Privy Council Appeal No. 52 of 1964

Joitabhai s/o Khodabhai Patel – – – – – – *Appellant*

v.

The Comptroller of Customs – – – – – – *Respondent*

FROM

THE SUPREME COURT OF FIJI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER 1965

Present at the Hearing:
LORD HODSON
LORD UPJOHN
LORD WILBERFORCE
(*Delivered by* LORD HODSON)

This is an appeal from the Supreme Court of Fiji which in its appellate jurisdiction on the 18th March 1964 allowed an appeal of the Comptroller of Customs from the judgment of the Suva Magistrate's Court and convicted the appellant of the offence with which he had been charged and imposed on him a fine of £50.

The charge was that of making a false declaration in a Customs Import Entry produced to an Officer of Customs contrary to section 116 of the Customs Ordinance (Cap. 166) in that in respect of 5 bags of corriander seed which arrived at Suva on 25th August 1963 instead of declaring the origin of that seed to be Morocco he declared it to be India.

Section 116 provides:

> " Should any person make any false entry in any form, declaration, entry, bond, return, receipt or in any document whatever required by or produced to any officer of customs under this Ordinance, or should any person counterfeit, falsify or wilfully use when counterfeited or falsified, any document required by or produced to any officer of customs, or should any person falsely produce to any such officer of customs under any of the provisions of this Ordinance in respect of any goods or of any vessel any document of any kind or description whatever that does not truly refer to such goods or to such vessel, or should any person make a false declaration to any officer of customs under any of the provisions of this Ordinance, whether such declaration be an oral one or a declaration subscribed by the person making it or a declaration on oath or otherwise, or should any person not truly answer any reasonable question put to such person by any officer of customs under any of the provisions of this Ordinance, or should any person alter or tamper with any document or instrument after the same has been officially issued or counterfeit the seal, signature or initials of or used by any officer of customs for the identification of any such document or instrument or for the security of any goods or for any other purpose under this Ordinance, such person shall on conviction for every such offence, except where a specific penalty is herein provided, be liable to a fine not exceeding two hundred pounds nor less than fifty pounds and in default of payment to imprisonment not exceeding six nor less than two months."

The evidence showed that the appellant had completed the form in which the country of origin of the seeds was given as India.

The magistrate found:—

(*a*) that the appellant ordered the corriander seed from Singapore;

(*b*) that the bags which contained the corriander seed were shipped from Singapore;

(*c*) that the appellant correctly engrossed the Customs Import Entry Form A in accordance with the particulars contained in the invoice referable to the purchase of the seed;

(*d*) that the only evidence that the corriander seed was of Moroccan origin was the markings on the bags which contained the seed;

(*e*) that there was no mens rea or carelessness on the part of the appellant;

(*f*) that the stitching on the mouth of the bag exhibited was partly in Manila Hemp;

(*g*) that the corriander seeds in the exhibited bags were round.

On investigation the 5 bags were found each to be contained in an outer bag marked J. H. Patel and Sons, the name in which the appellant was trading but the inner bags had written on them:—" Alberdan/A.D. 4152/ Corriander Favourite Singapore " and at the base of them the legend " Produce of Morocco ".

Two main questions arise. The first is whether the finding of the magistrate that there was no mens rea is conclusive in favour of the appellant or on the other hand whether the fact if proved that the appellant had made a false declaration is decisive against him even if he did not know that the entry to which he put his hand was false.

The second question is whether in any event even if the offence, if proved, is absolute without proof of mens rea there was any evidence to support a conviction.

A third question arises upon the construction of section 152 of the Act with which their Lordships will deal separately.

The first question is an important one which frequently arises upon the construction of Statutes. The general principle of the criminal law if a matter is made a criminal offence is that it is essential that there should be something in the nature of mens rea. There are however exceptions to this rule in the case of quasi-criminal offences as they may be called. In the words of Channell J. in *Pearks Gunston & Tee Limited v. Ward* [1902] 2 K.B. 1 at page 11 there are such exceptions, ".... where certain acts are forbidden by law under a penalty, possibly even under a personal penalty, such as imprisonment, at any rate in default of payment of a fine; and the reason for this is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender is liable to a penalty whether he had any mens rea or not, and whether or not he intended to commit a breach of the law." That was a case of adulteration of food contrary to the Sale of Food and Drugs Act, 1875. *Mousell Brothers v. London and North-Western Railway* [1917] 2 K.B. 836 was a case under the Railways Clauses Consolidation Act, 1845, section 98 which provided for a penalty in the case of giving a false account with intent to avoid tolls. The owners of goods were held guilty of giving false account with such intent without mens rea, their manager having given a false account to avoid payment. Viscount Reading C.J. said in the course of his judgment " where the language of an Act is not so plain as to leave no room for doubt, the Court may bear in mind the avowed purpose of the Act and consider whether a particular construction will render the Act effective or ineffective for that purpose." These words are apposite in considering the construction of section 116 of the Customs Ordinance.

