offences and the section is in the following terms:

"Every person commits an offence against this Act who uses abusive, insulting, obscene or threatening language to an Officer of Customs while in the execution of, or in relation to, his duties under the Customs Act."

Mr Gotlieb attempted to contend that before resort could be had to S.240 it had to be shown that the Officer was exercising one of the powers which are set forth in Part VIII of the Statute. Part VIII does set forth certain powers vested in Customs Officers such as the examination of goods under control of the Customs, the boarding of ships or aircraft, the questioning of persons on board any ship, boat or aircraft, the searching of persons, the examining of goods carried by persons and other ancillary matters.

It is apparent that by S.212 of the Statute a Customs Officer has wide powers when questioning any person who comes within the ambit of that section and somewhat related to S.212 is S.214 which empowers an Officer of Customs, or even a member of the Police, who has reasonable cause to suspect that any person is unlawfully carrying any dutiable goods to detain that person and examine any goods carried by him; for that purpose the Customs Officer or the member of Police is authorised to open any package carried by that person. There are other types of goods referred to in the Section as well as the dutiable goods.

In this particular case it subsequently was ascertained that the receipt concerning which Cooper was questioned did not relate to goods at all, but related to some charges incurred at a restaurant. However, there was nothing to prevent the Customs Officer from questioning Cooper as to the origin of the receipt and to what it related. Due to the state of the document it was not obvious, on the face of it, that it related to expenses incurred at a restaurant and in those circumstances, in my view, having been asked the question as to its origin Cooper was bound to answer. In behaving as he did it would be no surprise if the Customs Officer then came to the conclusion that Cooper was endeavouring to hide something deliberately from the Customs Department and that it was related to dutiable goods or goods which ought not to be admitted to New Zealand. If that situation had been reached, then if the Officer had decided to exercise the powers vested in her by S.214 of the Statute, I have no doubt that her actions would have been upheld by the Court.

But I am of the view that it is not necessary in the circumstances of this case to go that far. On the day in question Customs Officer Rizzi was on duty in the Customs Hall where it was her duty to examine any documents submitted to her by persons who were referred to her; she had the power to ask questions, search luggage and belongings, and take any action which she thought warranted in pursuance of the exercise of her duties. If, in the course of so acting, she was abused or subjected to obscene language, then in my view the person carrying out the abuse or using the obscene language was guilty of an offence under S.240 of the Statute.

Mr Gotlieb attempted to argue that S.240 could be resorted to when, and only when, the Officer was carrying out the powers vested in her by Part VIII of the Statute, and that otherwise the ordinary civil law applied and that any use of obscene language would have had to have been dealt with by the Police under the appropriate legislation. I cannot accept that submission. The Customs Act 1966 recognises that Customs Officers are in a special position where they are likely to be subjected to all sorts of threats and obscenities and a special set of offences has been created under Part XI of the Statute in relation to such conduct. I am of the view that where an Officer is carrying out his duties pursuant to the Statute, whatever those duties may be, then if any person commits an offence coming within S.240 of the Statute, proceedings may be taken against the offender pursuant to that section. I give a number of examples where I consider S.240 can be applied even where the Customs Officer is not carrying out any of the duties set forth in Part VIII of the Statute:

- (a) If a ~~Customs~~ Officer is receiving departure cards from persons departing upon an overseas aircraft and is sworn at by an intending passenger then that intending passenger could be prosecuted under S.240 of the Statute.
- (b) If a Customs Officer is standing in the arrival hall at an international airport merely to ensure that all arriving passengers go to the immigration officers to have their documents checked and is abused or insulted by one of those arriving passengers, then that person could also be proceeded against under S.240.
- (c) If a Customs Officer is attending to one particular person and a second person, not associated with the person with whom the Customs Officer is dealing, threatens the officer for example because he is frustrated by delays, then that person could be proceeded against under S.240.

In all the circumstances I am of the view that in this case Cooper was rightly convicted of the two offences for which he appeared before the District Court for trial and his appeal against those convictions is dismissed with costs of \$200 to the Respondent.

In respect of the case stated the answer to the first question is in the affirmative and in view of the determination set forth in paragraph 6 of the case stated the answer to the second question can but be only in the affirmative.

Accordingly in relation to the case stated the matter is referred back to the District Court for it to act in accordance with this opinion.



SOLICITORS:

G. Gotlieb, Auckland for Appellant,  
Crown Solicitor, Auckland for Respondent