Privy Council Appeal No. 30 of 1996

Richard Simmonds *Appellant*

v.

The Queen *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.
Delivered the 13th October 1997

Present at the hearing:-

Lord Browne-Wilkinson
Lord Slynn of Hadley
Lord Nicholls of Birkenhead
Lord Steyn
Lord Clyde

*[Delivered by **Lord Slynn of Hadley**]*

By information No. 6678/92 the appellant was charged with "knowingly harbouring [on 29th October 1991] restricted goods to wit: one Honda Accord motor car and one Nissan Pathfinder motor vehicle contrary to section 210 of the Customs Act" of Jamaica. He was tried with two other men on that and other charges under section 210(1). He was convicted of "knowingly harbouring" the cars on 22nd September 1993 after a trial covering some 14 days and a penalty of treble the value of the goods ($5,043,174), alternatively three years hard labour, was imposed. His appeal against conviction was dismissed by the Court of Appeal on 13th February 1995 but he was given leave to appeal to Her Majesty in Council.

The questions arising for which leave was sought were (1) whether the charge of knowingly harbouring restricted goods in contravention of section 210 of the Customs Act requires a specific intent that is, with intent to defraud Her Majesty

of any duties thereon or to evade any restriction applicable to such goods, and (2) where in the charge of harbouring restricted goods no specific intent was alleged (a) was the information defective and (b) was the "conviction bad where the court made no finding and the evidence showed both the non-payment of required duties and an avoidance of the restriction?".

To appreciate the problem which arises it is necessary to set out the sub-section in full:-

> "210.-(1) Every person who shall import or bring, or be concerned in importing or bringing into the Island any prohibited goods, or any goods the importation of which is restricted, contrary to such prohibition or restriction, whether the same be unloaded or not, or shall unload, or assist or be otherwise concerned in unloading any goods which are prohibited, or any goods which are restricted and imported contrary to such restriction, or shall knowingly harbour, keep or conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods, or shall knowingly acquire possession of or be in any way knowingly concerned in carrying, removing, depositing, concealing, or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods, or shall be in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any import or export duties of customs, or of the laws and restrictions of the customs relating to the importation, unloading, warehousing, delivery, removal, loading and exportation of goods, shall for each such offence incur a penalty of five thousand dollars, or treble the value of the goods, at the election of the Commissioner; and all goods in respect of which any such offence shall be committed shall be forfeited."

There is no issue as to whether these motor vehicles were restricted goods for the purpose of the section; they could only be imported on a licence issued by the Trade Board and it was not suggested that such a licence had been granted.

The evidence which the Resident Magistrate apparently accepted was that the two vehicles were imported in a container purporting to come from David Patterson Sports

Wear in New York for delivery to J.D. Manufacturing Co. Limited in Jamaica. The documents relating to the shipment purported to show that the contents of the container were clothing accessories. The latter company's business involved the importation of raw materials and accessories required for the manufacture of garments which would be exported and the fact that the goods would be exported meant that the imported material and accessories came in free of duty. The vehicles were not imported as part of the company's business.

The container was cleared from the wharf and taken to 25 Mannings Hill Road and then to 183 Border Avenue which was occupied and owned by the appellant. The magistrate found that the driver of a wrecker engaged in transporting the vehicles saw and spoke with the appellant at 25 Mannings Hill Road on 29th October 1991 and that the appellant had lied when he said that he never went to Mannings Hill Road on that date and that he did not speak to the driver about the wrecker's fees. He also found that the appellant had instructed Roy Robinson, a gardener, to clean the two cars when they were at the appellant's premises at 183 Border Avenue. Evidence was given by a detective that he had seen the appellant and the two vehicles there on 29th October. On this material it was not contended that the magistrate could not properly have found that the appellant physically "harboured" the two cars.

In the Court of Appeal the argument centred on the appellant's contention that in the absence of any allegation or finding of the specific intent "to defraud Her Majesty of any duties due thereon, or to evade any ... restriction of or applicable to such goods" the necessary mens rea was missing and the convictions accordingly bad. The Court of Appeal rejected this contention and held that:-

> "The mens rea lies in the knowledge that the restricted goods are possessed. Defences to this charge are:
>
> (a) lack of possession
>
> (b) lack of knowledge of possession
>
> (c) the restriction on the goods has been removed by a valid licence issued for their importation and compliance with the requirements of the licence.
>
> ...

