PETITIONER:
HIRA H. ADVANI ETC.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT:
13/08/1969

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
SIKRI, S.M.
HEGDE, K.S.

CITATION:
1971 AIR 44 1970 SCR (1) 821
1970 SCC (1) 509

ACT:
Sea Customs Act, s. 171-A--Statements under--Whether subject to s. 132 Evidence Act (1 of 1872) and Art. 20(2) of Constitution of India, 1950--Customs Officer whether a court--Incriminating questions whether permissible in enquiry s. 171-A--Effect of ss. 4, 5 and 7 of Indian Oaths Act (10 of 1873)--Common law principles whether applicable to matters covered by Evidence Act--Copy of premium debit note of insurance policy--Admissibility under s. 114 (III. 7)--Appraiser of customs Giving evidence as to value of goods after making enquiries in market-Evidence whether in admissible as hearsay.

HEADNOTE:
The appellants and two others were prosecuted on a complaint by the Assistant Collector of Customs, Bombay for the offence of conspiracy and substantive offences punishable under s. 167(81) of the Sea Customs Act and s. 5 of the Imports and Exports (Control) Act, 1947. The complaint was that all the accused knowingly and with intent to defraud the Government of India of duty payable on the import of goods and/or to evade the prohibitions and restrictions for the time being in force under or by virtue. of the Sea Customs Act and of the Imports & Exports (Control) Act, 1947 relating to the said import entered into a conspiracy in Bombay and other places during the period commencing from August 1958 and August 1959 to. acquire possession of and to b.e concerned in carrying, removing and concealing and otherwise dealing with prohibited and restricted goods in very large quantities of high C.I.F. value. The Presidency Magistrate held in regard to the appellants that they were parties to a conspiracy as alleged by the prosecution and convicted them under s./20-B Indian Penal Code 'read with s. 167(81) of the Sea Customs Act and s. 5 of the Imports and Exports (Control) Act, 1947. The accused were also convicted of certain other charges individually framed against them. The High Court dismissed the appeal against the order of the Presidency Magistrate. The appellants were however, granted a certificate under Art. 134(1)(c) of the Constitution. The

main legal question that fell for consideration by this Court was whether the statements made by the accused-appellants before the Customs Officer were inadmissible in evidence in view of the provisions cf s. 171-A. of the Sea Customs Act, s. 132 of the Evidence: Act and Art. 20(3) of the Constitution. Questions raised on behalf of the appellants in their individual cases regarding the admissibility of certain items of evidence and circumstances against them also arose for consideration.

HELD: (1) A Customs Officer is not a court and therefore statements made before him do not attract the provisions of s. 132 of the Evidence= Act or Art. 20(3) oil the Constitution.

(a) If the Legislature intended that the inquiry under s. 171-A was to be considered a judicial proceeding not within the narrow limits therein specified but generally, it could have used suitable words to express its intention. Although this Court gave a wider meaning to the expression 'judicial proceeding" in Lalji Haridas' ease there is nothing in that judgment to warrant a still wider interpretation of that definition. [83/C]

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Maqbool Hussain v. State of Bombay, [1953] S.C.R. 730, Thomas Dana v. State of Punjab, [1959] Supp. 1 S.C.R. 274, 286 Indo-China Steam Navigation Co. Ltd. v. Additional Collector of Customs, [1964] 6 S.C.R. 594, referred to.
Lalji Haridas v. State of Maharashtra, [1964] 6 S.C.R. 700, considered.

(b) The Oaths Act had no application to. the present case. The preamble to the Act shows that it was an Act to consolidate the law relating to judicial oaths, affirmations and declarations. The argument that a customs officer received evidence within the meaning of s. 4 of the Act and therefore a person appearing before him was a witness under s. 5 could not be accepted. Section 7 of the Act shows that oaths under the Act had to be administered according to such forms as the High Court might prescribe. The Customs Officer have nothing to. do with such forms and there was nothing on record to show that in the present case any oath was administered to the person making the statement. In Maqbool Hussain's case this Court stated expressly that the Customs Officers were not authorised to administer oath and the position was 'not altered by the insertion of s. 171-A in 1955. [832 D-E; 833 A-C]

Observations in Queen Empress v. Tulla, 12 Bombay 36. 42 and St. Alubvn v. Attorney-General, (1951) 2 A.E.R. 478, 498, discussed.

