C. J. PATEL *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) January 26, 1937.]

Customs Ordinance, 1881[1]*—s. 60—owner of goods fails to enter same correctly—incorrect import entry by Customs Agent—whether principal liable for act of agent—whether intent to defraud is an essential ingredient.*

The appellant's agent had ordered certain Japanese goods which were duly despatched and arrived in Suva. Appellant instructed a customs agent to clear the goods and handed him an invoice including an item "Jayant hair oil". The customs agent completed an entry form showing this item as "toilet goods". One of the cases was opened and found to contain bottles of imitation Eau de Cologne which by virtue of its spirit content, is liable to a higher rate of duty than toilet goods.

HELD.—(1) That appellant (the principal) entered the goods within the meaning of s. 60 of the Customs Ordinance, 1881.[1]

(2) That to constitute an offence under the section it is unnecessary that there should be any intent to deceive the Customs authorities.

Cases referred to :—

(1) *Reg. v. Butt* [1884] 15 Cox. C.C. 564 ; 51 L.T. 607 ; 1 T.L.R. 103 ; 14 Dig. 77.
(2) *Reg. v. Lewin, Clifford* [1845] 175 E.R. 84 ; 14 Dig. 76.
(3) *R. v. W. Giles* [1827] 168 E.R. 1227 ; 14 Dig. 76.
(4) *Reg. v. Manley* [1884] 1 Cox. C.C. 104 ; 14 Dig. 76.
(5) *Pearks, Gunston & Tee Limited v. Ward* [1902] 2 K.B. 1 ; 71 L.J.K.B. 656 ; 87 L.T. 51 ; 20 Cox. C.C. 279 ; 14 Dig. 41.
(6) *Mousell Bros. v. London & North Western Railway* [1917] 2 K.B. 836 ; 87 L.J.K.B. 82 ; 118 L.T. 25 ; 14 Dig. 44.

APPEAL against conviction and sentence. The facts are fully set out in the judgment.

R. Crompton, K.C., with *R. A. Crompton*, for the appellant.

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

CORRIE, C.J.—This is an appeal against the judgment dated 25th August, 1936, of the Chief Police Magistrate, Suva, whereby the appellant was convicted of an offence under s. 60 of the Customs Ordinance, 1881, and sentenced to pay a fine of £50 or to serve a term of three months imprisonment. The offence of which the appellant was found guilty was that "being owner of certain goods, to wit, 25 dozen bottles of perfumed spirits he did wrongly enter the same contrary to law."

S. 27 (2) of the Customs Ordinance, 1881, requires that any owner entering any goods inwards shall deliver to the collector or other proper officer an entry of such goods according to one of the forms prescribed and containing the several particulars indiciated or required thereby, and shall subscribe a declaration of the truth of such particulars in the form set forth.

1 *Now Cap.* 147, *s.* 62.

S. 60 of the Ordinance provides that " should any owner wrongly enter or attempt wrongly to enter any goods . . . he shall be liable on conviction in a summary manner to a penalty not exceeding £200 and in default of payment, to imprisonment with hard labour for any period not exceeding 12 months."

The material facts upon which the appellant's conviction is based are as follows :—

The appellant carries on business in Fiji, and certain goods ordered in Japan from the firm of A. Isumi & Co. by the appellant's agent were despatched to the appellant and arrived at Suva.

The appellant instructed Mr. George Williams to clear these goods and for this purpose handed him an invoice (Exhibit " B ") dated the 29th June, 1936, the first item in which is " JAYANT Hair Oil 2/8397—1—1 c/- of 25 doz." 28

Mr. Williams received no further instructions with regard to this item and filled up and signed an Import Entry Form (Exhibit " A ") in which this item appeared as " toilet goods."

One of the cases was opened by the Customs authorities and the contents of a bottle analysed and found to contain spirit. The bottles in fact contained an imitation Eau de Cologne and as such, were liable to duty at a higher rate than goods which do not contain spirits.

Upon the request of the customs authorities that he would furnish other documents relating to these goods, Mr. Williams obtained from the appellant and handed to the customs authorities an acceptance report from A. Isumi & Co. dated 29th May, 1936, the second item in which is " 25 dozen Eau de Cologne No. 7777. 2/8397 ". The acceptance report contained the following particulars : Shipment June 1936, Case Hark JAYANT Suva." 28

The first ground of appeal put forward is that the import entry upon which the prosecution was based was not signed by the appellant, but by his agent, Mr. George Williams, and that the penalty for a false entry is imposed by law upon the person who enters, that is to say, who actually signs the entry.

