[HIGH COURT OF AUSTRALIA.]

WILLIS . . . . . APPELLANT;
DEFENDANT,

AND

BURNES . . . . . RESPONDENT.
COMPLAINANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1921.

SYDNEY, *Nov.* 9.

Knox C.J., Gavan Duffy and Starke JJ.

Police Offences—Possession of goods suspected of being stolen—Explanation by defendant—Satisfaction of justice—Doubt as to sufficiency of explanation—Onus of proof—Police Offences Act 1901 (*N.S.W.*) (*No.* 5 *of* 1901), *sec.* 27—*Police Offences* (*Amendment*) *Act* 1908 (*N.S.W.*) (*No.* 12 *of* 1908), *sec.* 11.

Sec. 27 of the *Police Offences Act* 1901 (N.S.W.) (replaced by sec. 11 of the *Police Offences* (*Amendment*) *Act* 1908) provides that "Whosoever being charged before a justice with (*a*) having anything in his custody; or (*b*) knowingly having anything in the custody of another person; or (*c*) knowingly having anything in a house, building, . . . or other place, . . . which thing may be reasonably suspected of being stolen or unlawfully obtained, does not give an account to the satisfaction of such justice how he came by the same, shall be liable to a penalty not exceeding ten pounds or to imprisonment for a term not exceeding three months."

Held, that where the Crown has established that the defendant knowingly was in possession of certain property and that that property might reasonably be suspected of having been stolen, the onus is upon the defendant of satisfying the justice that he came by the property honestly, and that that onus is not discharged if the justice is left in doubt as to whether the defendant came by the property honestly.

Decision of the Supreme Court of New South Wales (*Wade* J.): *Burns* v. *Willis*, 38 N.S.W.W.N., 42, affirmed.

H. C. OF A. 1921.

WILLIS v. BURNES.

APPEAL from the Supreme Court of New South Wales.

At the Police Court at Werris Creek, before a Police Magistrate, an information was heard whereby John Hugh Burnes charged that Elias Willis did knowingly have a quantity of rabbit-skins in a certain building, which rabbit-skins "may be reasonably suspected of being stolen." The Magistrate, having dismissed the information, on the application of the complainant stated a case for the opinion of the Supreme Court in which, after setting out the above facts and the evidence, he said :—"The proceeding was under sec. 27 (c) of the *Police Offences Act* 1901. It was proved to my satisfaction that the defendant on the day and at the place charged did knowingly have a quantity of rabbit-skins in a certain building, situate at Henry Street, Werris Creek, in the State of New South Wales, which said rabbit-skins were reasonably suspected of being stolen. And thereupon I called upon the defendant to give an account to my satisfaction how he came by the same. The defendant then gave an explanation which, I thought, might reasonably be true, although I was not convinced that it was true. A doubt was thus left in my mind as to whether or not the defendant honestly came by the same. I held that the defendant was entitled to the benefit of that doubt, and dismissed the information. The question for the opinion of the Court is whether my said determination was erroneous in point of law."

The case was heard by *Wade* J., who answered the question in the affirmative, holding that, as the explanation offered by the defendant left a doubt in the mind of the Magistrate and so did not satisfy him, the defendant should have been convicted: *Burns* v. *Willis* (1).

From that decision the defendant now, by special leave, appealed to the High Court on the grounds: (1) that his Honor was in error in holding that the question asked should be answered in the affirmative; (2) that, the Magistrate having a reasonable doubt, the defendant was entitled to an acquittal; and (3) that on the finding of the Magistrate the appellant had given an account to the satisfaction of the Magistrate how he came by the goods in question.

(1) 38 N.S.W.W.N., 42.

Mack K.C. (with him *McGhie*), for the appellant. Admitting that, on a prosecution under sec. 27 of the *Police Offences Act* 1901, when the accused is shown to have been knowingly in possession of goods which are suspected of being stolen the onus is cast upon him of satisfying the justice as to how he came by the goods, that onus is discharged if the accused raises a reasonable doubt as to whether or not he came by the goods honestly. The accused is presumed to be innocent until he is proved to be guilty, and whether a doubt arises on the Crown case as to the accused knowingly having had the goods in his possession or whether it arises on the defence as to the goods having been honestly come by, the accused is entitled to the benefit of that doubt. The words "give an account to the satisfaction of" the justice are used as synonymous with "raise a reasonable doubt in the mind of" the justice. If the justice's state of mind is that he has a reasonable doubt as to the sufficiency of the explanation, he is satisfied in law. [Counsel referred to *Archbold's Criminal Practice*, 25th ed., p. 706; *R.* v. *Langmead* (1); *R.* v. *Sleep* (2); *Trainer* v. *The King* (3); *McDonald* v. *Webster* (4); *Hadley* v. *Perks* (5); *R.* v. *Banks* (6); *R.* v. *Tolson* (7); *Abrath* v. *North-Eastern Railway Co.* (8); *R.* v. *Wrigley* (9); *Peacock* v. *The King* (10); *R.* v. *Plummer* (11).]

