*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal between Graham v. Pocock and Mathew, from the Supreme Court of the Colony of the Cape of Good Hope; delivered 22nd July*, 1870.

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Present:—

LORD CAIRNS.
SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.

THE first question raised by this Appeal is, what goods were rendered liable to forfeiture to the Crown, by reason of defective entry? That the corks which are in question in the case were rendered liable to forfeiture is not disputed. It is contended by the Appellant, that not only were the corks forfeited to the Crown, but that in addition, the fifteen and ten casks of glassware were forfeited; and, although the question has not been brought by any cross Appeal before their Lordships, a suggestion has been made by the Chief Justice of the Supreme Court, to which in the first instance their Lordships will deem it their duty to advert,—a suggestion that the Court in the Colony has gone beyond what properly it ought to have done, in declaring that the three carriages in which the corks were contained were also forfeited.

Their Lordships are of opinion—although, I repeat, the question has not been brought before them by any regular Appeal upon this subject—that those carriages were properly forfeited. Their Lordships consider that, under the 24th and 25th sections of the Colonial Ordinance, it is the duty of any person who applies to enter goods for the purpose of having them unladen, to state the packages the unlading of which he asks for, and to identify those packages; and then their Lordships consider, that it thereupon becomes further the

duty of the person making this application to state the particulars of the quality and of the quantity of the goods which those packages, according to his knowledge, contain. If that statement is inaccurately made, their Lordships are of opinion that there is, in that respect, a defective and improper entry, rendering the goods liable to forfeiture. In this case (confining the observation still to the question of the carriages), there was a demand made for the entry and the unlading of three cases, having upon them particular marks; and, according to the construction which I have stated their Lordships put upon the section, it thereupon became the duty of the person tendering the entry to state what those three cases contained. He stated that they contained one brougham, one phaeton, and one sociable, whereas, in point of fact, they contained those three carriages and also a large quantity of corks, filling up the empty spaces. Their Lordships are of opinion that there is no ground for the doubt entertained by the Chief Justice, and that the Judgment of the Court, in holding forfeited the whole of the contents of those packages, was a correct Judgment.

But then arises the question brought before their Lordships directly by the Appeal, whether the twenty-five cases of glassware were also forfeited. That depends upon the construction which ought to be given to the word "entry" throughout the sections of the Ordinance, which have been referred to. Their Lordships are of opinion that it would not be a sound or proper construction to read the word "entry" throughout those clauses as meaning "bill of entry;" because they are of opinion that there may be several entries upon one bill of entry. What shall be considered to be the different entries, if there be more than one upon one bill of entry, will depend upon the facts of each particular case, the construction of the bill of entry and the nature of the goods which it describes. A case, for example, might easily be put, where fifty cases of goods precisely *ejusdem generis* were entered under one head, and as contained in cases marked from No. 1 to No. 50. It is obvious that that entry, although relating to fifty cases, would really be one entry.

But, in the present case, their Lordships think

there can be no doubt, from the manner in which the entry has been tendered, that there are upon the bill of entry two entries which are distinct for all substantial purposes; the first entry being that of the three carriages in the three cases to which I have already referred, and the second being a separate entry of twenty-five cases of glassware. With regard to those cases of glassware, their Lordships cannot find any provision in the Ordinance which has been violated or departed from: and they are, therefore, of opinion that there was a proper entry of those packages of glassware, and that they were not liable to forfeiture, or rendered liable to forfeiture, by reason of being associated in the same bill of entry with that other entry which their Lordships consider was a defective entry.

The result is, that on the first part of the case their Lordships consider the Judgment of the Court below is correct, and ought not to be altered.

The second part of the Appeal raises the question, whether the Respondents, or either of them, has become liable to the treble value of the forfeited goods?

I may put out of the case the first Respondent, Pocock, for it was admitted that there was no case of personal culpability against him. The question only arises with regard to the Defendant Mathew. As regards the facts of the case, resulting from the oral evidence, their Lordships have no hesitation in saying, that in their opinion, that evidence shows that Mathew was a person directly concerned in, if he was not the person ordering and entirely responsible for, the unshipping, the landing, and the removal of the goods which they hold to be liable to forfeiture. Their Lordships, therefore, see no reason for the opinion entertained by the Court below that the only terms in the Ordinance under which Mathew can be brought would be the words relating to the harbouring of goods. They are of opinion that he was a person either unshipping, landing, and removing the goods, or a person concerned in the unshipping, landing, and removing of the goods.

Their Lordships are of opinion, further, that it is not made an element in the 50th clause of the Ordinance that the Defendant should be a person

unshipping, landing, and removing the goods, with the fraudulent intent of depriving the Government of the duty properly payable upon their goods. The question of fact is all that the clause requires to be determined,—Was the Defendant, or was he not, a person who was actually concerned in unlading and unshipping the goods liable to forfeiture? Their Lordships are also of opinion that it is not any answer to the charge under this section to say that the Respondent Mathew was the owner of the goods, and therefore, as it were, the principal concerned, and not an accessory. The proceeding under the first part of the Record was not a proceeding personally against any individual. It is a proceeding for the forfeiture of particular goods, and the question who is the owner of the goods under that part of the proceeding is immaterial. The goods having been forfeited by a proceeding, which is in the nature of a proceeding *in rem*, the question who is liable to penalties for being concerned in the landing or the unlading of the goods is a question to be determined irrespective of the inquiry, Who is the principal and who is the accessory?

Their Lordships consider that upon the facts appearing on the evidence, it is abundantly clear that the Defendant Mathew was aware before these goods were unshipped, and at the time he tendered the entry, that the cases contained the cork, and that he was aware when he was concerned in unshipping them that he was unshipping cases of goods containing certain goods as to which no mention had been made upon the bill of entry.

Therefore, their Lordships are clearly of opinion that all the elements of the offence created by the 50th section concur in the case of Mathew, and that he has become liable to the penalty of the treble value of the goods under that section. They will, therefore, humbly advise Her Majesty that the Appeal in that respect should be allowed, and that Judgment should be given for the Crown in the proper form for the treble value of the goods forfeited.