

9th February, 1957

Judge:—

The Hon. Mr. Justice W. Harding, K.M., B.Litt., LL.D.
The Police *versus* Captain John W. Boyes

**Customs — Removal or Withdrawal of Goods —
Accomplice — Sections 60 and 61 of Chapter 60**

Section 60 and 61 of the Customs Ordinance require, as one of the ingredients of the offence therein contemplated, i.e. shipping of dutiable goods without the authority of the Collector of Customs, that the goods shall be "removed or withdrawn".

These words — "removal or withdrawal" — should not be given a restrictive interpretation so as to narrow them to the actual manual or physical handling of the goods by the offender himself. A person who employs an innocent agent, even though he is not actually present when an offence is committed, or even if he does not do anything with his own hands, is still liable as principal; if the agent be not an innocent agent, but is acting knowingly, then the person who gave him the instructions would still be liable as an accomplice; so that in no case the fact that the offender himself did not physically handle the goods leads to the exclusion of liability under the sections afore-quoted.

The Court, however, must be satisfied that in the particular circumstances of the case the defendant had a guilty mind, in order to convict him. And if the Court, in view of the whole background of circumstances, entertains a grave doubt as to whether the defendant acted in a guilty condition of mind, that doubt must benefit the defendant

This is an appeal entered by the Attorney General against a judgment given by the Criminal Court of Magistrates on the 24th September, 1956, whereby the said Captain Boyes was acquitted of the charge, laid against him by the Collector of Customs, of having, as master of the R.F.A. Sea Salvor, shipped 51,121 kilos of cigarettes and tobacco, valued at £103.3.0, without the authority of the Collector of Customs, thus contravening the Customs Ordinance;

The defendant, at the opening of the proceedings, had set up a plea in bar to the effect that the appeal was not admissible, as there was no point of law. This plea, however, was overruled by the judgment given by this Court whereof a copy is at page 21 of the record. It is now contended by the Prosecution that the defendant should not have been acquitted, as an offence was committed under sections 56-60(c) and 61(c) of the Ordinance (Chap. 60 Rev. Edit.);

Sections 60 and 61 require, as one of the ingredients of the offence, that the goods shall have been "removed or withdrawn". The First Court, as well as Counsel for the defendant, have given a very restricted interpretation of those words "removed or withdrawn", narrowing them down to the actual manual or physical handling of the goods by the offender himself. This construction runs counter to well-settled principles of law. A person who employs an innocent agent, even though he is not actually present when an offence is committed, or even if he does not do anything with his own hands, is still liable as principal under Maltese Law, and as principal in the first degree under English Law (see Harris & Wilshere, Crim. Law, p. 36). If the agent be not an innocent agent, but is acting knowingly, then the person who gave him instructions would still be liable as an accomplice under Maltese Law, (sec. 43(b) Chap. 12), and as an accessory before the fact under English Law (*ibidem*, p. 39). In no case would, therefore, the fact that the offender himself did not physi-

cally handle the goods lead to the exclusion of liability under the sections afore-quoted, and the interpretation given by the Court below is basically incorrect;

This Court, however, entertains a serious doubt as to whether in the particular circumstances of the case the defendant had a guilty mind, which, of course, is also an ingredient of the offence, this being a "crime" under sec. 63 of Chap. 60. It appears that the defendant placed his order for the goods through his local agents Messrs. Harvey and the goods were then ordered by the latter from England. They were then mailed from England to the Fleet Mail Office, addressed to the defendant, who through his servants collected them therefrom. Although the "Sea Savior", whereof the defendant is the master, is basically a merchant vessel, nevertheless she is owned by the Admiralty, and administered by the Admiralty, and is a naval vessel in so far as her sea-going functions are concerned. The vessel is supplied by the Admiralty Supply Department in the same way as a warship. In the case of cigarettes and tobacco, however, these would not be supplied by the Admiralty, but would be the concern of the master. Furthermore, in the case of supplies of cigarettes or tobacco, both to warships and merchant ships, certain customs formalities have to be gone through. As to stores which are essential for the running of the vessel, these are issued by the Admiralty without any customs control;

In this case, the goods came through the Fleet Mail Office. Now, although this office is not a Supply Department of the Admiralty, it is, in effect, an organisation of the Naval Authorities for delivering the goods;

It is not improbable, in view of the "Sea Savior" being undoubtedly a part of the naval set-up, that the defendant may have thought, not unjustifiably, that anything relating to customs, by way of exemption or otherwise, would be the concern of the Fleet Mail Officer. The fact that for a

number of years this practice of defendant, as it appears, was not called in question, may have misled the defendant in considering the procedure in order. It is important to consider that it does not appear that there would have been any difficulty on the part of the Customs Authorities, with regard to allowing these supplies, beyond the filling of a form, and consequently there was no particular interest or advantage to be gained in the sense of evading customs formalities or duties by getting the goods through the Fleet Mail Office. It also seems that the procedure communicated to the defendant, when this question arose, by the Collector of Customs, is still somewhat uncertain, in as much as Form 15 would appear to refer to a ship about to sail (see copy at page 9);

The Court has also considered, with regard to the ingredient of a guilty mind, the circumstance that the defendant did not mention to Andrew Pace, the Customs official who boarded his ship on the 14th July, 1956, that there was still a balance of the June consignment. But, apart from the fact that the defendant may have been unaware of this balance, which, in point of fact, was handed to Pace not by the defendant, but by the chief steward, the existence of "mens rea" must be proved with reference to the time of the act. Maybe in this case the visit of the Customs official might have produced in the defendant "at that moment" an awareness of the situation in lieu of his previous belief that the procedure was in order.

It would also appear that the attitude taken at first by the Customs Authorities was such as possibly to give the impression that the position had been, until then, more or less undefined. In fact, in an interview with the Collector of Customs when this matter arose, the proper procedure was explained to the defendant. It is true that defendant might have enquired about the procedure before, but here again he might have been misled by the seeming inaction of the Customs Authorities for a fairly long period, as well

as by the fact that everything that was necessary as regards customs formalities was being done at the Fleet Mail Office. This Office cannot be said to be unconnected with customs formalities. Andrew Pace stated in his evidence that the Fleet Mail Officer sometimes asks for a customs official to be present. The same fact was attested to by witness Joseph Micallef, who stated in his evidence that a customs officer attends at the Fleet Mail Office to sort out the mail. This Court is inclined to hold that defendant may well have thought that the procedure he was adopting was a proper one, and that the customs side of the transaction was being taken care of by the Fleet Mail Office. Unfortunately, scanty details have been given in evidence about the proper functions of the Fleet Mail Office with regard to customs formalities. It may well be that the examination of mail prior to release is the concern of the officer in charge of that naval department. It may not; but no evidence has been put before the Court to enable it to go into this point. All in all, the Court, in view of the whole background of circumstances, entertains a grave doubt as to whether the defendant acted in a guilty condition of mind, and that doubt must benefit the defendant;

In view of the afore going reasons, the Court dismisses the appeal of the Attorney General, and in the sense aforesaid affirms the judgment of the First Court.
