

COURT OF APPEAL. 1964. 20, 21, July. HUTCHISON J. MCGREGOR J.
GREGSON J.

Appeal against conviction - charge of forgery - whether certificate signed by appellant a false document - Crimes Ordinance 1961, section 107.

A document though containing false statements is not a false document within the meaning of section 107 of the Crimes Ordinance 1961, but only when it falsely purports to be what it is not.

R. v. Ritson (1869) 1 C.C.R. 200; Ex parte Charles Windsor (1865) Cox C.C. Cases 118 - 123; and The King v. Clark /1946/ N.Z.L.R. 522 referred to.

appeal allowed.
Conviction quashed.

APPEAL against conviction on a charge of forgery.

Scott (of the Fiji Bar) and Metcalfe, for appellant.
Frapwell, Attorney-General, for respondent.

Cur. adv. vult.

The judgment of the Court was delivered by HUTCHISON J.: On the 11th October 1963 appellant was convicted before the learned Chief Justice on a charge under section 107 of the Crimes Ordinance 1961 that he did forge a certain document to wit a certificate in the words -

"I certify that to the best of my knowledge and belief the foregoing account is true and correct in every particular; that the charge is reasonable and that the goods have been received",

such certificate being on a Treasury Department account voucher submitted by O.F. Nelson and Co. Ltd to the Marine Department, "knowing the same to be false, with the intent that it should be acted upon as genuine or that some person should be induced by the belief that it was genuine to do or refrain from doing anything".

The facts, as appearing from the evidence and as summarised by counsel, were that appellant ordered an air conditioner from O.F. Nelson and Co. Ltd in 1962. There was at that time no authority for the purchase of such air conditioner but appellant may have believed that there was such authority. The air conditioner arrived and was installed and a voucher for payment was duly presented in 1963. Appellant then had, and knew that he had, no vote out of which the account could be paid, and, to have the bill paid by Treasury, he resorted to the deception of requisitioning a quantity of chain to approximately the same value, obtaining a voucher for this and certifying it in the terms set out in the charge, though he did not receive the chain.

The case for appellant is that, irregular as this may have been, this certificate was not a forgery. Subsection (1) of section 107 of the Crimes Ordinance 1961 defines forgery as follows:

"Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine, whether within Western Samoa or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within Western Samoa or not."

Subsection (2) provides that, for the purposes of this section, the expression

"making a forged document" includes making any material alteration to a genuine document, and certain other cases of material addition or alteration. There are three other subsections to the section, but these are not material in relation to the question before the Court. The appeal is put forward upon the ground that the learned Chief Justice erred in law in holding that the document signed by appellant was a false document within the meaning of section 107; and the question is whether it was a false document within the meaning of that section. The main issue in the Court below appears to have been whether the completion of the certificate amounted to the making of a material addition as contemplated by subsection (2) of the section. In this Court, however, it was early apparent that the real issue was whether the certificate was a false document within the meaning of that term in subsection (1). In New Zealand section 263 of the Crimes Act 1961 gives a definition of "false document". Such a definition was given also in the Samoa Act 1921 section 176(4). A definition is given also in the English Forgery Act 1913, though not an exhaustive definition.

In section 107 of the Crimes Ordinance 1961 there is no definition of "false document", and the question before the Court must be decided without the help of any definition. Under these circumstances, assistance may be had from earlier decision of the Courts at common law. The learned Attorney-General said that, as the crime of forgery is in Western Samoa entirely a creature of Statute, there might be a definition of "false document" applicable here different from that accepted in other jurisdictions subject to the common law. If that were so, it would be unfortunate, for it would leave Western Samoa without the guidance which can be found in decisions of other Courts within the common law area. Further, a construction of the section, against an accused person, that disregarded the common law would, in our opinion, be in breach of section 9 of the Crimes Ordinance itself, and possibly of Article 111 (definition of "Law") of the Constitution.

Mr Scott for appellant submitted that, before the document, in this case the certificate, could be a false document, the addition of appellant's signature must have had the effect of converting the certificate into something which purported to be different from what it actually was.

We think that this submission is sound. The certificate contained untrue statements; but it was not something which purported to be different from what it actually was. The Attorney-General stressed the fact that there was a duty on appellant in his official position to give a correct certificate. That might be highly relevant on some other charge against appellant; but it is not relevant to define a "false document" for the purposes of section 107.

There is ample authority for this view. In Russell on Crime 10th Edition p. 1453 the learned editor says -

"Secondly, a writing is only forged when it is rendered 'false', that is, when it tells a lie about itself"

and again at p. 1461, referring to some old cases,

"This group of cases suggests that the Courts had not yet clearly established the now recognised rule that a document cannot be said to be forged unless it has been caused to appear to be different from what it really is".

In Kenny's Outlines of Criminal Law 17th Edition p. 354 paragraph 387, the learned editor says, on the authority of R.v. Ritson (1869) 1 C.C.R. 200,

"A writing is not a forgery when it merely contains statements which are false, but only when it falsely purports to be itself that which it is not".

In Ex parte Charles Windsor (1865) Cox C.C. Cas. 118 - 123, 124 Blackburn J. said -

"Forgery is the false making of an instrument purporting to be that which it is not; it is not the making of an instrument which purports to be what it really is but which contains false statements. Telling a lie does not become a forgery because it is reduced into writing".

The Attorney-General referred to The King v. Clark [1946] N.Z.L.R. 522 but, in our opinion, this case affords little assistance. It is to be noted, however, that Callan J. at the foot of p. 543 referred to the proposition established at common law:

"In all forgeries the instrument supposed to be forged must be a false instrument in itself...."

This accords with the principles we have already stated.

For these reasons the appeal is allowed and the conviction quashed.

There is then, of course, no need for us to deal with the appeal against sentence. It is as well, however, that we should say that both counsel raised a question whether, where a person convicted of forgery is, under section 107 of the Criminal Ordinance 1961, liable to imprisonment for a term not exceeding five years, he could be sentenced to pay a fine instead of being sentenced to imprisonment. Their point is that section 206 of the Samoa Act 1921, appearing as it does in Part V of that Act, was repealed by section 116 of the Crimes Ordinance 1961, without the enactment of any corresponding section. This point, if valid, would affect other crimes as well, and it may be a matter to which Parliament would think it proper to give its attention.