> Neither intent [relied on by the appellant] was a necessary ingredient of the charge and the evidence in this regard led by the prosecution was part of the body of evidence which traced the goods from the pier to where they were harboured."

Section 210(1) contains a number of different offences which the Court of Appeal in the present case divided into five groups which in summary are as follows:-

(1) the first is the importation or bringing into the Island of prohibited goods and of goods the importation of which is restricted;

(2) the second is the unloading of prohibited or restricted goods;

(3) the third category (which includes the present case) is the knowingly harbouring or keeping of prohibited, restricted or uncustomed goods;

(4) the fourth is knowingly acquiring possession of or being in any way knowingly concerned in carrying, removing or in any manner dealing with any goods with intent to defraud Her Majesty of any duties due thereon or to evade any prohibition or restriction of or applicable to such goods;

(5) the fifth is in any way being knowingly concerned in any fraudulent evasion or attempt at evasion of any customs duties, or of the laws and restrictions of the customs relating to the importation, unloading (etc.) of goods.

The appellant contends that the Court of Appeal were wrong to divide the section in this way. The words "with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods" are to be read as part of each of the offences specified in the first four groups.

In this appeal the precise question is whether the words of intent set out in group (4) are also part of the offence in group (3). Although it is perfectly possible that the sub-section should have made them part of group (3) but not of groups (1) and (2), there is for this purpose nothing in the structure of section 210 to distinguish between groups (1), (2) and (3).

The question thus in effect becomes whether the words of intent apply only in group (4) or to all the preceding offences.

The question is not without previous judicial authority.

In *Frailey v. Charlton* [1920] 1 K.B. 147 the defendant was charged with knowingly harbouring on board a vessel lying in the River Thames tablets of soap, the export of which was prohibited, contrary to section 186 of the Customs Consolidation Act 1876. That section is substantially in the same terms as section 210 of the Jamaican Customs Act save that, in what in the present case has been called group (4), the reference in section 186 of the English Act is to "any such goods" (i.e. any prohibited, restricted or uncustomed goods) and not, as in section 210 of the Jamaican Act, to "any goods". The magistrate found that the defendant had no intention to evade the prohibition and acquitted him. The Divisional Court on a case stated held that on such a finding the defendant could not be convicted of an offence under section 186. Lord Reading C.J. said at page 152:-

> "Now I cannot read s. 186, more especially when I find it, as I have said, in a group of sections for the prevention of smuggling, without coming to the conclusion that an offence is not committed under it unless the act complained of is done with intent to defraud the revenue of customs duties or to evade a prohibition against export as the case may be."

Lord Reading C.J. rejected the contention that the words of intent in group (4) were to be read only with the words which immediately preceded them. He referred to the words of group (1) and said at pages 152-153:-

> "Those words are of most general application, and if they are to be read as standing alone, without reference to the later restriction as to an intent to defraud or evade, the result would be that an innocent labourer who helped to unship a barrel or an innocent merchant who took delivery of it on the quay side, provided he knew what the particular goods were with which he was dealing, would be liable to be convicted notwithstanding that he was entirely ignorant of the fact that there was a prohibition or restriction upon their import. I come to the conclusion that the words 'with intent,' etc., must be read as applying to all the

> various offences created in the earlier parts of the section including that with which the respondent is charged. Any other interpretation would be doing violence to the language. In my view the meaning of the Legislature was that no person should be convicted of an offence under that section or be subjected to the serious penalty which it imposed, unless the act complained of was done with intent to defraud His Majesty of duties and to evade the prohibition or restriction applicable to the goods."

Darling J. and Avory J. were of the same opinion.

Frailey v. Charlton was concerned, as is the present case, with group (3). The principle was followed in *Rex. v. Franks (Note)* [1950] 2 All E.R. 1172 on a charge under section 186 of "importing prohibited goods" i.e. group (1). The case is not fully reported but it seems that the court applied *Frailey v. Charlton* holding that "the count on which the appellant was convicted was bad because it did not contain an allegation that what he did was done with intent to evade the prohibition imposed".

