

THE UNITED STATES OF AMERICA AND THE INSULAR COLLECTOR OF CUSTOMS, PLAINTIFFS AND APPELLANTS, VS. THE STEAMSHIP “RUBI,” REPRESENTED BY WARNER, BARNES & CO. (LTD.), GENERAL AGENT...

G.R. No. 9235. November 17, 1915

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal by the United States and the Insular Collector of Customs from a judgment of the Court of First Instance of Manila dismissing the petition of plaintiffs for a judgment confirming the action of the Insular Collector of Customs in imposing an administrative fine on the steamship Rubi for bringing unmanifested cargo into the port of Manila. The case was submitted for judgment on an agreed statement of facts the substance of which is set forth in the opinion of the trial judge, as follows:

"From this statement of facts I find that on the 9th day of February, 1913, the defendant steamer arrived in the city of Manila from a coastwise port but while on a continuous voyage from the foreign port of Hongkong.

"That at the time of her arrival in the port of Manila she had on board concealed in an unknown place 13.380 kilos of opium and 2.620 kilos of morphine.

"That at the same time the steamer had other cargo which was duly manifested as required by law, and that the said opium and morphine were not manifested.

"That while the steamer was lying in the harbor two members of the steamer's crew, one known as a 'coal passer' and the other as a 'donkey man,' attempted to discharge the opium and morphine from the vessel but in doing so delivered it to secret service agents of the Bureau of Customs.

"That thereupon the defendant steamer was seized and the Collector of Customs imposed a penalty of P500 on account of the violation of section 77 of Act No. 355, the usual proceedings having been followed in imposing the penalty."

The trial judge dismissed the petition on the ground that "there was no knowledge on the part of the master of the vessel of the opium and morphine, and so far as he was concerned it was not cargo. He being the master of the vessel, who should make manifests of all cargo, could not manifest that which he did not know of, and the vessel could not know more or have knowledge of more than he had, for his knowledge was that of the vessel.

"In order to bring the vessel within the penalizing clause of this law it would be necessary to show some knowledge and intent for the carrying of unmanifested cargo, or such carelessness as to create the presumption of knowledge or intention, which does not appear from the evidence in this case, but on the contrary the evidence clearly discloses that the defendant vessel, through its specific agent mentioned in the law, had no knowledge of such cargo. The law does not contemplate penalizing the inanimate vessel or its owner for doing that of which it had no knowledge."

In the recently decided case of the United States of America and the Insular Collector of Customs vs. The Steamship *Islas Filipinas*, represented by her owners *Fernandez Hermanos* (28 Phil. Rep., 291), wherein the facts were very similar to those stipulated in the court below, we ruled adversely to most of the contentions of the appellee in this case, at the same time sustaining contentions which are substantially identical with those upon which the present appellants rest their appeal. In the former case, however, no real question arose as to the fact that the unmanifested cargo came from a foreign port; and it clearly appeared that the captain of the vessel willfully, and with intent to smuggle and to import prohibited drugs into the Philippine Islands, omitted the goods from the manifest. The present case is to be distinguished from that case in that it is expressly stipulated that the time when and the place where the unmanifested goods were placed on board the *Rubi* were unknown to the defendants, these goods having been discovered on February 9, 1913, after the vessel, which had arrived in Manila from Hongkong on January 30, 1913, had touched, in the course of her voyage, at the ports of Mangarin, Iloilo, Cebu, and returned to Manila a second time; and further because it does not appear that the captain, or any of the officers of the *Rubi* had any knowledge of the presence of the unmanifested goods on the ship, these goods having been brought on board surreptitiously by two members of the crew, who attempted to land them in Manila without the knowledge and against the wishes of the owners, the captain and the other officers of the ship, and despite their diligent efforts to prevent the smuggling of such goods into the Philippine Islands.

The penalties were imposed by the Collector of Customs in both of these cases on charges of violations of the provisions of section 77 of Act No. 365, as amended by section 2 of Act No. 1235, which is as follows:

"Every vessel from a foreign port or place must, under a penalty of not exceeding five hundred dollars for failure, have on board complete written or typewritten manifests of all her cargo, signed by the master. All of the cargo intended to be landed at a port in the Philippine Archipelago must be described in separate manifests for each port of call therein. Each manifest shall include the port of departure and the port of delivery, with the marks, numbers, quantity, and description of the packages and the names of the consignees thereof. Every vessel from a foreign port or place must have on board complete manifests of passengers, immigrants and their baggage, in the prescribed form, setting forth their destination and all particulars required by the immigration laws; and every such vessel shall have prepared for presentation to the proper customs official, upon arrival in ports of the Philippines, a complete list of all ship's stores then on board, which must be certified thereto by the master thereof.