(c) Our law of evidence which is a complete code does not permit the importation of any principle of English common law relating to evidence in criminal cases to the contrary. There is no. scope for introduction of a rule of evidence in criminal cases unless it is within the four corners of s. 132 o.r some other provision of the Evidence Act. [834 H; 836 B-C]

Amba Lal v. Union of India & Ors. [1961] 1 S.C.R. 933 and Ragina v. Benjamin Scott, 169 E.R. 909, referred to.

Sris Chandra Nandi v. Rakhalananda (deceased), I.L.R. 1941 Calcutta 468, applied.

(d) The decision of the House of Lords in Harz's case does not support the proposition that under s. 171-A the right of interrogation was limited to questions the answers where to may not incriminate the person interrogated. The section expressly authorises officers off customs to secure the attendance of persons to give evidence or produce documents or things relevant in any enquiry in connection

with smuggling of goods. A limit is set to the right to obtain production in sub-s. (2) of the section and sub.ss. (3) and (4) lay down that' if a person summoned does not state the truth in such an examination he may be proceeded against under 8. 193 I.P.C. for giving false evidence. [837 D-E]

Commissioners of Customs and Excise v. Harz. (1867) 1 All. E.R. 177, explained.

(e) In view of the decision of this Court in Nishi Kant v. State Bihar, [1969] 2 S.C.R. 1033, the argument that statements of the accused under s. 171-A(4) should be considered only as a whole could not be accepted. The inculpatory position of a statement can be accepted if the exculpatory portion is found to be inherently improbable. In the present case the explanations contained in the statement were rejected by the courts below for 'reasons. given. There was 'no. reason for this Court to take a different view. [838 A-B]

(ii) The High Court rightly held that an office copy of a premium debit note maintained by an insurance company in the usual course of its
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business and attached to the office copy of the insurance policy was admissible in evidence under s. 114 (Illustration f) of the Evidence: Act. No objection could be allowed to. be raised on the ground that there was no proof of the preparation of the original premium note. [825 H]

(iii) The evidence of an appraiser of customs off long experience regarding the C.I.F. value of goods could not be rejected merely on the ground that his opinion was arrived at after making enquiries in the market and was therefore only hearsay. His testimony as to the valuation based on his knowledge of the market and experience had remained unshaken in cross-examination and was rightly relied on by the High Court. [827 D-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos.86 to 90 of 1968.

Appeals from the judgment and order dated January 13, 1968 of the Bombay High Court in Criminal Appeals Nos. 497 to 499, 516 and 500 of 1965 respectively.

R. Jethmalani, K.N. Mirchandani and U.P. Singh, for the appellant (in Cr. A. No. 86 of 1968).

Nur-ud-din Ahmed, K.N. Mirchandani and U.P. Singh, for the appellant (in Cr. A. No. 87 of 1968).

A.S.R. Chari, J.M. Mirchandani and K. Hingorani, for the appellant (in Cr. A No. 88 of 1968).

K. Hingorani, for the appellant (in Cr. A. No. 89 of 1968).

N.H. Hingorani for K. Hingorani, for the appellant (in Cr.A. 90 of 1968).

L.M. Singhvi, B.D. Sharma and S.P. Nayar, for the respondent (in all the appeals).

The Judgment of the Court was delivered by

Mitter, J. After stating the facts His Lordship proceeded :] The High Court dealt generally with the charge of conspiracy against all the accused and individually with respect to the charges raised against each accused and considered the explanations given by them with regard to the circumstances tending to criminal them. Mr. Jethmalani who argued the case of the first appellant at some length raised various questions of law with regard to the admissibility of the. evidence afforded by statements before the Customs Officers

under s. 171-A, the conclusion of the High Court that his client had custody or possession of all the exhibits found as a result of the search of the premises of H.B. Advani Brothers on 21st July, 1950, the correctness of the finding of the High Court that Ex. F.-2 contained a complete account with regard to the consignment per s.s. Canton, the finding of the High Court that the C.I.F. value of the goods exceeded the invoice value many times over by relying on the evidence of an appraiser of the Customs department and the absence of any
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overt act on the part of his client after the search on 21st July 1959. The argument with regard to the admissibility of evidence of the statements was adopted by counsel for all the other accused and need not be dealt with separately. Mr. Jethmalani virtually conceded that if his contentions on the above heads were not accepted by this Court, it would be futile for him to argue that the High Court had gone wrong in coming to the conclusion as to the. guilt of his client on the strength of the evidence before it and the inference which could legitimately be drawn therefrom.

