

1920

RECEIVER-
GENERAL
v.
GRIFFITH.

delivering goods it goes on to provide that any person "assist-
ing" 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 pro-
hibited 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.

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 Ordi-
nance 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

have been dismissed or amended, an adjournment being granted to appellant if necessary (see section 14 of Ordinance 4 of 1876). He did not take this course and I do not think defendant suffered any embarrassment or prejudice (see *R. v. Thomson* 4 C. App. Rep., p. 260).

1920

RAMA NAIR

v.
AHMED.

The second point is that while the information avers that the harbouring took place at Koronubu and elsewhere the evidence relates only to harbouring at Rarawai. Both places are within the jurisdiction of the District Commissioner, but, though this does not appear in the evidence, counsel agree that they are 7 or 8 miles apart, and it is certainly remarkable that the discrepancy was not noticed at the hearing. What I have said as to the first point applies to this. Appellant's counsel in face of the evidence given proceeded with his defence and asked neither for a dismissal nor for a postponement, but called evidence to contradict that for the prosecution. Here again I do not think appellant suffered any embarrassment or prejudice. If he had been undefended or if his counsel had asked for an adjournment on the ground of being taken by surprise and this had been refused I should have been prepared to quash the conviction; as it is, it appears to me that there has been no substantial miscarriage of justice and that this is a case in which I should give effect to the proviso which was added to section 3 of the Appeals Ordinance 1903 by Ordinance 14 of 1916.

I therefore dismiss the appeal except as regards the penalty which is the maximum allowed by law. I reduce the fine to £10 and the term of imprisonment to three months.

In the circumstances I order each party to pay his own costs.

[APPELLATE JURISDICTION.]

[ACTION No. 9, 1920.]

1921.

Jan. 25.

WALKER FOR THE RECEIVER-GENERAL *v.* CHOONILAL
AND JADHAVJEE.

Conviction under Ordinance 10 of 1905 for unlawfully importing gunjah—penalty under section 3—fine or imprisonment—enforcement of—form of conviction—Receiver-General proper authority to lay information—cannot delegate such authority—no valid information before the Court—proceedings void *ab initio*.

C. S. DAVSON, C.J. This is an appeal from a conviction under Ordinance 10 of 1905 for unlawfully importing gunjah. Section 2 of the Ordinance makes it unlawful to import gunjah