

*Judgment of the Lords of the Judicial
Committee of the Privy Council on the
Appeal of Prince and others v. Duncan
from the Vice-Admiralty Court of New
South Wales; delivered 19th December,
1873.*

Present :

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THIS is an appeal from a decree of the Vice-Admiralty Court of New South Wales, which pronounced two cases of merchandize, imported on behalf of Prince, Ogg, and Co., a firm at Sydney, and the Appellants, to be forfeited to Her Majesty.

The Appellants had purchased of a London firm, Messrs. Weintraud, Joyce, and Co., a quantity of trimmings and other wares called "soft" goods. They had also purchased of another London firm, Messrs. J. Lyons and Son, certain trunks and hat boxes.

These latter articles had been forwarded in the same cases or packages with the former, in accordance, as it appears, with a common practice in the trade, the "soft" goods being packed up in the trunks and boxes.

The invoice from Lyons and Son was sent to the Appellants at Sydney, and they seem to have been in possession of it when the ship arrived. It was as follows:—

" March 10th, 1871.
 " J. Lyons & Son,
 " London.

" 6 ea. Cloth Wellingtons } 16, 18, 20, 22, 24, }	..	5¼	13	2	6
1 27	5¼	0	11	10
6 ea. S. L. Raily. Compy. 20, 22 .	14½	15	4	6	
2 24 ..	14½	2	18	0	
1 28 ..	14½	1	13	10	
3 ea. O'land Trunks, 18, 22, 24, 27	9	10	4	9	
6 ,, Hat cases, 1¾, 2¾, 3¾ ..		2	12	6	
3 4 ..	4/3	0	12	9	
			<hr/>		
			£47	8	8

" To Weintraud, Joyce, & Co."

The other invoice from Weintraud and Co. is dated—

" London, 3 & 4, Aldermanbury, E.C.,
 " March 20th, 1871,
 " as April 1st.

" Invoice of Ten packages marked and numbered as per margin. Shipped per 'Damascus' @ Sydney.

" Messrs. Prince, Ogg & Co.

" 655 Bought of Weintraud, Joyce, & Co."

This invoice contained a description of the trimmings and other goods contained in the ten packages which had been purchased by the Appellants from Messrs. Weintraud, Joyce, and Co., together with the invoice price, and also description of the boxes and trunks purchased by the Appellants from Messrs. J. Lyons and Son, but did not mention the price of such boxes and trunks; and the total value appearing by the invoice to be the value of the goods therein mentioned was, in fact, only the invoice price of the goods purchased from Weintraud, Joyce, and Co., and did not include the price of the boxes and trunks purchased from Messrs. J. Lyons and Sons.

The cases, or packages, were ten in number, five of which contained the trimmings, and the trunks and boxes.

About the 8th of July, 1871, all the ten cases were entered for payment of *ad valorem* duty at the Sydney Custom-house, and the following declaration was made by the agent of the Appellants' firm:—

"Imports. Sydney, 8th day of July, 1871.

"In the 'Damascus,' a British ship, Ross, Master, from London.

"Prince, Ogg, & Co.

"Per Ford, Adams, & Co., Agents.

"Port of Sydney.

"I, Robert Adams, agent of Prince, Ogg, & Co., do hereby declare that the Invoice now produced is the genuine and only Invoice of the goods mentioned in the entry and contained in the packages.

<i>Marks and Nos.</i>	<i>Value.</i>	<i>Duty.</i>
"(P. O. & Co.)	£ s. d.	
"3587. One case Albums	.. 30 3 6	
3588. One do. do. 35 13 0	
3589. One do. Trimmings	.. 42 11 5	
3590. One do. do.	.. 103 1 8	
3591. One do. do.	.. 92 18 6	
3592. One do. do.	.. 37 11 9	
3593. One do. do.	.. 48 5 11	
3594. One do. do.	.. 46 0 6	
3596. One do. Buttons and Braids	60 19 5	
3599. One do. Waistcoats	.. 106 5 0	
	<hr/>	
	603 10 8	
"Circular Wharf (1157)	10% 60 7 1	
	<hr/>	
	£663 17 9	£33 3 11
	<hr/>	<hr/>

"And that the value of such goods mentioned in the said invoice, and therein stated as 603*l.* 10*s.* 8*d.*, was, to the best of my belief, the fair market value of such goods, at the time of shipment, at the place whence the same were exported. Witness my hand this 8th day of July, 1871.

"(Signed) R. ADAMS.

"Declared before me the 8th day of July, 1871.

M. MAC TAGGART,

"*pro Collector.*"

At the same time, the invoice from Weintraud and Co. was shown to the Collector of the Customs, and was stamped by him.

The five cases which contained the trimmings and trunks are those numbered 3590-3594 inclusive, and were landed by the Appellants.

