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The case of *Pearson* v. *Spence* (1), cited by Mr. *Canaway*, is quite in point in support of his contention.

I agree that the appeal should be allowed, and that the demurrers to declaration and plea be decided in favour of the plaintiffs.

Appeal allowed. Judgment for defendant discharged and entered for plaintiffs. Respondent to pay costs of appeal.

Solicitors, for the appellants, *Villeneuve-Smith & Dawes.*

Solicitor, for the respondent, *The Crown Solicitor for New South Wales.*

C. A. W.

[HIGH COURT OF AUSTRALIA.]

IRVING (COLLECTOR OF CUSTOMS FOR THE STATE OF QUEENSLAND). COMPLAINANT, } APPELLANT;

AND

JENGORA NISHIMURA AND ANOTHER . DEFENDANTS, RESPONDENTS.

ON APPEAL FROM THE DECISION OF A POLICE MAGISTRATE EXERCISING FEDERAL JURISDICTION.

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BRISBANE, *Oct.* 4.

Griffith C.J., Barton and Isaacs J.J.

Customs Act 1901 (*No.* 6 *of* 1901), *secs.* 233, 250, 255—*Unlawfully having possession of goods—Evidence of possession—Importation—Knowledge.*

The fact that a person has certain packages of goods in his possession, which he is in the act of importing into Australia, is evidence that he is aware of the contents of such packages and is in possession of such contents within the meaning of sec. 233 of the *Customs Act* 1901.

(1) 5 App. Cas., 70.

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APPEAL from the decision of the Police Magistrate at Cairns, sitting in federal jurisdiction, dismissing an information laid under sec. 233 of the *Customs Act* 1901. The facts and the decision of the magistrate are fully set out in the judgment of *Griffith* C.J. hereunder.

Power (with him *Macgregor*), for the appellant. The respondents were unlawfully in possession of goods subject to the control of the Customs authorities, *i.e.* opium fit for smoking, which had been absolutely prohibited from being imported into the Commonwealth by a proclamation issued under sec. 255 of the *Customs Act* 1901. The evidence of possession was complete; the evidence that the goods were left overnight in the Customs shed before being opened for inspection may have been evidence upon which the magistrate could have found that the goods had been tampered with, but was not, as the magistrate erroneously thought, conclusive against his finding proof of possession.

Lukin and *Walsh*, for the respondents. The information should have been dismissed, as it disclosed no offence; this Court may dismiss it now on that ground: *Prior* v. *Sherwood* (1).

Sec. 233 makes it an offence for any person to "have in his possession any goods," which is outside the federal power to enact.

[GRIFFITH C.J.—If it is read literally; but it may be read as limited to goods in the course of being imported, or perhaps to imported goods: *Federal Amalgamated Government and Tramway Service Association* v. *New South Wales Railway Traffic Employés Association* (2).]

The information does not, as it should, state how or in what manner the respondents "unlawfully" had goods in their possession: *Paley on Summary Conviction*, 8th ed., p. 195.

[GRIFFITH C.J.—It goes on to specify the nature of the unlawfulness, in having in their possession "goods, namely opium, the importation of which was prohibited." That satisfies sec. 250, being "set forth as nearly as may be in the words of this Act."]

(1) 3 C.L.R., 1054.

(2) 4 C.L.R., 488, at p. 546.

Such words as those do not absolve the party from setting out the necessary elements of the offence: *Smith* v. *Moody* (1).

There was no proof of guilty knowledge; merely having goods in one's possession is no proof of knowledge of what is hidden within them: *R.* v. *Colyer*; *Ex parte Colyer* (2); *Molloy* v. *Hallam* (3); *Walker* v. *Chapman*; *Ex parte Chapman* (4).

Power was not called on to reply.

GRIFFITH C.J. This is an appeal from a decision of a Police Magistrate dismissing a charge under sec. 233 of the Federal *Customs Act* 1901 that the defendants unlawfully had in their possession certain goods, namely, opium, the importation of which was prohibited. The facts were these:—On 8th February the s.s. *Chingtu* arrived in the roadstead at Cairns—it does not expressly appear from what port. One of the respondents, who was a passenger by the ship, landed in a launch, taking with him two tubs purporting to contain Japanese Soy, which he claimed as his own. The other respondent, who is a resident of Cairns, went out and returned in the launch, and on arrival at the wharf claimed the tubs as his. The two respondents were then in company. The tubs were put in the Customs store for the night, and in the morning they were opened and found to contain opium suitable for smoking, an article the importation of which was absolutely prohibited by law at that time. On these facts the Police Magistrate dismissed the complaint on the ground that there was no proof of possession by the defendants or either of them. He adds in the case stated that he decided to dismiss the charge on that ground for the reason that he considered that the two tubs should have been examined on the wharf at the time of landing, or else sealed and locked up in the Customs bond, instead of being left in the Customs office on the wharf, where it was quite possible for them to be tampered with. But the possibility of the tubs being tampered with is not conclusive of the question whether there was possession by the defendants. There was ample evidence of joint possession of the

(1) (1903) 1 K.B., 56.
(2) 8 Q.L.J., 27.
(3) 1903 St. R. Qd., 282.
(4) 1904 St. R. Qd., 330.