We propose to deal with the other points before examining the contention with regard to the admissibility of the statements made in pursuance of powers exercised by the customs officers under s. 171-A. With regard to the finding of the High Court in agreement with that of the Magistrate that accused I had the custody or possession of exhibits Exs. B to F-2, counsel argued that except those seized from his wallet the others were found in the drawer of the table of the premises searched, there was no evidence to show that the said table was the table of his client and as there was no proof that his client had any financial proprietary interest in the firm of H.B. Advani Brothers, there was nothing to warrant the conclusion that the exhibits other than' those in the wallet were in his custody. The High Court dealt elaborately with this point and we do not think it necessary to reexamine the same except to note the comment made before the High Court as well as before us that the evidence of Mr. Dame, the panch witness who had said that at the time of the search accused 1 was sitting at the table in a drawer of which the incriminating exhibits were found was. unbelievable. It was argued that inasmuch as the panchnama did not record this fact Dame who gave evidence in 1962 should not have been believed when he claimed. to. have remembered the. fact of accused 1 sitting at the table mentioned. Both the courts accepted Dame's statement and we see no good reason to take a different view. After all it would not be extraordinary for any person to recollect even after a considerable lapse of time that when he entered the room which was going to be searched, he found a particular person seated at a certain table inasmuch as this, would be the very first thing which would attract any_body's attention.

With regard to Ex. F.-2 which according to the prosecution case--accepted by the courts below--contained an account with regard to the consignment per s.s. Canton the prosecution case was that the figures on the left-hand side indicated the rates and the figures on the right-hand side indicated the total C.I.F. value of the goods of each type in that consignment. Before us exception was taken to the two figures 80.80 and 11.02 appearing on the right hand side. According to the prosecution the figure 11.02 was. the amount of insurance premium in dollars paid in
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respect of the consignment on s.s. Canton. As the

original which should have been with accused 2 was not produced, a copy of the insurance policy was put in and marked as Ex. Z.-301. Ex.Z-259-F-1 was a copy of the same produced by accused 2 before the customs officers on 24th July 1959 as was borne out by the statement of accused 2. The contents of the two exhibits were found to be the same by both the courts. The Claim Superintendent of the insurance company in Bombay produced the copy of the marine premium note in respect of the said policy showing the amount of premium as $11.02 and said to have been received by the Bombay office of the insurance company. Objection was raised to the admissibility of evidence of one Martin, Assistant Manager of New Zealand Insurance Company Hong Kong Branch who had joined that branch in 1963 i.e. long after the issue of the policy in 1959 although he had been an employee of the said company since 1952 and claimed to be familiar with the procedure of insurance of export cargo followed by the company. According to this witness, the company used to prepare as many copies of the policy as were required by the insurer. A carbon copy of the original was always kept in the office record. Martin produced an office copy of the policy in respect of the consignment on s.s. Canton to which was attached a marine premium debit note and it was his evidence that in the usual course of business of the company such a debit note. was, always prepared at the time when the policy was issued and a copy thereof was attached to the copy of the policy kept in the records. Counsel objected to the reception of the copy of the premium note on the ground that there was, no proof of its making or its correctness. The High Court accepted the evidence of Martin that the copy of the premium debit note had been attached to the policy kept in the office record relying on the presumption afforded by illustration (f) to s. 114 of the Evidence Act that the practice of the insurance company of attaching such a note to the policy had been followed in this particular case. In our view the High Court was entitled to do. so and no objection can be allowed to be raised on the ground that there was no. proof of the preparation of that original premium note.