Three out of the five were removed by the Appellants; two, numbered 3592 and 3593, were examined at the Queen's warehouse on the quay. They were found to contain eight trunks and twenty-one hat boxes not mentioned in the declaration or bill of entry, and for which no

ad valorem duty had been paid, such duty being payable upon them.

They were seized by the Custom-house Officer as forfeited to the Queen under the authority of certain Statutes about to be mentioned.

Afterwards, the Appellants produced to the Custom-house officer the invoice from Lyons and Son, and tendered duty upon the value, which was refused. They also applied for leave to amend the entry as to value, which was denied; and it is admitted the denial was lawful, and no complaint is founded upon it.

The Appellant took out a monition from the Vice-Admiralty Court against the seizer to proceed to adjudication on the two cases. Objections were taken to the jurisdiction of the Court, and overruled. Finally, the proceedings were conducted in solemn form, by plea and proof, and the seizer brought in his libel or information, the admissibility of which was not opposed.

The Appellants brought in a responsive allegation, the admissibility of which was opposed; and the Judge, after hearing arguments, delivered a written sentence rejecting the allegation, and also by interlocutory decree pronounced the two cases to be forfeited to the Queen, and condemned the Appellants in costs.

It may be well to observe here that no objection was taken in the Court below to this course of proceeding on the part of the Judge, in not only rejecting the responsive allegation, but also in adjudicating upon the whole case. It appears to have been acquiesced in by both parties, probably for the purpose of saving expense, there being no dispute as to the facts, and perhaps for the sake of facilitating an appeal. Nor has it been contended before their Lordships that the sentence was invalid on this ground. Their Lordships have, therefore, to consider both whether the responsive allegation was properly rejected, and whether the sentence on the merits was right. Substantially, indeed, the two questions are one.

There are two Colonial statutes on the true construction of which this case depends: The Customs Regulation Act of 1845, and the Customs Duties Act of 1871.

The first Act has the following enactment with respect to entries generally :—

“XVI. And be it enacted, that the person entering any goods shall deliver to the collector or other proper officer a bill of the entry thereof, fairly written in words at length, expressing the name of the importer and of the ship and of the master of the ship in which the goods are imported, and of the place whence they were brought, and of the place within the port where the goods are to be unladen, and the particulars of the quantity and quality of the goods and the packages containing the same, and the marks and numbers on the packages, and two or more duplicates as the case may require of such bill, in which all sums and numbers may be expressed in figures, and the particulars contained in such bills shall be written and arranged in such form and manner, and the number of such duplicates shall be such as the collector or other principal officer or other proper person shall require, and such person shall at the same time pay down all the duties due upon the goods, and the collector or other proper officer shall thereupon grant his warrant for the unloading of such goods.

“XVIII. And be it enacted, that no entry nor any warrant for the landing of any goods or for the taking of any goods out of any warehouse shall be deemed valid unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages purporting to be the same in the report of the ship or in the certificate or other document, where any is required, by which the importation or entry of such goods is authorised, nor unless the goods shall have been properly described in such entry by the denominations and with the characters and circumstances according to which such goods are charged with duty or may be imported, and any goods taken or delivered out of any ship or out of any warehouse by virtue of any entry or warrant not corresponding or agreeing in all such respects, or not properly describing the same, shall be deemed to be goods landed or taken without due entry thereof, and shall be forfeited.”

And, with respect to *ad valorem* duties, it is enacted by section 22—

“XXII. And be it enacted, that in all cases where the duties imposed upon the importation of articles into the said colony are charged, not according to weight, tale, gauge, or measure, but according to the value thereof, such value shall be ascertained by the declaration of the importer of such articles or his known agent in manner and form following, that is to say, ‘I, *A.B.*, do hereby declare that the articles mentioned in the entry and contained in the packages (here specifying the several packages and describing the several marks and numbers, as the case may be) are of the value of Witness my hand this day of, *A.B.* The above declaration signed the day of, in the presence of *C.D.*, collector (or other principal officer);’ which declaration shall be written on the bill of entry of such articles, and shall be subscribed with the hand of the importer thereof or his known agent

in the presence of the collector or other principal officer of the Customs at the port of importation."

Then follow regulations as to the course to be pursued when the Custom-house Officer does not think the articles are valued at their true price.

The second Act relates to *ad valorem* duties only, and by section 8 it enacts—

"VIII. In all cases in which goods shall, after the passing of this Act, continue to be chargeable with a duty *ad valorem*, or according to the true and real value of such goods, such value shall be verified at the time of entry by the production of the genuine invoice and by the declaration in the form hereinafter prescribed of the importer of such goods, or (with the consent of the collector or other proper officer of customs) of his authorized agent :

" Port of

" I, *A.B.*, do hereby declare that the invoice now produced is the genuine and only invoice of the goods mentioned in the entry and contained in the packages [here specify the several packages, and describe the several marks and numbers, as the case may be], and that the value of such goods mentioned in the said invoice and therein stated as [here state value] was to the best of my belief the fair market value of such goods at the time of shipment at the place whence the same were exported.

