

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

LONGDISTANCE (NATAL) (PTY) LIMITED First appellant
LONGDISTANCE (PTY) LTD Second appellant
LORRAINE TRUCK HIRE (PTY) LIMITED Third appellant
MARIUS HENDRIK OCKERT ELS Fourth appellant

and

THE STATE Respondent

Coram: BOTHA, HEFER, KUMLEBEN JJ A et NICHOLAS et

FRIEDMAN A JJ A

Heard: 29 August 1989

Delivered: 28 September 1989

J U D G M E N T

NICHOLAS A J A

/On

On 26 July 1985 two heavy vehicles, each made up of a mechanical horse and semitrailer, and each carrying 2000 12,5 kg pockets of refined sugar, were travelling on the public road between Waterval-Boven and Nelspruit. One was stopped by Detective-Sergeant Steenkamp of the South African Police near Ngodwana, and the other by Detective-Sergeant Brooderyk near Nelspruit. In response to a request by the police each of the drivers (Alfred Kabusa and Lulamile Qomoyi respectively) produced a permit issued under the Road Transportation Act 74 of 1977 ("the Act").

Arising out of these incidents, four accused appeared before the Nelspruit magistrate's court charged on two counts under s.31 of the Act (unlawful road transportation). They were:

Accused No 1, Longdistance (Natal) (Pty) Ltd;

Accused No 2, Longdistance (Pty) Ltd;

Accused No 3, Lorraine Truck Hire (Pty) Ltd;

and

Accused No 4, Marius Hendrik Ockert Els.

Kabusa and Qomoyi were originally charged as accused Nos 5 and 6 but the charges against them were withdrawn. It was alleged in the main counts that the accused wrongfully and unlawfully undertook road transportation, otherwise than under the authority of a permit authorizing such road transportation, in contravention of s. 31(1)(a) of the Act; and in the alternative counts that the accused, being the holder of a permit, undertook road transportation, otherwise than in accordance with the provisions of such permit, in contravention of s.31(1)(b) of the Act. The first (Ngodwana) count related to the motor vehicle consisting of mechanical horse No. ND 329666 and semitrailer No. ND 90044; and the second (Nelspruit) count related to the motor vehicle

consisting of mechanical horse No. ND 324908 and semitrailer No. ND 312230.

All the accused pleaded not guilty. They were found guilty on the two main counts. Both counts were treated as one for purposes of sentence. Accused Nos.1 and 3 were each sentenced to a fine of R2000-00; accused No. 2 was sentenced to a fine of R4000-00; and accused No.4 was sentenced to a fine of R2000-00 or 12 months' imprisonment. In addition the magistrate made a declaration under s.36(1) of the Act that the motor vehicles used in the transportation be forfeited to the State.

An appeal against convictions and sentences to the Transvaal Provincial Division was dismissed by MYBURGH A J with whom HUMAN A J concurred. Leave having been granted, the appellants now appeal to this court. (For the sake of convenience I shall continue to refer to the appellants

as the "accused".)

At the end of the trial most of the facts were either common cause as a result of formal admissions and statements made by the accused in terms of s.115 of the Criminal Procedure Act 51 of 1977, or were not in dispute.

Accused Nos 1, 2 and 3 were at all material times companies incorporated and registered under the Companies Act 61 of 1973, and were thus "corporate bodies" as referred to in s.332 of the Criminal Procedure Act. They carried on business as "carriers" as defined in s. 1 of the Act. No. 4 accused is a director of accused Nos. 1, 2 and 3 and he was duly authorized to represent them. The three corporate accused are members of a group of companies, in which accused No. 2 is the holding company and accused Nos. 1 and 3 are subsidiaries. No. 4 and his brother, Christo Els, are the sole directors of each of the companies in the group

and they are de facto the managers thereof.

The transportation of the sugar which was conveyed in the two vehicles was arranged with No. 4 accused by a Johannesburg broker named Export Import Trading. It was to be transported from Hulett's Refinery in Durban and delivered to one Mr Timmermans, who carried on business as a merchant dealing in foodstuffs under the style of Lowveld Food Distributors at Witrivier. Timmermans paid about R1750 per load for the transportation. It was his intention to resell the sugar to clients in Mozambique.