"Every vessel entering Philippine ports from a foreign port must carry manifests as hereinbefore provided, whether she carries cargo, passengers, or immigrants and their baggage, or not. If any such vessel does not carry cargo, passengers, or immigrants, the manifests must show that no cargo is carried from the port of departure to the port of destination in the Philippine Archipelago. Manifests in substantial compliance with these requirements shall be accepted, whether in English or in the language of the nation to which the vessel belongs. If in a language other than English, the master must furnish the number of translated copies required by the Collector."

Counsel for appellees vehemently contend on this appeal that the provisions of this section of the Act are intended to penalize "vessels for bringing unmanifested cargo into a port of the Philippine Islands from a foreign port," and insist that unless it affirmatively appears that unmanifested cargo was put on board in a foreign port and carried by the vessel into the Philippine Islands, the penalties provided in this section cannot be imposed. Emphasis is laid upon the language of the statute, which provides that:

"Every vessel from a foreign port or place must, etc.

"Every vessel from a foreign port or place must have, etc.

"Every vessel entering Philippine ports from a foreign port must carry manifests, etc.

"If such vessel does not carry cargo, etc.

"If any merchandise be found on board any vessel from a foreign port, etc."

Relying upon these provisions of the statute, counsel contend that: "The violation of this statute which is alleged in the present case consists of having brought certain opium and morphine from Hongkong to Manila on January 30, 1913, without the same having appeared on the manifests presented."

It will be seen however that while the penalty prescribed in section 77 of Act No. 355 can be incurred only by vessels "from a foreign port or place," there is nothing in the statute which justifies the inference that the penalties prescribed for having on board unmanifested goods are applicable only in cases where it affirmatively appears that such goods have been imported from abroad. Under the express terms of the statute the penalty may be imposed if any unmanifested cargo is found on board such vessels, and there is no provision, express or implied, which forbids its imposition in the absence of proof as to the place where or the time when such unmanifested cargo is placed aboard the vessel. Doubtless one of the purposes sought to be attained by penalizing the failure to manifest all cargo on board such vessels is to prevent the smuggling into the Islands of foreign goods; but it would tend largely to defeat this, as well as the other purposes and objects sought to be attained by the statute, if the penalty prescribed for having on board unmanifested goods could only be imposed upon the production of affirmative proof that such goods had been surreptitiously placed on board at some foreign port rather than upon the high seas or at any one of various ports at which vessels from foreign ports are permitted to touch in the Philippine Islands. In the very nature of things such proof would not be available in many if not most cases of violations of the statute. The surreptitious or unlawful importation or smuggling of goods into the Philippine Islands is severely penalized elsewhere in the statute, and the penalties prescribed in the section under consideration are not imposed for that offense but for the failure of the ship and its officers to comply with the regulations contained therein in regard to the manifesting of the cargo on board. In the absence of an express provision limiting the imposition of the penalty to cases wherein it affirmatively appears that the unmanifested goods had been placed on board at a foreign port, we would not be justified in holding that the Collector of Customs erred in imposing a fine for the violation of a statute requiring that all vessels from a foreign port or place should "have on board complete written or typewritten manifests of all her cargo, signed by the master," merely because he cannot produce evidence as to the place at which such unmanifested cargo was taken aboard the vessel.

It is contended that if the unmanifested goods were placed on board the Rubi at the ports of Mangarin, Iloilo, or Cebu, at which she touched before her return to Manila on February 9, 1913, when the fact that these goods were on board was first discovered, there might have been a violation of sections 136 and 137 of the statute, which provides for the manifesting of goods on board vessels licensed "for carrying on coasting trade in the Philippine Islands," but that there would have been no violation of the provisions of the above cited section 77 of the Act. We are of opinion, however, that while sections 136 and 137 are applicable to all vessels licensed for carrying on coasting trade within the Philippine Islands, the existence of those regulations is in no wise in conflict with the regulations contained in section 77 of the Act which require that "every vessel from a foreign port or place must, under a penalty of not exceeding one thousand pesos for failure, have on board complete written or typewritten manifests of all her cargo, signed by the master." So that if a vessel from a foreign port or place engaged in a continuous voyage is "licensed for carrying on coasting trade," and touches at various ports within the Islands, she is not thereby relieved from the duty of having her cargo duly manifested when she enters any such port. In this connection it may be proper to observe that while it affirmatively appears that at the time of the seizure the Rubi was a vessel from a foreign port or place, it does not appear whether she was or was not licensed to engage in the coasting trade in the Philippines.

