R. *v.* WONG CHOW.

[Criminal Jurisdiction (Maxwell Anderson, C.J.) June 12, 1934.]

Drugs and Poisons Ordinance 1926—*Importation of prepared opium—Person carrying parcel innocent as to contents—Definition of Importer—Quaere whether prohibition on importation absolute.*

Wong Chow was arraigned on an information alleging that he did import or bring into the Colony a prohibited drug to wit prepared opium. He pleaded not guilty.

It was proved that Wong Chow had received in Sydney, New South Wales, a cable asking him to receive from a certain party a parcel and to convey it to Suva for delivery to one Keat, another Chinese. On arrival at Suva and while still on board ship Wong Chow transferred the parcel to Keat. Both Wong Chow and Keat were arrested. Keat pleaded guilty to possession of the drug. Wong Chow from the outset denied knowledge of the contents of the parcel and pointed out that he was carrying a second parcel for the Chinese Consul. Both parcels were in his possession as an innocent carrier.

The Court (with assessors) found as a fact that the accused had no knowledge of the contents of the parcel.

HELD.—(1) " Importer " means the receiver or addressee of the parcel who is beneficially interested therein or, of course, one who might land the parcel knowing its contents and attempt to smuggle it through the customs.

(2) " Prepared Opium " the importation of which is absolutely prohibited by s. 23 of the Drugs and Poisons Ordinance, 1926[1] is a special preparation of opium so prepared as to be susceptible of being smoked or consumed in some form of pipe.

[**EDITORIAL NOTE.**—The Dangerous Drugs Ordinance Cap. 112 (Revised Edition Vol. II p. 1091) which replaces the Drugs and Poisons Ordinance, 1926 retains the same definition of " prepared opium " (*Vide* s. 2) as appeared in the Ordinance of 1926. However in the present Ordinance the sections absolutely prohibiting the importing etc. of prepared opium etc. (ss. 11 and 12 Revised Edition p. 1095) form Part II of the Ordinance and the sections relating to drugs the importation of which is conditionally prohibited are found in Part III of the Ordinance, whereas all the corresponding sections were in Part II of the Ordinance of 1926. Part III of the present Ordinance applies to " medicinal opium " but not to " prepared opium " as did Part II of the Ordinance of 1926. Since the only references to " prepared opium " in the present Ordinance are in s. 2 (definition) and Part II (absolute prohibition) it is doubtful whether the decision as to the limited interpretation of " prepared opium " in s. 23 of the Ordinance of 1926 is applicable to Part II of the present Ordinance.]

Cases referred to :—

(1) *Mousell Bros. Ltd. v. L. & N.W. Railway Co.* [1917] 2 K.B. 836 ; 81 J.P. 305 ; 87 L.J.K.B. 82 ; 118 L.T. 25 ; 14 Dig. 44.

(2) *Parker v. Alder* [1899] 1 Q.B. 20 ; 68 L.J.Q.B. 7 ; 79 L.T. 381 ; 19 Cox. C.C. 191.

(3) *R. v. Woodrow* [1846] 16 L.J.M.C. 122 ; 153 E.R. 907 ; 14 Dig. 34.

(4) *Hobbs v. Winchester Corporation* [1910] 2 K.B. 471.

[1] *Vide Editorial Note.*

ARGUMENT AS TO VERDICT ON FACTS found by the Court with assessors.

The Attorney-General, *R. S. Thacker*, for the Crown.

R. Crompton, K.C., with *J. M. Park*, for the accused.

The Attorney-General.—Even on that finding there should be a verdict of guilty. By s. 23 of the Ordinance the legislature has absolutely prohibited the importation of prepared opium and therefore a person offending against the section is guilty of a crime without proof of *mens rea*. He quoted *Mousell Bros. Ltd. v. L. &. N.W. Railway Co.* (1917, 2 K.B. 836) ; *Parker v. Alder* (1899, 1 Q.B.) ; *R. v. Wood* (L.J. 1847, Vol. 16, N.S. 122) ; and *Hobbs v. Winchester Corporation* (1910, 2 K.B. 471).

R. Crompton, K.C.—The learned Attorney-General's cases relate to offences in connection with the sale of pure food, milk and meat etc. Such legislation has no bearing on an enactment such as the Drugs and Poisons Ordinance. An innocent carrier cannot import—the importer is the person beneficially interested in the goods. He referred to *Stroud's Legal Dictionary*, definition of " importer ". The doctrine of *ejusdem generis* applies as to possession which does not mean actual physical possession.

