

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Jacob Bruhn v. His Majesty The King, on the Prosecution of the Opium Farmer, from the Supreme Court of the Straits Settlements (Settlement of Singapore); delivered the 26th February, 1909.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Atkinson.*]

This is an Appeal from a judgment of the Supreme Court of the Straits Settlements, dated the 19th December, 1907, dismissing an Appeal by the present Appellant against his conviction on the 19th July, 1907, by Walter Cecil Mitchell, Esquire, a police magistrate of the Settlement of Singapore, for an offence under s. 73 of the Opium Ordinance, 1906, of the Straits Settlements. The section runs as follows :—

If any ship is used for the importation, landing, removal, carriage or conveyance of any opium or chandu contrary to the provisions of this Ordinance or of the Rules made thereunder, or for the receipt or storage of any opium or chandu imported or moved contrary to the provisions of this Ordinance or the Rules made thereunder, the master and owner thereof shall be liable to a fine not exceeding \$5,000 and the ship may be detained by order of the Police Court until security has been given for a sum not exceeding \$5,000.

An amount of any such opium or chandu found on board any ship and exceeding:—

(a) In the case of any steamship whose registered tonnage is 500 tons and upwards, 100 tahils in weight.

(b) In the case of any steamship whose registered tonnage is under 500 tons and over 50 tons burden, 50 tahils in weight.

(c) In the case of any other ship ten tahils in weight shall be deemed evidence that the ship has been used for the importation, landing, removal, carriage or conveyance of opium or chandu contrary to the provisions of this Ordinance, or for the receipt or storage of opium or chandu imported or moved contrary to the provisions of this Ordinance or the Rules made thereunder, unless it is proved to the satisfaction of the Court that every reasonable precaution has been taken to prevent such user of such ship, and that none of the officers, their servants, or the crew, or any persons employed on board the ship were implicated therein.

The facts of the case, which are few and simple, are not disputed, and the question for decision turns upon the true construction of the above-mentioned section.

The Appellant is the Master of the SS. "Devawongsee," a vessel belonging to the North German Lloyd Company. Her registered tonnage is about 1,057 tons. Having sailed from Swatow on the 9th July, 1907, on a voyage to Singapore, she arrived at the latter port on the 16th of that month, and anchored in the roadstead on the following day.

She was searched twice by the officers of the Opium Farmer, on the 17th cursorily, and on the 18th thoroughly. On the second occasion Sergeant Mussell, one of the Police searchers, found 325 tahils of chandu (*i.e.*, opium prepared for smoking, chewing, or swallowing) carefully concealed in one of the life-boats, underneath the seat plank of the boat. It was necessary to unscrew this plank to discover the chandu. The

quantity found was largely in excess of the maximum quantity mentioned in s. 73, and as each tahl weighs about  $1\frac{1}{3}$  ounces avoirdupois, amounted to about 27 lbs. in weight.

On the 19th July, 1907, the Appellant was charged in the Police Court at Singapore before the Police Magistrate above-mentioned, that he "being the master of the SS. "Devawongsee," "and as such importing 325 tahils of chandu, "valued at about \$1,000, contrary to s. 73 of "Ordinance XX. of 1906," and was convicted and sentenced to pay a fine of \$2,000 and costs.

The Appellant and his chief officer, Fred Wade, were the only witnesses examined for the defence. They both proved that the strict rule of the Company is that their ships should be searched after leaving one of these Eastern ports; that they had searched this ship and the life-boat in which the chandu was subsequently discovered after leaving Swatow, though without taking up the seat plank, but found nothing; and that the crew knew it was forbidden to take opium on board. It was conceded that neither the owners, nor these witnesses, were themselves aware of the chandu's having been hidden in the life-boat, though a statement to that effect is not contained in the printed notes of their evidence, but beyond their testimony no proof whatever was given that none of the officers, their servants, or the crew of the ship, or the persons (if any) employed on board of her, other than the two witnesses, were not aware of, or privy to, the concealment of the chandu in the life-boat, or were not implicated in the alleged use of the ship for the purpose of importing that substance into Singapore. For all that appears upon the evidence, the chandu may have been hidden in the life-boat for that very purpose, with the knowledge, by the aid, through the connivance,

or with the consent of all, or any, of the last-mentioned persons, other than these witnesses.

On this evidence the magistrate states that he was satisfied that every precaution had been taken to prevent the ship being used for the importation of chandu, but that he was not satisfied, as indeed he could not well have been, that the second requirement of the section had been met. He accordingly convicted the Appellant of the offence charged, believing, as he states, that he had no option but to do so, and imposed upon him the above-mentioned fine of \$2,000.

The question for decision is whether that conviction is valid in law. Their Lordships think it is.

The first matter to be determined is what are the necessary elements of the offence created by s. 73.

Mr. Danckwerts, on behalf of the Appellant, contended that a vessel cannot be held to be "used," within the meaning of the section, for any of the purposes mentioned therein, unless a person having control over the ship authorizes her to be devoted to that use, and, further, that the owner or master cannot be convicted of an offence under it, unless it be shown that he knew that the ship was being so "used"; in other words, that the enterprises prohibited by the section only become criminal as against the master or owner (as the case may be) if engaged in *knowingly* by the party accused, and also with the authority of a person entitled to control the employment or management of the ship.

