

COURT PROCEDURE FOR CUSTOMS OFFICERS

G. Kennard P.

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FOREWORD

In applying the multifarious regulations governing our duties as Customs Officers we are at every stage carrying out principles embodied in Law, and, in pursuance of those duties, we are required, if necessary, to appear in Courts either to conduct proceedings or as material witnesses.

This book is not intended to do other than to assist officers who may be called upon in such circumstances; to convey to them the general atmosphere of the Courts, the etiquette to be observed therein, and the manner in which they should comport themselves as representatives of the Crown.

In the matter of Law procedure we are virtually laymen, for beyond the knowledge of the particular Acts applicable to our work we have no legal qualifications, but it is essential that in Court we should present our cases in such manner as to be free from criticism.

If this publication achieves that objective then it will have justified not only its production but also the valuable time and effort spent on it by Mr. C. F. Shaw and others who have given their help.

To all of them we are extremely grateful for their very kind co-operation.

For the Executive Committee,

A. E. FARMER,
General Secretary.

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(See analysis of Chapters 1-10 in Chapter 11)

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INTRODUCTION

It is frequently the duty of Chief Preventive Officers and others in the Preventive Service to detain and charge persons suspected of "smuggling," or a related offence, and, where the case is not conducted by a Barrister or Solicitor employed by the Department, to conduct the case in a Court of Summary Jurisdiction.

All officers are likely to appear as witnesses in such cases, and of course might have to appear for the defence in cases against the Department. Since 1947, though it was not normally so previously, the Crown can be sued "in tort" under the Crown Proceedings Act. Once the officer, not the Crown, had to be sued. (See Appendix D (e).)

You may, as a Customs Officer, have to appear as a witness in other cases, usually for the Police or for other Government Departments. It is therefore necessary for all officers from their probation onwards, but particularly for Chief Preventive Officers, to have something supplementary to the Regulations, and lighter than the usual legal tome, to assist them in the performance of such duties. The Legal Aid and Advice Act, 1948, may well make this need the greater.¹

This booklet aims to meet the necessity.

It is not proposed to deal at length with courts other than Courts of Summary Jurisdiction, as officers will rarely appear in any other without legal support and some preparation (but see Appendix C). We also consider it unsuitable to delve too deeply into many points raised herein, e.g. cross-examination; a fair general picture has been attempted. The reader who wishes to go deeper is referred to the bibliography printed at the back, and we have printed the book on one side of the pages only so as to allow additional matter such as special local orders to be inserted by the reader.

Throughout, we deal with smuggling as if it referred to ships, but of course, "subject to certain express exceptions and modifications," what applies to ships applies to aircraft. (Pars. 9 and 10, Instructions Relating to Civil Aircraft.)

This is a simple and practical book.

The Department does not, fortunately, expect us to be lawyers.

¹ This extends legal aid from public funds to persons with an income of less than £420 a year whose capital does not exceed £500, gives Magistrates a free hand in granting legal aid and makes it no longer dependant on the gravity of the charge.

CHAPTER ONE

DETAINING THE SUSPECT

It is no light matter to detain a citizen. "No free man shall be seized," etc. (Act 39 of Magna Carta.)

The Chief Preventive Officer¹ must first have decided that smuggling has taken place. This is no easy thing in itself. He must start with the question: Are these goods dutiable or prohibited? and investigate fully the act relating to the goods. If satisfied an offence has been committed, he next asks himself: Need I detain the person(s) concerned in this act?

Apart from the procedure by Information and Summons (Customs Code, Volume 1, Part 1, para. 39, and Volume 1, Part 2, para. 3, and Appendix D(g)) there are children and young persons and a number of others who will not normally be detained (Customs Code, Volume 1, Part 1, paras. 44 and 45. Ambassadors and other accredited representatives of foreign countries cannot be detained (Report). Information furnished by the Foreign Office is conclusive as to status.

Then there is the "option," a considerable power (Customs Code, Volume 1, Part 1, para. 28).

Yet we have a legal power to detain (Customs Consolidation Act, 1876, Section 186). This power is properly exercisable only when there is reasonable and probable cause for suspicion that a smuggling offence has been committed by the person detained. (Note very carefully Customs Code, Volume 1, Part 2, para. 2A). Therefore we must know at least as much as a policeman about arresting people.

The officer dealing with a suspect before arresting him is like the magistrate in the Court at which he will eventually appear; he must be impartial in reaching his decision. (See Appendix D (a).)

He will have heard, in the presence of the suspect, the statement of the officer who has found the goods. Then he has to hear what the suspect has to say. He may, of course, admit the whole thing, but where guilt is not admitted the decision can only be reached, the truth ascertained, by questioning. Other evidence, e.g. documents, will help in ascertaining the truth.

The suspect is asked for a statement in the presence of an official witness. This statement may be "tested" by going into irregularities, inconsistencies and obvious untruths. A reasonable amount of questioning aimed at clarification is justified at this stage. It is well to make a note of the excuses immediately. In time you will have a good catalogue of the standard "get-outs," and should know all the answers.

The officer investigating then asks his questions, the objects of which are to establish beyond *reasonable doubt*—it would be absurd to expect absolute certainty²—

¹ Throughout, Chief Preventive Officer and "prosecuting officer" will be used indiscriminately. When "you" is used, it refers to Customs officers who may have to act officially as described.

² See Appendix D (h).

- (1) That the goods are the property of the suspect and that he did conceal, carry (or whatever word you decide to use in the charge) the goods, or, if they are not his goods, that he was *concerned* in the act, e.g. acting for, or with, someone else. (In smuggling cases the accomplice is liable to the same penalties as the principal.)
- (2) That he concealed, etc., knowingly and with *intent*.
- (3) That he had the opportunity to declare the goods.

Make a note of the replies. Make notes always; and always have your notebook in Court.

Your object is to find the truth, not necessarily to obtain an admission. After the questions, you will most likely get the admission.

Before developing the three questions it is as well to say something of what are called "Judges' Rules"¹ on the subject of questioning. Any questions may be asked of any person, if by so doing useful information may be obtained and, while persons are not bound to answer such questions, it is usually in their best interests to do so.

It is not until you have made up your mind to charge the suspect or to report him to the Board for consideration of penalty proceedings that you need caution him. After this point has been reached, you should caution him before asking any further questions. You should also caution him if, after you have decided to report or charge him, he wishes to volunteer a statement. In most cases you need not caution a suspect until you charge him. (Next Chapter, where the wording of the caution is given.) When your questions are aimed at finding out whether an offence has been committed, a caution is not necessary.

When you seek to arrive at the truth by questioning, the quality of the truth and the degree of truthfulness may be judged by the probability of the reply. "Innocent persons as a result of such enquiries have nothing to fear, but enquiries should be made in such a way that guilty persons are not shielded from betraying themselves" (Judges' Rules). Yet no one can be forced to incriminate himself.

Of the three questions, the first is a matter of fact which you should quickly establish.

Number two is a matter of "*guilty knowledge*" which lawyers term "*mens rea*." The establishment of guilty knowledge is one of the most important functions of an investigating officer.

*Under Section 259 of the Customs Consolidation Act the proof that Duties of Customs have been paid or that the goods were lawfully imported rests with the defendant.*²

When we proceed under Section 186 of the Act we must, besides satisfying the Court that the Duties of Customs have not been paid, prove that *it was the intention of the defendant not to pay such Duty, or that the goods were prohibited and that it was his intention to evade the prohibition*. So your questions before going to Court must establish this.

The person concerned is unlikely to admit intention. The facts must prove it. The facts will have to be so presented in Court. Therefore, appearance in

¹ They were drawn up, to meet difficulties encountered by the Police, in 1912 by Judges of the King's Bench and have been revised from time to time since that date. For fuller treatment of the Rules, see Chapter Ten (Written Statements and G.O. 7/41 (16).)

² It is always advisable to show the Court that you endeavoured to find if Duty had been paid.

Court is not to be undertaken lightly and the fact that intention must be proved should be always in your mind. (This applies, of course, in option cases too, which must always be treated just the same as cases which go to Court.)

The evidence has no need to be more than reasonable.

On all this a series of judicial decisions on guilty knowledge are worth study. (See Appendix D (a).)

Opportunity to declare is obviously related to "intent." With members of the crew of a vessel, the List 142 is a useful indication of such, but the suspect should also have had an opportunity, other than his declaration on List 142, to declare the goods. There is no *specific* legal authority for the use of List 142 as there is with Report and Entry, though Section 168 of the Customs Consolidation Act, 1876, is an implied authority.

A declaration when seizure is imminent is a fine point to be examined.

Passengers do not at present make a written declaration,¹ but the Chief Preventive Officer must be satisfied that a suspect was questioned properly and fully, understood what was said, and was given Notice No. 2 to read. Had he seen a notice on the ship? Had he spoken to other passengers, or to officers of the ship, about what it was necessary to declare? Had he travelled before? Did he see the large shed notice? Non-declaration from carelessness, misunderstanding or forgetfulness, means that the goods should not be seized.

Note that a currency offence may also have been committed. (See "Charges," next Chapter.)

(The section of Chapter Eight on cross-examination may here be worth consulting.)

Note Customs Code, Volume 1, Part 1, para. 65 for goods liable to Excise Duty (Green Book, page 96).

If it is necessary to detain the suspect, he is to be charged at the police station nearest the place where the seizure was made as soon as possible. The Immigration Officer, in the case of aliens, must be notified before landing, or as soon after landing as this can be done. If there is no Immigration Officer in the area, inform the District Inspector (Customs Code, Volume 5, Part 11, and Customs Code, Volume 1, Part 2, para. 15) as soon as you can. For non-British subjects, or suspects who cannot speak English, an interpreter must be obtained.

For Scotland, note the procedure set out in Customs Code, Volume 1, Part 2, para. 6A.

List of Interpreters Available Locally
(If you have to do this yourself)

¹ Note, however, the use of Form C.794.

Ship's or Company's representatives are often necessary too and should, if needed, be courteously asked to come to Court. They should be warned that they may be required to give evidence.¹ The seizure will have been reported to the Master, and the attendance of shipping or company people for non-Customs purposes is his business.

Other non-Service witnesses may be required and should similarly be asked to appear (see "Evidence," Chapter Eight). If a vital non-Service witness is unlikely to appear, the Waterguard Superintendent should be informed. (He will get a subpoena or, if time does not permit that, a "witness summons" from a Magistrate—see Chapter Three.) Police witnesses can be asked to attend through their superiors, no subpoena being necessary.

Official witnesses must, of course, be ordered to appear at Crown expense. If a witness is unable to attend (e.g. through a transfer), the Board is to be informed.

Police aid in detaining a suspect may be sought if absolutely necessary and, if conveyance from the place of offence to the police station is required, the police will usually co-operate; otherwise we convey at Crown expense.

In option cases, where two or more are concerned, and one opts to appear before the Magistrate, all must be brought before the Magistrate. It is the offence we are concerned with and we cannot deal with the offence partly in one way and partly in another.

A juvenile concerned in smuggling jointly with an adult is charged with him. (He will appear with the adult in the ordinary Court *not* the Juvenile Court.)

Don't forget your note-book. Study the official seizure documents and note all the particulars required, and also take down such relevant items as the suspect's pay and circumstances (married, etc.). If unusual costs occur, note them. If you are not the prosecuting officer, tell him of these costs before the case. Be precise in recording times.

In Scotland, hold the suspect in the Customs building until Form C.473 is completed and *signed by officer in whose name proceedings will be taken.*

¹ e.g. for "proving" List 142: if suspect admits signature thereon is his it will probably be all right, but evidence that the man was asked specifically about dutiable goods by a ship's officer is useful. If signature was an "X" witnessed, the witness *must* appear.

CHAPTER TWO

CHARGING THE SUSPECT

It is unlikely that, before coming into the Customs, you were familiar with the appearance of a police station interior. Or you may be a stranger in the port. At any rate, you should know what the police station looks like so that you can walk in to make the charge with an appearance of authority.

They are usually gloomy, dull, sinister places. At a desk will be a police officer, usually of the rank of sergeant, with a large book in front of him. You tell this officer what your charge is and he records it.¹ Be sure it is written down properly before you sign it, as a wrongly worded charge could lose a case, or at least cause an undesirable adjournment. *Any* officer can make the charge (Customs and Inland Revenue Act, 1879, Section 11, and Inland Revenue Regulations Act, 1890, Section 21).

Caution the suspect before charging, as follows: "You are not obliged to say anything, but anything you say may be given in evidence." (Note reply.)

Have the wording of your charge perfect. After charging, caution again as follows: "Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down and may be given in evidence."

The suspect is now the concern of the police, who will release him or hold him until the Court sits.

Most of the charges you will have to make are listed below:

(i) **Dutiable Goods.** Either—

That . . . (full name) . . . did knowingly harbour (unship, deliver, carry, remove, conceal) on . . . (ship) . . . from . . . (port) . . . on . . . (date) . . . certain uncustomed goods to wit with intent to defraud His Majesty of the Duties due thereon and contrary to the Customs Consolidation Act, 1876, Section 186, as amended by Section 15 of the Finance Act, 1935, and Section 12 of the Finance Act, 1943.

(The word "harbour," or whichever one is used, must be most carefully chosen. It must be the nearest to describing the offence covered by the section. Never use two words, e.g. "carry *and* conceal," make it either "carry" or "conceal");

Or (better, especially for passengers)—

That was knowingly concerned on in a fraudulent attempt at evasion of the duties of Customs on certain goods to wit contrary to Section 186 of the Customs Consolidation Act, 1876, as amended by Section 15 of the Finance Act, 1935, and Section 12 of the Finance Act, 1943).

N.B.—The use of the word "knowingly." See Appendix D (a).

¹ In Scotland, a Form of Complaint is signed (Customs Code, Volume 1, Part 2, para. 6A). The charge is often spoken of as an Information. But see later for Information (Chapter Ten): its proper meaning.

(ii) Prohibited Goods

That did import into the United Kingdom certain prohibited goods, to wit with intent to evade the prohibition thereon and contrary to the Customs Consolidation Act, 1876, Section 186, as amended by Section 15 of the Finance Act, 1935, and Section 12 of the Finance Act, 1943.

(iii) Purchase Tax

It was decided in the case of *Beck v. Binks* (1948) that evasion of Customs Duty and Purchase Tax is one offence and that for the purpose of Section 186 of the Customs Consolidation Act, 1876, Purchase Tax is to be treated as if it were a Customs Duty. Therefore, where goods are liable to Purchase Tax as well as to Customs Duty, there will be only one charge which will not mention "purchase tax" but which will refer to "duties of Customs" only. The phrase will be "duties of Customs" even when Purchase Tax only is involved. You treat Purchase Tax as if it were an additional Customs Duty and you calculate the penalty accordingly. Use the forms of charge exactly as given in (i) above. The charge should not refer to Section 11 (1) of the Finance Act, 1944, but if, during the conduct of a case, a question is raised by the Magistrate or by the Defence as to the authority for including taxable goods in the charge, reference should be made to that section. If a Magistrate asks why there is not a separate charge, refer him to the judgment of Lord Goddard in *Beck v. Binks*. (See further the circular letter to C.P.O's and others dated 30.11.48, Section 29093~~7~~⁴8.)

(iv) Restricted Goods. As (ii)

Do not make a Customs charge, though the goods may be dutiable (e.g. Millet Seed), unless instructed to do so from a higher quarter. (See 5 in notes below.)

(v) Obstruction. (Most likely to be a case for an information and summons.)

Usually accompanies a smuggling charge, e.g. a case of smuggling hashish and throwing it through a porthole.)

That on did obstruct being a person employed in the prevention of smuggling in the execution of his duties contrary to the Customs and Inland Revenue Act, 1881, Section 12.

Or—

. did destroy (or attempt to destroy, certain uncustomed (or prohibited) goods, to wit to prevent the seizure thereof by an Officer of Customs, contrary to the Customs and Inland Revenue Act, 1881, Section 12.

(Obstruction is a broad term. See Customs Code, Volume 1, Part 3, para. 16.)

Worth noting:

Section 186 is as comprehensive as a section of the Law can be, for it concludes: "Or in any manner dealing with any such goods with intent to defraud His Majesty of any Duties due thereon." Section 185, on the right of Search of Person is also interesting. Section 201 deals with "pretending to smuggle," which would rarely be a matter for immediate jurisdiction.

The same applies to the Customs and Inland Revenue Act, 1879, Section 10, which deals with "assembling to make a run," and Section 203 of the Customs Consolidation Act, 1876 (a carter failing to stop when called on to do so).

A currency charge is to be made if currency has been smuggled, as well as the Duty charge. This applies even if currency is less than £45 (G.O. 21/47, o.6 and o.31).

(vi)¹ **Export.** (See G.O.1.47)

That on was knowingly concerned in carrying (or removing, or concealing or depositing) certain prohibited goods, to wit with intent to evade the export prohibitions applicable to such goods contrary to Section 186 of the Customs Consolidation Act, 1876.

