

IN THE HIGH COURT OF AUSTRALIA

THE HON. . . . LIONEL KEITH MURPHY

v.

CAMPBELL BEAUMONT TRADING PTY.
LIMITED (IN LIQUIDATION) AND OTHERS
(two matters)

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY
on FRIDAY 16 AUGUST, 1974

MURPHY

v.

CAMPBELL BEAUMONT TRADING PTY. LIMITED (IN LIQUIDATION)
AND OTHERS

No. 55 of 1973

ORDER

1. Declare that the second-named defendant has been guilty of each of the offences alleged in the paragraphs of the statement of claim mentioned in the paragraph numbered 2 in exhibit 'C'.
2. Declare that the third-named defendant has been guilty of each of the offences alleged in the paragraphs of the statement of claim mentioned in the paragraph numbered 5 in exhibit 'C'.
3. The first-named defendant having been dissolved on 6th November 1972 I order that the name of that defendant be removed as from that date from the record.
4. Order that the defendant William Patrick Bond do pay to the plaintiff on or before 16th November 1974 by way of penalty under s. 234(d) of the Customs Act 1901-1968 in respect of the offences referred to in the first declaration hereby made the total sum of \$3,570.
5. Order that the defendant Universal Agencies Pty. Ltd. do pay to the plaintiff by way of penalty under s. 234(d) of the Customs Act 1901-1968 in respect of the offences referred to in the second declaration hereby made the total sum of \$1,020.

6. I grant leave to amend the statement of claim by adding a claim against the third-named defendant for reparation under s. 21B of the Crimes Act.
7. I order that the third-named defendant make reparation to the Commonwealth by way of a money payment of \$62,188.02 in respect of the loss suffered by the Commonwealth by reason of the foregoing offences committed by the third-named defendant.
8. I make no order as to costs.
9. I direct that the exhibits be retained.

MURPHY

v.

CAMPBELL BEAUMONT TRADING PTY. LIMITED (IN LIQUIDATION)
AND OTHERS

No. 56 of 1973

ORDER

1. Declare that the second-named defendant has been guilty of each of the offences alleged in the paragraphs of the statement of claim mentioned in the paragraph numbered 2 in exhibit 'E'.
2. Declare that the third-named defendant has been guilty of each of the offences alleged in the paragraphs of the statement of claim mentioned in the paragraph numbered 5 in exhibit 'E'.
3. The first-named defendant having been dissolved on 6th November 1972 I order that the name of that defendant be removed as from that date from the record.
4. Order that the defendant William Patrick Bond do pay to the plaintiff on or before 16th November 1974 by way of penalty under s. 234(d) of the Customs Act 1901-1968 in respect of the offences referred to in the first declaration hereby made the total sum of \$2,870.
5. Order that the defendant Ametco (Aust.) Pty. Ltd. do pay to the plaintiff by way of penalty under s. 234(d) of the Customs Act 1901-1968 in respect of the offences referred to in the second declaration hereby made the total sum of \$820.

6. I grant leave to amend the statement of claim by adding a claim against the third-named defendant for reparation under s. 21B of the Crimes Act.
7. I order that the third-named defendant make reparation to the Commonwealth by way of a money payment of \$21,718.04 in respect of the loss suffered by the Commonwealth by reason of the foregoing offences committed by the third-named defendant.
8. I make no order as to costs.
9. I direct that the exhibits be retained.

MURPHY

v.

CAMPBELL BEAUMONT TRADING PTY. LIMITED (IN LIQUIDATION)
AND OTHERS

No. 55 of 1973

MURPHY

v.

CAMPBELL BEAUMONT TRADING PTY. LIMITED (IN LIQUIDATION)
AND OTHERS

No. 56 of 1973

JUDGMENT
(ORAL)

MASON J.

MURPHY

v.

CAMPBELL BEAUMONT TRADING PTY. LIMITED (IN LIQUIDATION)
AND OTHERS

No. 55 of 1973

MURPHY

v.

