

H. C. OF A. 1911.
HILL v. DONOHOE.
Griffith C.J.

the fact is not ancillary to the prevention of the crime. So construed, the section is clearly not *ultra vires*. The same evidence which went to show that the goods had been imported showed also that when they came into the possession of the appellant he had knowledge of the fact. The appeal must therefore be dismissed.

BARTON J. I am of the same opinion.

O'CONNOR J. I agree.

Appeal dismissed.

Solicitor, for appellant, *B. A. McBride*.

Solicitor, for respondent, Crown Solicitor for the Commonwealth.

C. E. W.

Appl <i>Anic, Sylvianou & Suleyman v R</i> (1993) 68 ACrimR 313	Foll/Appl <i>Anic, Sylvianou & Suleyman v R</i> (1993) 61 SASR 223	Dist <i>Vines & Williamson v R</i> (1993) 70 ACrimR 113
--	---	---

[HIGH COURT OF AUSTRALIA.]

WATERHOUSE APPELLANT;
DEFENDANT,

AND

THE KING RESPONDENT.
INFORMANT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A.
1911.
MELBOURNE,
June 1.

Criminal law—Larceny—Opium—Possession prohibited—Police Offences (Amendment) Act 1908 (N.S. W.) (No. 12 of 1908), secs. 19, 20.

Griffith C.J.,
Barton,
O'Connor,
Isaacs and
Higgins JJ.

Sec. 19 (a) of the *Police Offences (Amendment) Act 1908* provides that:—
“No person shall (a) unless the holder of a certificate to deal in poisons, issued under the provisions of the *Poisons Act 1902*, or any Act amending the same, sell, or have in his possession, opium.” Sec. 20 provides that—

“(1) . . . If opium is found . . . in the possession of any person, the constable may demand the production of the said certificate . . . from the person in whose possession the opium is found, and if such certificate is not produced, may forthwith seize the opium, and arrest any person present who he has reasonable ground to suspect is contravening the provisions of the last preceding section and take him before a stipendiary or police magistrate, or any two justices of the peace, and there charge him with such offence.

H. C. OF A.
1911.

WATER-
HOUSE
v.
THE KING.

“(2) The opium so seized shall be forfeited and disposed of as the adjudicating magistrate or justices may direct.”

Held, that, notwithstanding those sections, a person who is not the holder of such a certificate may have a right of property in opium, so that if he has opium in his possession it may be the subject of larceny.

Special leave to appeal from the decision of the Supreme Court of New South Wales: *Rex v. Waterhouse*, 11 S.R. (N.S.W.), 217, refused.

APPLICATION for special leave to appeal.

Oswald Victor Waterhouse was charged on indictment at a Court of Quarter Sessions in New South Wales with assaulting one Chong Lee and robbing him of one bag and nine tins of opium. The evidence showed that Chong Lee had bought the opium from the prisoner and another man, that the money was paid, that the opium was put into a bag and handed to Chong Lee, and that the bag and opium were then forcibly taken from Chong Lee by the appellant and had not been seen since. None of the persons concerned was the holder of a certificate to deal in poisons.

Before the jury returned into Court with their verdict counsel for the prisoner asked the Judge to direct the jury that opium could not be the subject of larceny. The learned Judge refused to so direct and the jury returned a verdict of guilty.

The learned Judge was asked to take a note of the following point:—“That his Honor should not have left the question to the jury whether opium had been stolen or not, but should have withdrawn such question from their consideration, and directed them that, under the circumstances of the case, opium could not be the subject of robbery.” The Full Court having affirmed the conviction (*Rex v. Waterhouse* (1)), application was now made to the High Court on behalf of Waterhouse for special leave to appeal.

(1) 11 S.R. (N.S.W.), 217.

H. C. OF A.
1911.

WATER-
HOUSE
v.

THE KING.

Mack, in support of the application. The effect of secs. 19 and 20 of the *Police Offences Act* 1908 is that it is a criminal offence for a person not having a certificate to have possession of opium, and if such a person has possession of opium he has no title or right of property in it. Opium, therefore, cannot be the subject of theft, for it cannot be the subject of detainee or trover: *Doode-ward v. Spence* (1). [He also referred to *R. v. Deakin* (2); *Gordon v. Chief Commissioner of Metropolitan Police* (3); *East's Pleas of the Crown*, pp. 419, 652.]

GRIFFITH C.J. delivered the judgment of the Court:—All that it is necessary to say is that the decision of the Full Court was clearly right. Leave to appeal will be refused.

Special leave to appeal refused.

Attorney, *R. H. Levien.*

B. L.

Dist
Campbell,
Re: Ex parte
Official
Trustee 13
FCR 326

Appl
Mickelberg v
R 167 CLR
259

Dist
Campbell,
Re: Ex parte
Official
Trustee 72
ALR 251

Foll
Edwards v R
(1993) 68
ACrimR 349

[HIGH COURT OF AUSTRALIA.]

SCOTT FELL APPELLANT;

AND

LLOYD (OFFICIAL ASSIGNEE) RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A.
1911.

SYDNEY,

August 2, 3,
4, 7, 8.

Griffith C.J.,
Barton and
O'Connor JJ.

Bankruptcy—Application for certificate of discharge—Misdemeanour not charged in Official Assignee's report or referred to in examination before Registrar—Onus of proof—Refusal of certificate—Appeal by bankrupt—Costs against Official Assignee—Appeal to High Court from State Court—Power to hear further evidence—Bankruptcy Act 1898 (N.S.W.) (No. 25), s. 39—Bankruptcy rule 301.

(1) 6 C.L.R., 406, at p. 410.

(2) 2 Mod., 862.

(3) (1910) 2 K.B., 1900.