(vii) **Currency.** (See General Order 21/47 (VI), pages 6 and 7.)

Note.—Immigration Officer may be necessary witness.

(viii) **False Declaration** (Section 168 Customs Consolidation Act, 1876)

Solicitor may decide to make this charge in addition to a smuggling charge, e.g. a lie on a C.104.

Always be conscious of the following points for all charges:

1. The description of the offence must be such that the defendant shall have sufficient information to understand the charge and prepare the defence.
2. The wording must be such as to enable the Court to judge that the facts proved amount in Law to the offence named. Do not choose a word which would make your proof difficult. Why say "conceal"—most difficult to prove—when "carry" meets the case?
3. The *exact* words of the Statute are best. If the Section says "wilfully," or "knowingly," you say it too.
4. Give the *correct name* of the suspect *and* a sufficient description following the name (e.g. "Fireman, s.s. *Minnetonka*," or an address²) to identify him. For a married woman, the correct name is her Christian name and the husband's surname, without any maiden name.

Note.—When the respondent³ is described by name and designation which he himself has given or assumed, he cannot avail himself of the objection that his true name and designation are different. If he has given a false name, he cannot later take advantage of this misnomer. It has also been held that a name wrongly given by defence does not invalidate the case.

5. Section 10 of the Summary Jurisdiction Act, 1848, provides that any *information* before Justices in England must be for one offence only. So, when goods liable to Duty are imported in such a manner as to be restricted or prohibited so that duty of Customs could not in any circumstances be accepted, *the information should describe them as being restricted or prohibited and not as being imported without payment of Duty.* A Currency charge accompanying a Duty charge is, of course, a distinct and separate charge.

After the charge, the police may detain the suspect, but a superior officer of police (Customs Code, Volume 1, Part 2, para. 20) can, where the case cannot come up in the next twenty-four hours (in Scotland, on that day), release the person on his entering into proper recognisances. If detention is necessary, and police will not detain, inform Collector immediately for his action.

¹ For both (vi) and (vii) you only charge when you cannot possibly contact Solicitors' Office.

² You'll need the address for the Hearing Letter.

³ Only the "defendant" under another name!

Note for Scotland appendix A (b) (i) especially the use of Forms C.474, 475 and 476.

The only prohibited (or restricted) goods you will normally deal with straight off without legal advice are—Firearms and Dangerous Drugs. Note on the first that the value quoted for a dutiable firearm must include the Duty. In Dangerous Drugs cases, between the charge and the appearance in Court, it is as well to get actual evidence from a proper chemist to verify your opinion that the goods *are* dangerous drugs. (Remember that one or two harmless articles, such as poppy lettuce and aloes, resemble dangerous drugs).

Note also, if you charge in such cases, the action between charging and Court appearance, and later, for Smuggling combined with Larceny and Smuggling aggravated by Attempted Bribery. Any aggravating circumstance should be recorded, e.g. importing large quantity of goods obviously for sale.

Are complications likely to arise needing legal advice? Should Section 23 be enforced so that suspect cannot obtain a licence from Board of Trade for an illicit import? Is one charge sufficient? Is it a currency case? (G.O. 21/47 (VI), pages 6 and 7). Is it a first offence? Is the Board's pre-election required? (Customs Code, Volume 1, Part 2, paras. 1 and 8, and page 102 of Green Book). Are the seized goods perishable? (G.O. 1/47, para. 82; G.O. 21/46, para. 64, C.C., 1, 1, 54). Do the seized goods appear to be pilfered cargo? (Customs Code, Volume 1, Part 1, para. 64).

(Dangerous Drugs.) Is the Information prepared? (Customs Code, Volume 1, Part 2, paras. 17 and 18; see also Appendix A, Customs Code, Volume 1, Part 2).

Have the police been informed? Is a vehicle involved? (It should be held if so.)

Weigh, test, value goods, if necessary before case, if not done before charging. If goods cannot be tested before charging, e.g. ten bottles Brandy, charge on ten bottles and in Court proceedings put official witness in the box; he has tested the Brandy according to Spirits Act, 1894, Section 134, and has found them to contain . . . proof gallons. (Penalty based on proof quantity.)

CHAPTER THREE

MAGISTRATES' COURTS

The suspected smuggler must be tried at the law court nearest to the place of the alleged offence. This will be what is often, usually incorrectly, termed a Police Court.¹ The correct name is "Magistrates' Court," or "Court of Summary Jurisdiction." Sometimes they are called "Courts of Petty Session." ("Petty," i.e. dealing with less important, smaller things, than other Courts.)

There are many kinds of Courts to try offences in this country (see Appendix C). We will confine ourselves here to these Courts of Summary Jurisdiction. Practically all action in connection with "crimes" starts in these Courts.

A crime is "an unlawful act or default which is an offence against the public," rendering the perpetrator liable to legal punishment (Halsbury's *Laws of England*). *Smuggling is a crime*, an offence against the community.² The difference between felonies and misdemeanours and the classification of crimes does not concern us. You will find it all, however, in the heavier legal books, with the distinction between Common and Statute Law, Civil and Criminal, and other most interesting matters.

The Courts of Summary Jurisdiction are controlled by a Bench of Magistrates, one of whom is Chairman. (But see "Stipendiaries" below.) They are usually close to the police station.

If the suspect has been held by the police, he will be brought to the Court by them. If not, he will appear in the Court on his own initiative. If the suspect does not appear, the police will get to work. This is unusual. If he does not appear, the case can go on without him. From now on he is the "defendant."

His name will appear with others on a list displayed in the vicinity of the Court, but the order on the list is not necessarily the order in which his case will be heard. You should look at this list. This is particularly necessary in places where there are a number of Courts sitting at the same time (e.g. London, Liverpool), and you might go into the wrong Court if unprepared.

The Courts vary greatly in appearance and can often be quite shoddy, "Harry Tate" places. In large towns they may be magnificent halls. Eighteen towns, besides London, have Stipendiary Courts and there are 1,000 others.

As a rule, the Magistrates sit on a raised platform or *bench* at one end of the room, with the Clerk sitting below at a desk. Around a table sit the police, advocates and the Probation Officer. The Press may have a separate table, or stall. There will probably be a dock and a witness-box. Otherwise, the prisoner, witnesses, etc., group themselves about the advocates' table. As justice must be dispensed in public, a section of the place will be for the public. (They can be barred if State secrets are likely to be revealed.)

In these dull, or grandiose, surroundings are dealt with—though they may be termed petty—matters of vital importance to human beings. It is well to

¹ See Report of the Departmental Committee of Justices' Clerks, CMD. 6507/44.

² A Court of Appeal in Northern Ireland has decided that Customs cases are Civil and not Criminal proceedings. This does not in any way alter anything written in this booklet, e.g. on the necessity for the caution before taking a statement.

know something of the origins of such Courts. Their history is the history of the Justice of the Peace system, described in the next Chapter.

Until the middle of the nineteenth century all the graver crimes went before a judge and jury but, as time goes on, more and more work comes to these Courts and, at present, it is estimated that 90 per cent. of the country's criminal cases go to them. Most go no further. Though important to us, therefore, it is unlikely that our case is the most important being heard on any particular day.

Officers, especially when new in an area, should frequently visit these places and become familiar with their layout and procedure so that official appearances there do not betray diffidence or strangeness inappropriate in an official witness, and not expected as it is with a "civilian."

N.B.—The authority for a smuggling case to be tried in such a court is Section 11 of the Customs and Inland Revenue Act, 1879. Proceedings are regulated by Section 53 of the Summary Jurisdiction Act, 1879. For Scotland, Sections 4 and 43 of the Summary Jurisdiction (Scotland) Act, 1908. For Northern Ireland, Summary Jurisdiction Act (Ireland) by virtue of the Revenue Proceedings (Northern Ireland) Order, 1935.

The authority of a Magistrate to try our cases without election where election not required, in these courts is in Section 233 of the Customs Consolidation Act, 1876. (See later points on Mitigation.) Magistrate cannot try if Board's Election necessary. The authority for a Customs officer to appear as prosecutor in such a court is in Section 273 of the Customs Consolidation Act, 1876.

CHAPTER FOUR

MAGISTRATES AND THEIR CLERKS

Shakespeare's Justice Shallow may be overdrawn, but it is true to say that the "judges" who sit in these Courts of Summary Jurisdiction are not always learned men, though they may be extremely experienced and shrewd, and try their best to be just and impartial. At any rate, we must take them as we find them in Court, and would be well advised to act always as if they were veritable Lord Chancellors. Do not assume that they understand Customs Law, or for that matter any law.

But, on the other hand, do not assume that they know no law. The Chairman may be a Judge of the High Court making an occasional appearance as a Justice of the Peace. One such, Mr. Justice Stable, addressed his fellow-magistrates as follows: "Have confidence in yourselves. Do not imagine you have to be learned in the Law. Do not worry about the Law, but use your common sense. If you use it and find that it does not tally with the Law, then there must be something wrong with the Law." Perhaps all J.P.s will not take this excellent advice.

The case must be put to them fully and simply; they are in the place of a judge and jury, *judging on law and fact*. The King is the Fountain of Justice and the Magistrate is in his seat, as his deputy. The legal expert is the Clerk, as we shall see.

In medieval times, Law centred round the baronial courts, and the Baron was the judge in effect, though the Sheriff for the larger unit of the shire exercised the full legal power, under the King. Sheriffs still exist, but with hardly any judicial power; for the most part, this high office is now merely a picturesque survival. The Sheriff in Scotland is something quite different. The "sheriff" of the cowboy film who flashes a silver badge at all wrongdoers and leads a "posse" is better known to these times. The Sheriff in a degree, as the Magistrate did and still does, exercised police as well as judicial powers.¹ (The English novelist, Fielding, was a magistrate who cleaned up the London gangs of his day. A constable elected (unwillingly) helped, and from this grew Peel's organised and paid police force.)

The Justices of the Peace rose as the medieval system declined and the Sheriff with it. In time, too, the social area from which Justices of the Peace were drawn shifted from Knights to men of property; now almost any citizen can be a Justice of the Peace, including, since 1919, women.

From Edward the Third's time there had been people whose duties were vague and whose title was "Conservators of the Peace." These *Custodes Pacis* had largely a military function, but from the beginning they had some judicial powers. At first they could impose no penalties and there was a rule that when they sat they were to be aided by persons who knew the Law (The Quorum). They received power to try criminal cases in 1360, but it was not until Elizabeth's time that their powers were clearly defined. They had always had administrative powers, e.g. the fixing of wages and prices and still have, e.g.

¹ e.g. "Reading the Riot Act.

licensing duties, control of police through County Joint Committees. In 1632, there were only sixty-nine in the country and only a few hundred two centuries ago. Now there must be a few thousand. In 1388, General Sessions of the Peace had been set up. These were held quarterly and there the Justices tried criminal cases, helped by Grand and Petty Juries. By the end of the eighteenth century, Justices had wide judicial powers and police powers. (Grand Juries no longer exist.)

As Statute Law grew, more and more duties accrued to these gentlemen, and soon *two* Justices sitting together could determine minor offences in a *summary* way. That is all "summary" means, and it should not indicate that in the Courts where these Justices sit the justice is rough or the process hurried. Gradually, the reforms of local government in the last century have reduced their powers as to police duties, and in other ways.

But in another way they have grown in importance. In the early nineteenth century they were, in the main, limited to a maximum fine of forty shillings and a sentence of imprisonment of three months. The forty shillings later became £5. But very heavy sentences are now possible. Treble the Duty paid value in our cases can, of course, run into thousands of pounds.

Justices operate in *Divisions*, which roughly correspond to the old "hundreds." Theoretically, the Commission of the Peace for the County can act anywhere within its boundaries. In practice, only those Justices resident in a division act in petty sessions in that division. (In a small division, it would be quite easy to know the names of all the local Justices of the Peace.) The more common name for Justices of the Peace is "magistrates." On appointment, they take a judicial oath of allegiance.

Justices deal with licensing, maintenance orders, moneylenders' certificates, certifying people of unsound mind, or mentally defective, and visiting them, adoption of infants, ejection orders. They visit prisons. They have powers in the case of a civil disturbance. Statutory declarations are made before them. If a person refuses to allow a Customs Officer to search him, he may have to be brought before a Justice of the Peace. Justices sign warrants for arrest and issue the Warrant we use for Search on occasions¹ (Section 105, Customs Consolidation Act, 1876). Many other official papers require their signature. They issue on request, and if satisfied, a "witness summons" for witnesses who can give material evidence but are unwilling to appear (Clerk can do this in Scotland). More than 90 per cent. of the criminal adjudication in this country (according to Mr. C. K. Allen) is in their hands (*Laws and Orders*).

Such, then, are our magistrates. As Lord Coke said: "The whole world hath not a like office to Justice of the Peace, if duly executed."

They are appointed (apart from Stipendiaries and Metropolitan Police Magistrates, who are made by the Home Secretary) by the Lord Chancellor, who is generally advised by the Lord Lieutenant (in the case of a county). The Lord Chancellor has appointed committees to advise him and the Lord Lieutenants. Boroughs with their own Commissions of the Peace advise direct, but have similar committees. These committees are likely to consist of already created Justices of the Peace and will recommend people whom they consider suitable to this office.

¹ If he deals in the goods to be searched for, he cannot issue the Search Warrant. Similarly, he cannot normally "sit" if interested, unless both parties agree.

in 1946, 99,343 indictable cases were tried summarily.

Mayors and ex-Mayors, and Chairmen of County Councils and of Urban and Rural District Councils during their tenure of office, are ex-officio magistrates.

As a rule, in most Courts, the Magistrates sit according to a rota, and the senior one present acts as "Chairman."¹ It is no harm to know the rota, and to have advance knowledge of who is Chairman.

In one large port, all prosecutions for the Department are performed by the one Chief Preventive Officer, who thus becomes very knowledgeable about the Court, including the people on the Bench.

A large number of Magistrates may sit at once, especially in small places. Five is no uncommon number. It should be an odd number, three being the best, for the Chairman has no casting vote. If there is an equal division, the case may be adjourned for a re-hearing, but where the final decision of the Justices is that they cannot come to a conclusion, the case should be dismissed.

In Scotland, the Magistrate is a "Bailie." His Court does the same work as the Sheriff's but is lower in status. Our cases go to the latter Court.² In Northern Ireland, the Magistrate for our cases is a "Resident Magistrate."³

Stipendiaries, as the name suggests, are paid for acting as Magistrates, and the officer appearing in one of their Courts must constantly have in mind that he is a lawyer; in fact he must be a barrister of at least seven years' standing. They are usually found in large cities, and in the Metropolitan Police District (where the Court is still termed "police court") we have paid Metropolitan Police Magistrates chosen in the same way as Stipendiaries.

Magistrates are "privileged," i.e. defamatory statements made by them in a Court during a case are not actionable. But damages can be awarded against them or they can be criticised by higher Courts.

Some people think there should be no unpaid Magistrates, but there is much to be said for the amateur trying his fellow-men in small cases, so long as he has a good impartial adviser on Law. To be honest, Magistrates are men and, like us all, are subject to strange vagaries.

They may be advanced in years, but a recent Royal Commission (1948) has recommended earlier retirement; normally, they are appointed for life unless suspended. The Commission recommended other reforms including the modification of certain qualifications and disqualifications, remuneration to the hitherto "great unpaid" for time lost and instruction in their duties (CMP 7463, July, 1948).

Clerks

These are the good, impartial advisers referred to above. Perhaps they should have been dealt with first. In most Petty Session Courts the Clerk is the key-man and, if you are prosecuting, it is as well to act accordingly. His job is to ensure that the Magistrates apply the Law correctly. He is an important, if sometimes "difficult" man.

¹ Stipendiaries sit alone. One Justice of the Peace can occasionally sit alone, e.g. on a case of being found drunk in the highway, but it is rare. In the City of London, the Lord Mayor, or an alderman, can sit alone. A Resident Magistrate in Northern Ireland is the same as a Stipendiary. Where only one Justice is present he can adjourn a case.

² There are Justices of the Peace before whom we can conduct a case when a hearing in a Sheriff's Court is not practicable. But it is doubtful if Bailies, or the Magistrates of Municipal Burghs, have full jurisdiction.

³ These are Justices of the Peace. When it is not practicable to bring a suspect before a Resident Magistrate, he may be brought to a Justice of the Peace for remand.

His function is mainly advisory. He must be a barrister of not less than fourteen years' standing, or a solicitor to the Supreme Court, or must have served for not less than seven years as a clerk to a Metropolitan Police Magistrate, or a Stipendiary; or, in special circumstances, have been fourteen years assistant to a clerk. He is usually a solicitor of experience, probably practising, though he cannot "appear" in his own Court. He may have one or more assistants.

Clerks hold office during the pleasure of the Justices. Besides their advisory work, theirs is the tedious job of taking down all depositions *in longhand*.