In *Rex. v. Cohen* [1951] 1 K.B. 505 the charge was of "knowingly harbouring certain uncustomed goods ... with intent to defraud His Majesty of the duties thereon, contrary to section 186" of the Act of 1876. The case is reported on the question of burden of proof in respect of which the appellant alleged a misdirection. In addition, although *Frailey v. Charlton* was not referred to, Lord Goddard C.J. said at page 506:-

> "Apart from an attempt to defraud (which we will consider separately), the offence consists in knowingly harbouring uncustomed goods, which in our opinion means that the accused person knowingly harboured goods and also knew that they were uncustomed. To prove a conscious harbouring it would usually be enough to show that goods which were subject to duty were found in the possession of the accused person."

He added at page 508 "Another ingredient of the offence is the intent to defraud, and of this the jury should be reminded". He then considered how such intent might be inferred.

It is, however, to be noted that in *Cohen* the point in the present case was not in issue, it being accepted by the appellant and by the prosecution that an intention to defraud was part of the offence.

In *Da Silva v. Abrams* (1969) 14 W.I.R. 315 the Full Court of the High Court of Guyana held that the words "with intent to defraud ... or to evade" in the equivalent of group (4) were not part of group (3) on a charge of knowingly harbouring, since the groups, separated by semi-colons and by the word "or", were to be read disjunctively. That approach was rejected by the Guyana Court of Appeal on the basis that when the relevant legislation had been adopted in Guyana the language was substantially the same as in the English legislation and should be interpreted in the same way as it had been interpreted in *Frailey v. Charlton*.

On the other side their Lordships have been referred to two cases. In *Rex. v. Aschendorf* (1947) 5 J.L.R. 74 the Court of Appeal of Jamaica in considering section 205 of the Customs Law 34 of 1939, now section 210 of the Customs Act, ruled that the words "with intent to defraud His Majesty of any duties" which are in group (4) did not form part of a charge of "knowingly keeping" any prohibited goods which is in group (3).

In *Reg. v. Barbar* (1973) 21 W.I.R. 343 the defendant was charged under section 205 with importing certain prohibited goods. The Court of Appeal, after a review of the history of the legislation and the terms of section 205, concluded that the words of intent in group (4) were not to be read with the words in group (1) of importing prohibited goods. These were distinct offences and unlawful importing was an offence involving strict liability. Luckhoo P. rejected the contention that the Jamaican legislature intended section 205 to have the same meaning as that adopted in section 186 of the English Act of 1876 in *Frailey v. Charlton* or that they were bound by that decision. The learned President attached importance to the fact that there existed in section 159 of the Jamaican Customs Consolidation Law of 1877 (as in section 234 of the English Customs Consolidation Act of 1853 (16 & 17 Vict. c. 107)) a provision creating a separate offence of unshipping or otherwise carrying or concealing any goods liable to forfeiture which was clearly an offence of strict liability and did not contain words to the effect "with intent to defraud Her Majesty of such duties". Where

those words appear in section 157 of the Jamaican Law of 1877 and in section 232 of the English Act of 1853 they appeared in juxtaposition to the words "or in any manner dealing with any goods liable to duties of customs". Moreover in the forms of information contained in Schedule B to the Jamaican Law of 1877, as in the forms of information set out in Schedule B to the English Act of 1853, the only count in which an intent to defraud of duties was required to be alleged was that which charged a "dealing" with any goods liable to duties of customs; a charge of harbouring was not required to allege an intent to defraud (see counts 16 and 18 in Schedule B to the 1877 Law and to the 1853 Act).

At page 352 Luckhoo P. said:-

> "I would therefore conclude in the light of the proper construction to be applied to the provisions of s. 157 of the local 1877 Law that a person concerned in importing or bringing into Jamaica (and this would include the actual importer) any prohibited goods contrary to the prohibition imposed would have been found guilty of an offence without proof of an intent to evade the prohibition."

There is thus a clear conflict between the decision in *Frailey v. Charlton* in the Divisional Court in England in 1920 and in *Reg. v. Barbar* in the Jamaican Court of Appeal in 1973. This appeal comes of course from the Court of Appeal of Jamaica and concerns Jamaican legislation but their Lordships pay respect to decisions of the English courts where the precise point has been in issue. In this case it is not possible to distinguish the two decisions and their Lordships must choose between the conflicting interpretations of the legislation.