E. M. Mitchell, for the respondent. The justice has to ask himself, "Am I satisfied?"—not "Has a reasonable explanation been given?" All that the Crown has to prove is that the accused knowingly had in his possession goods which might be suspected of being stolen. The gist of the offence is that the accused, being called upon to give an explanation, failed to satisfy the justice that he honestly came by the goods. [Counsel referred to *Ex parte New* (12); *Ex parte Davis* (13); *Ex parte Cassidy* (14).] [Counsel was stopped.]

(1) 9 Cox C.C., 464.
(2) 8 Cox C.C., 472.
(3) 4 C.L.R., 126.
(4) (1913) V.L.R., 506, at p. 514; 35 A.L.T., 101, at p. 105.
(5) L.R. 1 Q.B., 444.
(6) 1 Esp., 144.
(7) 23 Q.B.D., 168, at p. 175.
(8) 11 Q.B.D., 440, at p. 452.
(9) 18 N.S.W.L.R., 160, at p. 162.
(10) 13 C.L.R., 619, at p. 630.
(11) (1902) 2 K.B., 339, at p. 348.
(12) 15 S.R. (N.S.W.), 483.
(13) 18 N.S.W.L.R., 39.
(14) 19 N.S.W.W.N., 186.

H. C. OF A. 1921. WILLIS v. BURNES. Knox C.J.

Knox C.J. This appeal raises the question of the correctness of the decision of *Wade* J. on a case stated by a Magistrate. His Honor decided that, in a prosecution under sec. 27 of the *Police Offences Act* 1901, when it has been established to the satisfaction of the Magistrate that the property may reasonably be suspected of having been stolen and that the defendant is knowingly in possession of that property, then the onus lies on the defendant of giving an account of how he came by it—that is, of satisfying the Magistrate that he came by it honestly. That decision appears to me to be quite correct. I desire to adopt, with slight alteration, what *Gordon* J. said in *Ex parte Potts* (1) :—"In my opinion the section throws on the Crown the onus in the first instance of showing that the person charged was in possession of goods, and that those goods were" (this should read "might be") "reasonably suspected of being stolen or unlawfully obtained. It seems to me that it is not necessary to show that the goods were in fact stolen. The offence is that the person charged is in possession of goods which are" (this should read "may be") "'reasonably suspected' of having been stolen, and then fails to give a satisfactory account of how they came into his possession. It has been said in one case the offence is not being in possession of the goods, but failing to give a satisfactory account of their possession, when found in possession of goods which are reasonably suspected of having been stolen. In my opinion the onus lies on the Crown first of all to show the goods were" (this should read "might be") "reasonably suspected of having been stolen; when that has been shown the onus is shifted, and it becomes necessary that the person found in possession of these goods should give an account to the satisfaction of the justice how he came by the same." I think that that statement is literally in accordance with the provisions of the section. A new offence was created by the section and the words of the section are conclusive as to what the offence is, as to the manner of proving it and as to the onus of proof. I do not think that the cases cited by Mr. *Mack* are really in point in this case. In those cases it lay upon the Crown to establish a fact, and if the Crown failed to establish it beyond reasonable doubt, the jury would acquit the accused.

(1) 31 N.S.W.W.N., 1, at p. 2.

But in the present case the statute deliberately provides that if certain facts are established the defendant shall be convicted unless he satisfies the Magistrate of certain other matters. In this case the Magistrate says that the defendant did not satisfy him of those matters, and *Wade* J. held that in that event the Magistrate should have convicted the defendant, and I agree with him.

GAVAN DUFFY J. I agree.

STARKE J. I agree.

Appeal dismissed with costs.

Solicitor for the appellant, *R. J. O'Halloran*, Tamworth, by *R. H. Levien*.

Solicitor for the respondent, *J. V. Tillett*, Crown Solicitor for New South Wales.

B. L.

[HIGH COURT OF AUSTRALIA.]

CARTER . . . . . APPELLANT;
INFORMANT,

AND

E. W. ROACH AND J. B. MILTON PROPRIETARY LIMITED . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM A COURT OF PETTY SESSIONS OF VICTORIA.

MELBOURNE, *Oct.* 10, 11.

SYDNEY, *Nov.* 17.

Knox C.J., Higgins, Gavan Duffy, Powers, Rich and Starke JJ.

Industrial Arbitration—Agreement between parties to industrial dispute—Binding effect of agreement—Successor or assignee of party to agreement—Validity of Commonwealth statute—Commonwealth Conciliation and Arbitration Act 1904-1920 (*No.* 13 *of* 1904—*No.* 31 *of* 1920), *secs.* 24, 29 (*ba*)—*The Constitution* (63 & 64 *Vict. c.* 12), *sec.* 51 (xxxv.), (xxxix.).