

CASES

DECIDED IN

THE HOUSE OF LORDS,

ON APPEAL FROM

THE COURTS OF SCOTLAND.

WALTER GROSSET, Esq., Inspector-General of } *Appellant* ;
His Majesty's Customs at the Port of Leith, }
THOMAS OGILVY of Dundee, in the County of } *Respondent*.
Forfar, Merchant, - - - - - }

House of Lords, 16th February 1753.*

CUSTOMS—Act 3 Anne, c. 13, and 9 Geo. II.—Indemnity Act, 18 Geo. II.—Tobacco was imported from the Plantations abroad, by merchants in Leith, upon which the usual duties were paid. Afterwards it was exported, and, in terms of the act in such cases, a drawback of the whole duty was obtained, and the goods exported under a certificate that they were for foreign export. After the ship proceeded to sea the tobacco was clandestinely relanded: Held that the Indemnity Act, 18 Geo. II., did not apply to such a case, and that the tobacco was forfeited, and the penalties attached.

INDIRECT practices had been carried on for some time at Leith, by privately relanding tobacco and other foreign goods, after they had been shipped for exportation, upon certificates obtained from his Majesty's Customs, and drawbacks of the duty had been allowed thereon.

The defendant was accused as concerned in the unlawful

1753.

GROSSET
v.
OGILVY.

* This, and the next case, omitted in the former Part, at their proper dates.

GROSSET
v.
OGILVY.

relanding of such certificate-goods; and Information was filed in the Court of Exchequer against him, setting forth, that 46 hogsheads of plantation tobacco were imported by certain merchants in Leith, from beyond seas, for which certain duties were paid: and that the said merchants in Leith did afterwards procure proper certificates from the Custom-house officers, for the purpose of again exporting the tobacco to parts beyond seas, upon which certain drawbacks of the duty formerly paid were allowed; amounting to £879. 8s. 7d. being the whole of the duty; and that the said parcels of tobacco so shipped were afterwards unshipped, and reloaded, without any distress, or for the purpose of saving it, but to evade the law in these respects.

The Act 3 Anne, c. 13, was founded on, which sets forth; § 16: “ And whereas by the laws of this realm, every person
“ is entitled to a drawback of part of the duties paid or
“ secured at the importation thereof; and it hath been found
“ by experience, that great quantities of such tobacco, and
“ other foreign goods, after they have been shipped for ex-
“ portation, have been privately reloaded in this realm; and
“ the remedies already provided by law have not been suf-
“ ficient to obviate a practice so very prejudicial to her
“ Majesty’s revenue, and to all fair and honest traders in such
“ goods: For the better prevention whereof for the future,
“ be it further enacted, by the authority aforesaid, That from
“ and after the 27th day of March 1710, in case any tobac-
“ co, or other foreign goods, contained, or specified in any
“ certificate, whereupon any such drawback is to be made,
“ or whereupon any debenture is to be made for any such
“ drawback, *shall not be really and bona fide* shipped and
“ exported (the danger of seas excepted), or shall be landed
“ again in any part of Great Britain, unless in case of dis-
“ tress to save the goods from perishing, which shall be
“ presently made known to the person or persons who are
“ or shall be appointed by her Majesty to manage her cus-
“ toms, or principal officers of the port; then not only all
“ such tobacco and other *certificate-goods* shall be forfeited
“ and lost, but also the person or persons (being the ex-
“ porters, or any others,) who shall bring back, or conceal,
“ or procure to be reloaded, such tobacco, or other certificate
“ goods, shall be forfeited and lost; but also the person, or
“ persons (being the exporters or any others), who shall bring
“ back, or cause to procure to be reloaded, such tobacco, or
“ other certificate-goods, or any of them, in any part of Great

“ Britain, or be assisting, or otherwise concerned, in the
 “ unshipping of the same, or to whose hands the same shall
 “ knowingly come after the unshipping thereof, or by whose
 “ privity, knowledge; or direction, the said tobacco, and
 “ other goods, or any part thereof, shall be so relanded,
 “ shall forfeit double the amount of the said drawback for
 “ such goods, together with the vessels, and boats, and all
 “ the horses, or other cattle and carriages whatsoever, made
 “ use of in the landing, removing, carriage, or conveyance
 “ of the same; one moiety of all which penalties or for-
 “ feitures shall be to the use of her Majesty; and the other
 “ moiety to him or them that shall inform, seize, or sue for
 “ the same; to be recovered by bill, plaint, or information,
 “ in any of her Majesty’s Courts of Record at Westminster,
 “ or in the Court of Exchequer of Scotland, at any time
 “ within five years.” By 17th section the officer of customs
 conniving at any such fraud is to suffer deprivation, and six
 months’ imprisonment.