In the former case, *United States vs. Steamship Islas Filipinas*, (28 Phil. Kep., 291), we held that the term "cargo" as used in section 77 of Act No. 355, as amended by section 2 of Act No. 1235, includes "all goods, wares and merchandise aboard ship which do not form part of the ship's stores," and in support of our ruling we relied in part upon the rulings in the case of *Phile vs. The Anna* (1 Dallas [U. S.] 202.) In the case at bar it is vigorously contended that this definition of the word "cargo" is too broad, and that it is unjust, unreasonable and against the principles announced in the case of *Phile vs. The Anna* (supra) to hold that it is intended to include such articles when it appears that they were placed on board a vessel without the knowledge or consent of the owners, the master or the ship's officers.

We are of opinion, however, that the language used in the former decision, while sufficiently inclusive for the purpose of the case then under consideration, is if anything too narrow rather than too broad if intended as a definition of the word "cargo" as used in the first paragraph of that section. Certainly this is true if the words "goods, wares and merchandise" are taken in the strictly technical and limited sense sometimes attributed to them in commercial law. Having in mind the context, and the purposes and objects sought to be obtained by the enactment of this statute, we are satisfied that the word "cargo" as used in the first paragraph of section 77 refers to the "entire lading of the ship which carries it" and includes all goods, wares, merchandise, effects, and indeed everything, of every kind or description, found on board, except such things as are used or intended for use in connection with the management or direction of the vessel and are not intended for delivery at any port of call, and except also, perhaps, "passengers or immigrants and their baggage." Manifests are required for "passengers or immigrants and their baggage," and the word "cargo" has sometimes been used with reference to passengers and immigrants (7 M. & G. 729, 744), but in view of the apparent classification of the kinds of manifests prescribed in the section under consideration into manifests of "cargo," and manifests of "passengers or immigrants and their baggage," we expressly reserve our opinion as to whether the word "cargo" in the first paragraph of this section was intended by the legislator to include the latter.

The evident intent and object of these requirements for the submission of manifests by all vessels from foreign ports is to impose upon the owners and officers of such vessels an imperative obligation to submit lists of the entire lading of the ship in the prescribed form, in order to facilitate the labors of the customs and immigration officers, and to defeat any attempt to make use of such vessels to secure the unlawfully entry of persons or things into the Islands. No exception is made in the statute, and the recognition of any attempt to read an exception into the statute could hardly fail to defeat the purpose of its enactment.

It is contended, however, upon the authority of the case of *Phile vs. The Anna* (supra) and of some decisions of inferior federal courts, that it would be a great injustice and not in accord with the spirit and intent of the law to penalize the owners or officers of a vessel for the failure to manifest goods found on board, which were brought aboard without their knowledge and despite the exercise of due diligence on their part to prevent it, and this especially when the goods thus found on board are of small value or such as might easily escape the vigilance of the ship's officers.

It is true that in the case of *Phile vs. The Anna* (supra), Governor Cushman (Fed. Case 5646) and in some other cases the courts have held or intimated that it could not have been the intention of the legislator to impose the penalty prescribed for breaches of the revenue laws under such circumstances. But we think that, on examination, it will be found that in these cases the rulings in this regard are based on the enormous disproportion between the penalty of forfeiture of the vessel which was sought to be enforced in these cases and the alleged mischief sought to be remedied. The reasoning on which those decisions rest is not, as we understand it, that the legislator could not have prescribed a penalty for any and every failure to manifest the entire cargo, but that the legislator could not have intended to prescribe the forfeiture of the vessel as a penalty for the unintentional omission of some trifle

from the ship's manifests, without the knowledge or consent of the owners and despite the exercise of reasonable diligence by the ship's officers.

In this jurisdiction, however, the penalty prescribed by the section under consideration is a fine of not more than \$500, so that, in the exercise of a sound discretion, the amount of the penalty imposed in each case may be and should be proportioned to the gravity of the particular violation of the statute on account of which it is imposed. Manifestly a penalty of this nature is not sufficient to sustain an implied exception to the general provisions of the Philippine statute such as the courts in some cases appear to have read into certain American statutes prescribing the forfeiture of the vessel for violations of their provisions.

