1920.
*Sept. 20.*

## [APPELLATE JURISDICTION.]

[ACTION No. 6, 1920.]

## RECEIVER-GENERAL *v.* GRIFFITH.

Conviction under section 87 of the Customs Ordinance 1881, for "knowingly" delivering for conveyance dutiable goods on which duty had not been paid.

*Held*, "intent to defraud" not an essential ingredient to constitute the offence.

C. S. DAVSON, C.J. This is an appeal against a conviction under section 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 defiaud; 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 his client 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 section 14 (breaking bulk, &c.,

without permission of the "proper officer"); in section 74 (exporting goods without passing an entry unless the proper officer grants permission), in section 82 (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 this 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 irresistable, 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, &c." 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.

The Customs Consolidation Act 39 and 40 Vic., 36 C. was referred to in the argument, and here it is clear that "knowingly" does not mean "with intent to defraud." Section 186 renders liable to a penalty any person who shall be "knowingly concerned in the carrying of such goods (as those authorised 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 section 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 section 87 of our Ordinance, it is significant that after dealing with the offence of knowingly

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delivering goods 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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1920. Nov. 26.

[APPELLATE JURISDICTION.]

[ACTION No. 8, 1920.]

RAMA NAIR v. AHMED.

Information bad for duplicity—variance between evidence and information.

*Held*, information defective and at variance with evidence, but neither one or the other caused any embarrassment or prejudice to defendant, he being represented by counsel who raised no objection to the information, and proceeded with the defence; otherwise, if defendant had been undefended, or counsel had applied for an adjournment and been refused.

*Held*, in these circumstances no substantial miscarriage of justice (see S. **3** of Appeals Ordinance **1903** as amended by Ordinance **14 of 1916**).

C. S. Davson, C.J. This is an appeal from a conviction under section **44** of Ordinance **5** of **1918** for harbouring the wife of an immigrant. Several witnesses were called for the prosecution, but the only direct evidence of harbouring was that of the woman herself, of which there was some, though not very strong, corroboration. The District Commissioner was satisfied with their evidence and I am not prepared to interfere with his finding on the facts. I am, further, of opinion that the facts as found show a case of harbouring.

There were, however, two points which were relied on by appellant as grounds for quashing the conviction. The first is that the information was bad for duplicity in that it charged defendant with "harbouring at Koronubu and elsewhere." I agree that this was a defect in the information, but appellant was represented by counsel who, if his client had been misled, might have taken the objection and the information might