" Witness my hand this day of , one thousand eight hundred and

" *A.B.*

" Declared before me day of .

" (Signed) *E.D.*

" Collector (or other proper officer).

" And such declaration shall be made by the importer or his authorized agent as aforesaid in the presence of the collector of customs or other proper officer, and the invoice value so declared shall, with the addition of ten pounds per centum thereon, be deemed to be the value of the goods upon which duty shall be paid. And any person who shall in any such declaration make any false statement knowing the same to be false, shall be guilty of a misdemeanor, and shall be liable and subject to the like penalties as in case of perjury.

And by section 13 it is enacted—

" XIII. If in any invoice or entry any goods entered for *ad valorem* duty have been fraudulently misdescribed with intent to avoid the payment of the duty or any part of the duty on such goods, or if the oath or declaration made with regard to any such invoice or entry is wilfully false in any particular, the goods so misdescribed or in respect of which such oath or declaration is wilfully false as aforesaid shall be forfeited."

These Acts, *in pari materia*, are very loosely and carelessly drawn; but the true construction appears to their Lordships to be that the

16th and 18th sections of the former Act are not by implication (directly, they certainly are not) repealed *in toto* by the latter Act, the 8th section of which only so far affects the provisions in the former Act respecting entries of articles on which *ad valorem* duties are payable, that it supersedes the mode of ascertaining their value by a new mode of verification, namely, the production of the invoice, and another form of declaration; but otherwise it leaves the existing machinery under the former Act, respecting entries, untouched.

Now it is manifest that, according to the provisions in the first Act, these two condemned cases were not properly described in the entry, on account of the omission of the trunks and boxes, that they were "goods landed without due entry," and therefore "forfeited."

It has been contended that the error was in the *declaration* and not in the *entry*, and that an erroneous declaration does not enure to the forfeiture of the goods; but in their Lordships' opinion the error is in the entry; for although there appears to be no separate bill of entry, they think the document called the declaration contains in it the entry. The declaration appears, for the sake of convenience, to be written on the same paper; but although, in form, there is one instrument only, the document in substance contains both the bill of entry and the declaration, and must be treated as containing both in considering whether the provisions of the Statute have been complied with.

It has also been contended that, at any rate, the confiscation of the whole of the packages, including the trimmings and goods of that kind, was wrong, inasmuch as the entry of them was not incorrect, and that the wrong entry or non-entry of the trunks and boxes cannot contaminate the other goods, and the forfeiture ought to have been confined to the trunks and boxes. Their Lordships are of a different opinion. They think that under the bill of entry must be included every package that was landed; and that, although a bill of entry may contain more than one "entry" within the meaning of the Act, no entry can cover less than one entire package. The Custom-house

officer does not open the package, and every package must correspond with the mark or number in the manifest of the master.

Their Lordships have considered a former decision of this Court in the case of *Graham v. Pocock* (VII Moore's Privy Council Reports, N. S., p. 164), in which the circumstances were the converse of those in the present case; and they conceive this ruling to be in accordance with the principle laid down in that judgment.

There yet remains to be considered the argument arising upon the pleadings in this case.

It is contended that the libel did not sufficiently or distinctly allege the law under which the goods are to be forfeited; that it, in fact, laid no charge under the Act of 1845, but simply one of fraudulent misdescription and wilfully false declaration under the 13th section of the second Act; that the Judge of the Court below acquitted the Appellants of these charges, and that they are now abandoned, but that if they are not abandoned the responsive allegation being exclusively directed to rebutting these charges, ought to have been admitted to proof.

In the first place, it seems clear that this objection was not set up in the Court below, but that the whole question and the construction of both Statutes were fully discussed by both parties.

In the next place their Lordships are of opinion that this objection is otherwise not maintainable.

It is, indeed, unfortunately true that the libel is very ill drawn, and is much wanting in perspicuity and precision; and it would have been competent to the Appellants to have objected to its admissibility, and caused it to be reformed on these grounds, but they did not take this course.

In the libel, however, both statutes are mentioned, and facts and charges are alleged in a manner to support a case under both Statutes or either. It may also be observed that the Crown could scarcely have intended to rely on the latter Statute only; the charge of fraudulent misdescription and wilful falsity is not laid in the libel as it should have been if it was intended to rely upon these charges as a ground of forfeiture, under the 13th section of the second Act.

Upon the whole, their Lordships are of opinion that the judgment of the Court below ought not to be disturbed, and they will humbly advise Her Majesty that it ought to be affirmed, and that the Respondents are entitled to the costs of this Appeal.

