let off when arrested should not be a factor against him, it was submitted. We agree with this last submission, but in many cases of receiving it is the subsequent conduct of the receiver—hiding of the goods—denial of possession—that indicates his guilty knowledge. In this case the cigarettes were found in Beck Beer cases and the accused denied he had any more than a few cigarettes until the cases were all opened up.

On the evidence before the jury, we say that they would not have come to any other conclusion than that of the guilt of the 6th accused in spite of the misdirection or omission submitted to us.

Both the 5th and 6th accused received severe sentences. We do not however, propose to interfere with the sentences.

The appeals of the 5th and 6th accused are dismissed.

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[COURT OF APPEAL]

Freetown
*Nov.* 7,
1961
Ames Ag.P.
Benka-Coker
and Wiseham
C.JJ.

SHELL CO. OF WEST AFRICA LIMITED . . *Plaintiff/Respondent*

*v.*

MOHAMMED AHMED AND AHMED MOHAMED
(Trading under the name of Ahmed Bros.) . . *Defendants/Appellants*

[Civ. App. 7/61]

*Sale of goods—Action for goods sold and delivered—Effect of delivery and acceptance and subsequent sale to customers of petrol over and above amount specified in contract.*

Respondent (Shell) entered into an agreement with its agent, G. B. Ollivant and Co. Ltd. (Ollivant) and appellants (Ahmed Bros.) whereby Shell agreed to sell petrol to Ahmed Bros.. who were tenants of a filling station owned by Shell. Ollivant and Ahmed Bros. agreed that Ahmed Bros. would requisition and pay cash for the amounts of petrol which they wanted. Whenever they did so, Ollivant sent the necessary papers to Shell, who then made delivery to Ahmed Bros. At the filling station, Ahmed Bros. had an employee, one Osman. whose duty it was to receive the deliveries and supervise the sales.

As the result of an error, Shell delivered 22,400 more gallons of petrol than had been requisitioned by Ahmed Bros. This extra petrol, worth £4,003 8s. 0d., was accepted by Osman and was sold to customers of Ahmed Bros. in the usual course of business. Ahmed Bros., however, refused to pay for the petrol on the ground that Osman was not their agent for the purpose of making a contract of purchase and sale and pledging their credit. The Supreme Court held that Ahmed Bros. was bound to pay for the petrol. From this decision they appealed.

*Held,* dismissing the appeal, that, since Ahmed Bros.' agent had accepted the petrol and sold it to their customers, they were obligated to pay for it.

*Miss Frances Wright* for the appellants.
*Ken O. During* for the respondent.

AMES AG. P. This is an appeal by defendants against a judgment for £4,003 8s. 0d. obtained by the plaintiff in an action for goods sold and delivered.

The appellants were tenants at a nominal rent of property of the respondents, on which was a petrol filling station. There was a written

agreement concerning the tenancy and the conditions of supply of "automotive fuels, lubricants and other similar products" (which I will call petrol). There were two tanks on the premises and the usual pumps and meters.

The defendants are partners trading under the name of Ahmed Bros. The first defendant, apart from signing the written agreement, was not actively concerned with the running of the partnership business. The second defendant at all material times conducted the business, but their joint liability, if any, is not in dispute.

It is only necessary to set out one part of the agreement, namely Article 2 (B). The "authorised dealer" is the appellants. "The company" is the respondents. "The agents" is G. B. Ollivant & Co. Ltd. The Article reads:

> "(B) The products will be purchased by the authorised dealer through the established agents of the company at Freetown, on terms and conditions that shall be mutually agreed between these agents, the authorised dealer and the company. The agents have the right without reference to the company to withhold supplies to the authorised dealer at any time should the terms of sale agreed between the three parties not be adhered to."

It was agreed between the agents and appellants that the appellants should requisition and pay cash for the amounts of petrol which they wanted. Whenever they did so, the agents sent the necessary papers to the respondents, who then made delivery into the appellants' tanks. The appellants had a servant, one Osman, at the filling station, whose duty it was to receive the deliveries, and to supervise the sales. He was the appellants' servant in charge of the petrol station. There were also two other servants there to help with the sales; and Osman was responsible for the cash received at the filling station.

