

WONG SING *ats.* POLICE.

[Appellate Jurisdiction (Seton, C.J.) July 19, 1946.]

*Customs Ordinance (Cap. 147) s. 98—possession of goods upon which no Customs duty had been paid—whether an offence.*

As a result of information received Wong Sing, a storekeeper of Lautoka, was asked by a Police Officer if he had bought any cigarettes from one Hanif. He admitted this and when requested produced two cartons of American cigarettes. There was evidence from a Customs Officer that no duty had been paid on the cigarettes, which were dutiable goods.

**HELD.**—(1) S. 98 of the Customs Ordinance (Cap. 147) provides for the punishment of persons found in possession of dutiable goods on which no duty has been paid or insufficient duty fraudulently paid as the result of a search made by an officer of Customs acting upon the authority of a search warrant issued by a Magistrate upon a sworn complaint and if those circumstances are not present there is no offence punishable under the section.

Cases referred to :—

(1) *Reg. v. Hughes* [1879] 4 Q.B.D. 614; 48 L.J.M.C. 151; 40 L.T. 685; 43 L.P. 556; 14 Cox. 284; 14 Dig. 168.

(2) *Yewens v. Noakes* [1880] 50 L.J.K.B. 132; 6 Q.B.D. 530; 44 L.T. 128; 45 J.P. 468; 42 Dig. 643.

(3) *Elias v. Pasmore* [1934] W.N. 30; 2 K.B. 164.

(4) *Gray v. Commissioners of Customs* [1884] 48 L.P. 343.

APPEAL against conviction.

*A. D. Leys*, for the appellant, submitted that unless the formalities referred to in s. 98 of the Customs Ordinance have been observed there is no offence under the section.

*E. M. Prichard*, for the respondent: The section seems to be compounded of portions of three sections of the Customs Consolidation Act 1876 (Imperial) and the result is not easy to interpret (Customs Consolidation Act, 1876 ss. 186, 205, 202 and 206). In such a case it is proper to have regard to the history of legislation (*Yewens v. Noakes*). The section intends to treat the possession of uncustomed goods as an offence and goes further to provide for search warrants and the procedure for their execution. As to this latter subject, the section uses as one would expect, purely permissive language.

If the substantive offence is proved by proper evidence without recourse to the method of obtaining evidence permitted but not ordered by the section so much the better. Courts do not inquire into how evidence was obtained except so far as it affects the quality of the evidence (*Taylor on Evidence* 12th Ed. Vol. I p. 582) and do not refuse to act on it even if it is unlawfully obtained—which is not suggested in this case (*Elias v. Pasmore*). Guilt or innocence does not depend on the observance or non-observance of formalities by those charged with the duty of bringing offenders to justice (*Reg. v. Hughes*, *Gray v. Commissioners of Customs*). The section is admittedly not clear but this is a case for applying the principle of beneficial construction to its interpretation.

*A. D. Leys*, for the appellant, in reply : It is necessary to prove existence of circumstances bringing the case within the section.

SETON, C.J.—The appellant was convicted of unlawfully having in his possession cigarettes upon which no customs duty had been paid, contrary to s. 98 of the Customs Ordinance (Cap. 147), and sentenced to pay a fine of £50 or in default of payment to undergo imprisonment for a period of three months.

The facts are not in dispute. The cigarettes were American ; no customs duty had been paid on them ; somehow or other they came into the possession of a man named Hanif who sold them to the appellant. The appellant was called upon by two constables, who had received certain information, to produce the cigarettes and he did so.

The only question raised on the appeal is whether, the facts being admitted, the appellant was properly convicted under s. 98 of the Customs Ordinance. The answer is that he was not. S. 98 is a long section but it does not provide for a case like this. It provides for the punishment of persons found in possession of goods on which no duty has been paid or on which insufficient duty has been fraudulently paid as a result of a search made by an officer of Customs acting upon the authority of a search warrant issued by a Magistrate on a sworn complaint. It provides for no other case.

It is not an accurate account of s. 98 to say that it provides for the punishment of persons found in possession of dutiable goods on which no duty has been paid " provided that certain formalities have been observed ". It does nothing of the kind and there is no question of formalities. The section provides for the punishment of persons in certain circumstances ; if those circumstances are present, the section applies ; if they are not, the contrary is the case.

One would have expected that there would be another section in the Customs Ordinance dealing with all cases of persons found in possession of goods on which Customs duty has not been paid in circumstances not otherwise provided for by the Ordinance, but strangely enough there is none. There is a lacuna in the Ordinance which, now that attention has been called to it, will no doubt be remedied. Until it is, persons found in possession of dutiable goods upon which no duty has been paid, in circumstances similar to those in this case, will be entitled to go scot free. The appeal is allowed and the conviction and sentence set aside.

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