The defence case was that the transport was under the authority of two permits issued to No. 1 accused: one (OP 282006, Ex "D") authorized transportation, as set out in Annexure "A" thereto, by semitrailer ND 90044: the other (OP 282017, Ex "E") authorized transportation, as set

out in Annexure "A", by semitrailer ND 312230.

The defence admitted that No. 1 accused was the owner of semitrailer ND 90044; and that No. 2 accused was the owner of the two mechanical horses ND 329666 and ND 324908. There was no admission in regard to the ownership of semitrailer ND 312230.

A number of disparate points arose in the course of the argument of the appeal. They will be dealt with in turn.

Participation of No. 3 accused.

The point was taken that there was no admissible evidence connecting this accused with either of the counts: the only evidence against him was contained in an affidavit (Ex "H"), which showed that No. 3 was the owner of semitrailer ND 312230.

It was submitted that this was inadmissible hearsay.

It appears from the record, however, that at the end of the State case, the prosecution requested that Ex "H" be handed in as proof of ownership and counsel for the accused had no objection. When this court put it to counsel that the point had not been mentioned as one of the grounds of the appeal and that consequently the magistrate had had no opportunity of dealing with it, the point was, properly, abandoned.

Mens Rea.

The main ground of appeal was that the State did not discharge the onus of proving that the accused had the necessary mens rea.

In their statements made under s. 115 of the Criminal Procedure Act, the accused said in dealing with count 1 that

"... at all relevant times (they) honestly reasonably and without any negligence (Culpa) on their part believed by reason of legal advice which had been obtained that the conveyance of the sugar, the subject of the charge, was authorised by and in terms of permit OP 282006 more particularly clause (C) of the aforesaid permit."

There was a similar statement made by the accused in dealing with count 2, except that the reference was to permit OP 282017.

Under permit 282006 authority was granted to Longdistance Natal (Pty) Ltd (i.e. No. 1 accused) in respect of semitrailer ND 90044 "vir die vervoer soos uiteengesit in die aangehegte bylae No. A." Similar authority was granted under permit 282017 to Longdistance (Natal) (Pty)Ltd in respect of semitrailer ND 312230. Paragraph C was common to the respective annexures. It read:

"C. Gereedskap en toerusting asook steierwerk en bekisting in gebruik vanaf een perseel na n ander en nie vir herverkoop nie. Binne die Republiek van Suid-Afrika."

The legal advice referred to had been obtained by No. 4 accused from a Mr Martin Stephens, who described himself as an advocate. Although he had been admitted and was previously in practice as an advocate, he had for a number of years

not practised as such, but acted as a consultant in road transportation matters. No. 4 accused said in his evidence that although he personally had been engaged in road transportation since 1975, and had had much to do with permits issued under the Act, law was not his field. He accordingly used to seek legal advice from Stephens, whom his companies had retained as an adviser, and in whom he had great confidence.

In January/February 1985 he sought an opinion from Stephens generally as to the ambit of paragraph C, and specifically in regard to the goods, specified in a list furnished by him, which he was interested in transporting. Stephens furnished an opinion which was put in as Ex "J" before the trial court.

In Ex "J" Stephens referred to the four items set out in paragraph C, namely, gereedskap, toerusting

steierwerk, and bekisting. He said that the words "in gebruik vanaf een perseel na n ander en nie vir herverkoop nie" qualified only bekisting, and not the other items. He referred to a definition of equipment (toerusting) in Webster's Third New International Dictionary which had been quoted with approval by ROSE-INNES J in Trencor Services (Pty) Ltd v Muller t/a S A Trucking 1983 (4) SA 893, (C) at 897 F namely,

"all things used in a given work or useful in effecting a given end
Equipment usually covers everything except personnel needed for efficient operation or service."

On the basis of this definition Stephens concluded that

"..... this authority (i.e. para C) grants the consultant an extremely wide scope in the conveyance of Goods and it virtually

amounts to an authority to convey all classes of Goods, except items required merely for household purposes when it is being taken to a household."

Referring to No. 4's list of goods, Stephens said that "the Goods included in the annexed list are Goods of which I am of the opinion may be conveyed in terms of the authority covered by this Opinion." The list included a wide variety of articles, including tinned and bottled food, prepared foodstuffs, medicines, cosmetics and wine, beer and spirits.

No. 4 said in his evidence that when he was approached to transport a consignment of sugar, he specifically asked Stephens whether refined sugar fell under "prepared foodstuffs". Stephens told him that this was definitely so.