With regard to. the figure. 80.80 counsel argued that there was no proof that this was the amount of the freight in dollars charged in respect of the consignment per s.s. Canton. Counsel argued that the freight paid was not shown in the bill of lading in this case Ex. Z-259-G and the production of the copies of the bill of lading Ex. M-3 and Z-142W on which somebody had written the figure $80.80 did not establish the prosecution case.Ex. M-2 was the Manifest of Cargo per s.s. Canton and entry No. 5 therein showed that in respect of the consignment 80.80 dollars had been paid as freight. The prosecution adduced evidence of P.W. 45 Yeshwant Shankar Keluskar of Mackjnon

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Mackenzie & Co. who produced the Import General Manifest dated 20th July 1959 as also the Freight Manifest. According to this witness on the consignment on s.s. Canton 80.80 Hong Kong dollars had been paid as freight. He had no. personal knowledge but made. his statement on the basis of the record produced from his office. The prosecution also relied on Ex. M-3 the shipper's copy of the bill of lading produced before the customs officers on 24th July 1959 by accused 2 containing the rate at which the freight was charged and also the actual amount of freight charged viz., 80.80 Hong Kong dollars. Objection was taken to this inasmuch as the amount of the freight did not appear in the bill of lading Ex. Z-259-E. The prosecution case was

that freight was paid after the preparation of the Bill of lading and just before the goods were actually put on board and the reasonable explanation was that the amount of freight had been calculated subsequent to the preparation of the bill of lading and endorsed thereon as on Ex. M-3 subsequently. According to the High Court it could be said to be a subsequent original endorsement on a copy and the High Court relied on Ex. Z-148-W a carbon copy of the bill of lading bearing a similar endorsement and also on the fact that on both Ex. M-3 and Ex. Z-148-W the words "freight paid" appeared impressed by a rubber stamp in addition to the calculation of freight and the actual amount of freight. In our opinion, the High Court rightly held that all this established the prosecution case that the figure 80.80 in Ex. F-2 indicated the freight that was actually paid for the consignment on s.s. Canton. As Ex. M-3 was produced by accused 2 the consignee :before the customs officer on 24th July 1959 and contained the said endorsement the High Court was entitled to draw the necessary inference therefrom supported as it was by Ex. Z-148-W the Captain's copy of the bill of lading which bore a similar endorsement.

Counsel contended that the evidence of P.W. 90 the appraiser of customs with regard to the C.I.F. value and the market value of the goods was at best hearsay and should have been rejected by both the courts below.

The entries relied on in this connection appear on Ex-D found in the possession of accused No. 1. There was no evidence to show that it was written by him. P.W. 90 J.M. Jamedar's evidence was that he had been acting as an appraiser of customs doing valuation work for 11 years and had experience in the valuation of Japanese rayon goods, fountain pen refills, Roamer 'watches, plastic buttons,_ playing cards etc. He had taken samples from the consignments and noted the particulars thereof and had made the valuation of the goods of the consignments in question after making enquiries from the market and on the basis thereof had stated the C.I.F. value at the relevant time.
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This witness had been subjected to prolonged cross-examination but nothing came out therein which would enable the court to hold that his testimony was unreliable. The witness had stated that the goods had been valued by him after making necessary enquiries from the importers dealing in the same or similar goods supplied from foreign countries as well as by referring to prices offered or quotations whenever available and where it was not possible to obtain the C.I.F. value from the market he had assessed the value of such items to the best of his judgment and experience. It was argued by counsel that as the witness was not himself a party to whom offers and acceptances had been made or communicated by others and as he did not claim to have been present when such offers and acceptances had been made, his evidence as regards the value was hearsay. It was said that at best he was a mere conduit pipe of enquiries from others and was not in the position of an expert. We find ourselves unable to accept this submission. Jamedar according to his unshaken testimony had been working as an appraiser of customs. for 11 years out of his 16 year' service and was engaged in the valuation of goods and ascertaining their C./.F. value. He had occasion to value goods which formed the subject matter of con, signments of s.s. Canton. He claimed to have made enquiries in the market with regard thereto. Apart from his own experience and knowledge the record shows that the witness gave evidence as to the C.I.F. value of a very large number of

articles 'and it should have been quite easy for the defence who cross-examined him at great length to discredit his testimony by offering evidence from the market that the witness's estimate as to the C.I.F. value of any particular item was unreliable. After all what the court had to do in this case was to form an opinion as to. whether the C.I.F. value greatly exceeded the invoice value as put forward by the prosecution and Jamedar's evidence certainly went to show that the C.I.F, value and the market value of the contraband goods imported was far in excess of the value thereof mentioned in the invoices.

It may be mentioned here that the document Ex. D mentioned the consignments inter alia of all the three ships and the High Court held that the document related to imports in which accused 2 was interested and possession of the document by accused 1 went to show that he too was concerned in such imports.

