1915.

*Present:* De Sampayo A.J.

CASIE CHETTY *v.* AHAMADU.

*129—P. C. Colombo, 51,260*

*Medicine containing a trace of ganja—Is it an excisable article?—Possession of excisable article—Is* mens rea *necessary for conviction under section 43 of Ordinance No. 8 of 1912?*

A medicine imported from India containing "a trace of ganja" was held to be an excisable article within the meaning of the Excise Ordinance, No. 8 of 1912.

In respect of the acts made punishable by section 43 of Ordinance No. 8 of 1912, the absence of knowledge (*mens rea*) is no ground of defence.

THE facts are set out in the judgment.

*Tisseverasinghe*, for accused, appellant.—*Mens rea* is an essential ingredient in every offence. Actual knowledge need not in every case be proved. Proof of constructive knowledge may be sufficient. The mere absence of the words "knowingly," "wilfully," or "intentionally," or words to that effect in the clause of a statute creating an offence does not prevent knowledge being necessary. Such absence may and does affect the burden of proof, but not in all classes of cases. See *Regina v. Sleep.*[1] The offence was

[1] (1861) *30 L. J. M. C. 170.*

possession of Government naval stores marked with the broad arrow, in breach of section 2 of Acts 9 and 10, Will. 3, c. 41. The jury found they had not sufficient evidence before them to show that the prisoner knew that the stores were so marked, though he had reasonable means of knowledge. It was held that in the circumstances no conviction could be had. In reply to counsel's argument that the Legislature, on grounds of public policy, had thought fit to make the bare possession *primâ facie* an offence without proof of knowledge, Cockburn C.J. observed, " Does not that passage assume that the person who was possessed of the Government stores knew that they were Government stores?" See also *Hearne v. Garton et al.*, [1] *Nicholas v. Harne.* [2]

The presumption of the necessity of *mens rea* in the case of every offence may, however, be displaced by the words of the statute creating the offence or by the subject-matter with which it deals, as in the case of the Revenue Statutes, Adulteration Acts, Game Acts, &c. But even in these cases the absence of the word " knowingly " does not prevent knowledge being necessary. The only difference the presence or absence of that word makes is that knowledge must be proved by the prosecution in the one case and need not be proved in the other. *Sherias v. De Rutzen,* [3] *Townsend v. Arnold.* [4]

Section 50 of the Excise Ordinance goes no further than is indicated by these decisions. The accused has satisfactorily accounted for the possession of the article, and has thereby shifted the burden of proving " knowledge " on to the prosecution. The attempt to prove constructive knowledge on the part of the accused has failed.

Ganja under Notification 24 includes every part of the hemp plant, and therefore under section 3 " any preparation and admixture of the same." " A trace of ganja " cannot by any stretch of interpretation be said to include any part of the hemp plant or any " preparation or admixture " of the same.

Counsel also referred to *14 N. L. R. 349, 428: 15 N. L. R. 197; 2 Cur. L. R. 225.*

*V. Grenier, C.C.*, for respondent, not called upon.

*Cur. adv. vult.*

February 23, 1915. De Sampayo A.J.—

This is a prosecution under section 43 (*a*) of the Excise Ordinance, No. 8 of 1912, for possessing an excisable article, viz., ganja, in contravention of section 16 (3) of the Ordinance and the Notification No. 26 issued thereunder. Section 16 (3) empowers the Governor by notification to prohibit the supply to or possession by any person of any excisable article either absolutely or subject

[1] *28 L. J. Rep. (N. S.) W. C. 216.*
[2] *L. R. 8 C. P. 322.*
[3] *(1895) 1 Q. B. 918.*
[4] *75 J. P. 413.*

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to such conditions as he may prescribe. By Notification No. 26 dated February 18, 1914, the Governor prohibited absolutely the possession by any person of ganja, bhang, and every preparation and admixture of the same, and by the combined operation of the definitions of "intoxicating drugs" and "excisable article" in section 8 of the Ordinance any preparation and admixture of ganja is an excisable article, the possession of which under section 43 (*a*) is an offence. Now, the article in question in this case is a certain paste, and the Public Analyst detected in it "a trace of ganja." It was thereupon argued that this was not an excisable article. An article showing on analysis a trace of ganja, though it may contain but little of the drug, is still a "preparation and admixture of the same" within the meaning of the Ordinance and the notification issued thereunder. The argument on this point cannot, therefore, be sustained.

There is more substance in the next ground of appeal. The accused stated that he was a native medical practitioner, and had imported this medicine from India. He produced a catalogue of the pernicious kind of Indian medicines so widely advertised in Ceylon, and stated that this was the Cathur Jatha Rasayan mentioned there, and that he did not know that it contained ganja. Upon this it is argued for the accused that as there was no *mens rea* he could not be held to have committed the offence. It is undoubtedly true, as a general proposition, that a guilty mind is a necessary element in the constitution of a criminal offence. But there are many branches of social and municipal legislation in which an act is made criminal even without any *mens rea*. Many illustrations of this may be furnished from the English Public Health Act, the Food and Drug Act, and the Licensing Act. The principle underlying such legislation is that public health is paramount, and that any individual inconvenience must give way to it. Thus, in *Blaker v. Tillstone*,[1] which was a prosecution under the Public Health Act, 1875, for possessing unwholesome meat, it was decided that it was not necessary to prove knowledge of the condition of the meat on the part of the accused, as the object of the statute was to save the people from the danger of eating poison. The Excise Ordinance, under which the present prosecution is brought, has a similar object in view in prohibiting the possession of such deleterious drugs as opium, bhang, and ganja. The intention of any statute to ignore or exclude the element of *mens rea* in respect of breaches of certain of its provisions may also be gathered from the fact that knowledge or intention is expressly required in respect of breaches of other provisions of the same statute (*Derbyshire v. Houliston*[2]). Now sections 45 and 46 of the Excise Ordinance penalize certain acts when committed "wilfully," and under section 47 a person may be guilty of an omission when "intentional." I am of opinion that,

[1] (1894) 1 Q. B. 345.

[2] (1897) 1 Q. B. 772.

in respect of the acts made punishable by section 48, which involves no qualifying condition, the absence of knowledge is no ground of defence. Moreover, section 50 of the Ordinance expressly enacts that in prosecutions under section 48 it shall be presumed, until the contrary is proved, that the accused person has committed an offence under that section in respect of any excisable article for the possession of which, or for his conduct in connection with which, he is unable to account satisfactorily. Now, the conduct of the accused in this case when his house was searched was, as the Police Magistrate rightly observes, suspicious and highly unsatisfactory, and I think that the circumstances give rise to the presumption created by section 50. I may add that the accused says that he imported this medicine for the purpose of supplying his clients, and that he did actually sell some of it to them, and I do not think that he as a medical practitioner ought to be heard to say, or to be believed when he says, that he did not know the nature of the drug with which he was dosing his clients.

In my opinion the conviction is right, and I dismiss the appeal.

*Appeal dismissed.*