The reasoning in Ex J is a travesty, and the conclusion palpably absurd. There is no warrant for regarding the words "in gebruik vanaf een perseel na 'n ander en nie vir herverkoop nie" as qualifying only bekisting. That can be justified neither by grammar nor by logic. In using Webster's definition of equipment, Stephens ignored the the qualifying words "used in a given work or useful in effecting a given end". And how items such as tinned and bottled food, prepared foodstuffs, medicines, cosmetics, and wine, beer and spirits could be regarded as equipment, even in the widest meaning of the word, is beyond comprehension.

In the judgment of the Transvaal Provincial Division MYBURGH A J said that in his view the transportation of sugar which was to be resold was so far removed from what was authorized in paragraph C of the permit that neither No. 4 nor Stephens could really ^{have} believed that it was possible.

He considered their evidence in this regard to be unacceptable.

I am inclined to agree.

It is, however, unnecessary to go so far. Mens rea in the form of culpa is sufficient for convictions under paras (a) or (b) of s. 31(1) of the Act.

No. 4 and the corporate accused were engaged in the specialised field of road transportation, which is strictly controlled by an Act of Parliament and regulations made thereunder.

It was plainly their duty to take all reasonable care to acquaint themselves with what they were permitted and what they were not permitted to do. (Cf S v De Blom 1977(3) SA 513 (A) at 532 G).

The defence of the accused was that they did not know that the transportation of sugar was not authorized by the permits. No. 4 said that he took legal

opinion from an experienced transport consultant, whose advice he had followed with success for a number of years.

This evidence notwithstanding, it is clear in my opinion that No 4 did not take the necessary care to inform himself of what he could do under the permits concerned.

Legal advice has no magic which justifies the recipient in jettisoning his common sense. Stephens's advice was so bizarre that it must have given pause to even the most sanguine of carriers, and caused him to seek advice from another source whether, under permits for the transportation of gereedskap, toerusting, steierwerk and bekisting, he had carte blanche to convey all classes of goods, except only items required for household purposes when being taken to a household.

No. 4 had received other warning signals.

On various occasions (he could not say how many), his vehicles had been stopped and he had then been charged with alleged contraventions of s. 31(1) of the Act.

For example, on 20 February 1985, one of his vehicles was stopped near Winburg on the Bloemfontein road whilst conveying a load of 1150 cartons of bottled wine. He was convicted in the Bloemfontein magistrate's court. (An appeal was subsequently upheld on the ground that the State had not proved mens rea.)

Again, on 11 July 1985 (sixteen days before the offences charged) No. 4 was stopped at Pietermaritzburg whilst conveying sugar purportedly under the authority of a permit containing paragraph C.

No. 4 said when cross-examined that although he had not sought a second opinion before 26 July 1985 (the date of the contraventions charged), he did take senior

counsel's advice in October 1985. His reason for not seeking other advice before this was that he believed in Stephens. Six or seven previous court cases in which he had been acquitted had vindicated Stephens's opinion.

It is noteworthy that No. 4 referred to no case in which Stephens's opinion on the ambit of paragraph C was approved by a court. It would seem that his previous acquittals were based on a failure by the prosecution to prove mens rea.

Under cross-examination he agreed that Stephens could also make mistakes, and that it was possible that he foresaw that Stephens could possibly be mistaken, but when he was asked why it was then that he had not sought a further legal opinion he said he could give no answer.

In my opinion there is no doubt in this case that No. 4 had the requisite mens rea, and that as he was a directing mind of the corporate accused, they also

had mens rea.

Alleged splitting of charges.

It was argued that there was here
an unlawful duplication or splitting of charges,
because -

- (a) The sugar conveyed (50 000 kg.) -
 - (i) constituted one consignment; and
 - (ii) it was loaded in Durban and was in transit to Witrivier when the vehicles were stopped on 26 July 1985 while travelling between Waterval-Boven and Nelspruit.
- (b) The conveyances was performed at the instance of Export Import Trading pursuant to the sale of sugar by Huletts Refinery to Lowveld Food Distributors.

- (c) Although the conveyance was effected in two loads, it was in essence one transaction undertaken on one occasion with a single intent.

