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AGENT-
GENERAL OF
IMMIGRA-
TION
n.
SHUTE'S
EXECUTORS.

[CRIMINAL JURISDICTION.]

CROWN CASES RESERVED.

Oct. 24.

IRABUDEROO v. THE QUEEN.

Criminal Procedure Ordinance 1875, ss. 3, 9, 13, 15—Defect in information—Amendment.

The dating of an information, although required by s. 9 of the Criminal Procedure Ordinance 1875, is not a condition precedent to its validity. Its omission, therefore, is a defect in form only which may be amended, and does not constitute a good ground for moving in arrest of judgment.

This was a case in which the accused had been convicted of wilful murder on the 18th October and his counsel, Mr. H. G. Berkeley, had moved in arrest of judgment on the ground of insufficiency of the information, and his Honour, owing to the importance of the case, involving as it did the life of the accused, decided not to deliver judgment then but reserved the point under s. 44 of the Criminal Procedure Ordinance 1875 for further consideration and argument upon a later day.

Mr. H. G. Berkeley now appeared on behalf of the accused in support of his motion in arrest of judgment, and contended that the information or indictment was insufficient and bad in law on the ground that it bore no date, and s. 9 of the Criminal Procedure Ordinance

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1875 required that it must bear date on the day it was signed by the Attorney-General. He referred to ss. 3 and 4 of the same Ordinance and contended that the words "on the day" meant the actual date of signing by the Attorney-General, and that the information to be valid must have the date upon it when signed; that the signing and dating must be contemporaneous. In support of his argument the learned counsel cited Maxwell's *Interpretation of Statutes*, pp. 2 and 65, as to the duty of the Court in interpreting statutes, and 456, 458, 459, and 473 as to conditions precedent; and argued that the dating of the information was a condition precedent to the Court having jurisdiction. Also pp. 23 and 24 as to the meaning of the word "on" and p. 478 as to the effect of waiver of objections. Referring to ss. 13 and 15 of the Criminal Procedure Ordinance he contended that the omission of the date was no defect which might be cured by those sections but amounted to a nullity, and that consequently all proceedings taken under the information were absolutely void, and the prisoner was therefore entitled to be discharged.

The Attorney-General (Mr. Udal) who appeared for the Crown, contended that the omission of the date in the information or indictment, as no doubt required by s. 9 of the Criminal Procedure Ordinance, was immaterial and at the most only a defect, and not a nullity, and was consequently cured by the later s. 15, and that any objection now taken was too late. He cited *Reg. v. Goldsmith* (1), *Reg. v. Stroulzer* (2), Archbold's *Criminal Pleading*, pp. 71, 143, Stephen's *Digest of Criminal Procedure*, p. 171. He further pointed out that the practice had been for years to date the information in each case as from the first day of the sessions,

(1) L. R. 2 C. C. R. 74.

(2) 17 Q. B. D. 327.

which under s. 9 was just as defective as leaving the date out altogether, as in the present instance ; and that if the proceedings were absolutely void as contended the prisoner could be arraigned under a fresh information.

Mr. Berkeley, in reply.

H. S. BERKELEY, C.J. This was a motion in arrest of judgment on the ground that the information under which the prisoner was guilty of murder was insufficient inasmuch as it did not bear date on the same date as signed, as required by the 9th section of the Criminal Procedure Ordinance 1875. The information is in the name of and duly signed by the Attorney-General, and clearly and specifically describes and charges the statutory and common law offence upon which the prisoner has been found guilty. The information, however, is not dated, and this, it is contended, renders it and all proceedings under it a nullity and entitles the prisoner to be discharged and set at liberty. It is contended by the learned counsel for the prisoner that it is a nullity because it is not dated on the day upon which it was signed as required by s. 9, and that as the date of signing cannot be added on any day subsequent to that upon which it was signed by the Attorney-General, the dating was a condition precedent to valid information. It was argued that there were three requisites to every information—(1) it must bear the name of the Attorney-General ; (2) it must be signed by him ; and (3) it must bear date on the day it was signed, and that the absence of the third requisite renders the information and all proceedings under it void, and that that omission being a condition precedent could not be supplied by amendment. After careful consideration I am unable to concur in the ingenious point taken by the counsel for the

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defence. I do not regard the omission as one that cannot be supplied. I do not regard the dating as one of the conditions precedent to the validity of an information. These are to be found in the 3rd section of the Ordinance, not the 9th. I regard s. 9 as being merely declaratory as to the forms to be observed in framing the information; it merely provides dating as one of the forms. The 3rd section declares what is a valid and effectual information. [His Honour then read the section.] The requisites which will render an information signed by the Attorney-General as valid and effectual as an indictment presented by a grand jury do not contain the requirement of dating. The 3rd section is complete in itself and contains the valid requirements of a good information—nothing more remains to render it valid. Section 9 does not deal with the essentials of the validity of an information, but more with its form, and provides that every information shall be dated on the day on which it is signed. Dating is required by the Ordinance, but not as a condition precedent to its validity. The omission of the date is undoubtedly a defect, a defect in form which might have been amended at the trial. I read s. 9 as amounting to a declaration that every information shall bear date as therein provided, and that if that date be omitted the deficiency could be supplied by evidence at the trial. As such, this omission is expressly guarded against by s. 15 of the Ordinance. [His Honour read the section.] As I think this an objection as to form only, if raised on the trial I might have amended it, and it does not constitute a good ground for staying judgment against the prisoner in this case.

[The prisoner was then called upon and his Honour pronounced sentence of death.]