It is their function, besides advising on all points of the Law, and, if asked, on the verdict (they must not decide the verdict) and the penalty, to record the proceedings in the Court Register and to keep all accounts concerning fines and fees, and the collecting of them. We may therefore have dealings with them other than in the Court proper, e.g. as regards the records in a case of appeal.

In Scotland, the Clerk can issue the "witness summons" (called a "citation").

Both stand as the personification of the great British principle governing all legal procedure.

The Law itself guarantees fairness, but the person appearing in Court has other safeguards:

1. The Magistrates (and more than one must sit).
2. The rules of procedure.
3. The laws of evidence.
4. There must be no reasonable doubt before conviction. (See Appendix D (h).)

We must be fair also, so we must know something of (2) and (3).

CHAPTER FIVE

THE CASE¹

What to bring with you

Be in the Court in good time, see witnesses (and interpreter) are present, and have with you:

1. Your note-book, with all necessary particulars about the defendant, such as position or rank, address, age, pay, nationality, previous convictions (not necessarily for use), cognisance of regulations.

2. Slips in duplicate (one for Clerk) showing the charges, the goods (described precisely in Tariff terms) with Duty, Tax, etc., and Values² shown separately and then in forms of Single Value, Duty and Tax, Double and Treble. Note establishing the goods are what you say they are—offence, when, where . . . Act, Section . . .

3. The goods, if not held by the police, and any other “exhibits,” e.g. a suitcase with false bottom. (If police have goods, be sure the goods come into Court.) In practice, very large quantities of goods can be in the vicinity of Court for production if required, and only “sample” brought into Court.

4. Notes on how you intend to conduct the case, such as: chance to declare the goods, the concealment, order of witnesses (their full names, etc.) set out simply, point by point, in proper sequence.

5. Any official, or other, documents such as List 142, C.104, defendant’s written statement, Duty receipts, C.794, chemist’s certificate for Dangerous Drugs, statement by any valuer, passengers’ receipts.

6. Defendant’s statements when cautioned, and when charged (ready for handing up).

7. *N.B.*—Highmore’s Customs Laws, marked at all relevant sections of the law (see Appendix B), the Criminal Evidence Act, 1898, and Stone’s Justices’ Manual (if you can; if not, Clerk will have it if needed). Also, Summary Jurisdiction Act, 1879, or Summary Jurisdiction (Scotland) Act, 1908, or Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935. (If Aircraft involved: Article 55 and Schedule III, The Air Navigation Order 1949 (as amended). (Printed as Appendix A in Instructions relating to Civil Aircraft.))

8. Note on Magistrates’ authority to hear the case, and to impose penalties or mitigate them.

9. Any other items helpful for establishing the case, e.g. the Tariff and Notes (S.273 Customs Consolidation Act, 1876), Instructions, Extracts from Finance Acts.

10. This Booklet.

¹ It has not been thought necessary to include the special procedure when a Corporation (e.g. a limited company) and not an individual is defendant. But you should know there is such a special procedure.

² *N.B.*—Strictly, Duty, etc., should be proven in evidence, and you must be ready for this.

Most Courts know our rights to prosecute¹ (S.273 Customs Consolidation Act, 1876), but be prepared for any objection. Remember a general authorisation suffices. (*Regina v. Turner*, 1894, referred to in *Stone*.) This could be a book of Instructions.

The officer prosecuting normally sits at the solicitors' table in Court. Agreement to this may be assumed, unless you are told to the contrary. Let the Court officials know who you are.

There is no need to try to get your case heard early, though if you can, try and avoid a late one if officers (maybe after night duty) are being detained unduly. It is of great advantage to get the atmosphere of the Court and to "watch points," before your case comes up. (This is a tip given in *Court Procedure, Customs and Excise*, to which booklet we are indebted for many other little hints.)

Have your note-book, etc., neatly laid out before you. When the Magistrates enter, stand (like the Irishman in the "Mountains of Mourne") with the rest. Sit when they sit.

When the Clerk calls the case, the defendant ("prisoner" now) enters his box, and the Chief Preventive Officer should at once rise and say: "Sir, I appear for the prosecution."

The reading of the charge follows. In summons cases, this is when evidence of the service of the summons is given.

Under Section 17 of the Summary Jurisdiction Act, 1879, as the defendant is liable to be sent to prison for more than three months, he is entitled to elect whether he will be tried summarily, or by a jury.² The Court (i.e. the Clerk) must tell him this. In courts where our cases are unusual, the prosecuting officer should remind the Clerk beforehand that the case is one for election.

If the defendant fails to appear in person to answer the charge, he loses the right to elect to be tried by a jury, and the Court may determine the case in his absence.

If he elects to go for trial, the case proceeds in the usual way, but the evidence (termed "depositions" now) is taken down in writing verbatim and signed by the witnesses. So watch your evidence, if a witness. As this and other points govern the subsequent case, the prosecuting officer should seek an adjournment, and get in touch with the Solicitor's Office. Avoid remands generally, however (see Chapter Six). New evidence at the trial will be difficult to introduce, so everything relevant should be put into the depositions.

In all other cases the next step is for the Clerk to ask the defendant whether he pleads "guilty" or "not guilty."

When the Magistrate indicates to the Chief Preventive Officer that he shall open the case, he will proceed, using some such phrase as: "May it please the Court."

Subsequently, address the Court, with an occasional "Sir," or "Your Worship" (for Sheriff—"Your ^{Worship} Worship").³ The burden of proof is on the prosecutor. If he does not establish a *prima facie* case, or presents a case which is as compatible with the innocence of the defendant as with his guilt, the case

¹ Any officer can prosecute. If one dies, another can carry on.

² Not in Scotland.

³ Clerks are "learned clerks"; solicitors, "learned solicitors"; Counsel (if any), "learned Counsel."

will be dismissed. If he establishes a case, the burden then shifts to the defendant. Very little can cause this shift. If defendant is proved to have had ten plugs of tobacco in his sea-bag, the burden shifts to him to prove he was not smuggling them. A *prima facie* case is established when you—

- (a) Show an offence was committed; and
- (b) Show, beyond reasonable doubt, that defendant committed the offence.

Plea of Guilty

Following such a plea, many Courts dispense with evidence. In others, the case is gone through wholly or in part as if defendant had pleaded "not guilty." If the Court requires witnesses, leading questions are permitted. Often only a bald recital of the circumstances is wanted.

On a plea of guilty, previous warnings and convictions can be referred to. Better not to make any reference to compromise penalties—this is a good general rule. They could be cited as evidence that the defendant has had chances and apparently is not willing to be a good citizen. But such a penalty is definitely not a conviction. If the offering of the option on a previous occasion is referred to, it must, *if disputed by the defendant*, be proven by evidence on oath.

Plea of Not Guilty

Refusal to plead, or a plea which the Court cannot understand, is treated as a "not guilty" plea. The Court can, during the trial, decide to treat a plea of Guilty as one of Not Guilty. The case then starts afresh. This might arise when a man admits having the goods and then vigorously denies intent.

Prosecutor opens the case. He must always call a witness, or witnesses, in "not guilty" cases. After some prefatory remarks, in which he gives the Act and the Section under which proceedings have been taken, and the name, etc., of the respondent, he summarises the evidence he will submit. He need not read the Section, but will have Highmore's ready to hand to the Bench.

The first witness is called, and he will take the oath. (See Chapter Eight.) He can give his evidence either in the form of a statement, or in the form of replies to questions. The statement is better.

The prosecuting officer will introduce the witness: "What is your name?" . . .

"What are you?" . . .

"Where are you stationed?" . . .

"On such and such a day were you employed (examining baggage on the s.s. "So and so," or whatever the employment was), and did you see the defendant . . .?"

"Now will you please tell the Court in your own words what happened there . . .?" (See Chapter Eight on Witnesses and Evidence.)

If the witness, whilst making a statement, omits something of value, questions can be interjected. Do not, by this or any other means, however, frighten your witness. *Leading questions* are not allowed, although the introductory questions above *could* be:

"Your name is . . . etc."

One witness may be enough, but corroborative witnesses should always be present and ready. Be particularly considerate with non-official witnesses.

Lift up, or indicate, the exhibits at appropriate times. Act as if you believe the Magistrate has some knowledge of what you are talking about, using occasionally some such phrase as, "As you know, Sir." When you observe he has grasped a point, there is no need to embroider it.

If it is necessary to interject, do it lightly and with some such words as: "With great respect," or "I submit, Sir." Humour is to be avoided as a rule, as on all formal occasions in this country. Tempers should never be lost. Criticism in Court is prefaced by emollient remarks like: "The learned Solicitor is being most fair, but——" A *prima facie* case must be proved and no more. The Court must see the prosecutor as absolutely calm, not seeking a conviction but anxious that justice should be done, and doing his duty towards that end. He is there, let them think, merely to help the Court apply the Law. Except in serious cases, he should not therefore lay it on too heavily. His tone should be dispassionate, but loud enough to be heard clearly.

Face the Chairman of the Bench.

Your case will seldom be the most important to be heard that day, so it is as well to preserve a sense of proportion. However, it is not necessary to lose a case through being too casual, and the seriousness of smuggling, even to a small extent, should be kept clearly in the minds of the Court. Only facts, and *inferences which may be reasonably drawn from the facts*, are to be given. *No fact which reflects upon the character of the defendant*, unless it arises from the case, shall be brought out.

Facts which need not be proved

Court will take judicial notice without proof, if relevant, of:

- The practice of the Court itself;
- All public Acts of Parliament, and all Acts of Parliament whatever passed since 4th February, 1851;
- The *London Gazette*;
- The ordinary course of nature;
- The natural and artificial divisions of time;
- The meaning of English words;
- Weights and measures; and
- The ordinary Public Holidays.

When you have finished with your witnesses, all the facts stated in your preamble must have been brought out, particularly the three headings given on page 9. (All this Section must be read in conjunction with Chapter Eight.)

After each witness has been questioned by the prosecutor he may be cross-examined by the defendant, or his legal adviser. Leading questions are now permitted. After this, he may be re-examined *on matters only which have arisen out of the cross-examination*. Leading questions not permitted.

The prosecution must "prove" its case, and at the end of the prosecutor's presentation if the Court think it has not been proved beyond reasonable doubt it can then dismiss the case without hearing the defendant.

The defendant need prove nothing. He need not speak at all and he can

Speak without going in the witness-box. He need call no witnesses. His advocate can speak for him.

So the Court must have all necessary for a conviction at the point where you finish your presentation. Do not trust to something coming from defendant's side. (See Appendix D (h) on Reasonable Doubt.)

Lines the Defence may take

- (a) That the alleged facts are not proved beyond reasonable doubt.
- (b) Assert that such facts, even if proved, do not justify a conviction.
- (c) Try to prove other facts which are inconsistent with some of our facts.
- (d) Endeavour to *disprove* some or all of our facts.

Finally, give the Duty and Purchase Tax (if any), Single Value, Duty and Tax, Double Value, Duty and Tax, and Treble Value, Duty and Tax, and the amount you plea for, to the Court.¹ A witness might be necessary to establish what the Duty, Tax and Value is. Then the Court is addressed: "That is my case, Sir."

Defendant, or his counsel, then opens the case for the defence, calls his witnesses and examines them. (See Routine, Chapter Eight.) He need not call witnesses; he can disprove the case by discrediting the prosecution's witnesses.

The prosecution can cross-examine witnesses called, and they can be re-examined as above. Leading questions are permitted. Be very chary of the "connivance" witness, or the person charged with aiding and abetting. The prosecution has no right of reply except on matters of Law, except when defendant calls witnesses. No one can be questioned unless on oath. If the defendant does not choose to give evidence, he cannot be questioned. On some points the Court can question him. A prisoner making a statement, not on oath, cannot be questioned by the prosecution.

At some stage in his presentation of the case, preferably the close, the prosecutor should have made some reference to the prevalence of smuggling, black market possibilities, unfairness to honest taxpayers, etc., but in these *obiter dicta* great care must be exercised, and they are not essential.² A cool, concise, dispassionate manner is the best rule.

Be prepared for all eventualities tending against the success of the prosecution, especially some novel point of defence. Have your material ready to hand. Better too much preparation than the loss of a case through carelessness. An officer frequently attending the Court may soon learn to what degree relaxation is possible.

The defendant is innocent until he is proved guilty. This may appear to be a platitude, but it is always to be borne in mind. Be fair to defendant's witnesses.

A witness may be recalled at any time, by leave of the Court, and a new witness may be called to rebut evidence (e.g. Defendant says he bought no tobacco—Chief Steward is in Court and is called to say that he did). Give the other side no chances in your examinations, and cross-examinations, of witnesses.

¹ This is usually Treble Value and Duty. Merely give the figure. In these days of high Duties, some Magistrates consider the penalty too high ("savage," said one; "fantastic," another). So do not press.

² Need for severity is a matter of *opinion*, where prevalence of smuggling is a matter of *fact*. So eschew reference to former.

One's own witness may not be cross-examined by oneself unless the Court gives permission, he having proved *hostile*. Most unusual.

The defendant, or his counsel or solicitor, is entitled to address the Court either at the conclusion of the case for the prosecution or at the conclusion of the evidence, at his discretion. And where oral evidence is given by witnesses for the defence in addition to the evidence of the defendant, the Court may allow him, or his counsel or solicitor to address the Court both at the conclusion of the case for the prosecution and at the conclusion of the evidence, but in that case the prosecution has the right to reply. (Criminal Justice Act, 1948, Section 42.) The Court can, of course, interrogate witnesses at any time.

N.B.—In order to sustain a charge of *obstruction* of an officer, which is usually taken by the Solicitors' Office, it is not necessary that the person charged should have known the person obstructed was an officer, but it is sufficient to prove that the officer was actually in the execution of his duty, and was then obstructed. The obstruction need not be physical.

Excuses for Crime

Although sanity and responsibility is presumed, an offender can claim that he is not responsible for his act because he had no intent, or was justified in what he did. *Insanity* is one excuse, and *drunkenness* could be, if the offender had been made drunk deliberately by someone else, or if it is claimed that the person was too drunk to have intent.

Genuine *Ignorance* that goods are dutiable or prohibited may be an excuse and a genuine *mistake* may be an excuse acceptable to the Court.

An accident may be an excuse, if it occurs while performing a lawful act with due caution. This defence might crop up in an obstruction case.

Coercion is another excuse, unlikely to occur in our cases.

Justification is also unlikely.

Those seven possible excuses should be in the mind of the prosecutor.

When the case for the defence is completed, the Court considers and announces its verdict. For this, the Magistrates may adjourn. Sometimes the Clerk goes too. The prosecutor must be ready for questions during this period of consideration, and be ready to help the Court in any way possible. The verdict might be postponed. (See Chapter Seven.)

If the verdict is "Guilty," previous convictions *may* be stated. The penalty is announced. (See Chapter Seven.)

Keep your notes (in case of possible appeal). Get the goods.¹ Send to Kings Warehouse. If they were taken out of KW for the case, the original seizure No. should be used and a new C.570 should not be necessary. For disposal of currency seized, see pages 8 and 9, G.O.21147 (vi).

Make a note of the names of the Magistrates and note which was Chairman and the times of starting and finishing the case. You will require these for the Hearing Letter, as also the offender's occupation, the exact penalty, costs (whether against Crown or offender), the time allowed for payment and the

¹ Even if verdict "not guilty." Attempts are sometimes made to give goods to defendant in such instances, but onus of proof, etc. (page 8). If anything seized is formally claimed within one month of seizure or of issue of seizure notice (where seizure did not take place in presence of the owner or offender), condemnation proceedings are taken by the Solicitors' Office in the High Court (the "Taku" case) or in a Magistrates' Court.

term of imprisonment imposed and whether additional or in lieu of the penalty.

If all this makes an appearance as prosecutor seem difficult, it is only because the writer has tried to put everything in. Good sense, and half an hour's study, are really all that is normally necessary for the presentation of a case, and they are usually short and simple. A defendant seldom has slick lawyers and, because he had been brought to Court by reason of being virtually "caught red-handed," he is extremely likely to plead "guilty," allowing the Court to give a brisk verdict and you to return to the office.

The limitation of period after offence for prosecution is three years (Section 257, C.C.A., 1876).

The five kinds of punishment

The defendant has been found guilty. The Magistrate will publicly announce what punishment he is to have. He can:

- (i) Impose a fine.
- (ii) Sentence to imprisonment. (It can be one day, which means the prisoner can go at once, but this is a conviction.)
- (iii) Release on sureties. (This is in cases of breaches of the peace.)
- (iv) Release on probation. (Not a conviction.)
- (v) Combine any of the foregoing.

After a brief Chapter on Withdrawals and Adjournments we will deal with the punishment in our cases.

CHAPTER SIX

WITHDRAWALS AND ADJOURNMENTS

Withdrawals should be unlikely in the routine type of cases we normally deal with without legal aid. You will not ask, in any event, for a withdrawal yourself. Suggest to the Court that you can, without binding the Board, withdraw if the Court asks you. Under the Customs Consolidation Act, the Board have most unusual powers, frequently greater than the Bench's, but it is not tactful to tell the Bench this, if such be avoidable.