Lord Reading C.J. in *Frailey v. Charlton (supra)* was very concerned at page 153 that if group (1) constituted an offence of strict liability it would mean that an innocent labourer who helped to unship a barrel would be liable if he knew what were the goods with which he was dealing even if he was "entirely ignorant of the fact that there was a prohibition or restriction upon their import". Darling J. at page 154 thought it unacceptable that one concerned in the unshipping would not be protected by showing that there was no intention to try to evade the prohibition whereas one "concerned in carrying removing or depositing" would be

protected by proving such lack of intention. The way to avoid those consequences they saw as being to read the words of intent in group (4) as also being part of group (1).

Mr. Dingemans submitted that on the basis of *Sweet v. Parsley* [1970] A.C. 132, as Fox J.A. in *Barbar* considered, at pages 361-363, this result would not flow since the words in the section creating the offence would be read subject to the implication that a necessary element in the offence is the absence of a belief held honestly and upon reasonable grounds in the existence of facts which, if true, would make the act innocent. This point has not been fully argued and in any event does not arise in the present case where the charge is of knowingly harbouring. That in itself requires that the court should be satisfied that the defendant knew the nature of the goods he was harbouring, and in their Lordships' view, though this point also has not been fully argued in this case since it does not directly arise, that the defendent knew that they were prohibited, restricted or uncustomed goods (see e.g. *R. v. Hussain* [1969] 2 Q.B. 567 and Lord Goddard C.J. in *Cohen* [1951] 1 K.B. 505 at page 506). In the present case it was not contended that the appellant did not know what the goods were or that they were restricted goods imported without a permit. On the contrary, as their Lordships understand it, it was accepted that he did know. This was clearly an offence under this section unless the appellant is right in saying that the information must allege and the court find that he did so with one or other of the intents spelt out in group (4).

Since the penalty for all these offences in section 210 is the same, it is understandable that the draftsman put them all together in the interest of brevity. Doing so does, however, produce the question which has arisen in this case - how far, if at all, do the words of intent in group (4) apply to the offences in the other groups and particularly in group (3).

It is clear that group (5) is a separate group from the others, the words being "knowingly concerned in any fraudulent evasion" not simply providing an alternative form of intent to the two forms of intent set out in group (4) (i.e. with intent to defraud Her Majesty or to evade any prohibition) but constituting an independent offence. These words do not therefore apply to group (3).

As to the words "with intent to defraud ... or to evade" it is relevant to consider the structure, the purpose and the history of the legislation.

As to the structure it is to be noted that each group begins with the word "shall", preceded after the first group by a comma and the word "or" and it is this which separates the groups. Their Lordships do not attach any importance to the fact that a comma is used in this legislation rather than a semi-colon as in the English Act of 1876. The separation by ", or shall" of group (3) from groups (1) and (2) is in their Lordships' view *prima facie* indicative that separate self-contained groups are being defined unless there are words at the end of the sub-section which are clearly intended to apply to all groups. That is clearly so for the last five lines beginning "shall for each such offence incur a penalty" where obviously the word "or" is not included. The words of intent in what has been called group (4) do not have any express indication that they are to apply throughout - e.g. "and in respect of all acts hereinbefore specified with intent to defraud Her Majesty of any duties due thereon". *Prima facie* therefore it seems to their Lordships that the groups are separate groups.

As the Court of Appeal's classification in the present case shows, the first four groups are dealing with different stages of the handling of importing goods - in summary (1) importing, (2) unloading, (3) harbouring or concealing, (4) acquiring possession or carrying.

On the face of it these groups are dealt with differently. In the first place in groups (1) and (2) the word "knowingly" does not appear and if they are read alone then they are offences of strict liability subject to a defence based on *Sweet v. Parsley (supra)* being available. There does not seem any valid reason why "knowingly" should be read into groups (1) and (2). In groups (3) and (4) the word "knowingly" does appear and effect must be given to it. In group (4) it is clear that in addition to it being alleged that the defendant did the act knowingly it must also be shown that he was concerned in carrying, or in any way dealing with, the goods with intent to defraud Her Majesty of any duties or to evade any applicable prohibition or restriction.