The appellant also argues that even if it be held that he did in law enter the goods and that the entry was inaccurate, there is no evidence of any intent to defraud the revenue ; and that the innocent making of an inaccurate entry is not an offence within the section.

With regard to the first of these points : no authority as to who is the maker of an entry under the English Customs Law is forthcoming as the corresponding words in the relevant section, s. 168 of the Customs Consolidation Act 1876 are :—

> " If any person shall in any matter relating to the Customs or under the control or manage-
> " ment of the Commissioners of Customs make and subscribe or cause to be made and
> " subscribed any false declaration."

So that as regards liability under the English Statute it is clearly immaterial whether the owner of the goods himself signs the entry or not.

The prosecution has, cited *Rex v. Butt*, 15 Cox's Criminal Law Cases, page 564, in which a false entry was innocently made by one Elford in a cash book upon false information supplied to him by the accused.

The accused having been convicted of an offence under s. 1 of the Falsification of Accounts Act 1875, his conviction was upheld on appeal by the Court for Crown Cases Reserved.

That judgment, however, does not cover the present case, as under the Statute in question it was provided that if any clerk should wilfully and with intent to defraud make or concur in making any false entry he should be guilty of a misdemeanor : and in delivering judgment, Lord Coleridge, C.J., said : " It seems to me clear that the prisoner either made the entry with the innocent hands of Elford, or concurred in the innocent hands of Elford making it."

The Attorney-General cited three other cases, namely, *R. v. Lewin Clifford*, (175 Eng. R.p. 84); *R. v. W. Giles* (168 Eng. R.p. 1227); and *R. v. Manley*, (1 Cox's Criminal Cases 104) : from which it is clear that a principal may be criminally responsible for the acts done by an innocent agent.

In all those cases, the principal clearly acted with guilty intent. But there is also authority which establishes that in cerain cases a person who employs another to act on his behalf may be criminally responsible for the act of his agent or servant, even though he himself have no guilty intent.

The rule is expressed in the judgment of Channell J. in *Pearks, Gunston & Tee Limited v. Ward* [1902] 2 K.B. 1, at page 11, as follows :—

> " By the general principles of the criminal law, if a matter is made a criminal offence, it is " essential that there should be something in the nature of *mens rea*, and, therefore, in ordinary " cases a corporation cannot be guilty of a criminal offence, nor can a master be liable " criminally for an offence committed by his servant. But there are exceptions to this rule in " the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts " are forbidden by law under a penalty, possibly even under a personal penalty, such as " imprisonment, at any rate in default of payment of a fine ; and the reason for this is, that " the Legislature has thought it so important to prevent the particular act from being com- " mitted that it absolutely forbids it to be done ; and if it is done the offender is liable to a " penalty whether he had any *mens rea* or not, and whether or not he intended to commit a " breach of law. Where the act is of this character then the master, who, in fact, has done the " forbidden thing through his servant, is responsible and is liable to a penalty. There is no " reason why he should not be, because the very object of the Legislature was to forbid the " thing absolutely. It seems to me that exactly the same principle applies in the case of a " corporation. If it does the act which is forbidden it is liable. Therefore, when a question " arises, as in the present case, one has to consider whether the matter is one which is " absolutely forbidden, or whether it is simply a new offence which has been created to which " the ordinary principle as to *mens rea* applies."

That was a case of adulteration of food, contrary to the Sale of Food and Drugs Act 1875. It was cited with approval and followed by Viscount Reading C.J. in the Court of Appeal in a case relating to the making of a false entry : *Mousell Brothers v. London and North-Western Railway* [1917] 2 K.B. 836 at page 843. That was a case under the Railway Clauses Consolidation Act 1845, s. 98 of which requires that every person being the owner or having the " care of any carriage or goods passing or being upon a railway shall on demand give to the collector of tolls an exact account in writing signed by him of the number and quantity of goods conveyed by any such carriage ;" and by s. 99 it is provided " if any such owner or other such person fail to give such account or if he gives a false account, with intent to avoid the

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payment of any tolls payable in respect of goods, he shall be liable to a penalty."

The Court of Appeal held that owners of goods may without *mens rea* be guilty of giving false account with intent to avoid payment of tolls, and if their manager actually gives a false account with intent to avoid the payment, the owners, though a limited Company, are liable. In giving judgment Viscount Reading C.J. said : " Where the language of an Act is not so plain as to leave no room for doubt, the Court may bear in mind the avowed purpose of the Act and consider whether a particular construction will render the Act effective or ineffective for that purpose."