This section and corresponding sections in other legislation appear to derive from the U.K. legislation on the same topic. For example section 116 of the Customs Ordinance is very similar to section 168 of the U.K. Customs Laws Consolidation Act.

It is nessary in each case to consider the precise language used as well as the avowed object of the Act and assistance is to be obtained from the way in which the Courts of various parts of the Commonwealth have interpreted their own legislation.

In Fiji the view has obtained in the past that notwithstanding the use of the word " false " in section 116 an offence is constituted if an erroneous entry is made without any intent to deceive the Customs authorities. See *C. J. Patel v. The Police* Vol. 3. Fiji Law Reports 202. The same view was taken by the Court in this case but a contrary view was taken by the Supreme Court of Fiji in a later case of *The Comptroller of Customs v. Western Lectric Company Limited* which was heard immediately after this appeal and is now under consideration together with this appeal.

It is to be observed that section 116 itself contains a number of offences set out consecutively and joined by the conjunction " or ". It is sufficient to say that some of these would plainly require to be construed so that no offence would be constituted unless mens rea were established. For example the words " should any person counterfeit, falsify or wilfully use when counterfeited or falsified any document required by or produced to any officer of customs " would not in their Lordships' view be satisfied in the absence of proof of mens rea. It does not however follow that all the phrases in the section must be read in the same way and the making of a false entry may well be in this as in other similar statutes relating to customs absolutely prohibited within the exceptions to the general rule applicable to statutes creating criminal offences.

The distinction must be a narrow one in considering the various parts of the section if the conclusion is correct that one cannot " falsify " without a guilty mind but that one can innocently make a " false " entry. Notwithstanding the narrowness of the distinction their Lordships are of opinion that this difficulty must be faced.

On behalf of the appellant reliance was placed on the minimum penalty of £50 provided by the section as an indication that proof of mens rea must be required. No doubt this is a relevant consideration but it is to be noted that in other similar statutes a standard penalty of £100 is fixed and has not been held to have imported the necessity of proof of mens rea. See the Customs Act 1901–1950 of the Commonwealth of Australia. Section 234 of this Act provides " No person shall . . . (d) make any entry which is false in any particular; . . . Penalty: one hundred pounds. " This section was considered by the High Court of Australia in *Sternberg v. The Queen* 88 C.L.R. p. 646. At page 653 Dixon C.J. said of the section; " It appears to me to be a clear provision making it an offence to enter goods by an entry which in any particular is contrary to fact. If the view contended for were correct, the only fact which could be wrong would be the belief of the person concerned; the belief would extend over the whole entry and there is only one belief in which he could be wrong and that is the belief in the correctness of entry."

A like conclusion was reached upon the same language in the State of Victoria in *Stephens v. Robert Reid and Company Ltd.* (1902) 28 V.L.R. 82 and in *Dawson v. Jack and another* 28 V.L.R. 634. A similar result has been reached in New Zealand in construing the provisions of the Customs Act 1913 relating to penalties imposed for the importation of prohibited goods. See *Fraser v. Beckett & Sterling Limited and another* a decision of the Court of Appeal [1963] N.Z.L.R. at p. 480.

In the earlier case of *Chamberlain v. Fenn* (1907) 26 N.Z.L.R. p. 152 the Court sitting at Dunedin in Banco on an appeal by way of Case Stated from a magistrate reached a like conclusion on the making of a false declaration in a matter relating to the Customs contrary to the provisions of section 293 of the Customs Laws Consolidation Act 1882. This conclusion was reached notwithstanding the provision of a fixed penalty of £100 for the offence and notwithstanding the provision in the same statute of another section (43) which provided a specific penalty for " knowingly making a false declaration ".

In these cases the language of Wright J. in *Sherras v. De Rutzen* [1895] 1 Q.B. 918 has often been considered and serves as useful guide to the proper construction of the statutes under consideration. He says at page 921 " There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."

Their Lordships have not overlooked the judgment of the Board in *Lim Chin Aik v. The Queen* [1963] A.C. 160. That case concerned the presumption that mens rea is an essential ingredient in every offence and was much relied upon by the appellant but their Lordships find nothing in the judgment of the Board delivered by Lord Evershed to lead them to the conclusion that a construction should be placed upon section 116 which involves the addition by implication of the word " knowingly " before the words " make any false entry ".