An occasion for withdrawal would be that the defendant was found to be a child or young person.¹ With care this could be avoided. Another would be: Concurrent case with police, their case heard first and lost. On the dismissal of a case because a wrong charge is made (which Heaven forbid), a former Collector of Cardiff, Mr. A. B. Dawson, I.S.O., J.P., is interesting: ". . . the advice of the Bench may be requested, but to re-arrest the man and charge him again would be considered inadvisable. It is better to receive the cane from the Board than to have a public denouncement made in the paper!"

Likewise with any other lost or dismissed case. Further action *is* possible, but you will not initiate it. Normally, the rule is—a man must not be "in jeopardy" twice on the same charge. But, *retain the goods*.

Where a withdrawal occurs, or an adjournment (Remand), a detailed and comprehensive report would have to be made to the Solicitor's Office, and *at that level* further action might be decided upon. Eight points of detail for the report are given in Customs Code, Volume 1, Part 2, para. 11.

"With your permission, Sir, the prosecution would like a remand." When you say that, the Court will want to know why. They do not like keeping citizens awaiting trial if it can be avoided. Yet you must seek a remand when:

- (i) The case involves the Board election because of the amount of goods, or because the defendant elects to be tried by a jury. Only if the procedure to obviate remands has not been possible to carry out.
- (ii) Smuggling has been aggravated by an attempt at bribery. Then the Magistrate is told that a further charge arising out of the case may be made at the next hearing.
- (iii) Other cases of smuggling aggravated by attempted bribery. Give as your reason that the attempted bribery was in circumstances which make it necessary to seek the Board's directions as to whether the prosecution should not include another charge. If the Magistrate objects, the application need not be unduly pressed. The Board can always use Information and Summons procedure.
- (iv) When a concurrent hearing of a smuggling and a larceny charge takes place and the accused is committed on the larceny charge (page 86 of Green Book). In these smuggling combined with larceny jobs we withdraw smuggling case if asked to by the Bench.

¹ Then legal evidence, e.g. birth certificate, must be produced. (Criminal Law Amendment Act, 1885.)

- (v) Complex or grave cases (Customs Code, Volume 1, Part 2, para. 10).
 - (vi) Dangerous Drugs cases where the sufficiency of the general form of election is questioned (Customs Code, Volume 1, Part 2, para. 18).
-

Always report quickly, giving fullest details, in all remand cases (Customs Code, Volume 1, Part 2, para. 11).

The period of remand is a good time to test the evidence. You might want to contact other ports or the Special Inquiry Staff.

You should familiarise yourself with the whole business of the Board's election,¹ Highmore's Customs Laws are most instructive on this, as on so many matters. See Section 233 of the Customs Consolidation Act as amended by Section 5 of the Revenue Act, 1906. The Court can itself remand, of course, for any good reason. It will grant one during the case to either side if the request is reasonable.

During a period of remand (normally four to eight days) the defendant can go free or be held in custody as the Court decides. After a period of remand, another remand can be ordered. Do not see suspect during time of remand unless he asks for an interview.

¹ You might have to explain to the Court in, for example, where the Commissioners had sent a telegram instead of the full document. Court might ask for full document, and you would have to convey this wish quickly to Their Honours.

CHAPTER SEVEN

FINES, PENALTIES AND COSTS

Section 15 of the Finance Act, 1935, and Section 12 (1) of the Finance Act, 1943, increased the penalty under Section 186 of the Customs Consolidation Act, 1876, to not exceeding two years' imprisonment in lieu of or in addition to the fine and increased from six months to twelve the penalty for non-payment of fine. This resulted from a series of cases where big smugglers chose the comparatively light sentence of six months.

We sue for Treble Value and Duty (Customs Code, Volume 1, Part 1, para. 40), except in Drugs and other cases where pre-election by the Board is required (see Customs Code, Volume 1, Part 2, paras. 13-18). Purchase Tax is really a Duty, and we include that in the penalty where the goods are liable to Purchase Tax. If goods are liable only to Purchase Tax, we sue for Treble the Tax-Paid Value. *N.B.*—Value here means the *Customs Value*. File 25766/48 (Section 14) stressed that in prosecution cases the value for Purchase Tax is assessed under G.O.7/41, Part 9, para. 46, sub-para. (b). These need not have been worked out precisely at the time of charging.

We tell the Bench what fine we sue for. The Bench pleases itself, and can mitigate fines or "Compound and Stay" proceedings. If the mitigation is considerable, mention the fact in the Hearing Letter.

Offenders after conviction can, if the Court thinks fit, be discharged absolutely or conditionally. This does not count as a conviction but may be referred to in subsequent cases. It is a humane rule designed to prevent persons being stigmatised as criminals for one slip. In smuggling cases, different after all from a robbery or such like breach of the peace, the Magistrate will rarely exercise this prerogative. (Sections 3, 7 and 12 of the Criminal Justice Act, 1948.)

The Board, too, can mitigate fines and compound or stay proceedings. (Section 35 of the Inland Revenue Regulation Act, 1890, as applied by the Excise Transfer Order, 1909, to the exclusion of Section 209 of the Customs Consolidation Act, 1876.)¹

What the Bench cannot do is to impose the full penalty of Treble Value and Duty and a fine (say Five Pounds). This has been done, in small cases, as a deterrent, but the Court should be told it is incorrect legally. The effect of an addition to the maximum penalty is that the defendant, if he knew, could walk out of Court without paying anything, for the Magistrate has no power to impose this penalty, which therefore becomes null and void.

Be ready for a question as to how the Duty and Value are ascertained (Tariff and Finance Act abstract in G.O.s for Duty; Section 214 for Value)² and the authority for Treble Value and Duty.

Section 25 (1) of the Criminal Justice Act, 1948, allows Magistrates to adjourn a hearing for a period not exceeding three weeks after conviction and before sentence to determine the most suitable method of dealing with the case.

¹ Some courts do not like this. Yet they should realise without such power courts could be overwhelmed with trivial cases.

² Have the relevant parts of Finance Acts, as given in Orders, ready to quote.

Section 11 of the Customs and Inland Revenue Act, 1879, as substituted for Section 218 of the Customs Consolidation Act, 1876, gives the procedure for recovering penalties, enforcing forfeitures, and punishing offenders under Customs Acts. You will only be concerned with receiving any fine(s) imposed. The Clerk collects these. (Actually, he delegates the duty as a rule.) The fines are to be forwarded to the Collector. In many courts, it is the practice to do this direct. If the offender asks for time to pay, he is normally allowed time. If he has *no fixed abode within the jurisdiction of the Court*, or has no means to pay, the fact should be brought to the notice of the Court. (Criminal Justice Administration Act, 1914, Sections 1 and 43.) (See also Customs Code, Volume 1, Part 2, paras. 32 and 33.) The Magistrates can imprison, within limits, those who will not pay.

When the penalty is announced is the time to ask for *costs*. (In Scotland they are termed *expenses*.) The law on costs, as far as we are concerned, is Section 5 of the Customs and Inland Revenue and Savings Bank Act, 1877.

Where the offender has asked to be tried by jury, you list your costs, if any, to the Clerk, who must certify them. Ask for any interpreter's fees. It is in the defendant's interests to have an interpreter, so the fee is payable by him.

Note costs and fees for the Hearing Letter.

Where, in cases other than our own, a Customs witness receives a fee, it must, of course, be paid into the Custom House. If a question of conduct money for a witness arises, seek a higher authority. If instructed to give such money, obtain a proper receipt. See Custom Code, Volume 1, Part 2, para. 37, for return on C. and E. 460, when a person is committed to prison on a smuggling offence. Paragraph 42 deals with expenses incurred in connection with penalties other than Justices' Clerk's Fees, and the whole subject of Court fees is dealt with in paragraphs 35, 43 and 46 (Interpreter—who is paid right away). Scales are given in the same Code part, paragraphs 18 to 20, and paragraph 45 deals with *subsistence of prisoners*. Familiarise yourself with forms C. and E. 231 and 232.

For *your* expenses in connection with legal proceedings (C. and E. 231), see also Establishment Instructions, Volume 3, para. 105.

CHAPTER EIGHT

WITNESSES, EVIDENCE, CROSS-EXAMINATION

The chapter on The Case may be regarded as largely for the Chief Preventive Officer, though there is something there for the Preventive Officer and Assistant too. Preventive Officers have been known to perform the duty of prosecuting; in small places it is usual. It is also fitting that both grades should know how cases are conducted so that they can act "to the manner born" in Court, and should know the rights and obligations of a witness in relation to the defendant, the prosecutor and the Court itself.

What follows on witness and evidence must be read in conjunction with that chapter, these matters being thus dealt with separately only for convenience. The latter part, on cross-examination, is again more the concern of the Chief Preventive Officer.

The onus of proving guilt is on us. For this, facts only are wanted. The prosecutor works by producing evidence, i.e. the means by which the facts are proved. Usually, a witness on oath (a person) and exhibits (things) are the means. There is no need to enlarge on exhibits; bring them with you or see they are in Court and produce them when appropriate.

The laws of evidence are once more an instance of the overriding rule of Fairness. They are very much in favour of the accused. Much of what in ordinary life we would regard as being quite reasonable grounds for making a decision would not be permitted in a Court, and you must not be surprised if you are pulled up for not keeping strictly within the confines of these just rules.

It is not the witness's job to make speeches. Answer questions, no more. "Yes" or "No" is best, if possible. Do not use the expressions "absolutely yes" or "definitely no." Magistrates judge you when you are a witness as you judge people you meet for the first time.¹ If such a person brags of his achievements or bores you with personal reminiscences, you will form an unfavourable impression of him. Magistrates favour those who answer simply, without evasion or irrelevancies. Do not answer a question which has not been asked, and do not fence. Do not be prejudiced in your replies.

Speak clearly; do not have the Magistrate saying, "Speak up." (Some do it even if they *can* hear you! A judicial foible.) Face him and not the questioner when you answer questions. The Magistrate may ask questions too. Speak at a moderate rate, so that the Clerk can follow.

Most Courts expect you, as an official witness, to be fairly familiar with procedure, but they will not expect too much. Most of them realise that you are in the position of the policeman in the following little anecdote, told by the author of *The Constable's Pocket Guide*:

"Not so long ago, a certain eminent master of the legal profession was weighing the pros and cons of a police prosecution. Turning to a companion, at the same time taking a law book from the shelf, he said: 'You know—I believe the constable exceeded his powers when he arrested in this case.'

¹ H. Rubinstein, *John Citizen and the Law*, Pelican Books.

His companion, a canny Scot, replied: 'Yes, Sir, but he couldn't consult a law library before he made his decision.' "

The Perfect Witness

"He should relate in ordinary language the story he can tell of his own knowledge as to what he has seen, heard, etc. He should confine himself to facts, avoiding inferences and opinions or beliefs. He should tell his story in the natural order and sequence as it occurred. He should speak from memory, expressing himself clearly and accurately. He should not produce his note-book as a matter of course and read out his evidence therefrom.

"When asked a question, he should listen carefully to the question, make sure that he understands it, and give an intelligent and proper answer to the best of his ability. He should only answer the questions put to him, and then in as few words as possible, promptly and frankly. He should never lose his temper under cross-examination, and should always reply politely and quietly to offensive questions. He should not show partisanship or prejudice, and ought to give his evidence fairly and impartially. . . . If he does not know something, he should say so." (MORIARTY, *Police Law*.)

The good name of the Department is in your hands to a great degree when you step into the witness-box, and you must remember this. The few general rules just given will help. Now we will go into details as to how you shall conduct yourself and just what evidence is.

When called, and not before, step briskly into the box and take the Oath. This, or the affirmation, will be printed on a card handed to you by a police officer. See that you use the correct words. The usual form is:

"I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth." (It is no harm to familiarise yourself with the various ways of non-Christians affirming, such as the Chinese breaking of saucers.)

To tell a lie, or conceal the truth, under oath, is a most serious offence.

The prosecuting officer will lead you through your evidence, as we have seen. He must know, and so should you, what kind of evidence is *admissible*. The *best evidence* must be produced. This is *first-hand* or *primary evidence*. It may also be called direct or positive. Put simply, this means that the best evidence of a fact perceived by the senses, seen, heard, etc., is that of a person who says he saw, heard, etc. Direct evidence of a document or thing is the production of it. Thus, best evidence is: the person who saw or heard the facts stated; in the case of statements, the person who made them; documents. (Documents are read to the Court and so become part of the oral—sometimes termed "parole"—evidence.)

We need only produce sufficient evidence to prove the facts alleged.

Secondary evidence is admissible when the best cannot be had. The Court must be satisfied the latter is the case (e.g. that the document, of which a copy is produced, has been destroyed). Secondary evidence of a person, document or thing would be: statement by the person; a copy of the document; a model of the thing. Authenticated records of official documents, extracts from books which it would be inconvenient to bring to Court, may be permissible secondary evidence.

Hearsay evidence (what the soldier said) is not admissible, because what someone else, not present, said is not said on oath, and the defendant has no chance to cross-examine. Evidence of a third person is likewise inadmissible unless the statements were made by the person in the presence of the accused. When evidence is given by a document, the whole document must be given (as a rule).

The Court may permit, as part of the *res gestae* (literally, things done), reference to things said when the defendant was not present, but the rules as to what are relevant under this heading of *res gestae* are most complicated and it is sufficient to know that there is such a thing and, generally, to avoid hearsay. Similarly, there are circumstances in which apparently irrelevant evidence is permitted, but again this is for a lawyer.

Letters may be produced in evidence without proof of handwriting, unless evidence is advanced to the contrary. Generally, it is necessary to have the evidence of the writer of the letter. Do not make any written marks on documents belonging to defendant which you intend to produce.

No evidence is admissible which does not tend directly to prove the matter at issue. No evidence as regards other offences on the part of the defendant can be advanced (as a rule). *Evidence of fact, not of law, not of opinions, is wanted.* The Court interprets the facts, not the witness.

Chief Preventive Officers must protect their own witnesses against attempts to ask questions of law or of opinion. There are instances of a smart defending solicitor asking: "Do you think . . . is a smuggler?" You need not answer. Perhaps best reply is: "I have not made my mind up." (Something of the sort happened in Southampton. To a further question: "Then why did you charge the man with the offence?" the reply was: "Because I had reasonable and probable grounds to suspect he had committed it.")

Strong objection should be raised, on the grounds that it is contrary to public policy, to any questions by the defending solicitor which seem to have for their object the eliciting of an informer's name, or the source of information (*Rex v. Hardy*, 1794 (24), *Howell's State Trials*). The instance in Dublin where an English Special Inquiry Officer flatly refused to divulge the secret marks placed on export cigars, and was upheld by the Court, is notable.

A witness who appears after a warrant or witness summons, and refuses to speak, can be sent to prison.

There are other instances where a witness can claim *privilege* (e.g. priests and confessions) which would scarcely occur in Customs cases. Likewise, we need not go into *circumstantial evidence*. It simply means instead of evidence of a fact, evidence from other facts which lead to a presumption that something else is a fact. Stick to facts or to facts relevant to those facts.

Knowing then what is evidence, your knowledge perhaps expanded by a study of Stone, or Stephens' *Digest*, you must act properly in eliciting it. (Some points on this are in Chapter Six and in Chapter One).

Leading questions are questions so framed as to suggest to the witness the answer desired or which contain the answer desired. Therefore the questioner is really answering the questions, and the person being questioned is merely assenting, e.g. "Was it raining?" is leading. "What was the weather like?" is not. "Did you buy this in Paris?" is leading. "Where did you buy it?" is not. It is permitted, where a witness's memory is defective or where the matter in question is complicated, to ask such questions as will lead the mind

of the witness to the subject. (Lord Ellenborough in *Nicholls v. Dowding and Kemp*, 1815.)

A witness may refresh his memory from a note-book, but the notes must have been made shortly after the alleged offence and witness should be ready to swear accordingly. The "other side" can ask to see such notes. An accomplice can be called as a witness by the prosecution if the Court permits, but a corroborative witness should be called also. Defendant may call witnesses to prove he is of good character. Leave them alone. If a young child, who does not take the Oath, gives evidence for the prosecution, it must be corroborated by some other evidence.

For written statements, including confessions, put in as evidence, see Chapter Ten. (Much that applies to written evidence applies to oral evidence.)

A Customs case is a criminal proceeding. Therefore, a respondent, or the wife or husband of a respondent, was not at one time competent to give evidence. By the Criminal Evidence Act, 1898, the respondent, whether charged solely or jointly with any other person, is a competent witness for the defence. *The wife or husband may not be called upon as a witness except upon the application of the respondent.* If the wife or husband does not appear, you are not allowed to comment on the fact. The Court can.

The prosecutor, or the Customs officer upon whose complaint the charge is made, is a competent witness. Being a possible recipient of a reward does not affect one's standing as a witness.