The rule against splitting of charges is a rule of practice which has grown up over the years, and it amounts to this: where the accused has committed only one offence in substance it should not be split up and charged against him in one and the same trial as several offences. (See Ex parte Minister of Justice : In re Rex v Moseme 1936 AD 52 at 57.) Various tests have been propounded for use in applying the rule, but these cannot in the nature of things be decisive in all cases, and they should not be regarded as rules of law. They are only useful practical aids which can be used to ascertain whether or not a single offence has been committed. In the view of VAN WYK AJA in R v Kuzwayo 1960 (1) SA 340

(A) at 344 B (which has frequently been applied in this court)-

"Dit volg dus dat by die toepassing van die reël 'n mens tot 'n groot mate afhanklik is van die gesonde verstand en billikheidsgevoel van die hof."

In my view the fallacy underlying the accused's submission is that they were not charged with the conveyance of sugar. The charges against them were that they undertook road transportation without the authority of a permit authorizing such road transportation, or alternatively that, being the holder of a permit, they undertook road transportation otherwise than in accordance with the provisions of such permit. Under the definition of "road transportation" in s. 1 of the Act is included the conveyance of goods on a public road by means of a motor vehicle for reward. On the evidence, separate goods (albeit of the same kind) were

conveyed for separate rewards, in separate vehicles driven by separate drivers, and purportedly under separate permits.

On these facts, there can be no doubt that two separate offences, and not a single offence, were committed.

The point is without merit.

The convictions in this case.

It was submitted on behalf of the accused that since the sugar referred to in each of the counts was conveyed by the holder of a permit, s.31(b) of the Act and not s. 31(1)(a) applied. Consequently the accused were wrongly convicted of contravening s.31(1)(a). The point is well taken - see S v Smith 1986(3) 714 (A), a decision which had not been reported at the date on which the accused were convicted. It is competent, however, to substitute convictions under the alternative counts, which charged contraventions of s. 31(1)(b) (ibid, at 721 F).

It appears that all of the accused were convicted on both counts. This was clearly correct in the case of accused No. 1 (the transportation was performed under colour of the two permits issued to it, and it supplied semitrailer ND 90044); in the case of accused No. 2 (it supplied the two mechanical horses ND 329666 and ND 324908 and the two drivers); and in the case of accused No. 4 (whose was the mind directing the road transportation alleged in each of counts 1 and 2). In the case of accused No. 3, however, it provided only semitrailer ND 312230, which was used for the road transportation covered by count 2. There was no evidence that No. 3 participated in the performance of the motor transportation covered by count 1. No. 3 should not therefore have been found guilty on this count.

The previous convictions.

No previous convictions were proved against

Nos. 1 and 3 accused. The magistrate held that three previous convictions had been proved against no. 2, namely, convictions in the magistrate's courts at Howick (on 30 January 1983), Estcourt (on 20 June 1985) and Bloemfontein (on 19 May 1985); and that three previous convictions had been proved against accused No 4, namely convictions in the magistrate's courts at Ladysmith (on 25 February 1980), Estcourt (on 20 June 1985) and Bloemfontein (on 19 May 1985). All of these convictions were in respect of contraventions of s. 31(1)(a) of the Act (unlawful conveyance of goods), and fines of R100.00 were imposed in each case. With the exception of the Bloemfontein conviction, all of the convictions were in pursuance of admissions of guilt. The Ladysmith conviction and the Bloemfontein convictions were admitted, but none of the other convictions was admitted by either No. 2 or No. 4, and it was accordingly incumbent on the prosecution to

prove them.

The Bloemfontein convictions were under appeal at the time of the trial, and counsel for the State agrees that they should not have been taken into account for the purpose of sentence in this case. (The appeal was subsequently upheld by the Orange Free State Provincial Division, which set aside the convictions and sentences.)

In the proof of previous convictions, use may be made of form SAP 69 or form J 14. Form SAP 69 is furnished by the South African Criminal Bureau and contains information derived from fingerprint records. Form J 14 is completed by the clerk of the court by which the accused was previously convicted and sets out under headings information relating to the previous convictions which has been extracted from the court records. (See J C Ferreira, Strafproses in die Laer Howe 2e uitgawe at 611-612).