They are of opinion that the decision of the learned Judge in giving the opinion of the Supreme Court as to the meaning to be assigned to the word " false " is correct and that on this point the appeal would fail since the offence of which the appellant was convicted was absolute and no proof of mens rea was required.

The next question was whether there was any evidence upon which the appellant could be convicted of making a false declaration as charged.

The only entry as to which the allegation of falsity is made is the word " India " in the column headed " country of origin " which is part of the Import Entry Form signed by the appellant. The only evidence purporting to show that this entry was false is the legend " produce of Morocco " written upon the bags. Their Lordships are asked by the respondent to say that the inference can be drawn that the goods contained in the bags were produced in Morocco. This they are unable to do. From an evidentiary point of view the words are hearsay and cannot assist the prosecution. This matter need not be elaborated in view of the decision of the House of Lords in *Myers v. Director of Public Prosecutions* [1964] W.L.R. p.145, given after the Fiji Courts had considered the case. The decision of the House however makes clear beyond doubt that the list of exceptions to the hearsay rule cannot be extended judicially to include such things as labels or markings. Nothing is to be gained by comparing the legend in this case with the records considered in *Myers* case. Nothing here is known of when and by whom the markings on the bags were affixed and no evidence was called to prove any fact which tended to show that the goods in question in fact came from Morocco.

Some reliance was placed by the respondent on the case of *Regina v. Rice* [1963] 2 W.L.R. p.585 where a used airline ticket was admitted as an exhibit in a criminal prosecution. It is sufficient to say that the Court of Criminal Appeal in admitting the document said that it must not be treated as speaking its contents for what it might say could only be hearsay.

Subject therefore to the question which arises upon the construction of section 152 of the Act there is no evidence upon which the appellant can stand convicted.

Section 152 however provides as follows:

> " If, in any prosecution in respect of any goods seized for non-payment of duties or any other cause of forfeiture or for the recovery of any penalty or penalties under this Ordinance, any dispute arises whether the duties of customs have been paid in respect of such goods or whether the same have been lawfully imported into the Colony or lawfully unshipped or concerning the place whence such goods were brought, then and in every such case the proof thereof shall lie on the defendant in such prosecution, and the defendant shall be competent and compellable to give evidence; and any goods of a description

admissible to duty seized under any provision of this Ordinance by any customs officer on any vessel or at any place whatsoever in the Colony or within the waters of the Colony shall, in any proceeding before a magistrate for the forfeiture of such goods or for the infliction of any penalty incurred in respect thereof or on the hearing on appeal of any such case before the Supreme Court, be deemed and taken to be goods liable to and unshipped without payment of duties unless the contrary be proved, and the evidence that any person acting as an officer of customs in any proceeding relating to customs or undertaken under this Ordinance was duly authorised shall be presumed until the contrary is proved."

The material words are " If any dispute arises . . . concerning the place whence such goods were brought, then and in every such case the proof thereof shall lie on the defendant in such prosecution, and the defendant shall be competent and compellable to give evidence; . . ."

The dispute having arisen as to the country of origin of the goods it is contended for the respondent that this is a dispute concerning the place whence such goods were brought. It is said that the country of origin is the only sensible meaning to be given to the wording because that is what the Customs authorities want to know for purposes of fixing duty. In this connection reference was made to the Ordinance No. XXXI of 1877 and to the Tariff of Customs Dues in Schedule A. This includes Wine, Bordeaux (Claret) Australian in bulk or bottle, per gallon £0. 2. 0. and Wine—other kinds in bulk or bottle, per gallon £0. 4. 0. There is also in the same Schedule a list of articles exempt from duty including South Sea Island Produce. There is per contra a procedural section (section 64) in the Customs Act itself which indicates the relevance of the place from which goods are exported as opposed to their place of origin. The port from which the goods are brought is bound to be within the knowledge of the importer although the country of origin may not be. Upon this matter their Lordships are of opinion that the words " the place whence such goods were brought " should be construed in their natural meaning as the place whence they were brought by the importer and are not apt to include some other place from which they may have been previously brought or originally produced.

In these circumstances their Lordships are of opinion that there were no circumstances here which cast upon the appellant any burden under section 152 which would necessitate the remission of this case for further consideration.

They will accordingly humbly advise Her Majesty that the appeal be allowed, and the conviction of the appellant set aside. The respondent must pay the costs of the appeal.

(92628) Wt. 8052/124 75 10/65 Hw.

In the Privy Council

JOITABHAI S/O KHODABHAI PATEL

v.

THE COMPTROLLER OF CUSTOMS

DELIVERED BY
LORD HODSON

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS
HARROW
1965