The answer to this contention is (1) that, if it were sound, the whole section would be useless, and might be rejected as surplusage; because the action of the accused, in such a state of circumstances, would, under the earlier provisions of the Ordinance, amount to another and much

more serious offence subjecting him to much heavier penalties; and (2) because it would render the provision at the end of sub-section *c* nonsensical; since, if the master in command of a ship knowingly permits her to be used for a certain purpose, he is undoubtedly "implicated" in that project. But that is, under the sub-section, the precise fact which must be negatived if the *primá facie* proof is to be met. He must show that none of the officers, including, of course, himself, were implicated in it in any way. In other words, the accused, in order to escape, must prove that he was ignorant of the very matter of which *ex hypothesi* he must be shown to have had knowledge.

An examination of some of the earlier provisions of this Ordinance, designed, as it evidently is, at once to check the use of opium, and to forward the interest of the Revenue by securing to the Opium Farmer the profits of the monopoly granted to him, thereby, presumably, increasing the rent or sum he pays for it, will show clearly the meaning and object of s. 73.

By s. 28, sub-s. 4, the Opium Farmer is empowered, with the consent in writing of the Superintendent, to import or export chandu by sea into or from any of the ports subject to the Harbours Ordinance, 1872, of which admittedly Singapore is one. By exception (*a*) in s. 28 opium or chandu, not being sea stores, found on board any ship whose registered tonnage exceeds 50 tons, which enters the waters of the Colony on a journey to any place, is presumed to be imported, unless it is not intended that she should stop or unload, or does not in fact stop or unload, at some place within the Settlement.

By sec. 68 "every person who shall import, or aid, abet, procure, or be interested or concerned in, or knowingly derive any profit from, the

importation of any chandu contrary to the provisions" of the Ordinance, is rendered liable, in the case of a first offence to a fine not exceeding \$1,000, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both fine and imprisonment, and in the case of a second, and every subsequent offence, to a fine not exceeding \$3,000, or to imprisonment with or without hard labour for a period not exceeding 12 months, or to both fine and imprisonment. By s. 69 it is made an offence in any person to receive into, or have in his possession, custody, or control any opium or chandu not knowing, or having reason to believe, the same to have been lawfully imported or lawfully manufactured; the burden of proving the facts which exculpate being apparently thrown upon the accused. By s. 72, every person who conceals opium or chandu in any part of a ship, or who, being cognisant of opium or chandu being so concealed, does not take the earliest opportunity of reporting the same to the master of the ship, is rendered liable to a fine not exceeding \$3,000. It is not suggested that it was not intended that the "Devawongsee" should stop and unload at Singapore, or that she did not in fact do so. She must therefore, under the above-mentioned exception, be taken to have been engaged in the importation into that port of the chandu found in the life-boat. If this be so, these sections cover the case of the master and of every other person as to whom the prosecution were in a position to prove that they either concealed the chandu, or knew it was concealed and failed to report that fact to the master—the master under s. 68, the other persons under s. 72. Section 73 cannot be assumed to be purposeless. It must be taken to have been introduced into the Ordinance to effect some object, and it cannot effect any object not

already effected, unless it be held to apply to cases where chandu is in fact imported, but the prosecution have not the means of proving by whose aid, assistance, or procurement, or with whose privity or consent, or in whose interest, or for whose profit that was done. And accordingly the person who owns the ship, and the master who navigates her, are made responsible for the importation prohibited by the Ordinance, the burden of exculpating themselves in the manner prescribed in the sub-section being thrown upon them. Without some such provision as this evasion of the Ordinance would be easy, and the importation of chandu could not be effectively checked.

The other point relied upon on behalf of the Appellant was that there should be proof, express or implied, of a *mens rea* in the accused person before he could be convicted of a criminal offence. But that depends upon the terms of the statute or Ordinance creating the offence. In many cases connected with the revenue certain things are prohibited unless done by certain persons, or under certain conditions. Unless the person who does one of these things can establish that he is one of the privileged class, or that the prescribed conditions have been fulfilled, he will be adjudged guilty of the offence, though in fact he knew nothing of the prohibition. By this Ordinance every person other than the Opium Farmer is prohibited from importing or exporting chandu. If any other person does so, he *primâ facie* commits a crime under the provisions of the Ordinance. If it be provided in the Ordinance, as it is, that certain facts, if established, justify or excuse what is *primâ facie* a crime, then the burden of proving those facts obviously rests on the party accused. In truth, this objection is but the objection in another form, that knowledge

is a necessary element in crime, and it is answered by the same reasoning.

Some criticism was directed to the expression used by the magistrate who adjudicated in the case, that he "had no option but to convict the accused." What it appears to their Lordships he must have meant was this, that since what the Ordinance deemed *primâ facie* evidence of the crime was not rebutted or explained, either in the manner indicated in the Ordinance or otherwise, he felt himself bound to act upon it. And in that opinion their Lordships are disposed to concur.

Their Lordships will therefore humbly advise His Majesty that this Appeal should be dismissed. The Appellant will pay the costs of it.