

either at the commencement or during the continuance of the voyage, able, under the conditions then existing, to do the work required of it. Further, it has been proved affirmatively to my satisfaction that the fruit shipped was in good carrying condition, and as regards that in crates, properly packed. Without going into details, I find the evidence on this point so strong as to be practically conclusive. If I had had any doubt it would have been set at rest by the fact that the two lots of fruit, belonging to the same shipment, which were not carried in the insulating chamber arrived at their destination in good order. I refer to (a) the bananas carried on the cattle deck of the *Levuka*, and (b) those which were crowded out of the *Levuka* and taken to New Zealand by another steamer.

On many previous voyages, under happier climatic conditions, the insulating machinery had been able to do its work ; on this occasion the breaking point was reached and the machinery failed.

There must, therefore, be judgment for plaintiff for £547 14s. od., with costs.

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## RECEIVER-GENERAL *ats.* GRIFFITH.

[Appellate Jurisdiction (Davson, C.J.) September 20, 1920.]

*Customs Ordinance 1881, s. 87—“ knowingly ” delivering for conveyance dutiable goods on which duty has not been paid—no intent to defraud—whether an offence.*

Griffiths, who was overseer of the Union Steamship Company's labour at the Suva wharf, purchased two cases of butter from the chief steward of the steamship *Atua*. He instructed two labourers to carry the butter to his house. A police constable saw them carrying the butter outside the wharf area and the butter was seized. Griffiths stated that he intended to have the manifest amended to include the butter.

**HELD.**—“ Intent to defraud ”, is not an essential ingredient of the offence.

[**EDITORIAL NOTE.**—S. 87 of the Customs Ordinance 1881 referred to is s. 87 of the Ordinance as published in the consolidation of 1906 and not s. 87 of the original Ordinance of 1881. The section is now s. 100 of the Customs Ordinance (Cap. 147) (Revised Edition, Vol. II, p. 1524.)]

**APPEAL** against conviction. The facts and argument appear from the judgment.

*H. M. Scott, K.C.*, for the appellant.

*S. H. Ellis* for the respondent.

**DAVSON, C.J.**—This is an appeal against a conviction under s. 87 of the Customs Ordinance 1881, the latter part of which makes it an offence knowingly to deliver to anyone for conveyance dutiable goods on which duty has not been paid. The grounds of appeal are that the conviction is contrary to law and against the weight of evidence.

The argument turned largely on the presence or absence of an intent to defraud; as to this, the evidence would have justified a finding either way, according to the credit attached by the magistrate to certain portions of it, and with such finding on facts I would not interfere. There is nothing in the copy of proceedings to indicate what was his view on this point, but it was alleged by counsel for appellant that in giving judgment he expressed the opinion that appellant had no fraudulent intent, and respondent's counsel, while asserting that the prosecuting department took an opposite view, agreed with that statement. The case was, therefore, argued as if the Magistrate had so found.

For appellant, it is contended that (a) the words "without the permission of the proper officer" must be read with the section, and (b) that the word "knowingly" is used in a technical sense and means "with intent to defraud," and that therefore the appellant was entitled to an acquittal.

I am unable to assent to this interpretation. I think that the language of the section must be construed according to the ordinary and natural meaning of the words, and that the legislature has made it an offence to do the thing described in the section provided it be done "knowingly" and in my opinion the "knowledge" required before a conviction can take place is (so far as this case is concerned) the knowledge that the goods dealt with are dutiable goods on which the duty has not been paid. If the legislature had intended that leave might be given by a customs officer to handle such goods it would have said so, as in s. 14<sup>1</sup> (breaking bulk, etc., without permission of the "proper officer"); in s. 74<sup>2</sup> (exporting goods without passing in entry unless the proper officer grants permission) in s. 82<sup>3</sup> (*re* landing of ship's stores without the sanction of the proper officer and without passing entries).

