

HIGH COURT. 1960. 1, 2, 8, September. MARSACK C.J.

Smuggling - prosecution for - importation of goods - intent to defraud Customs of duty.

The defendant was at the material times Chief Postmaster of Western Samoa. In 1952 or 1953 he entered into an arrangement with the Postmaster at Pago Pago, Tutuila, whereby parcels from the United States addressed to the defendant would be sent to him care of the Postmaster in Pago Pago and would then be forwarded by the latter to the defendant in a special bag addressed "Postmaster, Apia", without payment of further postage and without entry on the document known as the Parcels Bill upon which all parcels sent from Pago Pago to Apia by post are listed. In the absence of such entry in the Parcels Bill, it was impossible to determine the actual number of parcels forwarded to the defendant by this means; or whether customs duty was assessed and paid on any of the unlisted parcels.

On two charges of smuggling and one of attempted smuggling, it was proved that, with respect to the charge of smuggling on 3 November 1956 and as generally illustrative of the defendant's subsequent conduct with regard to the other two charges, an insured parcel had been despatched from Chicago to the defendant care of the Postmaster, Pago Pago; that it was sent from Pago Pago to Apia arriving 3 November 1956; that it was uplifted by the defendant personally without any entry in the Customs docket book; that there was no assessment or payment of duty thereon; and that the parcel was not shown to any Customs officer. No Customs authority was given the defendant to remove the parcel in question.

HELD: That the goods contained in the parcel were imported into Western Samoa by the defendant with intent to defraud the Customs of the duty payable thereon.

Defendant convicted.

PROSECUTION for smuggling and attempted smuggling pursuant to section 207 Customs Act 1913 (New Zealand).

Penlington, for informant.  
Metcalf, for defendant.

Cur. adv. vult.

MARSACK C.J.: Three informations have been laid against the defendant, two for smuggling, on the 3rd November 1956 and the 11th May 1959 respectively, and one of attempted smuggling on the 6th June 1959. The informations are laid under section 207 of the Customs Act 1913 (New Zealand) which is in force in Western Samoa. Under section 2 of that Act smuggling is defined as follows:

" 'Smuggling' means importing, unshipping, landing, conveying, or otherwise dealing with any goods with intent to defraud the revenue of Customs".

Defendant was at all material times Chief Postmaster of Western Samoa, with headquarters at Apia.

In 1952 or 1953 defendant entered into what counsel for the defence without overstatement describes as "a highly suspicious arrangement" with the Postmaster at Pago Pago, Tutuila, whereby parcels from the United States addressed to defendant would be sent to him care of the Postmaster, Pago Pago and would then be forwarded by the latter to the defendant in a special bag

addressed "Postmaster, Apia", without payment of further postage and without entry on the document known as the Parcels Bill upon which all parcels sent from Pago Pago to Apia by post are listed. Defendant explained that the purpose of this arrangement was to take advantage of the lower postal charges obtaining between the United States and American Samoa, and to avoid payment of any further postage for the journey Pago Pago-Apia. It is impossible to say how many parcels were sent to defendant from the United States and forwarded by this means, as when they were not noted in the parcels list there was no record of their despatch from the Post Office in Pago Pago or of their receipt in the Post Office Apia. There must, however, have been a considerable number of them. I accept the evidence of Jane Uhrle, Assistant to the Postmaster, Pago Pago, to the effect that she saw numbers of parcels arriving from the United States addressed to Mr C.R. Rivers, c/- Postmaster, Pago Pago, and that these parcels under the instructions of the Postmaster there were made up in a separate bag which was sealed, addressed to the Postmaster, Apia and enclosed in the letter-bag. As a general rule these parcels were not entered on the parcels list. On occasion they were listed, when Postal Clerk Pearson was preparing the despatches and Mrs Uhrle instructed him to enter on the parcels list the parcel or parcels addressed to defendant. Whether customs duty was assessed and paid on the unlisted parcels it is impossible to say, as in the absence of an entry in the parcels list there is no record of their arrival in Apia. In any event none of those parcels is the subject of a charge before the Court, and they are mentioned only to indicate the arrangement that had been made between the defendant and the Postmaster in Pago Pago.

Turning now to the charge of smuggling a parcel on the 3rd November 1956. An insured parcel from Chicago arrived in Pago Pago addressed to Mr C.R. Rivers, c/- Postmaster, Pago Pago. This parcel was sent on to Apia and was listed on parcel bill No. 63 by Postal Clerk Pearson. Its weight was in the class 12-22lbs. Three other parcels were sent in the same shipment by the M.V. "Sulimoni". Parcel bill No. 63 was produced to the Court as Exhibit "C". On that bill a pencilled line is drawn through the entry relating to this parcel and defendant has set his initials after his name at the end of that line. Defendant denies all knowledge of striking out the entry. This must, however, have been done after despatch from Pago Pago, because in the carbon copy of parcel bill No. 63 produced from the records of the Post Office, Pago Pago (Exhibit "C") there appears no such line. Opposite the entries of the other three parcels listed in parcel bill No. 63 appear the numbers 7298, 7299 and 7297, which correspond with the numbers appearing in the Customs docket book. The next serial number, 7300, was allotted to a parcel arriving subsequently in Apia by the ship "John Williams".