There is nothing in section 77 of the Act which indicates any intention on the part of the legislator to limit the imposition of the prescribed penalty to cases where the captain or the ship's officers knowingly or willfully omitted any part of the cargo from the manifests. This section in unequivocal terms prescribes the imposition of the penalty in all cases of such omissions, and read together with section 303, which imposes penalties or forfeitures on the master of the vessels in such cases, it cannot be doubted that the intention of the legislator was to provide for the imposition of the prescribed penalties, whether such omissions occurred with or without the knowledge of the owner or the officers of the vessels. Section 303 is here inserted, because both by its terms and the nature of the penalties prescribed it makes very clear the intention of the legislator to penalize omissions from the ship's manifest, whether made with or without the knowledge of the owners, or of the ship's officers charged with the preparation of the required manifests.

"SEC. 303. Except as provided by the last preceding section, if any merchandise be found on board any vessel from a foreign port which is not included in her manifests, produced as required by this Act, the master shall forfeit an amount equal to double the duties fixed therefor: Provided always, That if it appears to the collector that such omissions occurred with intent to defraud the revenue, the master shall in addition forfeit an amount equal to the value of the merchandise not manifested, and all such merchandise belonging or consigned to the officers or crew of the vessel shall be seized and forfeited; but if such merchandise belongs to any other person acting in good faith the same shall be released upon payment of the regular duties and charges thereon. If any package or article named on the manifest be missing on the arrival of the vessel, or if the merchandise on board does not otherwise agree with the manifest delivered by the master, except as above prescribed, the master shall be liable to a penalty of not less than two hundred and fifty dollars and not more than two thousand five hundred dollars, and in addition an amount equal to the value of the said missing merchandise as ascertained by the collector of customs, unless the collector shall be satisfied that such deficiency or disagreement occurred without fraudulent intent, in which case said penalty shall not be inflicted: Provided, nevertheless, That if such disagreement or deficiency is found by the collector to be due to the carelessness, negligence, or incompetence of the master of the vessel, her owners, or agents, a penalty of not more than the value thereof may be imposed upon the master for each package missing or materially disagreeing in marks, character, or otherwise with the description thereof in the manifest.

"All penalties inflicted under the provisions of this section shall be forthwith reported to the Insular Collector with full particulars of the offense committed and of the previous conduct of the master in like matters."

Counsel for appellant cites us to certain cases decided in some of the inferior federal courts (U.S. vs. Stadacona, Fed. Case 16371; U. S. vs. Missouri, Fed. Case 15785) which hold, under the statutes relied upon in those cases, that where "no personal delinquency is imputable to the master," "a sense of justice to the master" forbids the imposition of the prescribed penalty as to him. We are of opinion however that in view of the express provisions of the Philippine statute, and of the nature of the prescribed penalties, and in view also of the manifest intention of the legislator to provide for the imposition of penalties for omissions from ship's manifests, whether made with or without the knowledge of the owner or ship's officers, we would not be justified in adopting and following the

reasoning of the decisions in those cases. The power of the legislator to prescribe such penalties is clearly sustained in the opinion of the Supreme Court of the United States in the case of *United States vs. Brig Malek Adhel* (43 U. S., 210) from which we cite the following:

"The next question is, whether the innocence of the owners can withdraw the ship from the penalty of confiscation under the Act of Congress. Here, again, it may be remarked that the Act makes no exception whatsoever, whether the aggression be with or without the cooperation of the owners. The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner. The vessel or boat (says the Act of Congress) from which such piratical aggression, etc., shall have been first attempted or made shall be condemned. Nor is there anything new in a provision of this sort. It is not an uncommon course in the admiralty, acting under the law of nations, to treat the vessel in which or by which, or by the master or crew thereof, a wrong or offense has been done as the offender, without any regard whatsoever to the personal misconduct or responsibility of the owner thereof.