The copies of the completed forms J 14
contained in the record are headed

"VORIGE VEROORDELINGS VAN -

(Uittreksel uit die oorspronklike saakrekord)"

There follow the headings under which the information is
tabulated namely: Misdaad (waaraan skuldig bevind);
Datum van skuldigbevinding; Datum van vonnis; Plek waar
veroordeel; Vonnis; Opmerkings. At the foot there is provision
for the clerk of the court to certify that what is set out
in the form is "n juiste uittreksel." The form is apparently
admissible under s.232(1) or s.234(1) of the Criminal Procedure
Act.

In the relevant forms J 14 produced by
the prosecution there appear under Vonnis: "R100.00 EVS",
or "Betaal R100 E/S", or "R100 S/E". It was common cause
that the letters mean "erkenning van skuld" or "skulderkenning".

The question arises whether a conviction in pursuance of an admission of guilt can be proved by the production merely of a completed form J 14, or whether something else is required.

Admissions of guilt are dealt with in s. 57 of the Criminal Procedure Act. This provides in ss. (1) that where a summons is issued against an accused, he may, in the circumstances specified, without appearing in court, admit his guilt in respect of the offence in question by paying the stipulated fine inter alia at any police station within the jurisdiction of the court concerned. Ss.(6) provides that an admission of guilt fine paid at a police station in terms of ss. (1) and the summons shall be forwarded to the clerk of the magistrate's court which has jurisdiction,

"and such clerk shall thereafter

enter the essential particulars of such

summons ... in the criminal record book ~~summons~~
for admissions of guilt, whereupon the
accused shall ... be deemed to have been
convicted and sentenced by the court in
respect of the offence in question."

It is clear from ss.(6) that no act of a magistrate is required
for the conviction and sentencing of an accused who pays an
admission of guilt fine: that is deemed to take place ipso
facto upon the entry by the clerk of the court of the essential
particulars of the summons in the criminal record book for
admissions of guilt. It follows that the conviction
and sentence can be proved only by the production of the criminal
record book for admissions of guilt, or a certified extract
therefrom. No such proof was forthcoming in this case.

No reference was made in any of the forms J 14 to the criminal record book for admissions of guilt, and plainly such book does not form part of "die oorspronklike saakrekord."

The State also led the evidence of Lieutenant-Colonel Welthagen of the Railway Police that No.4 was on about 16 March 1986 appearing on a similar charge in the Heidelberg magistrate's court. Welthagen was carrying a sheaf of J 14 forms, and while they were waiting for the magistrate to come into court to give judgment, No.4 said "dat die Howick vorige veroordeling gedateer 30 Januarie 1983 wel sy vorige veroordeling is." (This related to No. 2 accused: see above).

Welthagen's evidence regarding No. 4's admission regarding the conviction at Howick on 30 January

1983 did not constitute proof as against No 2 accused.

It was made in the course of a casual conversation, and it cannot be said that No.4 was at the time acting, or was authorized to make an admission, on behalf of accused No. 2.

The order of forfeiture.

S.36(1) of the Act provides that -

"The court convicting any person of an offence under this Act involving the undertaking of unauthorized road transportation - - - may, and shall on a third and each subsequent conviction of such an offence, declare the motor vehicle used in such transportation and any goods conveyed thereon without authority, or the convicted person's rights in such motor vehicle or goods, to be forfeited to the State: Provided that ... "

The magistrate found that, having regard to accused No 2's previous convictions (Howick, Estcourt and Bloemfontein), the present convictions were No. 2's fourth and fifth convictions; and that having regard to accused No 4's previous convictions (Ladysmith and Bloemfontein), the present convictions were his third and fourth. That being so, the magistrate held he was obliged to make a declaration of forfeiture under s. 36(1).

For the reasons just given, no relevant previous convictions were proved against No. 2, and the only relevant previous conviction proved against No. 4 was the admitted Ladysmith conviction. The question then is whether the present two convictions are to be regarded as No. 4's second and third convictions (in which case the forfeiture declaration was in order), or whether they are to be regarded as together constituting his second conviction (in which case

the forfeiture cannot stand.)