We now come to the question as to the admissibility of the statements made to the customs officers under s. 171-A of the Sea Customs Act. At the outset it has to be noted that this section came into the Statute Book in the year 1955 and there was nothing similar to it in the Act before such inclusion. The section' reads:

> "(1) Any officer of Customs duly employed in the prevention of smuggling shall have power to summon
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> any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.
>
> (2) A summons to produce documents or other things may be made for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.
>
> (3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as, such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents an other things as may be required:
>
> Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 shall be applicable to any requisition for attendance under this sections.
>
> (4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code."

In Maqbool Hussain v. The State of Bombay (1) where provisions of the Sea Customs Act were considered at some length by this Court before the amendment of 1955 by insertion of s. 171-A it was said (at p. 742):

> "All this is for the enforcement of the levy of and safeguarding the recovery of the sea customs duties. There is no procedure prescribed to. be followed by the Customs Officer in the matter of such adjudication and the proceedings. before the Customs Officers

are not assimilated in any manner whatever to proceedings in courts of law according to the provisions of the Civil or the Criminal Procedure Code. The Customs Officer are not required to act judicially on legal evidence tendered on oath and they are not authorised to administer oath to any witness. All these. provisions go to. show that far from being authorities bound by any rules of evidence or procedure established by law and invested with power to enforce their own judgments or orders the Sea Customs Authorities are merely constituted administrative machinery for the purpose of adjudging confiscation, increased rates of duty and penalty prescribed in the Act.

(1) [1953] S.C.R. 730.

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We are. of the opinion that the Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a court or judicial tribunal necessary for the. purpose of supporting a plea of double jeopardy."

The Court in that case was dealing with the question as to whether an order of confiscation was a punishment inflicted by a court or a judicial tribunal within the meaning of Art. 20 (2) of the Constitution.

In Thomas Dana v. The State of Punjab(1) the provisions of the Sea Customs Act were examined again and referring to s. 187-A it was said:

"This section makes it clear that the Chief Customs Officer or any other officer lower in rank than him, in the Customs department, is not a "court", and that the offence punishable under item 81 of the Schedule to s. 167, cannot be taken cognizance of by any court, except upon a complaint in writing, made. as prescribed in that section."

With regard to the use of the word 'offence' indiscriminately all over the Act it was said:

"All criminal offences are offences, but all offences. in the sense of infringement of a law, are not criminal offences but when a trial on a charge of a criminal offence in intended under 'any one of the entries of the Schedule aforesaid, it is. only the Magistrate having jurisdiction, who is empowered to impose a sentence of imprisonment or fine or both."

It was argued before us that the position became entirely different as a result of the inclusion of s. 171-A as sub-s. (4) of the section went to show that an enquiry by customs authorities wherein statements of persons were recorded was "to be deemed to be a judicial proceeding within the meaning of s. 193 and s. 228 of the Indian Penal Code." Counsel argued that such proceeding was a judicial proceeding also for the other purposes thus attracting the operation of s. 132 of the Evidence Act. Apart from the point as to non-exercise of claim of privilege (about which we express no opinion) there can be no question that if the said section

of the Evidence Act is to be attracted to such a proceeding statements made by him in any such inquiry could not be proved against him in the criminal proceedings launched. It was

(1) [1959] Supp. 1 S.C.R. 274 at 286.

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argued that sub-s. (3) of s. 171-A made it obligatory on the persons summoned to state the truth upon any subject respecting which he was examined and if the proceeding was judicial proceeding there was nothing to. exclude the applicability of s. 132. Our attention was drawn to s.1 of the Indian Evidence Act which made the Statute applicable to all judicial proceedings in or before any court in the whole of India. As 'court' in s. 3 included all Judges and Magistrates and all persons, except arbitrators, legally authorised to. take evidence, it was contended that the customs officers being authorised by s. 171.-A of the Sea Customs Act were 'courts' within the meaning of the definition of s. 3. Reference may also be made to the definition of 'evidence' in the said section which shows that the word means and includes inter alia all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry.