"And this is done from the necessity of the case, as the only adequate means of suppressing the offense or wrong, or insuring an indemnity to the injured party. The doctrine also is familiarly applied to cases of smuggling and other misconduct under our revenue laws; and has been applied to other kindred cases, such as cases arising on embargo and non-intercourse acts. In short, the acts of the master and crew, in cases of this sort, bind the interest of the owner of the ship, whether he be innocent or guilty; and he impliedly submits to whatever the law denounces as a forfeiture attached to the ship by reason of their unlawful or wanton wrongs. In the case of *The United States vs. The Schooner Little Charles* (1 Brock. Rep., 347, 354), a case arising under the embargo laws, the same argument which has been addressed to us, was upon that occasion addressed to Mr. Chief Justice Marshall. The learned judge, in reply, said: 'This is not a proceeding against the owner; it is a proceeding against the vessel for an offense committed by the vessel; which is not the less an offense, and does not the less subject her to forfeiture because it was committed without the authority and against the will of the owner. It is true that inanimate matter can commit no offense. But this body is animated and put in action by the crew, who are guided by the master. The vessel acts and speaks by the master. She reports herself by the master. It is therefore not unreasonable that the vessel should be affected by this report.' The same doctrine was held by this court in the case of *The Palmyra* (12 Wheat. R., 1, 14) where, referring to seizures in revenue causes, it was said: The thing is here primarily considered as the offender, or rather the offense is primarily attached to the thing; and this whether the offense be *malum prohibitum* or *malum in re*. The same thing applies to proceeding in rem or seizures in the Admiralty."

As will be seen from the foregoing citation, as well as from the citations set forth in the former case (*U. S. vs. The Steamship Islas Filipinos*, *supra*), the doctrine is well established in pursuance of which the owner of a vessel may be made to suffer for the acts or omissions of the officers and crew, "without any regard whatsoever to the character or responsibility of the owner," from "the necessity of the case, as the only adequate means of suppressing the offense, or wrong." In many if not in most instances of violations of the provisions of section 77 of the statute it would be practically impossible to establish the connivance or willful participation of the master in the surreptitious lading of his ship with unmanifested goods, unless they were of such bulk as to render the inference of guilty knowledge irresistible. There would be but small prospects of success in the attempt to suppress the practice of carrying unmanifested goods on vessels from foreign ports by the imposition of penalties on the ship or the master, if the imposition of such penalties were made dependent on the production of affirmative proof that such omissions had been made knowingly by the master or that the unmanifested goods had been brought aboard with his connivance. Under such circumstances the legislator has seen fit to prescribe penalties in all cases where unmanifested cargo is found on the vessel, whether it appears that such cargo was placed on board with or without the consent or knowledge of the owners or ship's officers and despite the possibility of individual hardships in some instances. We are of opinion that there can be no real question as to the

power of the legislator to enact such legislation, and we are not greatly impressed by contentions of counsel based upon the alleged injustices and hardships which it is said must result from the rigid enforcement of the statute.

In the first place, it is always within the power of the ship's officers to render it extremely difficult if not practically impossible for members of the crew or other persons to conceal unmanifested goods on board ship. Their disciplinary control of the ship, the crew, and indeed of every person on board, if duly exercised, should render such concealments of unmanifested cargo rare indeed.

In the second place, we think that the danger of real hardship or injustice arising from the imposition of harsh or oppressive penalties under the provisions of sections 77 of the Act is substantially provided against by the discretion conferred upon the Collector of Customs under the supervision of the courts whereby he may impose any penalty, from an amount merely nominal up to a maximum of \$500.

We conclude that the judgment entered in the court below should be reversed, with the costs of this instance de oficio, and that the record should be remanded to the court below with instructions to enter the appropriate orders in accord with the prayer of the petition. So ordered.

Arellano, C. J., and Trent, J., concur.

Johnson, J., concurs in the result.

Torres and Araullo, JJ., dissent.

DISSENTING OPINION

MORELAND, J.:

I cannot agree to the doctrine laid down in this case. No authority has been found, or, in my judgment, can be found to support it.

There are several errors in the decision:

1. It fails to note that the statute provides two kinds of penalties, distinct and separate, imposed for distinct and separate acts and on different objects; the one for a failure to manifest cargo, section 77 of Act No. 355, in which case the penalty is imposed on the ship; the other for having on board unmanifested merchandise section 303 of Act No. 355, in which case the penalty is imposed on the master and not on the ship. The former offense (section 77) is found in the chapter of the statute headed "Entrance of vessels in foreign trade;" and deals (sections 76-110) exclusively with cargoes, the manifests, the language in which they shall be written, mailing of the manifests, unauthorized transfer of cargo, the entry of vessel into port, landing of cargo, the distinguishing of the cargo from the ship's stores, etc. etc. The latter offense deals exclusively with unmanifested merchandise, which is not cargo at all, and was never intended by anybody to be cargo. This offense (section 303) is found in the chapter of the statute headed "Fines, penalties, seizures and forfeitures." This chapter (sections 301—319) has nothing to do with cargo (except that it penalizes offenses committed against the cargo), but, so far as it affects property at all, deals exclusively with unmanifested merchandise which is not cargo and was never intended for cargo.