The defendant appeared, and, instead of denying the several charges in the Information, he pleaded the Act 18 Geo. II. for indemnifying persons who have been guilty of the unlawful importing, landing, or running, of prohibited and uncustomed or other goods,—which act sets forth:—“ That
 “ all and every his Majesty’s subjects of this his Majesty’s
 “ realm of Great Britain, who before the first day of May in
 “ the year of our Lord 1745, had incurred any penalty or
 “ forfeiture, in, by or for, the clandestine running, unshipping,
 “ concealing, or receiving, any prohibited goods, wares, or
 “ merchandizes, or any foreign goods, liable to the payment
 “ of the duties of customs and excise, or either of them, and
 “ who were, or might be subject to any information, or other
 “ prosecution whatsoever, for the penalties for the running,
 “ landing, unshipping, concealing or receiving thereof, or
 “ for landing any goods, without the presence of an officer,
 “ should be, and were, by the authority of the said act,
 “ acquitted, indemnified, released, and discharged, against
 “ his said Majesty, his heirs and successors, and all and
 “ every other person and persons, bodies politic and cor-
 “ porate, and any officer or officers of the Customs and
 “ Excise, any and every of them, of and from all the said
 “ offences (not excepted in the said act), and of and from
 “ all penalties, forfeitures, indictments, outlawries, con-
 “ victions, and judgments (not therein after excepted), in-
 “ curred, had or given, or that might arise, or accrue, for

 GROSSET

v.

OGILVY.

“ or by reason or means of any of the said offences, or other matters, or things, in the said act mentioned or expressed.”

The defendant further pleaded, That he was a subject of his Majesty's realm of Great Britain, and entitled to the benefit of the said act, as an indemnity against the penalties, for the offences in the act first above quoted.

Feb. 1, 1749. The Barons of Exchequer in Scotland were equally divided; but the Chief Baron having given his casting vote for the defendant's plea, verdict went for him.

A writ of error to Parliament was taken against this judgment.

Pleaded for the Plaintiff:—The defendant, by pleading the Act of Indemnity, hath admitted the several charges in the Information—namely, that he was concerned in relanding the tobacco in question, after the proper certificates for exportation, and a drawback of the duties allowed thereon, had been obtained. The relanding was not made known to the officers of customs, nor occasioned by distress, and consequently he had become liable to all the penalties imposed by the act of the 3d of Queen Anne, unless those penalties shall appear to be released by the Indemnity Act of the 18 Geo. II. That the relanding of uncustomed or prohibited goods, and the relanding of certificate-goods, are separate and distinct offences. The term landing and relanding are differently applied. The former being used to express the offence in unshipping customable or prohibited goods; and relanding being applied only to *certificate-goods*. The Act of Indemnity of 18 Geo. II. only applies to and pardons all forfeitures for the running, landing, and shipping of prohibited goods; but certificate goods are neither prohibited goods, nor goods liable to the payment of duties, as they have once been legally imported and landed, and consequently are not prohibited. Nor will the indemnity granted by the act, in respect of goods not landed in presence of an officer, extend to the case of certificate-goods; because the certificate of such goods is granted upon the express condition of exportation.

Pleaded for the Defendant:—The offence charged in the Information is the landing and unshipping of tobacco, which having been once duly imported, the duties paid, and afterwards entered for exportation, with a certificate, and drawback allowed, is an offence contrary to, and prohibited by law. The tobacco, therefore, on the case stated by the Information, was a prohibited commodity, and by the landing thereof, in the

manner stated and charged in the Information, the respondent was liable to the consequences and penalties, for landing and unshipping of prohibited goods, contrary to act of Parliament; but he pleads the Indemnity Act, because it is from such penalties and forfeitures, as well as from all prosecutions on account thereof, that persons are expressly indemnified and acquitted by the Act 18 Geo. II. If the landing of tobacco exported by certificate was not within the words of the statute, it was within the intent and meaning of the legislature.

GROSSET
OGILVY.

The question proposed to the whole judges was:—

“Whether the offence of being assisting, or concerned in the unshipping and in landing of the tobacco, charged in the Information in this case, is released, or discharged, by the act of Parliament, 18 Geo. II.?”

The Chief Justice (Willis) delivered the opinion of the judges thus:—

“I will consider it first, merely on this statute, (18 Geo. II.) independent of the 9 Geo. II.; and will afterwards consider whether that statute affords any argument in behalf of the defendant?”

“Offences proper to be taken into consideration.”

“1. The offence of running or landing prohibited goods.

2. The offence of running or landing goods, liable to the payment of customs and duties, before the customs or duties are paid.

3. The offence of relanding or landing again goods, on which a drawback has been allowed, upon their being entered for exportation.”

“And we are of opinion, that the two first offences are discharged and pardoned, by the 18 Geo. II.—But the last is not, which is the offence charged in the Information, and is confessed by the defendant’s demurrer.”

“The reasons for our opinion are:—We think that these three offences are very distinct and different from each other.”

“1. As they are always described by different words.

2. As they are made offences by different acts of Parliament, and different penalties are inflicted on them.

3. As they are in their nature very distinctly different from each other.”

1. They are described by different expressions.

“The first is described the *running or landing prohibited goods*.”

