

MACFADYEAN v THE PEOPLE (1965) ZR 1 (CA)

COURT OF APPEAL

CONROY CJ, BLAGDEN JA, PICKETT, J

Criminal Appeal No. 147 of 1964

21st January 1965

Fly note and Headnote

[1] Criminal Law - Forgery - English Law not applicable: Since the provisions of the Zambian Penal

Code with respect to forgery are complete in themselves, they should be construed without reference to any English decisions.

[2] Criminal Law - Reception of English Law - Penal Code sections complete in themselves - English Law irrelevant:

See [1] above.

[3] Criminal Law - Forgery - elements - document purporting to be what it is not defined - misstatements of fact distorting the nature of the documents - section 310 (a) of Penal Code construed:

A document containing misstatements of fact which distort the whole nature of the document is a 'document purporting to be what it in fact is not' within section 310 (a) of the Penal Code.

Case cited:

R v Riley [1896] 1 QB 309, 65 LJM 74; 74 LT 254.

Statutes construed:

Penal Code (1965, Cap. 6), ss. 308, 310, 312.

May, for the appellant

Thistlethwaite, for the respondent

Judgment

Conroy CJ: This is an appeal against conviction. There is no dispute about the facts, and the appeal turns upon a narrow point of law. After hearing argument, we dismissed the appeal and announced that we would give our reasons at a later date. Our reasons are as follows:

The appellant was convicted in the court of the Senior Resident Magistrate, Lusaka, of the offence of forgery contrary to section 312 of the Penal Code (Cap. 6). The particulars of the offence were as follows:

Rhoderick John Macfadyean on or about the 10th day of October, 1962, in the Lusaka District of the Central Province of Northern Rhodesia, with intent to defraud, forged a certain document purporting to be a statement issued by Macfadyean (Established 1919) Limited dated the 10th day of October, 1962, recording a sale to J W. M. Russell of an Electrolux Refrigerator in the sum of £118 10s 0d.

The facts are that a man called Russell wanted to obtain money from the Government. He applied for a loan to purchase a refrigerator under the normal scheme by which civil servants obtain loans for this purpose. The Government was not prepared to advance

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the money without written evidence that Russell had agreed to purchase the refrigerator. He accordingly went to the appellant, who made out and furnished him with the document, the subject of the charge. This document was headed at the top 'Statement', and consisted of a printed form containing vertical cash columns, bearing the heading 'Macfadyean (Established 1919) Limited, Estate Agents, Auctioneers Valuers, Customs Clearance, Receiving, Forwarding and Commission Agents'. It was addressed to Russell, was dated 10th October, 1962, and it bore the following written words:

To Auction Sale 10/10/62

Electrolux Refrigerator £118 10s 0d

Quite clearly it was a statement of account showing that on 10th October, 1962, Russell owed Macfadyean (Established 1919) Limited £118 10s 0d for an Electrolux Refrigerator that the company had sold to Russell at an auction sale held on that date. There is no question that no such refrigerator was sold by the appellant's company or by the appellant

on 10th October, 1962, or at any other time, to Russell, and that Russell did not become indebted to the appellant's company for the sum of £118 10s 0d.

Section 308 of the Penal Code defines forgery to be 'the making of a false document with intent to defraud or to deceive'. Section 310 provides, *inter alia*, that 'any person makes a false document who . . . makes a document purporting to be what in fact it is not'. It has been urged in front of us that the Statement in question did not purport to be what it is not, as it purported to be, and in fact is, a statement. The appellant's argument was that it was truthfully stated to be a statement notwithstanding that it contained a number of untrue statements of fact.

[1] [2] The provisions of our Penal Code dealing with forgery are complete in themselves, and should therefore be construed without reference to any decisions on the English law, however authoritative. [3] The only issue in this case is whether, on the facts of this case, the statement purported to be what, in fact, it was not. The definition in the Shorter Oxford Dictionary of the word 'purport' is 'bearing, tenor, import, effect, meaning or sense'. The verb is there stated to mean 'to have as its purport, to convey to the mind, to mean, to imply'. The question could therefore be posed, did the material misstatement of fact alter the tenor, effect, import, bearing or sense of the Statement? It was argued in front of us that we must apply the English Common Law principle with regard to forgery, that a document is not a false document just because it contains a lie; it is only false if it lies about itself. I do not accept this argument. I think the wording of the section clearly intends to mean that it is a question of fact, in each particular case, whether a particular document purports to be what, in fact, it is not. The answer to such a question of fact may well be - as here - one of degree. A document may contain misstatements of fact which are so material that they distort the whole nature of the document and thus make it purport to be what in fact it is not.

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If the appellant's argument is right, a forged painting, which purported to be by Renoir, would not purport to be what it was not, because it purported to be a painting. But the fallacy in that argument is that the painting purports to be an authentic Renoir, it does not purport to be just 'a painting'. I appreciate that a painting is not a 'document', but I use the example to illustrate the meaning to be attached to the use of the word 'purported' in everyday use.

In the instant case the Statement did not purport to be just 'a Statement'. It purported to be a statement of an indebtedness, as at 10th October, 1962, by Russell to the appellant's company for the sum of £118 10s 0d for the sale of an Electrolux refrigerator at an auction conducted on that date. It purported to be an authentic statement of an actual indebtedness; in fact, it was no such thing. There was no such sale, there was no such refrigerator, there was no such indebtedness, it was a statement of an account which did not exist. I think it was properly charged in the particulars of charge as being a statement purporting to record a sale to Russell of this refrigerator for this sum. Applying that test it was not, in fact, what it purported to be.

An interesting illustration of a document purporting to be what it is not was contained in the case of *R v Riley* [1896] 1 QB 309. In that case the accused, who was a clerk in the Post Office, sent a telegram to a bookmaker placing a bet on a horse in a 2.45 p.m. race, and showing that the telegram was handed in at 2.40 p.m., when in fact it was sent off after the race had been run and the result known. The judges in the Court of Crown Cases Reserved all accepted that the telegram had purported to be what it was not: it was undoubtedly a telegram, but it purported to be a telegram which was handed in before the race was run, and that, in fact, it was not. The falsehoods contained in it were so many, and so material, that they altered the whole tenor, effect, import, meaning and sense of the document. It was most material that the telegram should have been dispatched before the race. As this essential ingredient was false, the telegram purported to be what it was not, i.e. a telegram dispatched before the 'off'.

In the instant case, it was most material that the Statement was evidence of indebtedness for a refrigerator Russell had bought. Because Russell had not incurred such an indebtedness, the Statement purported to be what in fact it was not. I am satisfied that

the magistrate who heard the case was right when he said that it purported to be a statement of a debtor/creditor relationship between Russell and the appellant's company. Clearly it was not such a statement because no such relationship existed. It therefore purports to be what it was not and it tells a lie about itself. I am therefore also satisfied that the learned judge who heard the High Court appeal was right.

Appeal dismissed

Judgment

Blagden JA: I agree

Judgment

Pickett J: I agree