CAMPBELL BEAUMONT TRADING PTY. LIMITED (IN LIQUIDATION)
AND OTHERS

No. 56 of 1973

When these matters came on for hearing I was informed by senior counsel for the Crown that it desired to proceed against the second and third defendants in respect of the thirty-one offences against s. 234(d) of the Customs Act mentioned in the statement of claim in the first action and in respect of the twenty-one offences against s. 234(d) mentioned in the statement of claim in the second action and for an order for reparation against the third defendants in each action for the recovery of the amount of duty short paid. Senior counsel stated that the plaintiff did not now maintain the claim that offences had been committed under ss. 233(1)(a) and 234(a) of the Act. I was then informed by counsel for the second and third defendants that they were willing to submit to a declaration that their clients were guilty of the offences against s. 234(d) charged in the respective statements of claim and that the third defendant in each case was willing to submit to an order for reparation under s. 21B of the Crimes Act. The first defendant has been dissolved and its name will be struck from the record in each action.

In Chipp v. Campbell Beaumont Trading Pty. Ltd. (22nd December 1969) and Murphy v. Campbell Beaumont Trading Pty. Ltd. (11th November 1973) the Chief Justice described the procedure by which the first defendant (whose managing director was the second defendant) entered cigars and cigarettes for home consumption, a procedure which led to the making of the false entries in those cases and in the two actions before me. I need not repeat what was then said. Investigations which have taken place subsequently have brought to light further information that has been incorporated in a written statement of facts tendered in evidence. According to this statement,

"The first defendant's office was situated at 20 Argyle Street, Sydney in the Argyle Bond. Imported cigarettes were at the importer's nomination entered for warehousing at the Argyle Bond.

Cigarettes are dutiable according to weight. Prior to entry ex warehouse for home consumption the weight of cigarettes should have been ascertained by a Customs Officer.

In no instance in the 31 entries alleged in the first statement of claim or the 21 in the second were cigarettes weighed by Examining Officers at Argyle Bond.

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In examining cigarettes, the duties of the Examining Officer required that he first carry out a weighing from the particular shipment to determine the number of cigarettes which together make up 4 ozs and, thus, calculate the total nett weight of the shipment. The results of the examination were then to be endorsed on an 'Examination Sheet' signed by the Officer.

Each such Officer whose duties for the time being included attendance at Argyle Bond, has since stated that while he filled out and signed various Examination Sheets purporting to show the result of weighings, no such weighings did in fact take place and that he relied on information contained in previous Examination Sheets. Some information was obtained from employees of the first defendant. In

justification of their actions the officers pleaded extreme pressure of work and a desire not to impede the flow of imports by repetitious examination of similar goods, each weighing being time consuming.

As a result of a departmental enquiry all officers concerned have been dealt with under Section 55 of the Public Service Act on charges of negligence. In each case penalties imposed resulted in demotion and/or fine.

The then system required the results of weighings as set out in the Examination Sheet to be used in the compilation of entries for home consumption on which duty is paid. In the matters dealt with in the Statements of Claim, the Examination Sheets in all cases showed weights less than the weights appearing on the manufacturer's invoices which resulted in short payment of duty. The Statements of Claim aver that the true weight of the cigarettes was equal to the weight stated on the manufacturer's invoices."

I interpolate here that the manufacturer's invoices stating the conventional weights (stated to be the correct weights in the statements of claim) were presented to Customs in each transaction and that it was the failure of the Customs officers to accept the weights so stated that led to the short payment of duty.

I resume my quotation from the agreed statement of facts:

"In the present matters the plaintiff offers no evidence in relation to s. 234(a) offences, 'evasion of duty' and proceeds upon the strict liability offence under section 234(d). As to each third defendant there is no evidence of any intent to be put before the Court. In the present matters, unlike the previous matters the plaintiff offers no evidence against the second defendant of an intent to defraud the revenue or to smuggle. The plaintiff's case against him in the present matters relied on equivocal documents impounded from the third defendant in the first statement of claim and any incriminating answers on oath from the second defendant who was served with a subpoena ad testificandum under s. 254. This step was not beyond doubt by reasons of s. 242."

Additional information relating to the parts played by the third defendants has been given to me by their counsel, the information relating to Ametco (Aust.) Pty. Ltd. being incorporated in a written statement which has been placed in evidence. The correctness of the accounts given to me by counsel on behalf of the third defendants has not been disputed by the Crown.