Now in the present case it is clear that to hold that where a false import entry was signed by an agent or servant on behalf of the owner of the goods in accordance with instructions received from him, the owner would be under no liability, would render s. 60 of the Customs Ordinance ineffective for the purpose for which it was enacted.

Following the authorities cited I hold that the appellant entered the goods within the meaning of s. 60 of the Customs Ordinance 1881 : and further, that to constitute an offence under the section it is unnecessary that there should be any intent to deceive the Customs authorities. I hold that the offence of making a false customs entry is one coming within the class in which, in the words of Channell J. " The legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done ; and if it is done the offender is liable to a penalty whether he had any *mens rea* or not, and whether or not he intended to commit a breach of the law."

S. 60 requires from a person who makes a customs entry that he shall exercise the utmost care to ensure that the entry is correct.

If he fails to exercise such care and negligently, though without any positive criminal intent, makes an untrue entry, he is liable under the section.

The next point taken by the appellant was that the description of the goods in the entry was not inaccurate and evidence was called to show that Eau de Cologne is classed under the heading of toilet requisites. Having regard, however, to the evidence of Mr. George Williams : " If I had seen the bottle (Exhibit ' C ') I would have entered it as perfumery or perfumed spirit . . . I would have put Exhibit ' C ' under perfumery, Item 146. It was actually passed under Item 170 ;" it is clear that the Magistrate had evidence before him upon which he could hold that the description of the goods was, for the purpose of the Customs Ordinance, inaccurate.

There remains the question whether the Magistrate was right in holding : " I find in fact that by Exhibit ' E ' the defendant was fully aware of the Eau de Cologne and allowed the entry to be passed as toilet goods. The invoice is marked hair oil."

As has already been said, the question of guilty intent is not material when determining whether or not an offence has been committed. It is, however, very material as regards the severity of the penalty ; and if the Magistrate was wrong on this point, the fine of £50 imposed by his judgment was excessive.

The Magistrate has relied upon the acceptance report (Exhibit " E ") and when this exhibit is compared with the invoice (Exhibit " B ") it is clear that the appellant had in his possession information showing that the item appearing as hair oil in the invoice was in fact Eau de Cologne.

I do not, however, find evidence to show that in failing to inform his agent of this fact the appellant acted deliberately and not merely negligently.

The penalty imposed by the judgment of the Magistrate is therefore set aside.

The appellant will pay a fine of £25 or in default serve a term of six weeks imprisonment.

POLICE *ats.* CHARLIE RATTAN.

[Appellate Jurisdiction (Corrie, C.J.) January 26, 1937.]

Liquor Ordinance 1932—*S.* 65—(1)[1]—*Possession of liqour—Native in possession of brown paper parcel of liquor containing liquor for delivery to a European—no knowledge of contents—duty to deliver unopened—whether facts constitute " possession ".*

A native was handed a brown paper parcel by a hotel barman for delivery to another person. He was unaware of the contents.

HELD.—For an offence to be committed under the Liquor Ordinance, 1932, s. 65 (1)[1] the accused must have access to the liquor.

APPEAL BY CASE STATED against acquittal. The facts appear from the judgment.

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

H. M. Scott, K.C. for the respondent.

CORRIE, C.J.—This is an appeal by the Attorney-General by way of case stated against the judgment of the Acting Chief Police Magistrate whereby the respondent was acquitted of the charge that he did unlawfully have in his possession " liquor " to wit, one bottle of whisky, he being a native, " contrary to s. 65 sub-s. (1) of Ordinance 25 of 1932."

The bottle of whisky was " made up in a brown paper parcel and addressed J. J. Costello, Suva Point ", and the respondent was handed the parcel by an Indian barman at the Pier Hotel and asked to deliver it to Mr. J. J. Costello.

The learned Magistrate found as a fact " that the respondent was unaware what the parcel contained, merely that it was for Mr. J. J. Costello, whom he knew well, having often taken parcels to him before." The learned Magistrate further found as a fact that the respondent was an innocent conveyer of the liquor " and formed the opinion that " he was not unlawfully in possession of liquor as charged within the meaning of s. 65 (1)[1] of the Liquor Ordinance No. 25 of 1932 " and consequently dismissed the charge.

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[1] *Rep. Vide Liquor Ordinance,* 1946, s. 69—(1).