When a witness has been present in the Court without permission during the examination of other witnesses, it is a matter of judicial discretion whether his testimony should be received or not. Usually his evidence will be received if his presence was not the consequence of evil intent. The Court must be satisfied that the fact of the witness having been present will lead to no injustice. A defendant *can* have a waiting witness removed, on request.

Routine

So the drill is:

- (1) Examine your own witnesses. They can be cross-examined by defendant.
- (2) Cross-examine defendant's witnesses.
- (3) Re-question your own witnesses on new points brought out in their cross-examination.
- (4) Recall other witnesses if necessary, and if Court consents. The witnesses can also be re-examined by the Court.

Competency of Witnesses

The following cannot be called:

- (1) Children of tender years.
- (2) Idiots and the insane.¹
- (3) Deaf and dumb persons if they are incapable of understanding what is said or of communicating their thoughts.
- (4) Persons temporarily incapable through illness or drunkenness.

The King, of course, as Fountain of Justice, cannot be called.

¹ Some lunatics are insane on one matter and sane on others. On a matter on which he is sane his evidence may be accepted.

Cross-Examination

The fireworks of a Hastings or the relentless probing after truth of a Birkett are not expected from a Preventive Official in a small case, and, indeed, any display of ultra-smartness can, like long-windedness, antagonise the Court. Yet some knowledge of the difficult art of cross-examination is not undesirable.

It is said to be the most difficult accomplishment to be acquired by the advocate, and even in the legal profession the first-rate cross-examiner is a rarity.

Cross-examination has been deemed the surest test of truth and a better security than the Oath.

The need or opportunity for us to display any great knowledge of this art will rarely arise, fortunately. Yet some knowledge is useful even for day-to-day preventive work, outside the courts. Perjury apart, you cross-examine to discredit the witness on his testimony if it goes against your case. Therefore you can be most courteous to the person questioned if only because he is thereby disarmed. If you can get him to help you to discredit his testimony, so much the better. But do not forget the Magistrate. He might prefer to ask the questions. You certainly must not weary him or give him the impression you wish to gain your point by hook or by crook. Acquire the good *manner* before you consider matter. Then you can observe the following simple rules:

Don't ask unnecessary questions.

Don't forget you are questioning the witness, but it is the Magistrate whose mind you are trying to penetrate.

Don't be slick; be fair. Think of yourself in the box being questioned.

Don't take the witness through every item of evidence he has given.

Don't be trifling over minor lapses of memory.

If you obtain a favourable answer to your question, once you are sure the Bench has spotted it, leave it quite alone.

If the witness is the Clever Guy type, you can let him score off you. You may put a vital question just when he is feeling most elated and is off his guard.

If the witness appears to be reciting a prepared story, ask him to repeat it. *If he repeats it exactly*, let the Magistrate draw his own conclusions.

Question him on just one point arising from his story and put him off his stride.

Remember the motto¹: Hold your own temper while you lead the witness to lose his.

These few rules, if your cross-examination is carried out in a proper sequence (which you can prepare during the time when the evidence is given), should suffice for all practical purposes. Knowledge of the rules, of course, will also help if *you* are cross-examined!

A few more points, based on the methods of great cross-examiners such as Choate, O'Connell, Erskine, collated by Wellman,¹ may be of further interest.

When a witness is unwilling, for one reason or another, to tell the whole truth, he must be led through apparently harmless questions, which he cannot possibly object to answering, until he comes to the point where he cannot help answering the vital question.

¹ *The Art of Cross-examination*, by F. L. Wellman (Macmillan).

Wrong testimony is not always deliberate. There can be many reasons for fallacious evidence. Sense impressions should, perhaps, be the same to every mind, but when the mind receives them and starts to interpret them, error creeps in. (Some excellent instances of this are given in *Alias J. J. Connington* by Dr. Stewart.) Looking at railway lines, the eyes see converging lines, the mind interprets them as parallel lines. Each person interprets sense impressions differently at different times. In our cases, evidence is of a simple nature and such false interpretations can scarcely occur or do not matter if they do. But, for one's own sake, it is well to know how difficult it is to tell the whole truth and nothing but the truth. People believe what they want to believe. Memory may be at fault; or the will. And finally there is unconscious partisanship, the tendency to take sides which makes a witness more anxious for his side to win than for justice to be done. It is well known that in collision cases all the crew of one ship will believe the other ship was at fault and will testify so.

So, all false witness is not perjury. Yet, when the witness, without intent, is guilty of giving fallacious testimony, you must see that the Court realises that.

Finally, when you have received the answer you want, ask no more questions. As Josh Billings said: "When you strike ile, stop boring. Many a man has bored clean through and let the ile run out at the bottom."

CHAPTER NINE

THE HEARING LETTER THE SOLICITORS' OFFICE

The Hearing Letter

You should be familiar with all the forms connected with seizures. The Hearing Letter (C. and E. 459) is a comparatively straightforward document, but you should be sure to have all the details called for thereon ready for inclusion in and despatch of the form to the Solicitors' Office immediately after the case, *whether it (the case) is successful or not.*

The work of the Solicitors' Office, as far as we are concerned, is briefly dealt with below. A few points about the Hearing Letter may first be noted: It is to be prepared in duplicate and sent through the Waterguard Superintendent.

No duplicate is required if the case is conducted by a member of the Solicitors' Office.

If two or more persons are prosecuted for the same offence, include the names on the same Hearing Letter, unless there is some reason to the contrary.

If the Court imposes no penalty or a very small one, state the reason given for this in the Hearing Letter.

Also record if the penalty was paid at once, giving details, or if not paid at once.

There is a portion to cover all relevant points not covered by the rest of the Hearing Letter. Make good use of these, so that when whole form is completed a whole picture (without superfluties) is available.

The Solicitors' Office

Johnson may have said that he did not "care to speak ill of any man behind his back, but he believed the gentleman was an Attorney," yet in this Department our legal advisers deserve none of the sneers often made about lawyers. Their work is comparatively unknown and the following outline—far from comprehensive—of the work of that office may be enlightening as well as useful. It has been compiled with the assistance of members of that office, who also, incidentally, have been helpful in other ways connected with this booklet.

The Solicitors' Office consists of about thirty barristers and solicitors, a staff officer, a higher clerical officer and a number of clerical officers. It is divided into four divisions, two of which deal with Customs Law (except prosecutions), one with Excise and Purchase Tax (except prosecutions) and one with Prosecutions and litigation. It is, of course, the members of the Prosecution division whom you will meet most frequently. They not only conduct prosecutions in courts throughout England and Wales, but instruct Counsel in Quarter Sessions, Assizes, and Courts of Appeal and brief Crown solicitors in Northern Ireland and Procurators Fiscal in Scotland. The litigation branch bring and defend all civil cases in the High Court and in County Courts. The vast majority of civil

cases are taken to recover Purchase Tax.¹ These are often followed by bankruptcy and companies' winding-up proceedings.

The Customs divisions advise on proposed legislation, international conventions and trade treaties, liability to specific and *ad valorem* duties, the temporary importation of cars, aeroplanes and vessels, bonds, legal quays, sufferance wharfs and warehouses, exchange control, seizures, Registry of Shipping and one or two matters of a general nature such as Probate and conveyancing.

The Excise and Purchase Tax division advises on liability to Excise Duties, Entertainments Duty and Purchase Tax and on all legal questions in connection with licences, Excise entries, monopoly value, etc. In February, March and April each year a member of the office attends every Brewster Sessions and Confirming Meeting where there is a dispute as to the amount of monopoly value to be paid on the grant of a new liquor licence.

The prosecution work has increased rapidly since Purchase Tax was imposed, and about a third of the office is engaged in this work. Any member of the Solicitors' Office is always very willing to advise members of the Preventive Service on any tricky points which may arise.

Address of Solicitors' Office: City Gate House, Finsbury Square, London, E.C.2.

Telephone No. of Solicitors' Office: MANSion House 1515.

¹ During the years 1945-1948 there were over 300 prosecutions for Purchase Tax offences, many offenders getting prison sentences. In addition to tax recovered, penalties and costs approximated £100,000.

CHAPTER TEN

MISCELLANEOUS

Written Statements

In any case where it is desirable to take a written statement¹ in connection with preventive work, it is well to bear in mind the definite rules which govern the obtaining and use of written statements when legal action is taken.

If a suspected person, or an informant, or possible witness, is willing to make a statement, it is a good idea to get one, especially in major cases, but it must be the person's *own* statement, not yours. This the rules make clear. Have a witness when you obtain the statement. You can take the statement down for the signature of the person who is making the statement, but he must read it over, or have it read over to him, and be absolutely certain that it is in his own words and just what he wishes to say. If the statement runs into more than one page, each page must be signed. Preserve the signed documents with care.

See that the conditions in which the statement is made are as pleasant as possible. *Make no mark of your own on the statement.* All alterations should be initialled by the person making the statement.

Now for the rules. They are, as the obtaining of an oral statement is (Chapter One), governed by the Judges' Rules.

When you are making an investigation you are not bound to caution. But although you are doing your job when investigating a seizure, if you reach the point of wanting a written statement, it is best to caution. A case was lost in Barry in 1946 mainly because a caution had not been given in such circumstances. If, in this matter of the caution, you are more fair to the suspect than you need be, you are upholding the good name of the service. Magistrates look askance at written confessions, especially from persons not necessarily familiar, as the police must be, with the governing rules. Also, even with the police, many Magistrates feel justified in being a little dubious of the average written statement. One certainly hears in Court documents read, purporting to be confessions, and not denied by the prisoner, which seem quite unlikely to have been his own work, even if voluntarily given in the strictest sense, if only because of the language in which the statement is couched.

It is presumed in Law that a man will not make a statement detrimental to his own interests, but statements in his own favour are not necessarily accepted. Evidence given in other cases or courts of inquiry can be quoted. (Much of the detail given here on written statements applies, of course, to oral statements.)

If, then, evidence in a written statement, properly obtained, is produced, it is admissible evidence against a suspect, unless it is "privileged" (which we need not go into). But it must be freely and voluntarily given.

Where the question of intent is part of an issue, he *can* quote words written or spoken by him which, though favourable to him, do show what his intention was.

¹ We obtain a written statement from an informant prior to applying for Search Warrant or Writ, but no caution is then required.

When the written statement is produced in Court, the prosecution cannot select one part and omit another; the whole must be given. Thus the suspect can get something favourable to himself over, but the Court, of course, may credit one part of the statement and not the other and, in any case, take the evidence of the written statement along with the other evidence when reaching a decision.

A written statement involving another person is not evidence against the other person unless he asked the writer to give it for him, which would have to be proved.

No inducement must be made to the person making the statement. "If it proceeds from remorse, or a desire to make reparation for a crime, it is admissible; if it flows from hope or fear excited by a person in authority, it is inadmissible" (Cave, J., in *Rex v. Thompson*, 1893, 2 QB 12). It would, for example, be wrong to suggest that a confession would mean getting off more lightly in Court.

You should not press a person who is making a written statement in any way, for example, by repeating a question he is unwilling to answer therein.

He must not be cross-examined, although you can help him remove ambiguities in his statement, e.g. he mentions an hour but forgets to put in the date; you may point this out to him.

Where two or more are making a statement, the statement of one must not be made known to another orally, but each is entitled to a copy of the others' statement. Do not ask for a reply. If a reply is volunteered, the caution must be given.

Do not allow the business to take too long. A Magistrate once rejected the written statement in a case where the suspect had been interrogated for three hours. The period before formal arrest should never be a long one.

In the case of a statement in a foreign language, unless the person giving the evidence understands the language, it is always necessary to call as a witness the person who interpreted the statement at the time it was made.

Generally speaking, therefore, the written statement voluntarily given after a caution in proper form, and not in connection with anyone but himself, can be put forward as evidence of a suspect's guilt, and may be accepted, even without corroborative evidence, by the Magistrate, but *if two persons are involved, and only one pleads guilty, the person pleading guilty cannot have a confession quoted against him.*

Your main duty is to see that the confession is quite voluntarily given, offering no inducements or unsought aid, to give the proper caution and to see the document is ready for presentation in Court. But the greatest care must be taken that the rights of the citizen are attended to with a consideration almost excessively sensitive.

If you take down a statement from a suspect, a good opening phrase is: "I having been cautioned that I need not say anything unless I wish to do so, but that anything I say may be used in evidence, make the following voluntary statement."

Courts-martial

The following few points relating to Royal Naval courts-martial, which apply *mutatis mutandis* to similar affairs in the other Services, or even to courts of

inquiry (where, however, the rules of evidence may not be closely followed), cover all that we need to know of such courts where we sometimes appear as witnesses. (But it is very desirable, in addition, that points of conduct and etiquette as to uniform, attitude in Court, etc., should be known to the officer. Detail herein would be unfitting, but the officer could get the "gen" if he wished.)

1. The laws of evidence which apply in a magistrates' court apply just the same in a court-martial.

2. Cases are usually under the Naval Discipline Act, and sentences up to death can be given—not necessarily carried out; heavy sentences must be approved by higher authority.

3. The courts do not supersede the civil courts.

4. The Court consists of not less than five, not more than nine, officers. There are strict rules as to seniority. One of the officers is President.

5. Time and place are also strictly laid down.

6. Person charged must have had time to prepare defence, and can have a friend with him and can object on the constitution of the Court or on any other point.

7. The case is started by a person in authority writing a "circumstantial letter" asking for a court-martial and giving all details and other documents. The request is not granted until it has been thoroughly gone into.

8. Persons travelling as passengers on Royal Naval vessels are subject to be tried by these courts.

9. Twenty-four hours' notice of a Court is given to witnesses, etc.

10. *Procedure.* (This may vary on some points and is not, of course, so formal for mere inquiries.)

(a) Court assembles. Officer of Court reports witnesses in attendance, and any officers on leave.

(b) President declares Court opened. Accused brought in by Provost Marshal.

(c) Prosecutor and audience admitted. (Witnesses come in one by one, as a rule. Audience may be barred, but such courts should be public.)

(d) Prisoner's "friend" named.

(e) Warrants, etc., read.

(f) After objections, if any, dealt with, Court sworn in, charges read, circumstantial letter read.

(g) Prisoner asked for objections.

(h) After checking whether prisoner had notices, etc., he is asked to plead, if he wishes. He need not plead.

(i) Prisoner makes statement and calls witnesses *as to mitigation*, if plea "guilty."

(j) Prosecution gives case, with witnesses. Prisoner can cross-examine.

(k) Prosecutor closes case. Court can now call any of the prosecution's witnesses or the prosecutor himself for examination.

(l) Accused gives his case and calls witnesses, including himself, if he wishes. (An adjournment can be granted if he is not fully prepared.)

- (m) After witnesses heard, accused or his friend can sum up case orally or in writing.
- (n) Prosecutor may sum up his case.
- (o) Court cleared for findings.
- (p) Court re-opened; findings announced; Court cleared.

This is given to dissolve any feeling of unfamiliarity if one appears in such a Court. It will be seen that it is almost the same as a Court of Summary Jurisdiction but, of course, circumstances may make the atmosphere quite different, and the Court President, in minor cases, may allow, within the bounds of fairness to the accused, a degree of relaxation in the formal process.

You must be as careful before initiating action which would lead to a court-martial as you would be in initiating action leading to any other court.

All officers should be familiar with all those parts of King's Regulations which concern us.

Coroners' Courts

Unfortunately, accidents occasionally happen in and around docks and the places where we work. We sometimes appear in these courts to assist the Court to find the cause of a death. You might appear for other reasons.

These courts are Courts of Law, although no one is accused. Evidence is on Oath and usually follows the laws of evidence, but *the Coroner can admit any evidence he likes, including hearsay.*

His duty is to ascertain the cause of death, and he can take any reasonable steps to that end. Except in serious cases, he need not have a jury. A coroner's jury must not be less than seven, not more than eleven. He can accept their majority verdict.

The verdict (Finding, i.e. result of the inquisition or search) will be in writing, signed by the Coroner and the jury. He can commit for trial.

A Coroner also makes inquiries into "Treasure Trove" (gold or silver found hidden).

He can hold his Court anywhere, even in a public-house, if necessary. His duties are laid down by the Coroners' Acts, 1887 and 1926. His is an ancient office, under the Crown, going back to Norman times, and some think there is room for improvement in the conduct of these courts.

All that further concerns us is that we should report to the Coroner any sudden death within our cognisance. (He can inquire into *any* death, and order a post-mortem.) The public can attend, but, on the grounds of decency, this may not be permitted.

Appeals

Any defendant can appeal against *conviction* if he did not plead guilty; against the *sentence* he can appeal whether he pleaded guilty or not.

Unless he is in custody, recognisances are no longer always necessary and must always be "reasonable."

Written notice of appeal is to be given to the Court and to us within fourteen days,¹ stating grounds. For "case stated" (see below), period is seven days. If he is in custody, he *may* be released.

¹ The Criminal Justice Act, 1948, allows Sessions to extend the period.