It appears that the third defendant, Universal Agencies Pty. Ltd., was a wholesaler selling cigarettes exclusively, or almost so, in New South Wales. It employed the first defendant as its customs agent, leaving to it entirely the importation of cigarettes through Customs (save as to actual payment of duty), including the warehousing and storage of the goods and their entry for home consumption. Having regard to its pricing structure, no additional profit was made on the sale of the cigarettes as a result of the short payment of duty. As the relevant transactions relating to the cigarettes so imported took place between 1965 and 1967 and have long since closed, Universal Agencies has no prospect of recouping the amount of duty short paid which it will be ordered to pay to the plaintiff.

Ametco is a Melbourne company which was appointed Australian sales representative for Lexington cigarettes. It appointed Godfrey Phillips as Australian distributor and placed orders with the overseas suppliers of those cigarettes when requested so to do by Godfrey Phillips. It appointed the first defendant as its customs agent, again leaving to it entirely the importation of cigarettes through Customs, including the warehousing and storage of the goods and their entry for home consumption. Payment of duty was attended to by Godfrey

Phillips, not by Ametco. Indeed, it is possible that property in the goods passed to Godfrey Phillips before their arrival in Australia. Ametco was paid a commission by Godfrey Phillips in respect of the transactions from which it made a small profit only. Like Universal Agencies it has no prospect of recovering the amount of duty short paid which it will be ordered to pay to the plaintiff, apart from an arrangement for some reimbursement which it has made with the second defendant.

It is common ground that neither of the third defendants participated in, or had knowledge of, the making of the false entries or of the circumstance that duty was being short paid. There is no suggestion that either of them intended to defraud the revenue or evade payment of duty. Nor is it suggested that any officer or servant of either company was involved in the commission of the offences. It seems to me that each company acted without negligence.

Counsel for the third defendants have submitted that the circumstances call for the imposition of the minimum penalty only in respect of each of the offences. Senior counsel for the Crown has stated that the Crown does not wish to put anything in opposition to these submissions and is content to leave the matter to the Court. He has also stated that the two actions conclude the long and protracted Customs prosecutions arising out of the importation of cigars and cigarettes in which the first defendant participated. No doubt the Crown's view is that when consideration is given to the heavy penalties imposed in the earlier cases there is strong ground for thinking that the revenue has been adequately protected.

In my view the circumstances call for no more than

the imposition of double the minimum penalty on each of the third defendants. The order for reparation is in each case a substantial punishment.

The case of the second defendant has given me more difficulty. Here again it has been urged that the minimum penalty or a penalty no more than two or three times greater than the minimum penalty should be imposed. Again senior counsel for the Crown has stated that he does not wish to put anything in opposition to this submission. Mr. Priestley, Q.C. for the second defendant points to his age (he is seventy), his ill-health and the circumstance that he is not well off. He says, correctly, that he has already been heavily punished in the earlier cases and that as between himself and Ametco he will be required to meet part of the order for reparation.

It is common ground that this case is different from the earlier cases in several respects. No offences against ss. 233(1)(a) and 234(a) are now suggested to have taken place. No evidence of intent to defraud or of intent to avoid payment of duty has been placed before me. The offences are much smaller in number and the value of the goods is substantially less.

I have given weight to all these considerations and I have concluded that a penalty somewhat larger than that suggested by Mr. Priestley should be imposed on the second defendant. Before 30th May 1967 the prescribed penalty for an offence against s. 234 was \$200 and after that date \$1,000. The minimum penalty is one-twentieth of that specified, namely, \$10 for entries made before 30th May 1967 and \$50 for entries made after that date.

In action No. 55 of 1973 there are twenty-six entries before 30th May 1967 and five entries subsequent to that date. The value for duty of the thirty-one entries was \$118,693.

In action No. 56 of 1973 there were sixteen entries before 30th May 1967 and five entries after that date. The total value for duty of the twenty-one entries was \$29,928.

In each action I impose on the second defendant a penalty of \$70 in respect of each offence before 30th May 1957 and \$350 for each offence committed after that date, being a total of \$3,570 in the first action and \$2,870 in the second action.