All parcels arriving from overseas are given a number from the Customs docket book, and if no such number appears opposite the entry of a parcel in the parcels bill the inference may be drawn that no Customs docket has been issued in respect of that parcel. It is the duty of the postal officials handling the parcels at the Apia Post Office to ensure that all parcels arriving from overseas are given a Customs docket number and brought to the attention of a Customs officer for assessment of duty. I accept the evidence of Mr McFall and of Olive that the postal officers concerned would not consider it their duty to make any report regarding the absence of a listed parcel if the Chief Postmaster's initials were on the bill opposite the entry of that parcel. The presence of his initials would indicate that he had taken the responsibility for it. It appears from the evidence that on some occasions when mail arrived from Pago Pago the defendant himself opened the bag before the arrival of those members of his staff who would in the normal course deal with it.

When defendant was first shown parcel bill No. 63 by the Superintendent of Police he stated that the drawing of a pencilled line through the entry indicated that the parcel had not been received. In Court, however, he stated that this answer had been given hastily, and that upon due thought he accepted the presence of his initials opposite the entry of the parcel as establishing the fact that he had taken delivery of it.

I find therefore that this insured parcel had been despatched from

Chicago, Ill. to the defendant care of the Postmaster, Pago Pago; that it was sent on from Pago Pago to Apia where it arrived on the morning of the 3rd November 1956; that it was uplifted by the defendant personally without any entry in the Customs docket book; and that there is no evidence of assessment or payment of duty thereon, and in fact no evidence that the parcel was ever shown to any Customs officer. No permission was given by a Customs officer in writing for the removal of the parcel in question.

Defendant endeavours to discharge the burden of proof laid upon him by sections 276 and 277 of the Act by stating that he had no recollection of the matter at all, though he may have taken the parcel out for the purpose of sending it to his daughter in New Zealand by the hands of the Chief Steward of "Tofua" which was sailing that same day. Although I agree with Mr Metcalfe that defendant has been hampered by the fact that nearly four years have elapsed since this parcel was received, I cannot agree with him that the explanation offered is a feasible explanation. What defendant has to explain is why the parcel was uplifted by him without following the normal routine of having an entry made in the Customs docket book for the assessment and payment of duty. It is not a feasible explanation to put forward a mere possibility that he may have taken the parcel from the Post Office and given it to the Chief Steward in "Tofua" to take to his daughter in New Zealand.

It is difficult to understand why defendant should have taken away this parcel without going through the normal Customs routine, in view of his own insistence to his staff on the strict observance of all formalities. When in May 1954 the Private Secretary to the High Commissioner uplifted a parcel addressed to the High Commissioner without following the normal Customs routine defendant wrote in July complaining of his action, and issued an instruction to his own staff in the following words:

"Please note that in future no dutiable parcels are to be delivered to anyone unless the duty has been paid or a delivery order received from the Customs Department".

It is quite clear that in November 1956 he acted in a manner directly contrary to that laid down in his previous official instruction to his staff.

Moreover, under section 61(2) of the Act no goods subject to the control of the Customs shall be removed from any examining place except with the permission of a Customs officer after proper entry or in pursuance of a written permit granted by the Collector of Customs. Presumably the parcels office at the Post Office is an examining place, as parcels are in fact examined there by Customs officials for the assessment of duty, and the parcels concerned are subject to the control of the Customs. If this is so it would be at best a grave irregularity for the Chief Postmaster to remove a parcel addressed to himself without written permission of the Customs, and at worst a definite offence under the Act.

I accordingly find that the goods contained in the parcel were imported into Western Samoa by the defendant with intent to defraud the Customs of the duty payable thereon, and therefore there must be a conviction on this charge.

Turning now to the second charge. This concerns two parcels which were sent from Oakland, Calif., addressed to Mr C.R. Rivers, c/- Postmaster, Pago Pago and which were subsequently forwarded to Apia by the M.V. "Isabel Rose". At the time of their arrival in Pago Pago the Postmaster was away from Tutuila, and Mrs Uhrle was temporarily in charge of the Post Office there. Although Mrs Uhrle knew of the arrangement between the two postmasters that parcels would be sent on to defendant without additional postage charge, she considered that this was contrary to the Postal Regulations in force there, and accordingly wrote advising him of the arrival of the parcels and requesting payment of additional postage of \$2.00. Defendant wrote back forwarding the \$2.00 and asking:

"Would you please ensure to forward them on by first mail (enclosed in a separate bag addressed to me) as I need the

goods urgently".