In the second place there is a difference between the type of goods covered. Groups (1) and (2) deal with prohibited

goods or goods imported contrary to a restriction; group (3) deals with "prohibited, restricted or uncustomed goods". Group (4) is significantly different. The offence is in carrying or in any matter dealing with "any goods". If it stopped there trade would be stifled. It was therefore necessary and intended to provide a specific mental element to limit the words - i.e. "with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods". Whether these words were intended to apply to the earlier groups is debatable; whether they were necessary in the earlier groups in order to create an offence is plainly not debatable. The limitation to prohibited or restricted goods is already expressly spelt out.

It seems to their Lordships that, these offences being directed not only against the bringing in but also against the subsequent dealing with goods which for revenue and economic or other policy reasons it was wished to curtail or prohibit, it could, for good reason, have been decided to adopt a different test for each activity. The primary task is to stop the importing and unloading of goods which are prohibited; it is wholly intelligible that it should have been wished to make this an offence of strict liability. Moreover section 210(1) provides for the forfeiture of "all goods in respect of which any such offence shall be committed". If the legislature has prohibited, or authorised a prohibition of, the importation of specific goods there seems no reason why such forfeiture should be limited to cases where the goods were imported with intent to evade duties or the prohibition. The not unreasonable message is "if you import at all you commit an offence and you will lose the goods".

"Harbouring" or "acquiring possession" of the goods may take place soon, or a considerable time, after the importation and unloading of the goods. The person, in whose possession the goods are, may have acquired them in circumstances which gave no indication either as to their nature or as to the fact that they were prohibited or uncustomed goods. It is thus reasonable to limit the offence to those who harbour or acquire possession "knowingly".

Section 210 of the Customs Act was formerly section 205(1) of the Customs Law (No. 34 of 1939) of Jamaica which, as Luckhoo P. said in *Reg. v. Barbar supra* at page 348:-

> "... appears to have been modelled on the English Customs Consolidation Act 1876 (39 & 40 Vict. c. 36) the provisions of s. 186 of which were in part enacted as s. 205(1) of the local 1939 Law with such consequential changes as were considered necessary."

This provision, without differences significant for present purposes, was to be found in section 160 of the Customs Consolidation Law Cap. 176 in its original version dating from 1877.

If in section 186 of the English Act or its predecessors the offence of "harbouring" included as a necessary part an intention to defraud of duties or to evade a prohibition there would be much to be said in favour of regarding the intention to defraud or evade as being part of the offence of harbouring in the present Jamaican Act.

In section 186 of the English Act of 1876 the language is not identical with section 210 of the current Customs Act. Other offences are included in section 186. What is group (3) in section 210 reads in section 186:-

> "Or shall knowingly harbour, keep, or conceal, or knowingly permit or suffer or cause or procure to be harboured, kept or concealed, any prohibited, restricted or uncustomed goods or any goods which shall have been illegally removed without payment of duty from any warehouse or place of security in which they may have been deposited ...;"

What is now in group (4) in section 210 reads in section 186:-

> "Or shall knowingly acquire possession of any such goods; or shall be in any way knowingly concerned in carrying, removing, depositing, concealing or in any manner dealing with any such goods with intent to defraud Her Majesty of any duties due thereon or to evade any prohibition or restriction of or applicable to such goods ...;"

"Acquiring possession" is thus dealt with differently but for the rest it is the same save that the words are separated by a semi-colon rather than by a comma. As has already been said their Lordships do not attach importance to that. Moreover the provision for a penalty is different in section 186. The person committing an offence "shall for each such offence

forfeit either treble the value of the goods including the duty payable thereon or £100 at the election of the Commissioners of Customs.". There is no provision that the goods shall be forfeited.

There is, however, no significant difference for present purposes between section 210 of the Customs Act and section 186 of the Customs Consolidation Act of 1876.

Section 186 of the Act of 1876 replaced section 232 of 16 & 17 Vict. c. 107 of 1853. In section 232 the words in group (3) are same as in section 186 of the 1876 Act. Group (4) is the same as in section 186 save that the words of intent are only "with intent to defraud Her Majesty of such duties or any part thereof".

