

[HIGH COURT OF AUSTRALIA.]

McNEILL APPELLANT;
DEFENDANT,

AND

WHITTON (COLLECTOR OF CUSTOMS FOR }
VICTORIA) } RESPONDENT.
INFORMANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS
OF VICTORIA.

Customs—Interference with goods subject to control of Customs—Evidence—Customs Act 1901-1910 (No. 6 of 1901—No. 36 of 1910), sec. 33. H. C. OF A.
1915.

The mere fact that a wharf labourer employed by a stevedore in unloading from a ship goods which are under the control of the Customs hammers down the lid of a case of goods which he sees open is not an “interference” with the goods within the meaning of sec. 33 of the *Customs Act* 1901-1910.

MELBOURNE,
Sept. 28.
Griffith C.J.,
Gavan Duffy and
Rich JJ.

Decision of the Supreme Court of Victoria (*Mudden C.J.*): *Whitton v. McNeill*, (1915) V.L.R., 539; 37 A.L.T., 58, on that point overruled.

APPEAL to the High Court.

James McNeill was charged on the information of Percy Whitton, Collector of Customs for Victoria, before the Court of Petty Sessions at Melbourne, with having on 29th June 1915 without authority interfered with certain goods subject to the control of the Customs. It appeared that the defendant, who was a wharf labourer employed by a firm of stevedores in unloading a ship at a wharf in Melbourne, was acting on 29th June as a “book clerk,” that is to say, he had charge of a book in which were entered descriptions of the various cases containing

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For the prosecution it was alleged that the defendant went on the top of a stack of cases in the shed and opened one of them with a dog-hook, and that he had no authority to do so.

The defendant's evidence was that he went on the stack to look for certain cases of goods at the request of a carter, and that while there he saw that the lid of the particular case was slightly open, and that he gave it a few knocks with his dog-hook to close it.

On the first hearing the police magistrate dismissed the information, and on order to review *Madden* C.J. held that the evidence established an "interference" with the goods, and he remitted the case to the magistrate for rehearing: *Whitton v. McNeill* (1). On the rehearing, at the conclusion of the evidence, the police magistrate found that "what the defendant did was, with respect to the case in question, to hammer down with his dog-hook part of the case that was open," and he said that he was bound to hold that that was an "interference" with the goods within the meaning of sec. 33 of the *Customs Act* 1901-1910. He therefore convicted the defendant, and imposed a fine of £5.

From that decision the defendant now appealed by way of order to review.

Mitchell K.C. (with him *Eager*), for the appellant. — What, according to the finding of the magistrate, the appellant did in respect of these goods was not an "interference" within the meaning of sec. 33 of the *Customs Act* 1901-1910. [He was stopped.]

Starke, for the respondent. The prohibition in sec. 33 is absolute, and no wrongful intention is necessary: *Murphy v. Stokes* (2). Any unauthorized meddling with goods in such a way that the Customs may lose control of them is an "interference."

(1) (1915) V.L.R., 539; 37 A.L.T., 58. (2) 5 W.A.L.R., 162.

The judgment of the COURT was delivered by

GRIFFITH C.J. The facts as found by the magistrate were that the defendant, being in a Customs shed, hammered down with a dog-hook part of a case which was open. The magistrate found himself bound by a decision of the Supreme Court, not yet reported, to hold that what the defendant did was in point of law an interference with goods subject to the control of the Customs. We are unable to say that such an act was, as a matter of law, an interference with goods subject to the control of the Customs within the meaning of sec. 33. The conviction therefore cannot stand, and the appeal must be allowed.

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Appeal allowed. Conviction quashed. Costs of the appeal and £5 5s. costs in the Court of Petty Sessions to be paid by the respondent.

Solicitors, for the appellant, *Maddock, Jamieson & Lonie.*

Solicitor, for the respondent, *Gordon H. Castle*, Crown Solicitor for the Commonwealth.

B. L.