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IN THE MATTER of Section 280 of the
Customs Act 1966

A N D

IN THE MATTER of certain Canon
Cameras, camera
lenses, filters and
associated equipment

BETWEEN

JAMES WILLIAM GORDON
BARROW of Dunedin,
Collector of Customs

Informant

A N D

JEFFREY MARTIN BRYANT
of Alexandra,
Scientist

Defendant

Hearing: 16 October 1984

Counsel: W.J. Wright for Informant.
P.B. Churchman for Bryant

Judgment: 13 NOV 1984

JUDGMENT OF HOLLAND, J.

The proceedings before the Court are by way of information in rem pursuant to section 280 of the Customs Act 1966 praying judgment of condemnation of certain camera equipment described in the information and costs. The information in rem was filed because the defendant, Jeffrey Martin Bryant, gave notice claiming that he was entitled to possession and ownership of the goods and that he intended to dispute forfeiture on the grounds that he had not knowingly committed any offence against any statute providing for forfeiture, and that in his case forfeiture was unwarranted and unjustified. An order was made for service of the information on the defendant and he has filed a statement of defence. The statement of defence admits that the informant

is the Collector of Customs, that in or about the month of December 1983 the camera equipment was imported into New Zealand, and that the defendant arranged for one Robert Hudson to purchase the goods in Hong Kong to bring to New Zealand with him when he visited New Zealand on holiday. It was further admitted that the camera equipment concerned was imported into the country on behalf of the defendant, but an allegation in the statement of claim that the goods were not declared as being for him and that in consequence no Customs duty or sales tax was paid in respect of the goods was denied. He admitted that the camera equipment was seized by the Crown on 13 February 1984 and notice of seizure given on the same day to him and that he consequently gave notice disputing forfeiture. He denied the allegations as to the value of the goods and denied that the importation of the goods involved offences against the provisions of section 243 of the Customs Act 1966 and section 64 of the Sales Tax Act 1974.

Section 299(1) of the Customs Act 1966 provides as follows:-

"(1) In any proceedings under the Customs Acts instituted by or on behalf of or against the Crown (other than a prosecution for an indictable offence) every allegation made on behalf of the Crown in any statement of claim, statement of defence, plea, or information, and relating to the identity or nature of any goods, or to their value for ad valorem duty, or to the country or time of their exportation, or to the fact or time of their importation, or to their place of manufacture, production, or origin, or to the payment of any duty on them, or to any act done or omitted with respect thereto by any person, shall be presumed to be true unless the contrary is proved."

Notwithstanding this presumption, the Collector of Customs called evidence. It is established that following a search of premises occupied by the

defendant on 8 February of this year the camera equipment described in the information was found in the possession of the defendant. It is admitted that the goods were imported into New Zealand by Mr Hudson on behalf of Mr Bryant. There was produced to the Court a Customs declaration made by Mr Hudson in which, inter alia, he was required to list all goods carried on behalf of other persons and gifts valued at more than \$NZ50 in total. His declaration included under this heading, only "various Christmas presents (clothes, books, toys, Chinese handicrafts) total price paid \$NZ140". There is evidence that invoices in relation to the camera equipment in the possession of the defendant showed that the purchase price was \$6,200 (Hong Kong) which was then equivalent to approximately \$NZ1137. The allegation in paragraph 4 of the information that the said goods were not declared at the time of importation by Mr Hudson as being for the defendant has been established and the evidence also satisfies me that in consequence of this false declaration no Customs duty or sales tax was paid in respect of the goods.

The defendant gave evidence. He testified that he was returning to New Zealand after several years' absence when camera equipment of exactly the same nature as that which was imported on his behalf by Mr Hudson was destroyed in a boating accident in Tahiti. His goods were covered by insurance, but of course he was left in New Zealand without the goods. It was his claim that had he had the goods with him on his return to New Zealand, (they having been in his possession for a considerable period), he would have been entitled to have imported them without attracting either Customs duty or sales tax.

It was submitted on behalf of the defendant that the Crown has to prove that offences have been committed. It was submitted that in the circumstances no intent to defraud the revenue could be imputed either against Mr Hudson or against Mr Bryant.

It is clear that section 243 of the Customs Act provides that it is only an offence if a person contravenes the provisions of the Act with intent to defraud the revenue. Paragraph 5 of the information is somewhat bald if it is to be relied on as establishing pursuant to the provisions of section 299 of the Act that the importation was with intent to defraud. The defendant in his defence does no more than deny the allegation.

It has been established that in the circumstances in which the goods were imported by Mr Hudson those goods were dutiable as being goods imported by him on behalf of someone else. The goods had only recently been purchased by Mr Hudson and purchased on behalf of the defendant. The disclosure of the goods in the Customs declaration required to be completed by Mr Hudson did not necessarily mean that duty is payable if in fact the circumstances were such that importation did not attract duty. The failure, however, to declare such goods when there is a clear indication that they should be declared and the accompanying facts showing that the goods are in fact dutiable, compels the Court to the inevitable inference that they were not declared with the intention of defrauding the revenue of Customs by failing to inform the Customs officer of the situation relating to the goods

and thus enable him to assess the duty, if any. The Court is driven inevitably to the conclusion that Mr Hudson at the time of importation was not of the clear and unequivocal view that no duty would be attracted on the goods or he would have declared them. His failure to declare the goods compels the Court to the view that he failed to make the declaration deliberately intending to conceal the existence of the goods from the Customs officer and hence to defraud the revenue.

The defendant further submits that before he, as the true owner, can be forced to suffer forfeiture of the goods he must be shown to be a party to the illegal importation. I am not satisfied that such is the law but in any event his only honest belief that the goods were not dutiable could have been because of a mistake as to the law and that cannot possibly be an excuse. It accordingly follows that judgment must be entered in accordance with the prayer of the Collector of Customs for forfeiture. In this case I am satisfied that the defendant has to some considerable extent acted honestly. He has produced the goods without a warrant even though a warrant had been obtained and he has not endeavoured to deceive the Court in his evidence. Costs should normally follow the event but this would not appear to be a case for a substantial award of party and party costs. There will be an order that the defendant pay costs of \$150.

A. D. Holland

Solicitors:

Crown Solicitor, Dunedin, for Informant

Jackson Lucas Deuchrass & Churchman, Dunedin, for Bryant