The Appeal Committee at Quarter Sessions can confirm, reverse, or vary the decision. This can involve heavy costs or an increase of sentence! Frivolous appeals are thereby kept to a minimum. The committee deals with costs. Only one case in 750 cases go to Sessions on appeal (1948).

The appeal is dealt with by hearing the case again. This is the usual form of appeal.

The appeal form known as "case stated" is interesting. In this form of appeal the case is not re-heard, but the Law is applied to the facts as stated by the Justices (i.e. case stated). It is dealt with by Judges of the King's Bench Division. (See Appendix D.)

The prosecution can appeal on a point of Law only.

If a case is lost on a point of Law, the Chief Preventive Officer may ask the Court if it would be willing to state a case. Report quickly and fully to Solicitors' Office. Send any newspaper account with your report. The report should include the name and address of the Clerk of the Court.

At Quarter Sessions the case is actually re-heard, so the prosecutor would again have to prove his case. Neither side, however, is bound by what it did or said at the first hearing. New witnesses may be called.

The appeal to the King's Bench Division is more truly an "appeal." Unless there is no evidence to justify their findings, the *facts* of the case as the Magistrates found them are accepted. The Magistrates give a concise report of the facts as they found them, say what their decision was and why they reached it.

This must be done within three months of the application for the case to be stated. Usually during this time both sides see the relevant documents before the Magistrates make the final draft. They sign it, and the appellant is given it to forward to the High Court.

Appellants can have legal aid and they may abandon an appeal to Quarter Sessions not less than two days before the date fixed for the hearing.

In case-stated appeals the Judges either find no fault with the Magistrates' decision or send it back to be altered in the light of the Judges' remarks. Perhaps they will be told to get additional evidence.

A decision upon a point of Law by a Divisional Court is binding on all lower courts unless reversed by a higher.

A successful appeal at Quarter Sessions decides nothing *except the charge itself*. The decision is not binding on the Court from which the appeal came or on any other courts.

These facts about appeals are not academic, for they may become more frequent and their possibility should always be borne in mind.

Search Warrants

See Customs Code, Volume 1, Part 1, paras. 18 and 22, for the Search Warrant issued by a Justice of the Peace, on reasonable cause being shown. He should not be a person interested in the goods to be looked for. It would be as well, though the police would always assist, to know the names and addresses of Justices of the Peace to whom you could go in a case of urgency, where the Writ of Assistance was not to be used. Be ready to show him the reasonable cause. (Section 204 and 205, Customs Consolidation Act, 1876.) Application need not be made in Court.

If resistance is expected, the police can be asked to attend.

You cannot *follow* goods with a Search Warrant as with the Writ. You need another warrant, or the Writ.

Daytime in the Section refers to the time between sunrise and sunset. Note days on which the warrant cannot be used (para. 23).

Report fully to the Board on the use of the warrant (see on warrants generally below under "Informations and Summonses"). ✕

Informations and Summonses

The alternative procedure to immediate detention is the summoning of the suspect to appear before a Magistrate at the court nearest to the place where the offence occurred. Before that, an Information has to be laid. This must be done within three years of the offence.

In the case of Dangerous Drugs, the Board's election must be in evidence (Customs Code, Volume 1, Part 2, para. 18). The form of the Information is given in Appendix B, Customs Code, Volume 1, Part 2, and para. 18 gives the form of the explanation to be made if you are questioned about the exhibition of the document.

There might occur other cases where you would have to arrange for the laying of the information (which would be prepared in the Solicitors' Office), and you should ask the Clerk of the Court, in such cases, what procedure the Court would like to adopt. It should be laid for a reasonable period of time, maybe ten days, but this cannot always be so.

Read through the Information to see it is correct in detail, e.g. dates, the offence properly described. Only one offence may be charged in each Information.

One purpose of the Information is to give the defendant a chance to arrange his defence. When you receive an Information to lay on behalf of the Department it will have a short letter of instruction with it. If the summons is sent, a copy of the summons will also accompany it. Normally, we do not serve summonses.

When you give the information to the Clerk he will tell you the date of the Hearing.

Note the procedure for Scotland ("the complaint") referred to in Chapter Two.

A sample Information is given as an appendix to Volume 1, Part 2.

A *Summons* is a written order signed by a Justice, after information, directing the person named therein to appear at a given time in such a court with reference to a matter set out therein. It states in brief the matter of the information, describing the offence in ordinary language, including the Section and the Act. You should try to see an example.

Usually the summons for the defendant is arranged centrally, but for *local witnesses summonses* you would apply to the Clerk. (Summary Jurisdiction Act, 1848, Section 7, and Indictable Offences Act, 1848, Section 16.) You must be ready to affirm that the person concerned will not come without a summons and is likely to give material evidence. Other witnesses will be arranged for centrally by such a summons or a *sub-poena* (a writ *commanding* appearance under a penalty, issued at the Crown Office, London), which "operates from day to day until charge disposed of." If for convenience you had locally to

serve a sub-poena and the person receiving it was entitled to *conduct money* (about which you would have prior instruction), obtain a receipt for it. Witness summonses must be "served"—they cannot be sent by post.

Summonses are used as an alternative to *warrants* (i.e. a direction to a policeman or other to *arrest* a suspect¹). They are made out in duplicate, the original being handed to the person himself or delivered by registered letter (preferably the former, which is called "personal service") *at his last or most usual place of abode*.

If a person receiving a summons (*receipt being proved*) does not appear, a warrant can be issued for him.

The police almost always serve the summons. The copy is for the Warrant Officer to prove in Court, if required. See para. 27, Customs Code, Volume 1, Part 2, for Northern Ireland procedure.

General

Affidavit. A written statement upon Oath made in relation to a matter before a Court before a Justice of the Peace or a Commissioner for Oaths.

Certiorari. A writ, granted on proof that there has been some defect in the proceedings before the Justices, directing the proceedings to be removed to the King's Bench Division (see Appendix C). It would also be granted if a difficult point of Law arose during the trial, or if it is proved that a fair and impartial trial cannot be given in the Magistrates' Court and for one or two other reasons.

Habeas Corpus. A writ of the King's Bench Division addressed to a person holding another in custody, directing him to produce the person and show reason for his detention.

Bail. A *recognisance*, or bond, taken by a duly authorised person to ensure the appearance of an accused person at an appointed place and time to answer the charges made against him. (*A recognisance* is a similar bond, but it is taken from any person to ensure appearance, etc., e.g. a prosecutor, where the defendant elects to be tried by a jury.) If the recognisance is not the prisoner's own, he must have two persons (usually householders) to be his bailsmen, and they lose the sum stated if he does not appear. The Magistrate must be satisfied.

Bail should normally be allowed to the unconvicted person who is unlikely to abscond, but the police often oppose it. It would be unusual for us to do so. Non-appearance of a person released on bail is purely the concern of the police.

If a prisoner makes his own recognisance and does not appear, he can lose the money involved. If he did not actually deposit money, he can be summoned to show why the sum should not be paid. Technically, a person on bail is in the custody of those who stand bail for him.

Bail is also used by police officials who do not think it necessary to detain a prisoner charged, though his own undertaking to appear, in such cases as ours, is generally sufficient.

¹ The warrant is also used for search as we have seen, for taking a man to prison, to levy distress for the non-payment of a legal penalty, and for other purposes.

Legal Maxims

Much of British Law is summed up in a variety of maxims, some of which are worth knowing though maybe you will never encounter them in the ordinary court. When Serjeant Sullivan, in an assault case in which he defended a labourer, was asked by the Judge: "But surely your client knows the maxim, *Potior est conditio defendentis?*" He replied, "Your Honour, in the part of Cork my client hails from they talk about scarcely anything else."

Still it is no harm to know a few:

Ignorantia facti excusat. Ignorantia juris non excusat. (Ignorance of a natural fact may excuse a person from the legal consequence of his conduct, but ignorance of the Law, which every man is presumed to know, does not afford excuse.)

De minimis non curat lex.

Rex non potest peccare.

Qui facit per alium facit per se.

(He who does an act through the medium of another party is in Law considered as doing it himself.)

Apices iuris non sunt iura. (Legal quibbles tending to the overthrow or delay of justice are disallowed.)

Ubi eadem ratio ibi idem ius. (Like reason makes like Law.)

Delegatus non potest delegare.

When the Court cannot take notice of a fact it is as if the fact did not exist. All acts are presumed to be rightly done. A man acting in a public capacity is presumed to be duly authorised to do so.

(For more: see *Everyman's Own Lawyer.*)

CHAPTER ELEVEN

SUMMARY OF CHAPTERS ONE TO TEN

(Used with the appendices, this summary should make an index unnecessary and still leave the main text readable. It is always difficult to make something which can be read in a straightforward way useful as a handbook. If this summary does not serve the purpose, an Index will be added in later editions.)

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(Appendix B gives all the main authorities.)

Appendix A (a)

Short Summary of the Customs Consolidation Act, 1876

(Based on the introduction to *Highmore's Customs Laws*, Third Edition)

The Act is designed to ensure due collection of the Customs Revenue. It also forms legal basis of prohibitions and restrictions on import and export, and of the machinery with which statistics of the trade and shipping of the United Kingdom are compiled.

First Part deals with appointment of officers, remunerations, duties. The appointment of ports, etc. Bonded warehouses. Boarding stations. Sufferance wharves, etc. (Section 14). The general law relating to the collection of Duties (e.g. Section 17, Duties, etc., in British currency and Imperial weights, etc. Receipt exempt from Stamp Duty—Stamp Act, 1891). Drawbacks, Allowances. Sections 1-30.

Second Part. The importation, prohibition, entry, examination and landing of goods. (N.B.—Section 5. Vessels to come quickly to places of unloading. Section 47. Officers to board ships. Section 51, Master liable to forfeit £100 for false report or failure to report. Section 66. No entry required for passengers' baggage.) Warehousing. Prohibited and restricted goods listed. Customs control over ships and goods from first arrival in territorial waters until delivered out of custody. Reports, Entries. Sections 42-110.

Third Part. Exportation of goods. Clearance. Shipment of goods, including drawback. Other goods. (Section 136, Ships carrying away officers, penalty £100.) Sections 111-138.

Fourth Part. Coasting Trade. Sections 140-147.

Fifth Part. Channel Islands. Sections 149-163.

Sixth Part. Bonds and other Securities. Sections 165-167.

Seventh Part. False declarations, counterfeiting documents, etc. Section 168.

Eighth Part. The Prevention of Smuggling. Seizures, forfeiture of vessels. Apprehending offenders. Legal proceedings. Sections 172-274 (see Appendix B).

Ninth and Tenth Parts. Sale, etc., of Land, and Isle of Man Tariff. Sections 277-283.

Section 284 deals with interpretation of terms in this Act. Section 286 says: Playing Cards imported not to be sold without wrapper provided by Commissioners of Inland Revenue.

There are also amending Acts and Finance Acts.

Appendix A (b)

**Main Differences between the Legal Processes in England and—
(i) Scotland***General*

Legal procedure in Scotland differs, in certain features, from that as practised in England. Some of these differences are clearly shown in Customs Code, Volume 1, Part 2, para. 6A, but to understand this paragraph it is necessary to examine the relevant forms used.

Accuracy

The necessity of using these forms supports the view that a higher standard of accuracy and a larger amount of detail are required in the Complaint in Scotland than in England.

Venue

Customs charges in Scotland should be heard in Sheriffs' Courts or before Justices of the Peace and never taken before the ordinary Police or Magistrates' Court. Frequently time does not allow the use of the Sheriff's Court, but, normally, Justice of the Peace Courts can be convened at fairly short notice by contacting the Justice of the Peace clerk and stating our requirements. Sheriffs and Sheriff substitutes have power to try Customs offences committed anywhere in the Sherifffdom, but Justice of the Peace courts are restricted to the Burgh or County.

Fees

No fees are payable for use of the Sheriff Court, but the following fees are paid to the Justice of the Peace clerk: Complaint, 2s. 6d.; Trial—no proof, 2s. 6d.; add 75 per cent, 3s. 9d.; Bar Officer, 6d.; total 9s. 3d.

If Trial: Complaint, 2s. 6d.; Trial, 5s.; add 75 per cent, 5s. 7d.; Bar Officer, 1s.; total 14s. 1d.

Detention of Offenders

It is the practice to detain the offender in the Custom House until completion of the form of Complaint and then to have the offender charged at the police station and brought before the Sheriff or Justice of the Peace court. When it is not possible to have immediate disposal of the case, the offender should be detained, but should the Police demur at detention of the individual, the Collector or other superior officer should be contacted in order to take steps to enforce detention.

If a complaint is sworn in front of a Justice of the Peace he can sign a warrant, and that is sufficient to ensure detention by the Police.

Form of Complaint No. 1 C.473. Summary Proceedings

The completion of this form requires little explanation. A duplicate should also be completed and delivered, as early as possible, to the defendant or his agent to enable him to prepare the defence and to know the exact wording of the charge.

Form of Complaint No. 4 C.476. Board's Election Cases

Where it is necessary to seek a remand in cases involving the Board's election, an application by Petition is made on Form No. 4 requesting that the accused may be detained in custody for a reasonable time and a warrant to convey the accused to prison.

Form No. 2 C.474

When Board's directions are known, a complaint on Form No. 2 is completed.

Form No. 3 C.475

If the accused is on bail, a Service copy of the Citation on Form No. 3 will be served on him, but if in prison, application must be made to the Sheriff or Justice for an order to bring him into Court.

Study these forms.

In Scotland, to prove a case, it is generally necessary to have corroborated evidence, i.e. the unsupported evidence of one witness might not be sufficient to prove a charge.

In England, there are only two possible verdicts, guilty or not guilty, but in Scotland there is the additional one of "Not proven."

In Scotland, the charge of larceny is termed "theft." Cases are not adjourned but "continued." The first hearing of a case can be in the nature of a pleading diet, where the accused is allowed to plead and, if a plea of guilty is tendered, the case might be disposed of summarily, but, if not guilty, the prosecutor, if his case is not complete or all his witnesses not available, can ask for a stated date for the future hearing of the case. In Customs cases we are usually prepared for the immediate disposal of the charge.

The enforcement of payment of fines or penalties in England is a matter for the Court, but in Scotland it is necessary for the prosecutor to set the machinery in operation. This is achieved by application to the Sheriff clerk or the Justice of the Peace clerk for an "Extract of conviction." This is given free by the Sheriff's clerk but costs 1s. 9d. when issued by the Justice of the Peace clerk. The extract is then turned over to the police for execution.

(ii) Northern Ireland

It is not possible to quote the various Collector's Orders which supplement the Codes and G.O.s 86/33, 66/34, 11/38 nor the special document Secretary C. & E., No. 48516/48 (to which, without actually quoting, we are none the less indebted), but if you are actually stationed in Northern Ireland the last-named will put you on the right track. What follows is a mere summary.

Compromise Penalty

Obstruction is often quite likely and altogether "aggravating circumstances" are to be watched for and, where they arise, the offer of compromise should be made only on the express directions of the Collector, Assistant Collector or other senior official. Such circumstances would be that the smuggler was a known smuggler; that the goods were for trading purposes; that they were smuggled in the course of the smuggler's employment (e.g. a bus-driver on a regular cross-Border service). Children are often used for smuggling, and this is an aggravating circumstance. They and young persons *may be arrested if*

persistent offenders and resident in Éire. This is at the Collector's discretion, and he is to be informed of all cases immediately. For report purposes you will want what you can learn by questioning as to the source of the goods or the money which bought the goods and of their destination. This is to establish any adult complicity.

Power of Arrest

There is no power of arrest for offences which consist solely of contraventions of the Customs (Land Boundary) Regulations.

Procedvve

Only a Resident Magistrate is authorised to hear and determine Customs cases.

For the Sole Purpose of Obtaining a Remand

When an R.M. is not available, the offender may be brought before a Justice of the Peace. When you have been told to arrest a juvenile (the Information and Summons procedure without arrest will suffice for Northern Ireland juveniles), bring him without delay before the Magistrate and request a remand if it appears that procedure may be by Information and Summons.

When you have to deal with a Justice, contact the Royal Ulster Constabulary (all of whose members including Special Constables, by the way, are deemed to be officers of Customs and Excise "with power and authority to do and perform all such matters and things as are by Law authorised to be done and performed by officers of Customs and Excise in connection with the prevention of smuggling into or out of the United Kingdom").

The appearance before the J.P. is at a *Special Court*, which may be arranged at any hour.

You should arrange at this Special Court for a remand to a date of a sitting of the Court of Petty Sessions, which will allow time for the Board's directions to be received. If, however, it is decided to proceed summarily under Section 233 of the C.C.A. 1876, the remand sought should be to the next sitting of the Court of Petty Sessions. If the offender is a citizen of the Republic of Ireland (Éire), remand will be in custody unless he is able to find surety in the person of a Northern Ireland resident. Again: leave it to the R.U.C. There are no Sunday courts.