“The second, the running, unshipping, or landing goods liable to the payment of duties, before the duties are paid or secured, and which, for shortness sake, is generally called, “*the running or landing uncustomed goods*.”

The *third*, which is the present offence, on the 8 Anne, in this

GROSSET
v.
OGILVY.

and all the other statutes, which make any mention of it, it is the landing again, or relanding goods not prohibited, for which the duties have been paid, but which duties have been paid back again, on their being entered for exportation, and on an express agreement that the goods shall be *bona fide* exported, and that they shall not be relanded in any part of Great Britain, that constitutes the offence; and it is usually called, *the relanding of certificate goods*; because the drawbacks are paid, or allowed on producing proper certificates."

"2dly, Those are made offences by different acts of Parliament, and different penalties are inflicted upon them, as appears by the two acts which have been cited by the counsel, particularly by the 8 Anne, by which, if persons are guilty of the offence in question, the goods themselves are forfeited, the offenders to pay double the amount of the drawback, and to suffer six months imprisonment."

"3dly, When those offences come to be considered, they are as different in their nature as possible, the last is much more heinous than either of the others."

"The two first are not *mala in se*, but only *mala prohibita*; but the offence under your Lordships' consideration, is not only *malum prohibitum*, but plainly *malum in se*."

"It is receiving money of the crown, on an agreement to do a particular thing, and then not doing it; but acting clandestinely, in direct contradiction to the agreement, which is a cheat on the Crown and the public; and is generally attended with something worse; for the person who commits this offence is generally perjured likewise."

"For by 4 and 5 Wm. and Mary, c. 15 and 11: The owner of the goods, or the person who is to be concerned in the direction of the voyage, must take care that the goods shall be *bona fide* exported and not landed again."

"By what I have said, I think it is plain that the offence is not within the words or the meaning of the 18 Geo. II. They are certainly not prohibited goods, for they were lawfully imported, and paid the customs. And, for the same reason, they are not goods liable to be seized for not paying customs, they having paid them already, and they cannot be liable to pay them again, because it was agreed that they should never again be brought into Great Britain."

"The only other words in the act, which can possibly relate to the offence in question, are, landing goods without the presence of an officer; and those plainly cannot be such, because the agreement is, that the same shall never be relanded; and if an officer was to be by when those were relanding, yet the offence would be just the same."

"And as this offence is not within the words, so it is as clearly not within the meaning of the act; for the meaning of the act was, to reclaim, if possible, some sturdy stout fellows, who might make useful seamen in his Majesty's navy; but those who are guilty of those sorts of frauds are seldom of this sort. Besides, it can never

be imagined that the legislature intended to pardon a notorious cheat, much less a cheat attended with perjury, which is a crime of so very heinous a nature, that it is expressly excepted out of all the Acts of Grace which can possibly extend to it."

"I think, therefore, that it may as well be said, if an Act of Grace was to pass, pardoning robbery, burglary, and saying nothing of murder, that murder was within the meaning of such an act, as to say that this offence is within the meaning of the 18 Geo. II."

"What was said, that this act is to be construed most beneficially for the subject, can have no weight in the present case, because, considering the nature of those crimes which are pardoned by this act, it certainly ought to be construed strictly, and, besides, it is plain that it was the intent of the legislature that it should be so construed, because the words *most beneficially for the subject*, though (as the plaintiff's case rightly observes) they are in all the other Acts of Grace since the Restoration, are omitted in this."

"I shall now take notice of the act 9 Geo. II.; and, we think, upon considering it, that it affords no argument on the part of the defendant. After just the same words as there are in the present act, are those words, "or for making any false report or entry of the "landing of any ship or vessel, inwards or outwards."

"Now, entering the goods of a ship for exportation, to parts beyond the sea, which are intended to be relanded in Great Britain, is certainly a false entry, and for that reason this exception is put in afterwards."

"Leaving to his Majesty, his heirs, &c., all debts, dues, and demands, due or owing to his Majesty, for, or in respect of any sum or sums of money, by him or any of his predecessors, at any time paid, on any debenture or debentures, certificate or certificates, where such debenture or certificate was wrongfully or fraudulently obtained, or where the same debenture afterwards became void, by the landing of the goods therein mentioned."

"Now, as the legislature plainly had this act in their view when the 18 Geo. II. was made, because it is copied almost *verbatim*, till it comes to those words, *or for making any false report, &c.*; these seem to be purposely omitted, lest there should be a pretence that this offence was pardoned by the Act 18 Geo. II."

"And, as a further proof that it was not intended to be included in that act, the saving clauses are likewise omitted."

"For these reasons, we are all of opinion, that the offence stated in the question proposed to us, is not released or discharged by the 18 Geo. II."

It was therefore ordered and adjudged, that the judgment below be reversed with costs.

For Plaintiff, *Sir D. Ryder, Wm. Murray.*

For Defendant, *A. Hume Campbell, K. Evans.*

Note.—This case unreported in Court of Session.