MAXWELL ANDERSON, C.J.—In this case the accused stands charged with importing or bringing into the Colony a prohibited drug—opium. I need not recite the facts ; suffice it to say that the Court has found as a fact that the accused was conveying the parcel innocently in so far that he had no knowledge of the contents of the parcel temporarily in his charge for transit.

On this finding the learned Attorney-General argues that accused must be convicted of the offence charged since s. 23 of Ordinance 19 of 1926 contains an absolute prohibition on import and that no *mens rea* is necessary. He cites in support of his contention certain cases connected with the Sale of Food and Drugs, which show clearly, firstly, that there may be a complete offence without *mens rea* and, secondly, the principles upon which a Court should be guided as to whether or no in any particular case it is the intention of the legislature to create such an offence.

Learned counsel for the defence argues that there is no analogy between such cases relating to Pure Food and the question of importing or bringing in under the Ordinance, which the Court now has to consider. He maintains that the Court should rather look to customs laws for the definition of an importer and refers to *Stroud's Legal Dictionary* and the information therein given under the definition of " importer."

I am faced first of all with this difficulty, that whereas s. 23 of Ordinance 19 of 1929 appears to be absolute in terms, yet s. 25, *et. seq.*, all relate to " drugs under this part of this Ordinance ", and prepared opium is undoubtedly a drug under such Part II of the Ordinance.[1]

A closer scrutiny of s. 23, however, would seem to show that the prepared opium referred to in that section is a special preparation of opium so prepared as to be susceptible of being smoked or consumed in some form of pipe and together with such preparation there is a further absolute prohibition on the importation of any article that can be used either in the preparation of the opium for smoking or to assist in the smoking.

[1] *Vide Editorial Note.*

Now in this case I have no evidence beyond that the objectionable substance is a preparation of opium and since every penal statute must be construed strictly and so far as possible in favour of the accused, in the absence of evidence that Exhibit A is a preparation susceptible of being smoked, I feel bound to hold that the exhibit is not a preparation on which there is an absolute ban as regards importation.

There now arises the further point, was the accused the actual importer of the exhibit? I have carefully considered all relevant assistance which I can find and albeit with some hesitation I come to the conclusion that in the absence of any definition of the term "importer" in local legislation I should adopt the perfectly logical definition in s. 284 of 39 and 40, Vict., c. 36.[1] Reading that section carefully I cannot consider that the words "possessed of" can mean an innocent carrier of a parcel and accordingly I come to the conclusion that Wong Chow was not the importer of this parcel of opium. Any other conclusion, it seems to me, might lead to very curious results. I can conceive a case in which the shipping company might be held responsible for the importation of a packet innocently received for carriage; the agents of the post office might even be held similarly liable, and so, the more especially in a criminal charge, I feel constrained to hold that the importer is the receiver or addressee of the parcel, who is beneficially interested therein or, of course, one who might land the parcel knowing its contents and attempt to smuggle it through the Customs.

No such state of mind or action may be attributed to the accused and accordingly I hold that both in fact and in law the charge against him cannot be sustained.

There will accordingly be a verdict of "not guilty."

I only desire to add that I have come to this conclusion with a certain degree of hesitation—if I had been sitting as a High Court judge in England I should, I think, have convicted and given leave to appeal, but I cannot put a person in the position of accused to the expense of an appeal, and so, since I have a doubt, it is better that a guilty man should escape rather than that an innocent man should suffer.

R. *v.* SURAJPAL.

[Criminal Jurisdiction (Maxwell Anderson, C.J.) June 14, 1934.]

Bigamy—Marriage by Indian Custom—First marriage prior to Marriage (Amendment) Ordinance 1928 *and without certificates—Second marriage complying with all legal requirements—whether first marriage valid.*

Accused was arraigned on a charge of bigamy contrary to s. 57 of the Offences against the Person Act, 1861. It was proved that in 1927 he went through a marriage ceremony according to Indian custom with one Rampiari. The marriage was performed by two priests, one registered and one unregistered under the Marriage Ordinance 1918. No certificates for marriage were produced to the priests and the marriage was not registered. The priests deposed that the marriage was binding

[1] *Customs Consolidation Act,* 1876.