

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Peninsular and Oriental Steam Navigation Company (substituted for Charles Gadd, deceased, by Order of Revivor dated the 16th February 1903) v. Charles Cameron Kingston, Minister of State for Trade and Customs of the Commonwealth of Australia, from the Supreme Court of Victoria; delivered the 15th July 1903.*

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Present at the Hearing :

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

[*Delivered by The Lord Chancellor.*]

The action out of which this Appeal arises was brought by the Minister of State for Trade and Customs of the Commonwealth of Australia against one Charles Gadd, the Master of the British merchant ship "Oceana," belonging to the Appellant Company, for penalties under two Sections of the Act No. 6 of 1901 of the Commonwealth of Australia, being the Customs Act, 1901.

The facts are not in dispute, and are set out in the Statement of Claim and admitted by the Defence.

The "Oceana" had on her arrival in the Port of Sydney goods liable to duty, and, after her arrival, more goods were shipped on board.

Upon none of the goods in question were duties paid, although all of them were liable to duty, but by the arrangement contemplated and in pursuance of the Customs Act in question, the goods were secured on board the "Oceana" by the Customs Officer by placing customs seals upon parts of the ship in which they were stored.

After the ship left the Port of Sydney for Melbourne, and while on the voyage, the Defendant caused the receptacles for these goods to be opened and the customs seals to be broken. During the voyage, and afterwards during the ship's stay in the Port of Melbourne, the stores were used by the passengers and crew and for the service of the ship.

The ship arrived from Sydney at the Port of Melbourne having the seals broken without the authority of an officer of the Customs.

The Plaintiff's claim was for 100*l.* by reason of the ship's entering the Port of Melbourne with the seals broken; and for 50*l.* for using the stores while the ship was within territorial waters or in the Port of Melbourne.

The Sections under which the action was brought were the 127th and 192nd. Section 127 is in these words:—

"Use of ships' stores."

127. "Ships' stores whether shipped in parts beyond the seas or in the Commonwealth, unless entered for home consumption or except as prescribed, shall only be used by the passengers and crew and for the service of the ship and after the departure of such ship from her last port of departure in the Commonwealth."

The language just quoted prohibits the use of ships' stores by the passengers and crew or for the service of the ship unless duty is paid for them, or until the ship has departed from her last port of departure in the Commonwealth.

So far as this Section is concerned the meaning is obvious enough. All goods being liable to duty upon being imported, ships' stores, which

are treated as being privileged from the payment of duty, are only to be used by the passengers and crew of the ship, and even then not until after the departure of the ship from her last port of departure in the Commonwealth.

It is difficult to see what objection can be made to the authority to inflict the penalty of 50*l.* which is claimed in respect of the use of stores while the ship was within the territorial waters or in the Port of Melbourne, in respect of which use alone the penalty is alleged by the Statement of Claim to have been incurred.

But the Plaintiff claimed 100*l.* in respect of the offence created by Section 192. That Section is in these words : —

192. "No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door, hatchway, opening, or place for the purpose of securing any stores upon any ship which has arrived in any port from parts beyond the seas and which is bound to any other port within the Commonwealth shall be opened, altered, broken, or erased except by authority, and if any ship enters any port with any such fastening, lock, mark, or seal opened, altered, broken, or erased contrary to this Section, the master shall be guilty of an offence against this Act."

"Penalty : One hundred pounds."

The objection urged appears to be that because the breaking of the seals took place on the high seas and outside the jurisdiction of the Australian Commonwealth, Section 192 was beyond the power of the Australian Commonwealth to enact if applied to such a case as that now under debate.

Their Lordships think that the objection is founded on a misapprehension of what the Section enacts. The Section assumes the lawful imposition of the customs seals for the purpose of exempting from duty goods upon which the Commonwealth might have exacted import duties. But in ease of trade and commerce, and as a regulation for navigation, all of which subjects are within the competence of the

Commonwealth Legislature, the shipowner is permitted to have on board and in Australian ports goods so sealed up that they cannot be used while the seals remain unbroken. This is a privilege accorded to the shipowner who might be compelled to pay duties in respect of all goods on board his ship. The offence created by Section 192 is the composite act of breaking the seals and coming into an Australian port with the seals broken.

When the arrangement referred to has been permitted to the shipowner for the purpose of exempting him from paying duty, it is immaterial where the act of breaking the seals takes place. When he comes back into an Australian port with the seals broken, the offence is complete.

As Mr. Justice Hood points out, the ship is, by arrangement, converted into a bond so that the stores cannot lawfully be used till the final departure of the ship.

As has been pointed out by Counsel, the Legislation proceeds on precisely the same lines as Section 135 of the Imperial Customs Consolidation Act, 1876, and under that Section, if a foreign ship were to take goods so sealed from one bonded warehouse in the United Kingdom to another, although in the course of her voyage she might go outside the territorial limits of the United Kingdom, the very same question might arise, and upon her arrival at any other port in the United Kingdom the master would undoubtedly, in their Lordships' opinion, be liable to the penalties created by that Section.

For these reasons their Lordships will humbly recommend to His Majesty to dismiss this Appeal. The Appellants must pay the costs of it.

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