

TROTTER

v.

SENIOR COLLECTOR OF CUSTOMS

[SUPREME COURT, 1964 (Hammett Ag. C.J.), 21st February, 17th April]

Appellate Jurisdiction

Criminal law—customs duty—charge of being knowingly concerned in attempted fraudulent evasion—unmanifested parcel—circumstances consistent with contents being undutiable—proof of knowledge of nature of contents essential—Customs Ordinance (Cap. 166) s.106A(1) (b).

Customs—duty—attempted fraudulent evasion—Customs Ordinance (Cap. 166) s.106A(1) (b).

The appellant, who was in charge of the commissary stores at the passenger services section of Qantas at Nadi Ariport, was convicted of being knowingly concerned in an attempt at the fraudulent evasion of Customs duty chargeable on an electric hair drier, which the appellant had requested his mother to send from Australia. There was a long standing practice for parcels of foodstuffs etc. for the Commissary to arrive at the airport unmanifested and these would be placed on the Commissary van, which was regularly inspected by a Customs officer on its journey from plane to office. Such parcels were frequently addressed to the appellant by name. The hair drier arrived in a parcel so addressed, was put in the Commissary van by one of the employees, and was found by a Customs officer on his routine inspection. There was no evidence that the appellant had issued any instructions to his subordinates as to how this particular parcel was to be handled.

Held: 1. To establish the charge it was essential to prove that the parcel was placed on the van by the appellant's agent authorised expressly or by implication and that the appellant knew that it contained the hair drier.

2. There was no finding of fact by the magistrate that the appellant had such knowledge and the evidence did not establish that ingredient of the charge.

Appeal from a conviction by a Magistrate's Court.

Customs Ordinance, s.106A (1) — Notwithstanding any other provision of this Ordinance, if any person —

(b) is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any such prohibition or restriction as aforesaid or of any provision of this Ordinance applicable to those goods,

he shall be liable to a penalty

R. G. Q. Kermode for the appellant.

G. N. Mishra for the respondent.

A The facts sufficiently appear from the judgment.

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B The appellant was convicted by the Magistrate's Court at Nadi of being knowingly concerned in an attempt at the fraudulent evasion of Customs Duty contrary to Section 106A (1) (b) of the Customs Ordinance, and fined £25.

The particulars of offence read:

C "John Trotter on 20th August, 1963, at Nadi in the Western Division was knowingly concerned in an attempt at the fraudulent evasion of Customs Duty chargeable upon an electric hair drier which on the said day was brought to the Colony of Fiji from the Commonwealth of Australia."

D He has appealed against the conviction on a number of grounds of which the fifth reads:

"That the prosecution failed to prove the charge beyond reasonable doubt and on all the evidence before him, the learned Magistrate should have acquitted the appellant."

The facts were as follows:

E The appellant was in charge of the Commissary Stores at the Passenger Services Section of Qantas at Nadi Airport. Commissary Stores not required for that particular flight are normally carried as Air Cargo and entered on the plane's manifest as such.

F On occasions, which apparently occur with some frequency, commissary stores are loaded on an aircraft too late to be entered on its manifest. Such articles arrive as unmanifested parcels and it was conceded by the Customs Officer at Nadi Airport that parcels of food stuffs, for example, do so arrive to the knowledge of the Customs Authorities. Such parcels are addressed to the Qantas Commissary at Nadi Airport but many have in fact arrived addressed to the appellant, the head of that section, by name.

G It has been a long standing practice for all such unmanifested parcels to be loaded on arrival in the Commissary Van. This is the van that conveys such items as soiled linen etc. from the plane to the Passenger Services office. The same Customs Officer gave evidence that on its journey from the aircraft this Commissary Van is subjected to regular inspection by a Customs Officer.

H No suggestion was or could, therefore, have been made by the prosecution that goods could avoid inspection by Customs merely by being placed in the Commissary Van because of the established

practice of the contents of this van being subjected to regular scrutiny by Customs Officers on its way from the aircraft to the Passenger Services Office.

The procedure followed in the handling of unmanifested parcels has been in existence since before the appointment of the appellant to his present post and has continued since this prosecution was instituted. As an example, on 20th October, 1963, four separate unmanifested parcels arrived by Qantas each addressed to the appellant personally but all containing commissary service equipment which includes such items as linen etc.