2. While citing both articles, section 77 and section 303, the decision does not note and therefore draws no conclusion from the fact that they relate to distinct offenses and does not make any effort to determine whether section 303 is not really the section that is applicable instead of section 77.

With the statute before us, with the two sections standing side by side, what reasons can there be (a) for holding section 77 applicable instead of section 303, and (b) for calling the opium in this case cargo instead of

unmanifested merchandise, if it is either, when the admitted fact is, stated in the decision, that it was the property and in the exclusive possession and control of two of the most menial members of the crew, whose sole purpose was to smuggle, and whose success lay in secrecy and stealth; and that neither the officers nor the owners of the ship had or could have had the slightest knowledge of the facts.

If there was an offense at all does it not fall within section 303, instead of section 77? Does it not require far more "straining" to bring the case within the latter than the former section? Why call opium, carefully hidden under the sole of a coal passer's shoe, cargo? Is it not more logical to call it unmanifested merchandise?

3. The decision inverts the rule which declares that an act will not be considered a penal act unless it clearly falls within the law defining penal acts; that an act will not be considered penal by construction. The decision in this case holds, in effect, that an act will be considered an offense unless it clearly appears from the statute that it is not. Section 77 punishes the failure of a ship to have on board a complete manifest of its cargo. Now, in order to convict the ship, it is necessary to hold that the opium hidden under the sole of a coal passer's shoe is cargo. The definition of the word cargo must be pressed to such extremes in order to convict. That, it seems to me, is not the way that penal statutes are construed and interpreted.

It must be remembered that the act of bringing in the opium in the manner described is not, in the ordinary meaning of the words, the act of the ship or the master. Neither one of them committed the act punished. No one but the coal passer had any knowledge of the facts. So that, in order to convict, it must not only be held that the opium was cargo but that the act of the coal passer was the act of the ship.

As to the inversion of the rule governing the interpretation of penal statutes, note this in the opinion:

"There is nothing in section 77 of the Act which indicates any intention on the part of the legislator to limit the imposition of the prescribed penalty to cases where the captain or the ship's officers knowingly or willfully omitted any part of the cargo from the manifests."

This indicates that the court was looking for an intention on the part of the legislature to exclude instead of include. The elementary and primary inquiry is "Does the statute clearly include?" Not "Does it exclude?"

The most that can be claimed from the cases cited in the decision is that the finding of unmanifested merchandise on board a ship is prima facie evidence of the knowledge of the master; but that may be overcome by satisfactory evidence. In the case at bar the presumption is made absolute by the decision. Innocence is no defense. In this case the complete innocence of the master and officers of all knowledge of the presence of the merchandise on the ship is expressly stipulated by the parties, yet the ship is convicted, and, necessarily, the master would be if the proceeding were against him. I can not understand a construction which produces so unjust results. The statute does not require it. There is not the slightest indication in the whole Act that it was intended to be an insurance Act by which transportation companies are required to insure the government against any loss which might result from the felonious acts of persons over whose criminal propensities and purposes the companies have no control. It nowhere appears in the Act that the intention of the Legislature was to make the owner of a ship, or the master thereof, liable, under such circumstances, for the criminal acts of members of the crew any more than it appears that it was the intention of the Legislature to make the Insular Auditor or Treasurer responsible for the crimes of theft, estafa, and robbery committed by their subordinates. There being nothing showing such an intention; the court, in order to convict, found it necessary, in effect, to add another provision to the statute which reads in substance: "In proceedings under this Act, it is immaterial that the owners and officers of the ship are innocent."

While the opium in question here was not a "pinch" and was not secreted under the sole of a coal passer's shoe, the result would be, under the principles and doctrine of the decision, precisely the same. For, if a pound of opium carried by a coal passer in any other place but in absolute secrecy is cargo, a pinch under the sole of his shoe

would also be cargo; for, under the decision, whether opium is cargo or not does not depend on where it is secreted or on how much there is of it but simply on the fact that it is on, the ship; and, if the admitted and stipulated innocence of the owners and officers is no defense, then it makes no difference where the opium is hidden, whether under a shoe or in a coal bunker (in fact it is of no consequence to the owners and officers whether it is hidden or not), as the difficulty of obtaining knowledge of its presence on the ship is of no significance. Under the decision liability attaches as fully and effectually whether the opium consists of a minute particle sealed up in the cavity of a tooth or a half ton lying openly on the deck. If opium on a ship is cargo, it is such whatever the quantity; and if innocence is no defense, it is of no consequence in what part of the ship the opium may be.

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