There came a time when duplication of orders crept into Ollivants' system with the result that the respondents delivered more than they should have done under the system of requisition plus cash payment. They claimed these duplicated supplies to be 22,400 gallons, of the value of £4,003 8s. 0d.

The defence relied on the agreement by which all supplies were to be on a cash basis, as they were at first, and then were partly.

It is not necessary here to go into the figures of the transactions: they were put in evidence in the court below. One book might be mentioned: it was referred to as exhibit "A." This was a book of record supplied by the respondents to all their "Shell petrol stations," and Osman had to make daily entries in it, showing the stock and meter readings. The respondents' case was that the book was delivered to the second defendant/appellant in Osman's presence, and that the second defendant/appellant handed it to Osman to use; that the respondents' demonstrator operator showed Osman how to keep it and made daily inspections of it and the meter. This book should have shown the second appellant that the quantity of petrol going through the tank was more than his requisitions. The second appellant denied having ever seen it before this litigation started: but the learned judge disbelieved him.

The learned judge's findings of fact were:

> "Evidence was adduced by plaintiff's witness that quantities of petrol to the tune of 77,300 gallons valued at £13,790 were supplied into defendants' filling station at Garrison Street of which payments were only made for 54,900 gallons valued at £9,787 1s. 8d., leaving a balance of 22,400 gallons valued at £4,003 8s. 0d. to be paid for. There is clear

evidence from Exh. 'A' and other relevant documents that petrol was poured into defendants' tank which has been sold and not paid for. When plaintiffs gave evidence which satisfies the court that delivery of petrol was made, the concurrent condition of payment becomes operative."

The appellants had two grounds of appeal. The first is that the decision is against the weight of the evidence. As to this, in my opinion, there was ample evidence to support the learned judge's findings.

The other ground alleges two errors in law. They are:

(a) "The learned trial judge was wrong in law in holding that notwithstanding the written agreement of October 1, 1953, between the respondents and the appellants the witness Osman Cole was an agent for the appellants for the purpose of making a contract of purchase and sale on behalf of the appellants with the respondents by acceptance of petroleum or petroleum products.

(b) "The learned trial judge was wrong in holding that Osman Cole as the agent or servant of the appellants' had a right to pledge the appellants' credit in regard to the purchase of petroleum products as all prior purchases of petroleum products were made on the basis of prior cash payments through the recognised agent of the respondents, Messrs. G. B. Ollivant (Sierra Leone)."

These grounds of appeal merely repeat what was the appellants' defence to the claim, namely, that these deliveries of petrol had not been requisitioned by them under Article 2 (B) of the agreement and that the arrangement with Ollivants to pay cash with the requisition, and that Osman (who was admitted to be the appellants' servant and agent) had no authority to contract for or on their behalf for the supply of any other deliveries of petrol, or to pledge their credit for any such, or to accept delivery of any petrol over and above what had been requisitioned and paid for. But these did not form any part of the respondent's case, and they did not claim on the basis of any contract made by the appellants' servant and agent, and the learned judge did not hold them liable for any of these reasons.

The respondents' claim was based on the Sale of Goods Ordinance and delivery and acceptance and subsequent sale to customers, and the consequent implied promise to pay, and the learned judge held them liable for the same reason, as is shown by the last sentence of the part of his judgment which I have set out.

The goods were delivered by error at various dates in excess of what was ordered to the appellants' servant and agent at the petrol filling station and accepted by him, and sold in the usual way together with that which had been ordered, as the documentary evidence showed, and as common sense insists (otherwise those extra thousands and thousands of gallons would have caused a flood in the streets: and no one has mentioned any such flood). In these circumstances "the concurrent condition of payment becomes operative" as the learned judge put it.

I would dismiss the appeal.