A similar question arose for decision in R v Ansowitz 1916 T P D 693. The accused was convicted of selling liquor to a native in contravention of s. 46 of the Transvaal Liquor Licensing Ordinance 32 of 1902. A previous conviction on two counts was proved against him, and the magistrate considered himself bound, in view of the provisions of s.46, to sentence the accused to two years' imprisonment. In giving judgment on an appeal against sentence, MASON J said at 694 that the magistrate, following undoubtedly the exact words of s. 46, said that there had been two prior offences, and that as this was a third offence he was bound to impose two years' imprisonment with hard labour. The learned judge continued:

"In one sense of course there was a conviction for two separate offences, but it is clear that there was only one

conviction at one prior period, and the object of the law is that the conviction should operate as a warning, and, if there is a second offence on a separate occasion, then the minimum period of twelve months should be imposed, and, if a third offence on a third occasion, the minimum period of two years. There are other laws very much to the same effect, increasing the penalty for subsequent offences, but none of them have ever been construed so as to mean that a conviction on several counts on one occasion is to be considered several prior convictions for several prior offences, and entail this increased penalty."

The sentence was accordingly reduced to twelve months' imprisonment with hard labour.

I respectfully agree with the learned judge's reasoning. The present is a converse case. No.

4 had one previous conviction and he now had a second conviction

on two counts - but the same principle is applicable, and the present convictions are to be regarded as one conviction for the purpose of s.36(1) of the Act. Consequently the declaration of forfeiture will be set aside.

Sentence

In his written reasons the magistrate said that in imposing sentence he took into account that the convictions (sc on count 2) were accused No. 2 and 4's fifth and fourth conviction respectively. He also took into account that accused Nos. 1 and 3 were first offenders, but at the same time he had regard to the fact that although accused Nos. 1, 2 and 3 were separate registered companies, they undertook the road transportation jointly. A further consideration was that the accused were conscious of previous warnings in the form of small fines paid as admissions of guilt which had clearly had no effect upon them. He had regard to the maximum fine of R10 000 which had been laid down by the

legislature and which indicated the seriousness with which the offence should be regarded. The magistrate referred finally to an unreported case of in the Eastern Cape, in which a fine of R1500 was not regarded as excessive.

In view of the fact that we disagree with the magistrate's findings in regard to the previous convictions, this court is at large in regard to the sentences on accused Nos. 2 and 4. If their sentences are reduced, a reduction in respect of Nos. 1 and 3, who are first offenders, should follow. (I do not think that the fact that No. 3's conviction on count 1 is being set aside affords ground for distinction between No. 3 and No. 1 - in the case of all the accused the magistrate treated the two counts as one for the purpose of sentence.)

There is a further ground for interference. It does not seem that the magistrate paid sufficient regard to the fact that accused Nos. 1, 2 and 3, though separate legal entities, are members of a group of companies, which

essentially constitutes an economic unit, so that punishment of Nos. 1 and 3 is indirectly punishment of No. 2, the holding company, and punishment of No. 2 is indirectly punishment of the two shareholders, of whom No. 4 is one.

The fines imposed on all the accused aggregated R10 000, which is in my opinion entirely out of proportion to the seriousness of the offences, especially since the magistrate properly treated the two counts as one for the purpose of sentence.

The problem then is, what sentences should be substituted by this court. Little guidance is to be obtained from the reported road transportation cases and counsel were not able to offer the court any real assistance in this connection.

In my view it would be appropriate and just to impose on the accused fines which in total equal the gross consideration received from the illegal transportation, namely, R3500. (Cf. S v Deal Enterprises (Pty) Ltd 1981(4) SA 29 (A) at 36 H).

The order.

The order.

The appeal is allowed in part. For the magistrate's verdicts and sentences the following is substituted:

- (a) Accused Nos. 1, 2 and 4 are found guilty on the alternative charges in counts 1 and 2 (contraventions of s. 31(1)(b) of Act 74 of 1977).
- (b) Accused No. 3 is found guilty on the alternative charge in count 2 (contravention of s. 31(1)(b) of Act 74 of 1977).
- (c) Accused No. 1 is sentenced to a fine of R500-00, both counts being treated as one for purpose of sentence.
- (d) Accused No. 2 is sentenced to a fine of R2000-00, both counts being treated as one for purpose of sentence.

- (e) Accused No. 3 is sentenced to a fine of
R500-00.
- (f) Accused No. 4 is sentenced to a fine of
R500-00, alternatively
3 months' imprisonment, both counts being
treated as one for purpose of sentence.

The declaration of forfeiture is set aside.

H C NICHOLAS AJA

BOTHA J A
HEFER JA
KUMLEBEN JA
FRIEDMAN AJA

Concur.