Crown Solicitor

Proceedings in Northern Ireland in our cases are conducted by the local Crown Solicitor. When it is proposed under Section 233 to deal with a case summarily, the Crown Solicitor should be informed of the facts of the case as soon as possible.

In all proceedings against juveniles the Crown Solicitor's services are to be obtained.

A Crown Solicitor is not normally required to attend a Special Court.

In the Court

A C.P.O. proceeding under Section 233 must cite the Section of the C.C.A. 1876 giving him the power of arrest (Section 181).

The offender does not have to be informed by the Court of a right to be tried by jury.

Witnesses usually sit throughout the trial in the open court.

In Land Boundary offences it is always necessary to give in evidence that the offender "Has been required to furnish proof under Section 16 (2) Finance Act 1934 that the goods have been Duty paid or have not been imported from Eire."¹

Penalties

The Summary Jurisdiction and Criminal Justice Act (Northern Ireland), Section 44, was amended by the Finance Act 1943, Section 12, and thus increased the term of imprisonment which may be imposed (twelve months) to two years, but

The Small Penalties Act (Ireland) 1873, Section 4, and the Petty Sessions (Ireland) Act 1851, Section 22, lay down the scale of imprisonment in default of a payment of a penalty, but these have not been amended, and so the maximum penalty which can be imposed *in default* is twelve months. If offender is given time to pay and is a resident of the Republic of Ireland, see that he does not leave the Court before the fine is paid. Apply, at the end of the hearing, to the R.M. for the issue of an *Immediate Warrant*, which ensures his being held until the fine is paid. You might have to remind the Crown Solicitor to apply for this warrant.

Costs and Court Fees

Costs may be awarded and, in addition, should include any Court fees or Police fees payable. (Clerk will tell you after case.) Petty Sessions Clerks are required to pay over to the Commissioners of Customs and Excise all penalties and costs awarded (C.C.A. 1876, Section 235).

Court fees: Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1935, Section 45, and Fourth Schedule.

Appeal

The right to appeal is given by Petty Sessions (Ireland) Act 1851, Section 24. To Quarter Sessions.

Children and Young Persons

A "child" is under 14 years as here, but a "young person" 14 or over but under 16.

Information and Summons (very frequent)

The officer takes the Information (in duplicate) and Summons before an R.M. or J.P., who will sign them when complete. Retain one copy of Information for the Board's file. The other copy, with the summons, is to be delivered to the Clerk of the Court. They are then issued by Court Summons' Servers. (Not by Police or others unless Magistrate so directs.)²

Offenders resident in the Republic of Ireland are not to be proceeded against by Information and Summons. Deal with immediately.

General

Get used to the idea of working at all times (a) with the Police, (b) with the Crown Solicitor.

¹ Purchase Tax offences come under this by Section 11 (5) Finance Act, 1944.

² Warrants are served by the Police.

Appendix B

The Authority For—

RELEASE ON BAIL

Page in
"Highmore's
Customs Laws"

Subject

Law

England—Section 22, Criminal Justice Administration Act, 1914.

Northern Ireland—Section 39, Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935. (See C.C. 1-2-20, page 12.)

Note.—For position in Scotland see C.C. 1-2-20.

LEGAL PROCEEDINGS

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| 252. | How value is to be ascertained. | Section 214, C.C.A., 1876. |
| 256. | How penalties, etc., to be sued for. | Section 218, C.C.A., 1876, repealed and Section 11 of the Customs and Inland Revenue Act, 1879, substituted therefor. |
| 256. | An Information (or charge) may be in name of any officer of Customs and Excise. | Section 218, C.C.A., 1876, repealed and Section 11 of the Customs and Inland Revenue Act, 1879, substituted therefor. |
| 257. | Rule as to costs in Customs cases. | Section 5, Customs, Inland Revenue and Savings Bank Act, 1877. |
| 258. | Execution may issue after trial out of term. | Section 219, C.C.A., 1876. |
| 258. | Penalty and costs to be stated in convictions, etc. | Section 220, C.C.A., 1876. |
| 259. | Where proceedings by <i>capias</i> is waived in favour of the subject, Justices may issue warrant and admit to bail. | Section 221, C.C.A., 1876. |
| 259. | Penalties joint and several may be sued for by joint and several Information. | Section 222, C.C.A., 1876. |
| 260. | Information, convictions, etc., to be in form, etc., in Schedule C. | Section 223, C.C.A., 1876. |

Page in "Highmore's Customs Laws"	Subject	Law
263.	Justices may summon offender within 3 years of commission of offence.	Section 224, C.C.A., 1876.
263.	On attendance of the party on the day and place appointed, Justices may hear and determine the case. On non-appearance, Justice to proceed as if he had appeared.	Section 225, C.C.A., 1876.
264.	Justices may condemn goods liable to forfeiture.	Section 226, C.C.A., 1876.
265.	Summons to be served personally or by leaving same at last known place of abode.	Section 227, C.C.A., 1876.
265.	Penalty for neglecting to attend.	Section 228, C.C.A., 1876.
266.	Where offence committed upon the water not being within any county, such offence deemed to be an offence on the high seas.	Section 229, C.C.A., 1876.
266.	Justices of adjoining county may act when required.	Section 230, C.C.A., 1876, as amended by Section 8, Revenue Act, 1883.
267.	Justices of counties to have concurrent jurisdiction in cities, boroughs, etc., situate in such counties.	Section 231, C.C.A., 1876, and, as to jurisdiction in England and Wales, Section 46 of the Summary Jurisdiction Act, 1879; and as to jurisdiction in Scotland, Section 10, Summary Jurisdiction (Scotland) Act, 1908.
268.	Justice may commit in default of payment of penalty until paid. Scale of imprisonment.	Section 232, C.C.A., 1876.
270.	Justices may commit in certain cases without order of Commissioners where quantity of spirits less than 5 gallons, of tobacco less than 20 lb., or of saccharin less than 5 lb.	Section 233, C.C.A., 1876, as amended by Section 5, Revenue Act, 1906.
272.	Persons arriving in ships from infected places not to land before examination.	Section 234, C.C.A., 1876.
275.	Penalties and forfeitures to be paid to Commissioners.	Section 235, C.C.A., 1876.

Page in "Highmore's Customs Laws"	Subject	Law
278.	Writs of certiorari and habeas corpus not to issue except on affidavit.	Section 243, C.C.A., 1876.
279.	No writ of habeas corpus or order without notice to solicitor for the Customs.	Section 244, C.C.A., 1876.
279.	Prisoners against whom Informations are exhibited to be brought up by habeas corpus or Judge's order.	Section 245, C.C.A., 1876.
282.	Service of sub-poena.	Section 248, C.C.A., 1876.
288.	Onus of proof that Duties have been paid, etc., is on defendant.	Section 259, C.C.A., 1876.
289.	Averments in Smuggling cases.	Section 260, C.C.A., 1876.
290.	Viva-voce evidence may be given that a party is an officer of Customs.	Section 261, C.C.A., 1876.
290.	Witness competent although entitled to part of seizure or reward.	Section 261, C.C.A., 1876.
291.	All regulations, minutes and notices purporting to be signed by secretary or assistant secretary of Commissioners shall, unless contrary proved, be deemed to have been so signed.	Section 262, C.C.A., 1876.
295.	Officers may conduct cases. Court of Summary Jurisdiction may dismiss Information or charge; or discharge offender conditionally, etc.	Section 273, C.C.A., 1876. Section 1, Probation of Offenders Act, 1907. (See C.C. 1-2-31.)
	Justices may, for a first offence, mitigate penalty as they may think fit. Justices may mitigate penalty as they think fit.	Section 4, Summary Jurisdiction Act, 1879 (England and Wales). (See C.C. 1-2-24.) Summary Jurisdiction (Scotland) Act, 1908. (See C.C. 1-2-25.) (See C.C. 1-2-28 regarding Northern Ireland.)
	Any person charged with an offence under Section 186 C.C.A., 1876, may claim to be tried by Jury.	Section 17, Summary Jurisdiction Act, 1879 (England and Wales). (See C.C. 1-2-24.)

Page in "Highmore's Customs Laws"	Subject	Law
592	Court must, before the charge is gone into, inform defendant in the words of Section 17 of the Summary Jurisdiction Act, 1879, of his right to be tried by Jury.	Section 17, Summary Jurisdiction Act, 1879 (England and Wales). (See C.C. 1-2-24.)
	A person convicted of an offence under Section 186, C.C.A., 1876, may be ordered in lieu of, or in addition to, paying a penalty to be imprisoned for a term not exceeding 2 years.	Section 15, Finance Act, 1935, and Section 12, Finance Act, 1943. (See C.C. 1-2-23, 25 and 26.)
	The defendant and the wife or husband of the defendant are allowed to give evidence in proceedings before Justices for recovery of Revenue penalties.	England, Wales and Scotland—Criminal Evidence Act, 1898. Northern Ireland — Criminal Evidence Act (Northern Ireland), 1923. (See C.C. 1-2-22.)

SEIZURES

247.	Uncustomed, prohibited or restricted goods detained by the Police to be conveyed to Customs warehouse immediately if offender not detained or, if detained, immediately after trial of offender.	Section 206, C.C.A., 1876.
249.	Commissioners may restore seizures, mitigate punishments, or stay or compound any proceedings.	Section 209, C.C.A., 1876, excluded in favour of Section 35, Inland Revenue Regulation Act, 1890 (such provision is contained in the Excise Transfer Order, 1909).
288.	Onus of proof that Duties have been paid, etc., is on defendant.	Section 259, C.C.A., 1876.

FORFEITURE OF SHIPS' BOATS, OTHER CONVEYANCES, ETC.

214.	Vessels made use of in removal of uncustomed or prohibited goods forfeited.	Section 172, C.C.A., 1876.
215.	Smuggled goods: General description.	Section 177, C.C.A., 1876.

Page in "Highmore's Customs Laws"	Subject	Law
215.	Goods unshipped without payment of Duty and prohibited goods liable to forfeiture. Dutiable, restricted or prohibited goods concealed on board liable to forfeiture, together with any goods packed with or used in concealing them.	Section 177, C.C.A., 1876.
240.	Ships, boats, other conveyances, animals and other things made use of in importation, landing or removal of uncustomed, prohibited or restricted goods liable to forfeiture.	Section 202, C.C.A., 1876.
220.	Ships under 250 tons burden liable to forfeiture and vessels of, or exceeding 250 tons burden liable to fine if concerned in smuggling tobacco or spirits.	Section 179, C.C.A., 1876, as modified by C.C.A., 1876, Amendment Act, 1890.

POWERS OF SEARCH

224.	Ships may be searched within the limits of the port.	Section 182, C.C.A., 1876.
225.	Suspected person on board ship or landing from a ship may be searched if reason to suspect smuggled goods concealed on them.	Section 184, C.C.A., 1876, repealed and Section 12, Customs and Inland Revenue Act, 1881, substituted therefor.
226.	Persons before search may require to be taken before a Justice or Superior Officer of Customs.	Section 185, C.C.A., 1876.
244.	Search of Carts, etc.	Section 203, C.C.A., 1876.
244.	Search of Premises by Writ of Assistance or Search Warrant.	Section 204, C.C.A., 1876.
246.	Justice has authority to issue Search Warrant on reasonable cause shown.	Section 205, C.C.A., 1876.
193.	Search of Coasting Ships.	Section 147, C.C.A., 1876.
116.	Search of Commissioned Ships.	Section 52, C.C.A., 1876.
237.	Officers may patrol and pass freely along and over any part of the coasts of United Kingdom not being a garden or pleasure-ground.	Section 196, C.C.A., 1876.

Page in "Highmore's Customs Laws"	Subject	Law
180.	Firearms, etc.	The Arms Export Prohibition Order, 1931 (dated 19.5.31), and the Arms Export Prohibition Order, 1937 (dated 8.6.37) made under the Customs and Inland Revenue Act, 1879, Section 8, and the Finance Act, 1921, Section 17, at present superseded by the Import, Export and Customs Powers (Defence) Act, 1939, which supplements the Customs Consolidation Act. (See G.O. 1/47, paragraphs 1 and 2, and Appendices B and C.)
180.	Control of Exports.	The Import, Export and Customs Powers (Defence) Act, 1939, which supplements the Customs Consolidation Act. (See G.O. 1/47, paragraphs 1 and 2 and Appendices B and C.)
	Control of Currency	Exchange Control Act, 1947. (See G.O. 1/47.)

Appendix C

Kinds of Courts

The highest Court in the country—before which you are unlikely to appear—is *the House of Lords* (the high Court of Parliament). It is composed of eminent lawyers who are Peers and Members of the House of Lords, and deals with the very important points of Law on appeal, from the Court of Appeal or, on the certificate of the Attorney-General, from the Court of Criminal Appeal (see *Barnard and Another v. Gorman*, Appendix D).

Technically, the hearing of an appeal is a sitting of the House of Lords, but only the Law Lords attend (usually five). When arguments in the case have been delivered, the Law Lords do not give a judgment. The Lord Chancellor moves that the appeal be allowed or dismissed, the other Law Lords give their views in support or otherwise, and the majority verdict decides the case.

The Court of Appeal, which hears appeals from the High Court in civil matters.

The Court of Criminal Appeal consists of the Lord Chief Justice and usually two other Judges of the King's Bench Division of the High Court, and it deals with criminal cases brought before it on appeal from lower courts.

The High Court of Justice is in three divisions:

1. *Chancery Division*
2. *King's Bench Division*; to divisional courts of which come appeals on points of Law from Magistrates' Courts.
3. *Probate, Divorce and Admiralty Division*.

Court of Assize.¹ England and Wales is divided into seven circuits. Judges of the High Court of Justice visit each circuit twice a year at least and deal with all criminal and civil cases in the list.

The London and Middlesex Assize is held twelve times a year and is known as—

The Central Criminal Court. At these assizes all prisoners held or persons on bail must be tried.

Below these and above Magistrates' Courts (petty sessions) come—

The Quarter Sessions. They deal with all the less serious kinds of criminal cases. Quarter Sessions have no jurisdiction in civil cases except licensing and a few other unimportant subjects. They are of two kinds:

1. *The General County Sessions of the Peace* held quarterly in each county. It consists of two or more Justices (not Judges),² presided over by a Chairman. It can deal with appeals against summary convictions.

2. *The Borough Quarter Sessions*, held quarterly in cities and many towns (not non-County Boroughs) with a Judge (called the Recorder) and a jury. It hears appeals also.

Assizes or Sessions are where our cases are heard if suspect elects to be tried by a jury.²

¹ Note: Court of Assize properly comes under the heading of "High Court of Justice" but it is not a division thereof.

² That is why it is incorrect to talk of a defendant electing to be tried by a Judge and Jury. He may be committed to Quarter Sessions and get a jury but not a Judge. His right is to a jury only.

There are also *Juvenile Courts*, which are Magistrates' Courts with special rules designed for young persons. Sometimes they deal with persons over 17. If a young person is jointly charged with an adult, they do not deal with him. And *Coroners' Courts*. (See Chapter Ten.)
Civil Courts we will not deal with.

Appeals from most parts of the Empire can go to the Judicial Committee of the Privy Council. They do not deliver a judgment, but after they have expressed their views, they "humbly advise His Majesty to allow/reject the appeal."

(It is not really possible to deal completely separately with Criminal or Civil Courts, because some courts have jurisdiction in both types of case.)

Appendix D

From the Courts

(a) *Guilty Knowledge*

A judgment was given reviewing previous authorities, by Lord Justice Babington, on October 23rd, 1944, in the Court of Appeal, Northern Ireland, in the matter of James McAllister, appellant, and George Goodrich Dixon, Officer of Customs and Excise, respondent. The judgment is not binding on English courts, but it is a "strong persuasive authority" (i.e. it could be quoted in an English court).

The appellant was seen to arrive near the Border in a car. Another car was waiting for him on the Eire side. The driver of this ran over to Northern Ireland and was seen to walk back over the Border into Eire with a sack on his back, accompanied by the appellant. The latter assisted him to put the sack in the car in Eire.

The appellant denied knowledge of the sack which, on examination, was found to contain 120 pounds of turnip seed, the exportation of which was prohibited. The Resident Magistrate convicted the appellant under Section 186 of the Customs Consolidation Act, 1876.

On appeal, the Quarter Sessions quashed the conviction, *holding that the prosecution must give evidence that the defendant knew the nature or quality of the goods or that he otherwise knew they were prohibited.*

But the Court of Appeal held that failure to explain his connection with the prohibited goods was *prima facie* evidence of his guilt.

There follow extracts from the precedents quoted:

Attorney-General v. Siddons, C. and J., 220 148 ER 1400. The prosecution charged the defendant with harbouring and concealing tobacco, the Duty thereon not having first been paid. The acts were done by a servant without the knowledge or privity of the defendant who, nevertheless, was held liable, upon proof of the fact that the tobacco was found on his premises. "It is an occurrence of every day," said Alexander, L. C. J., "to convict upon such evidence, and if the rule were otherwise the Law would be quite inoperative. It is always competent to the defendant to prove his innocence if he can, but the finding is *prima facie* evidence upon which these convictions proceed. If he does not prove his innocence, the Law presumes his guilt from the fact of the goods being found concealed upon his premises."