She gave instructions to Postal Clerk Pearson to put on stamps to the value of the extra postage, enter the parcels on the parcels bill, and forward in the normal way. On this occasion ten parcels in all were sent, and they were listed on parcel bill 525 which is produced as Exhibit "A". The two parcels were uplifted by the defendant who put his initials opposite the entry on the parcel list. No Customs docket numbers were set against the entry of these two parcels, though the other eight parcels in the shipment all received the appropriate Customs docket numbers. Defendant did not approach the Collector of Customs or any Customs officer for permission to remove the parcels or ask them to assess duty thereon. When this irregularity was disclosed by Audit in February 1960, nine months after the receipt of the parcels, defendant made out an import entry and paid duty which was assessed at £1.16.0. Defendant sought to explain his omission to notify the Customs Department by the fact that he was in considerable distress on account of an accident to his hand, that he had staff worries, and that he was extremely busy as President of the Public Service Association in preparing material to place before a Wages Commission.

This charge must, I think, be considered in conjunction with the third charge which is of attempting to smuggle goods on the 6th June 1960. On this occasion a parcel was despatched from Chicago Ill. addressed to Charles Raymond Rivers, c/- Postmaster, Pago Pago. Once again a card was sent to defendant advising him of the arrival of the parcel and asking for additional postage amounting to \$5.07. Defendant wrote back to the Pago Pago Postmaster himself, who returned to Pago Pago just before this letter arrived. The letter was produced to Court as Exhibit "K" and reads as follows:

"Post Office,  
Apia, W. Samoa.  
6 June 1959.

Dear Ed,

Sorry I didn't see you when you were here. I had wanted to discuss the despatch of our airmails by the Oceanic Airlines. However, we will discuss this at some future date.

The purpose of this note is to enclose the attached card in which you are asking \$5.07. This is the second time in which I have been asked to pay additional postage on my parcels. What is this for please Ed?

I enclose \$5.07. Please send me the parcels by first mail - and please enclose them in a separate bag addressed to me, as usual, and please don't enter in your parcel bill.

Kind regards,

Sincerely,  
Charles."

The use of the phrase "as usual" indicates clearly that what defendant asked the Postmaster Pago Pago to do was to proceed in accordance with the arrangement they had previously made. The underlining of "don't" in the request "please don't enter in your parcel bill" is particularly significant. The evidence satisfies me that in the absence of an entry in the parcels bill there is no record whatever of the arrival of an overseas parcel in the Apia Post Office. Defendant gave an explanation in the box that the reason for his request was that he wished to avoid payment of additional postage. That explanation cannot be accepted, as he had forwarded the postage with the letter. He said further that he wished to avoid delay in sorting. I was not informed, and do not understand, in what way non-entry in the parcels bill

would avoid delay in sorting. Moreover, records covering two periods of several months each, produced to the Court, show that the average number of parcels in each shipment from Pago Pago to Apia is slightly less than three. These could be sorted in a matter of seconds.

I am forced to the conclusion that the only object there could be in omitting all mention of this parcel in the parcels bill would be to keep knowledge of the arrival of the parcel from the Customs officers. Duty was actually paid in respect of this parcel almost two months later, namely on the 31st July. The duty paid was £2.5.10. The same explanation as to the reason for the delay in payment was given as in the case of the parcels received in May. It is noteworthy that when defendant paid the duty on this parcel he overlooked that received the previous month. In view of the terms of the letter of the 6th June from defendant to the Postmaster, Pago Pago I am impelled to find that the action taken with regard to the May parcels amounted to smuggling as defined in the Act, and that with regard to the June parcel amounts at least to an attempt to smuggle as stated in the information. Mr Metcalfe concedes that the charge concerning the importation of the parcel in June is a most difficult charge to answer in view of the letter quoted. Mr Metcalfe argues that the defendant, as he stated in evidence, meant in that letter to refer to future parcels and the saving of postage on them; and that he may have expressed himself clumsily. I find on the contrary that the letter is expressed with perfect clarity and directly to the point. Defendant asked for that particular parcel to be omitted from the parcels bill for reasons quite unconnected with the postage on it, as the postage was enclosed in the letter.

For these reasons the defendant must be convicted on all three charges. As the convictions amount to a finding that defendant had misused his position as Chief Postmaster to defraud the country's revenue it was his duty to protect, the penalties to be imposed must necessarily be substantial. On each of the charges of smuggling defendant is fined £60; on the charge of attempted smuggling he is fined £30.