In section 46 of an Act for the Prevention of Smuggling 8 and 9 Vict. c. 87 (1845) it is provided that every person:-

> "... who shall, either in the United Kingdom or the Isle of Man, unship or assist or be otherwise concerned in the unshipping of any Goods which are prohibited .... or who shall knowingly harbour, keep or conceal, or shall knowingly permit or suffer to be harboured, kept or concealed, any Goods which shall have been illegally unshipped without Payment of Duties, ... or to whose hands and possession any such prohibited or uncustomed goods shall knowingly come, ... shall forfeit either the Treble Value thereof, or the Penalty of One hundred Pounds at the Election of Commissioners of Her Majesty's Customs."

Once again here the relevant qualification in relation to harbouring is "knowingly" and not with intent to defraud Her Majesty or to evade a prohibition.

In section 44 of 3 and 4 William IV c. 53 (1833) entitled "An Act for the Prevention of Smuggling" the wording is for present purposes the same save that instead of "unship or assist in or be otherwise concerned in the unshipping" in section 46 of the Act of 1845 as already quoted the words are "assist or be otherwise concerned in the unshipping".

In 1825 Parliament enacted 6 Geo. IV c. 108 which recited that because the laws of customs had been so complex new laws should be adopted in a more compendious form and that all laws relating to smuggling

should be repealed and replaced by that Act. In section 45 it was provided that persons who "assist or be otherwise concerned in the unshipping of any goods" which are prohibited or on which duties have not been paid shall forfeit treble the value. The word "knowingly" is not included. The section goes on to provide that a person who shall "knowingly harbour, keep or conceal etc." goods illegally unshipped without payment of duties or contrary to a restriction or prohibition shall forfeit treble the value thereof. There is thus a distinction between the strict offence of unshipping and the offence of harbouring which requires proof of knowledge. In neither case, however, is there any requirement that it shall be proved that there was an intent to defraud His Majesty of the payment of duties or to evade a prohibition or restriction relative to the goods. The section does not, moreover, include the offences which are now contained in what had been called groups (4) and (5).

Thus the wording has been changed from time to time since this fundamental revision of the legislation in 1825. It is also clear that in regard to some of the acts included in section 210 different tests have been provided in different statutes. Thus despite the provision of section 46 of the 1845 Act, on the prevention of smuggling (supra), in section 13 of 8 and 9 Vict. c. 86 of 1845 entitled "An Act for the General Regulation of the Customs" it is provided that "every person knowingly concerned in the unshipping or carrying of such goods, or to whose hands and possession such goods shall knowingly come, contrary to such Rules, Regulations, and Restrictions shall" pay £100 or treble the value of the goods. Although here there is a requirement that the unshipping and the possession shall occur knowingly before the fine can be levied there is no reference to any intent to defraud of duties or evade a prohibition.

No other forerunner of this legislation has been suggested which included expressly the words "with intent to defraud ... or to evade" now to be found in group (4) as part of the offence of "harbouring" in group (3).

In the premises it is the view of their Lordships that there is nothing in the structure or in the purpose of section 210, or in the history of the relevant provision as to "knowingly harbouring", which requires that the words "with intent to defraud Her Majesty of any duties due thereon, or to evade any prohibition or restriction of or applicable to such goods"

be read as part of the offence of "knowingly harbouring any prohibited, restricted or uncustomed goods". It was therefore not necessary to allege them in the information and the trial judge was not obliged to find as a fact that they had been established before he could convict of "knowingly harbouring".

This view, as has already been said, is in conflict with the decision of the Divisional Court in *Frailey v. Charlton* where the Divisional Court did not, as it seems from the report, have the advantage of the detailed arguments addressed to their Lordships in the present case nor the analysis of the Jamaican Court of Appeal in *Barbar*. Their Lordships consider the approach in the latter case to be the right one.

The issue in the present case does not, however, now arise directly in the English legislation since section 170(1) of the Customs and Excise Management Act 1979 makes it an offence for any person to be concerned in harbouring prohibited goods who "does so with intent to defraud Her Majesty of any duty payable on the goods or to evade any such prohibition or restriction with respect to the goods", thus giving statutory effect to the result arrived at in *Frailey v. Charlton*. This has not been done in Jamaica and perhaps not elsewhere where the earlier English legislation was taken as a model.

Their Lordships accordingly consider that the Court of Appeal came to the right conclusion and will humbly advise Her Majesty that the appeal should be dismissed.