Queen v. Prince, I. R., 2 C.C.R. 154. Brett, J., says: "The ultimate proof necessary to authorise a conviction is not altered by the presence or absence of the word "knowingly," though by its presence or absence the burden of proof is altered." He goes on: "The presence of the word calls for more evidence on the part of the prosecution, but it does not call for irrefutable proof of knowledge. Such proof is generally impossible, knowledge being a state of mind not to be positively established in the absence of a statement by the defendant of unequivocal facts from which it may be inferred."

Rex v. Kalolo (1923) 2 K.B.794, p. 795. Sankey, J.: "Where the fact to be proved is guilty knowledge a very slender amount of evidence may be sufficient to shift the onus of proof, since the truth or knowledge of the allegation lies peculiarly within the knowledge of the defendant."

Hibbs v. Ross, LR I QB. 534, p. 543. Blackburn, J.: "If the facts are capable of supporting an inference that the defendant's connection with the prohibited goods was an innocent one, his failure to explain them may compel the Court to adopt the inference to guilt rather than that of innocence, since the truth is known only to him, and it must be assumed that if he is innocent he will hasten to proclaim it and clear himself of the suspicion which the facts have fastened on him."

"Where such criminal intention is material, the proof that the act was done may, of itself, be evidence of the intention, for there is a rebuttable presumption of Law that every sane person intends the natural and probable consequences of his acts."—Wm. Shaw on "Mens Rea."

The legal maxim is: "Actus non facit reum, nisi mens set rea" (An act does not make a man guilty unless there be criminal intent).

(b) *Onus of Proof on the Defendant*

There are many cases which could be quoted, but the most recent covers all that they do. It is: Rev v. Fitzpatrick, March 23rd/April 19th, 1948, at the Court of Criminal Appeal, before Lord Goddard, C.J., Humphries, J., Pritchard, J.

The appellant was convicted at Essex Quarter Sessions on an indictment which charged her with unlawfully dealing with uncustomed goods, namely forty-six watches, between September 1st, 1946, and April 9th, 1947, contrary, etc. (first count). She was also charged with unlawfully dealing in the goods with intent to defraud the Crown of Duties on them, contrary, etc. (second count). There was a Purchase Tax charge (third count). She was convicted and sentenced on each count to two months' imprisonment, to run consecutively, and to a penalty of £138.

In April 1947 a man offered some Swiss watches for sale to another man, who proved to be a detective-officer, telling him that Duty had not been paid on them, the import of watches being prohibited except under licence. Later, the Customs visited the house where the appellant lived. In consequence of statements alleged to have been made by the appellant with regard to the watches, she was charged in respect of forty-six watches, six of which were those seized. (Here the Law Report quotes Section 259.)

The Chairman directed the jury that the burden of proof was on the appellant in respect of all the watches, and it was contended for the appellant that the burden was on her only in respect of six watches which had been seized, and that the Chairman's direction to the jury had been a misdirection.

The Court of Criminal Appeal held that: "Such goods' in the above Section included both those seized for non-payment of Duty or goods in respect of which a penalty was sought but which need not necessarily have been seized.

The contention that the proof shifted where goods were seized and did not shift when they were not could not be established, and the appellant was accordingly called on to establish her innocence with regard to the forty-six watches. There had, therefore, been no misdirection. The appeal against conviction must therefore be dismissed. . . ."

Clearly, where goods are actually seized no question of the onus arises.

Another case, *Eber v. Crawford*, heard in the King's Bench Division on May 28th, 1948, is worth noting: "The Divisional Court dismissed this appeal by way of case stated from a decision of Middlesex Justices.

"The appellant and her husband were charged with knowingly harbouring uncustomed goods (wrist-watches) with intent to defraud His Majesty of Duty, contrary to Section 186 of the Customs Consolidation Act, 1876 (39 and 40 Vict., c.36), and of Purchase Tax. The watches were found concealed in the garage adjacent to the house in which the appellant lived with her husband and of which the latter was the tenant. Some of the watches were wrapped in paper napkins of a common type. Similar napkins were found in the part of the house occupied by the appellant and her husband, and had been supplied by the appellant for use by one of her husband's sub-tenants in the house. Other sub-tenants, and a person using the garage to store his car, denied all knowledge of the watches when questioned by the police. While the appellant and her husband were being questioned, the appellant said to him: 'Do not answer questions you have not been asked. You talk too much.' The appellant gave no evidence. She contended that she was not in possession of the watches. The Justices convicted the appellant and fined her £500 on each of two charges.

"On her appeal: Held that, once the harbouring was proved, the burden was on the appellant to prove her innocence; that as she did not give evidence, the question was whether there was a prima facie case against her; that the facts proved disclosed a case calling for an answer; and that as she had failed to prove her innocence she was rightly convicted. Appeal dismissed" (*Local Government Chronicle*, August 28th, 1948).

(c) *Can We Arrest?*

Two officers were sued for wrongful arrest, and the case finally reached the House of Lords. It is a most fascinating case, quite impossible to quote fully. But it established our right to arrest, *if we have reasonable grounds*.

The Lord Chancellor, in this case (*Barnard and Another v. Gorman*, House of Lords, July 31st, 1941), quoted Section 186 and asked two questions:

1. Are Preventive Officers authorised to detain a person whom they believe on reasonable grounds to have committed an offence under that Section? or
2. Are they liable to damages to the person detained in an action for false imprisonment if the complainant has not actually committed the offence?

There was a subsidiary point as to whether in this case they had had reasonable grounds. (He found that they had.)

The case leading to the appeal does not matter. Cigars were found, the evidence was thin, the case was dismissed. The appellant had appealed to the Court of Passage in the City of Liverpool, where the learned Judge dismissed the claim for damages for wrongful arrest.

The respondent appealed to the Court of Appeal where, by a majority (Lord Justice MacKinnon dissenting), the appeal was allowed, damages being assessed at £25. All the Lords Justices were agreed that "if reasonable ground for belief that the respondent committed the offence charged were any defence to the action for false imprisonment" (Gorman had been detained overnight at the police station) "when the respondent was, in fact, not guilty of the offence, the appellants had proved such reasonable ground."

But the majority held that on the true construction of 186 the word "offender" was confined to persons who had, in fact, committed an offence. Lord Justice MacKinnon, on the other hand, thought the word "offender" in this case could properly be taken to include "a suspected offender" and must not be limited to "one who has in fact committed an offence."

So the case turned on the word "offender" in Section 186. Other cases were quoted, but it was clear the decision would be made on the meaning of the word in the "statute," particularly its meaning in that paragraph. If the wording meant that Officers of Customs could not detain suspects on reasonable grounds, well that was for Parliament, not the Judges, despite the loophole for fraud.

"Our duty," said the Lord Chancellor, "is plain. We must not give the statutory words a wider meaning merely because on a narrower construction the words might leave a loophole for frauds. . . . Our duty is to take the words as they stand, and to give them the true constructions having regard to the language of the whole Section, and as far as relevant, of the whole Act, always preferring the natural meaning of the word involved, but none the less always giving the word its appropriate construction according to the context."

He continued: "Approaching the problem in this spirit, I confess that I think the correct solution can be reached without reference to the decided cases to which we were referred. . . . The final words of the Section run: "and the offender may either be detained or proceeded against by summons." If we separate these alternatives and consider the second of them, the provision, therefore, is that the offender may be proceeded against by summons. In this connection the "offender" cannot possibly be construed as limited solely to the man who is actually guilty of the offence. Whether "the offender" is guilty of the offence charged will only be determined at the hearing. . . . It is plain that "the offender" who may be summonsed must include an innocent person who is wrongfully suspected of having committed the offence. But if that is so, how can the "offender" have a different meaning when the first alternative is considered? Here again the detention is preliminary to an accusation, unless, indeed, satisfactory explanations are offered and it is right to let the suspected person go. I cannot think that in a sentence which uses the word "offender" only once and then provides for his alternative treatment, the word has a different meaning with a different context according to the alternative adopted."

He gave other instances in the Statute of how (e.g. in Section 197) the word must be given the extended meaning, followed with a scholarly discourse on the origin of the word "culprit," and then dealt as clearly and succinctly with "reasonable cause."

Once he had defined "offender" as he did, our appeal had won. (Mr. Barnard was a Chief Preventive Officer and Another was a Liverpool Preventive Officer.)

The three other Lords present all supported his view of the meaning of the word.

Lord Wright's remarks were interesting:

"Arrest for a misdemeanour, without a warrant, whether by a private person or by a police officer or by any public functionary, may be either under power conferred by Common Law or by Statute, but if it is not made under such a power it is wrongful. In the case of a misdemeanour, there is at Common Law no power to arrest without a warrant unless for a breach of the peace being committed in the presence of the person arresting, or the renewal of which is reasonably apprehended, or where there is escape and fresh pursuit. There is, apart from Common Law power, no right to arrest without a warrant in the case of a misdemeanour, *unless that power is expressly given by Statute*. The offence in question here is a misdemeanour. For purposes of the present case, if the power is given at all it is given by the last twelve words of Section 186."

(It is similarly given, of course, by Section 12 of Customs and Inland Revenue Act 1881—Obstruction, etc.)

Another appeal at Glamorganshire Winter Assize in Cardiff, March 6th, 1942 (*Angel Montanos v. Herbert Cecil White and Richard Edward Jones*), was similarly dismissed and the right to arrest *when there is reasonable suspicion* upheld, even if suspect is later found not guilty.

Mr. Justice Tucker quoted the Lord Chancellor's decision on the word "offender" in Section 186.

(d) *One Charge or Two?*

King's Bench Division, Beck v. Binks (November 25th, 1948.)

"The Divisional Court allowed in part this appeal by way of a case stated by a Metropolitan magistrate.

"The appellant was found by an officer of H.M. Customs to be carrying in a brief case 208 Swiss watches on which, to his knowledge, Duty had not been paid. He was accordingly charged with knowingly carrying uncustomed goods with intent to defraud His Majesty of the Import Duty thereon, contrary to Section 186 of the Customs Consolidation Act, 1876, and with similarly seeking to defraud His Majesty of Purchase Tax, contrary to Section 11 (1) of the Finance Act, 1944, applying Section 186 of the Act of 1876. The Magistrate found the appellant guilty on both charges and sentenced him to a fine and imprisonment in respect of each. The appellant, on his appeal, contended that he was guilty of one offence and not two; and, further, that the offence in question could only be committed by the actual smugglers or importers of the goods or those engaged in carrying the goods from the ship, aircraft or warehouse, etc., at the actual place of importation with the intention of there evading Duty or Tax.

"Held (1) that, as the offence created by Section 186 included being "in any way knowingly concerned in carrying . . . or in any manner dealing with uncustomed goods with intent to defraud His Majesty of any Duties due thereon," a person knowingly carrying the goods was as much assisting in defrauding His Majesty as was the actual smuggler, his acts and those of the smuggler all being part of the same operation;

"(2) that on the true construction of Section 11 (1) of the Act of 1944, Purchase Tax on imported goods was to be regarded as a Customs Duty, and

simply as increasing that Duty, and that while a man who evaded the one Duty also evaded the other, the effect of Section 11 (1) was that he was evading only one thing, namely, Customs Duty, and was committing only one offence. Sentence on the charge of evading Purchase Tax quashed. Sentence on the first charge affirmed.

“Appeal allowed in part.”

(e) *What is Passengers' Baggage?*

No entry is required for passengers' accompanied baggage. But what is “baggage”?

On November 9th, 1932, as recorded in *The Customs Journal* at the time, the King's Bench Division dealt with a Petition of Right presented by Mr. Buckland of 122 Sunningfield Road, Hendon, N.W., which Mr. Justice McCardie dismissed. The case has a bearing on this question.

Mr. Buckland, a film producer, arrived at Victoria Station one day in 1925, from Berlin, and had six parcels containing films detained by the Customs on the grounds that there was a fine to pay for the carriage of the films with suppliant's baggage. He claimed that during the period of detention the value of the films had gone down from £35,000 to £3,000.

“In a demurrer by the Crown it was contended that, in so far as damages were claimed for detention, the Petition of Right was bad in substance and in Law, no such petition being maintainable which complained of a wrongful or tortious act by servants of the Crown” (*The Times*, November 10th, 1932).

The respondents further contended that they had lawfully detained the films because they had not been entered in accordance with the Act, and so were liable to seizure and forfeiture.

The Solicitor-General (Sir Boyd Merriman, K.C.) and Mr. W. Bowstead appeared for the Crown. Mr. Claude Grundy was for the suppliant. We quote the Judgment:

“In giving judgment for the Crown, his Lordship said that the suppliant's claim was based on detainee. He asked for the return of the films and he also asked for £32,000 damages for detention. (He then surveyed all the circumstances leading up to the presentation of the films to the Customs Officer at Victoria.)

“The Customs Officer formed the view that the parcels were not ordinary personal luggage or baggage at all. . . . The parcels were detained on the grounds that they were merchandise and required entry in due form. . . .” (They were also liable to Duty.)

Therefore, the leading point in the case was whether the parcels were the baggage of a passenger within Section 66 of the Act. The Act contained no definition of baggage. The Judge therefore quoted the ordinary dictionary definition and a definition in Stroud's *Judicial Dictionary* which would exclude merchandise or other valuables even if carried in trunks, etc., “which were not designed for” personal use “but for other purposes such as sale and the like.”

“It might be said that if these six parcels were to be deemed the ‘baggage of passengers,’ then why not also a dozen cases of cutlery, a dozen Turkey carpets or a score of garden seats?”

There were definitions of “baggage” in the various Railway Acts. From all

this it was clear that the six parcels were not passengers' baggage as intended in the Act, and we were therefore entitled to detain them. So the Petition of Right failed.

He expressed the view that, had they been wrongly detained, a Petition of Right would lie against the Crown. (But see Crown Proceedings Act, 1948.)

(f) *Should Magistrate Have Sole Power?*

From *Hansard*, November 9th, 1948.

“*Customs and Excise (Prosecution)*.”

“Sir Wavell Wakefield asked the Chancellor of the Exchequer why, in the case of Mr. G. G. W. Farquharson, of 196 Great Portland Street, W.1, particulars of whose case he had been given, the Magistrate trying the case was not informed of the intention of the Customs and Excise Department to seize Mr. Farquharson's motor car in addition to the fine imposed; to what extent this action is customary; and if he will give instructions in the future for the Magistrate to be told of the intentions of the Customs and Excise Department, thereby avoiding the possibility of excessive punishment.

“Sir S. Cripps said: ‘The section of the Spirits Act, 1880, under which Mr. Farquharson was prosecuted for unlawfully removing spirits, provides for the forfeiture of the vehicle used for removing them, and there is nothing unusual about its enforcement. There was no need for the prosecution to call the Magistrate's attention to the forfeiture provisions, and the solicitor who defended Mr. Farquharson, and may be presumed to have been familiar with the situation, evidently took the same view. In the circumstances, I see no need to interfere with the discretion of the Department.’

“Sir W. Wakefield said: ‘Is it not wrong that the Customs and Excise should have the power of perhaps doubling or trebling the fine imposed by a Magistrate? Ought not the Magistrate to have the sole power of deciding what punishment a man should or should not have?’

“Sir S. Cripps replied: ‘No, Sir. Parliament decided in 1880 in the contrary direction.’

“Mr. Hogg said: ‘Would it not be more equitable if the Magistrate, when he inflicted the penalty, had the knowledge whether or not the Department had decided to enforce that particular provision?’

“Sir S. Cripps replied: ‘No. No doubt he makes his decisions in the light of the Act of Parliament which gives that power.’

“Sir W. Wakefield then said: ‘In view of the most unsatisfactory nature of this matter, I wish to give notice that I shall raise it on the Adjournment at the earliest possible opportunity.’ ”

(g) *Detain or Proceed by Information and Summons?*

I wish those responsible for initiating prosecutions would remember that unless there is a danger of the person running away, there is no need whatever for arrest.—Justice Croom Johnson at Swansea Assizes, July 1949.

(h) *Reasonable Doubt*

What it means is not some whimsical or fanciful doubt, which a person might conjure up for the purpose of creating a difficulty, but such a doubt as would

govern a man's course of action in some private affair of his own.—Lord Hewart, in *Rex. v. Podmore*.

There is hardly anything which a really subtle and ingenious mind cannot bring itself honestly to doubt.—Justice Darling.

“Throughout the web of English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner . . . the prosecutor has not made out the case and the prisoner is entitled to acquittal. No matter what the charge or where the trial, the principle that the prosecutor must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.”—Lord Sankey, in *Woolmington v. Director of Public Prosecutions*, 1935.

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(The greatest of these are Stone and Wm. Shaw, but Stone is extremely hard going for the layman.)

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C. F. S.