The Court is not concerned with the question of whether this is a good practice or not. It is, however, abundantly clear that it is a practice which has been in operation for a considerable period and was well known to the Customs Authorities who have accepted it. The Customs Authorities regularly check the contents of the Commissary Van and so they know and Qantas employees know that the Customs Authorities know, what in fact is being carried in the Commissary Van.

On 20th August, 1963, two unmanifested parcels arrived on the Qantas plane from Australia for the appellant, one of which was addressed to him by name. The other contained meat which he took to a Customs Officer at once and cleared and had placed in a refrigerator. He was told by an employee that another parcel addressed to him had been put in the Commissary Van. He did not see or handle this second parcel or make any further enquiries about it but left to attend to a passenger.

The Customs Officer when making the routine check on the contents of the Commissary Van on its way from the aircraft, saw this second unmanifested parcel addressed to the appellant and impounded it. Later the same night a Customs Officer questioned the appellant about this parcel which upon being opened was found to contain a lady's hair drier worth some £13-£14, on which £3 or £4 duty was payable. The appellant offered to pay this duty.

The appellant told this Customs Officer that he had previously written his mother overseas asking her to buy and send him by air cargo, at Company rebate rates, a hair drier for his wife. He said he had no idea that this had been sent to him as unmanifested cargo or was on this particular plane. If the parcel had been sent by air cargo it would of course have been on the plane's manifest and passed through Customs in the normal way.

The Customs Authorities did not accept the appellant's explanation and in due course issued a summons charging him with this offence.

In his judgment the learned trial Senior Magistrate said that the case against the appellant, who had not declared this hair drier to the Customs before it was impounded, depended on whether the appellant knew that this second unmanifested parcel containing this hair drier was on this aircraft.

A He found as fact, on sufficient evidence, that the appellant did know there were two unmanifested parcels for him on this plane and there are no grounds for disturbing that finding of fact. He did not, however, find as fact or hold that the appellant knew that one of these two parcels contained this hair drier.

B There is no evidence, direct or circumstantial, that the appellant knew or had been expecting this hair drier to arrive in an unmanifested parcel on this particular plane. Such evidence as there was on this matter was all to the contrary effect, namely, that he was expecting it to arrive by air cargo.

C To hold that the mere placing of an unmanifested parcel on the Commissary Van was an attempt at the fraudulent evasion of Customs Duties would be unwarranted and would be to ignore two facts, namely —

Firstly: That the contents of the Commissary Van were well known to be subjected to a regular inspection by Customs Officers on its journey from the plane to the Passenger Services Office;

D and Secondly: That the practice of placing such unmanifested parcels in the Commissary Van was of long standing and was known to the Customs Authorities.

E Nevertheless if one of the employees engaged in this work at the Airport deliberately placed in the Commissary Van goods which he well knew were liable to duty and which were nothing to do with Commissary Stores but were his own personal property, in an attempt to avoid Customs Duty, this would be an entirely different matter.

F It appears to me, therefore, that to establish the charge in this case, it was essential for the prosecution to prove, not merely that the appellant knew there were two unmanifested parcels for him on this plane, but also by either direct or circumstantial evidence that this particular unmanifested parcel was placed on the Commissary Van by his agent on his behalf and he expressly or by implication authorised that act, and that he knew that it did in fact contain this hair drier and not Commissary Stores.

G It is clear that the appellant at no time saw this parcel or handled it or had it in his possession before it was impounded by the Customs Authorities. There was no specific finding of fact by the trial Court that the appellant knew that this particular parcel contained this hair drier. In the absence of such a finding I have examined the record to see if that is the inescapable and only inference and conclusion that can reasonably be drawn from the direct and circumstantial evidence. In view of the fact that there is no evidence that the appellant issued any instructions to his subordinates as to how this particular parcel was to be handled and that many unmanifested parcels addressed to the appellant or his section had in the past been handled in precisely the same way as this parcel was handled, with the tacit consent and approval of the Customs Authorities, I do

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not feel able so to find, on the evidence in this case. I have come to the conclusion that this essential ingredient in the case for the prosecution was not established with that degree of certainty required to sustain a conviction on a criminal charge.

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For these reasons the appeal must be allowed. The conviction and sentence are set aside. It is ordered that the hair drier in this case be returned to the Customs Authorities to be handed by them to the appellant upon payment of the appropriate duties payable thereon.

Appeal allowed.