Similarly, if the legislature had intended that the act should not be unlawful unless done with intent to defraud it would, in my opinion, have used those words instead of the word "knowingly." The only mention of "fraud" in the section entirely confirms his view; it makes punishable the conveyance of goods on which "no duty or through fraud an insufficient amount of duty" has been paid. If the legislature had intended to make fraud a necessary ingredient of every act made punishable under the section it would presumably, have done so in express terms, as in this case; the inference that it did not so intend seems irresistible, the necessity for the words in the case of insufficient duty is obvious, for otherwise a person who had in good faith paid the duty demanded by the customs authorities might be criminally liable for a mistake made by them.

In further confirmation of this interpretation I may refer to an earlier clause in the section (87) under which the "owner" of the goods may in the discretion of the Receiver-General be proceeded against, and "if such person cannot prove that all duty leviable on such goods has been duly paid then such . . . owner . . . shall be liable to a fine, etc." It will not avail the "owner" to prove that he had the permission of a customs officer (which such officer has no power to give) or the absence of intent to defraud.

<sup>1</sup> Now s. 23 of the Customs Ordinance (Cap. 147) (Revised Edition, Vol. II, p. 1489).

<sup>2</sup> Now s. 92 of the Customs Ordinance (Cap. 147) (Revised Edition, Vol. II, p. 1518.)

<sup>3</sup> Now s. 95 of the Customs Ordinance (Cap. 147) (Revised Edition, Vol. II, p. 1520.)

The Customs Consolidation Act<sup>1</sup> 39 and 40 Vict., c. 36, s. 186, was referred to in the argument, and here it is clear the "knowingly" does not mean "with intent to defraud." S. 186 renders liable to a penalty any person who shall be "knowingly concerned in the carrying of such" (as those authorized in the section) "with intent to defraud"; here "knowingly" cannot mean "with intent"; it has, in my opinion, a meaning similar to that which I attribute to it in s. 87 of our Ordinance.

I may observe that the same section (186) of the English Act makes it an offence to remove from a ship certain goods "unless under the care or authority" of a customs officer; can it be contended that if these words did not appear in the section they would be implied? Surely not.

To revert once more to s. 87 of our Ordinance, it is significant that after dealing with the offence of knowingly delivering it goes on to provide that any person "assisting" in their removal is also punishable if he does so "knowing that the same were liable to the payment of duty"—exactly the meaning which, in my view, "knowingly" has in the case of the person delivering the goods to be removed.

It seems clear then that the legislature has absolutely prohibited the acts dealt with in this section; that hard cases may arise under such stringent provisions is undoubted and this is probably why a discretion to prosecuting is given to the Receiver-General, enabling him to hold his hand where he is satisfied that the offence is purely technical.

The appeal is dismissed with costs.

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## WALKER FOR THE RECEIVER-GENERAL *ats.* CHOONILAL AND JADHAVJEE.

[Appellate Jurisdiction (Davson, C.J.) January 25, 1921.]

*Conviction under Ordinance 10 of 1905<sup>2</sup> for unlawfully importing gunjah—penalty under s. 3—fine or imprisonment—enforcement of—form of conviction—proper authority to lay information—whether authority may be delegated—no valid information before the Court—proceedings void ab initio.*

In a prosecution under the Indian Hemp Prohibition Ordinance, 1905, the information was laid by "Alfred Walker on behalf of the Receiver-General". It was objected at the trial before a court of summary jurisdiction that the complaint in this form was invalid.

**HELD.**—(1) There being no valid information before the Court the proceedings were void *ab initio*.

(2) There being no statutory provision allowing a complaint to be made by one person on behalf of another, in this instance, the information could have been laid by Walker in his own name but there is no law giving the Receiver-General a general power to authorize another to take proceedings.

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<sup>1</sup> 1876.

<sup>2</sup> *Indian Hemp Prohibition Ordinance, 1905 (Repealed).*