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tubs and their contents by both defendants, and also evidence of possession by each of them with the concurrence of the other, which is sufficient under the *Justices Act* to sustain a charge against both. The reason which the magistrate gives might have justified him in coming to the conclusion that the tubs had in fact been tampered with, but it was otherwise irrelevant to the question whether the opium was in the possession of the defendants. Mr. *Lukin* says that, even if the ground relied upon by the magistrate is wrong, yet the appeal should not be allowed if the magistrate was bound to dismiss the information in any event, and that is no doubt right. I will, therefore, refer briefly to the other objections taken. The first was that the complaint disclosed no offence. That is met by sec. 250 of the Act, which enacts that an information following the terms of the Statute is sufficient. The complaint in this case did so. Another objection was that there was no proof of importation. There was, at any rate, this evidence of importation: The goods arrived by the *Chingtu*, which was a ship to which Customs officers went for the purpose of granting a clearance, and the goods when landed were taken possession of by the Customs officers. I think that is sufficient *primâ facie* evidence that the goods were imported, and that both the defendants knew it. I pass over some other objections not relied upon by Mr. *Lukin*.

The important objection is that there was no evidence on which the justices could find that the defendants knew that these tubs, purporting to contain "Japanese Soy," really contained opium. It is said that the word "unlawfully" in the section of the Act imports knowledge, and in one sense I accept that contention. It was, indeed, boldly contended that the section was altogether invalid as exceeding the competency of the Commonwealth Parliament. It reads:—"No person shall smuggle or unlawfully import, export, convey or have in his possession any goods, and no master of a ship or boat shall use or suffer his ship or boat to be used in smuggling or in the unlawful importation, exportation, or conveyance of any goods." It is said that it would be absurd to interpret the words "have in his possession" in their plain literal meaning, because they would apply to all goods in all parts of the Commonwealth. No doubt they would, and therefore the

section must be construed as dealing only with matters within the competency of the Commonwealth Parliament. The words may, therefore, relate to any goods the subject of importation or exportation, and whatever else they may mean, they certainly include the case of goods imported. Whatever the section does or does not include, it certainly includes the case of a person who unlawfully has in his possession goods unlawfully imported. These goods were undoubtedly unlawfully imported. That being so, can it be said that the defendants had them unlawfully in their possession? It is said, and very properly, that a man, who does not know that a thing is in his possession, cannot be convicted of having it unlawfully in his possession. If a man has something put into his pocket without his knowledge, he cannot be charged with having it unlawfully in his possession, if that fact appears. But in a case where goods are imported from abroad it is a difficult thing for the importer to say that he does not know what is contained in the packages that are imported, and which he claims as his own. It is open for him to show that, without his knowledge or consent, some goods that he never desired to have imported have been put in the package, but I think that when goods are imported the fact of importation is sufficient *primâ facie* evidence that the importer knows what is contained in the packages. It is not conclusive evidence, and as this case must in any event go back to the justice, it would not be proper to express any positive opinion on the facts, but from what I have said it is sufficiently obvious that the magistrate was not bound to dismiss the case. The point which I understand him to have decided was wrongly decided, and the case must be remitted to him for determination on the merits.

BARTON J. I am quite of the same opinion.

ISAACS J. I shall say nothing about the questions of fact because the case has to go back to the magistrate for him to consider, but I should like to say with regard to the construction of sec. 233, and especially with regard to the argument that the words "unlawfully having possession of any goods" was so wide as to embrace the contravention of any law whatever relating to any goods throughout Australia, and so make the section or that

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portion of it *ultra vires*, that we are not only not driven to that conclusion, but we ought not to adopt it. The general words in a Statute must always be construed in relation to the matter in hand—the subject matter of the enactment—and that principle was given effect to by the Privy Council in *Macleod* v. *Attorney-General for New South Wales* (1). Their Lordships there refused to adopt one possible construction of an Act which would have made it *ultra vires* of the New South Wales legislature, and adopted another construction, which the language permitted, and upon which the Act was clearly within the competency of the legislature. The principle is well stated by *Turner* L.J. in *In re Poland* (2), where the learned Judge says:—"There can be no doubt that the general words in an Act of Parliament must be construed in accordance with the circumstances to which the Act was intended to apply." That principle was applied by this Court very recently in the case of *Bank of Australasia* v. *Hall* (3) in relation to the words "creditor" and "debt," and when we apply it to this case, we see that the object of the Federal Parliament in sec. 233 was to prevent the evasion of its Statutes in relation to the importation and exportation of goods. The word "unlawfully," therefore, in that section gets full significance, and it is not left open to any imputation of being *ultra vires*, if it is understood in the sense that it means the contravening of some federal law relating to the matters that I have referred to. That is all I wish to say with regard to the case. The other matter has been fully dealt with by the learned Chief Justice, with whose observations I concur.

Appeal allowed. Case remitted to the Police Magistrate for determination. Respondent to pay the costs of the appeal.

Solicitors, for appellant, *Chambers & McNab* for *Lilley & Murray*, Cairns.

Solicitors, for respondent, *Stephens & Tozer* for *Hartley*, Cairns.

N. G. P.

(1) (1891) A.C., 455.
(2) L.R. 1 Ch., 358.
(3) 4 C.L.R., 1514.