Reference. was. also made to s. 4(1) of the Code of Criminal Procedure, 1898 under which 'investigation' for purposes of the Code includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who. is authorised by a Magistrate tiffs behalf; and cl. (m) which defines "judicial proceeding" as including any proceeding in the course of which evidence is or may be legally taken on oath. Counsel relied strongly on the judgment of this Court in Lalji Haridas v. State of Maharashtra(1) where this Court had to consider whether an Income-tax Officer exercising powers under s. 37 of the Income-tax Act, 1922 was a ' court' within the meaning of s. 195 (1) (b) of the Code of Criminal Procedure making the sanction thereunder obligatory for the filing of a complaint in respect of an offence alleged to have been committed under s. 193 of the Penal Code. Sub-ss. (1) to (3) of s. 37 of the Income-tax Act were worded somewhat differently from those of sub ss. (1) to (3) of s. 171-A of the Sea Customs Act. The words in sub-s. (4) of s. 37 are for all practical purposes identical with those. used in s. 171-A (4). There this Court by a majority of three to two were of opinion that the proceedings before the Income-tax Officer were judicial proceedings not only under s. 193 of the Indian Penal Code but were also. to. be treated as proceedings. in any court for the purpose of s. 195 (1) (b) of the Code of Criminal Procedure. The majority Judges referred to the sections in the Indian Penal Code and the Criminal Procedure Code mentioned above and to provisions in various other Acts wherein the legislature had expressly mentioned that s. 195 Cr. P.C. would apply to proceedings before diverse authorities and accepted the argument that reading s. 193 I.P.C. and s. 195 (1) (b) Cr. P.C. together it would be reason-

(1) [1964] 6 S.C.R. 700.

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able to hold that proceedings which are judicial under the former should be taken to be proceedings under the latter. According to the minority Judges although the word 'judicial proceeding' was wide enough to. include not only proceedings be,fore a 'court' but proceedings before certain tribunals it was clear from a decision of this Court in Indo-China

Steam Navigation Co., Ltd. v. The Additional Collector of Customs(1) that a Customs Officer "was not a court or Tribunal" and s. 37(4) of the Income-tax Act should not be given a meaning different to that given in s. 171-A(4) of' the Sea Customs Act."

In our view if the Legislature intended that the inquiry under s. 171-A was to. be considered a judicial proceeding not within the narrow limits therein specified but generally, it could have used suitable words. to express its intention. Although this Court gave a wider meaning to the expression 'judicial proceeding' in Lalji Haridas's case(2) there is nothing in that judgment to warrant a still wider interpretation of that definition.

Mr. Jethmalani referred to the provisions in the Indian Oaths Act (X of 1873) and on the basis of his argument that the statements under s. 171-A (4) were made on oath contended that the proceeding became a judicial proceeding in the wider sense of the word. In our view the Oaths Act has no application here. The preamble to the Act shows that it was an Act to consolidate the law relating to judicial oaths, affirmations and declarations and was enacted because the Legislature thought that it "expedient to consolidate the law relating to judicial oaths, affirmations and declarations and to repeal the law relating to official oaths, affirmations and declarations." Section 4 of the Act provided that:

> "The following Courts and persons are authorised to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:
>
> (a) all Courts and persons having by law or consent of parties authority to receive evidence :"
>
> The relevant portion of s. 5 runs--
>
> "Oaths or affirmations shall be made by the following persons :-
>
> (a) all witnesses, that is to say, all persons who may lawfully be examined or give or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons and to receive evidence :"

(1) [1964] 6 S.C.R. 594. (2) [1964] 6 S.C.R. 700.

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Counsel argued that a Customs Officer was a person who had authority by law to receive evidence within the meaning of s. 4 of the Oaths Act and anybody who could be lawfully examined before such a person would be a witness within the meaning of s. 5 and as such it would be. necessary to administer oath to them. in our view, the argument proceeds on a complete misconception of the provisions of the Act. The preamble to the Act shows that the oaths referred to are only judicial oaths and section 7 shows that all such oaths had to be administered according to such forms as the High Court might prescribe. The Customs Officers have nothing to do with such farms and nothing has been shown to us that 'any such formality was ever complied with. Neither do the records show that any oath was administered to any person making a statement under s. 171-A. In Maqbool Hussain's case(1) this Court stated expressly that the Customs Officers were not authorised to administer oath and the position according to us is not altered by the insertion of

s. 171-A in 1955.

Mr. Jethmalani referred us to the decision in Queen Empress v. Tulja(2) and to certain observations of West, J. in that case. There it was held that a Sub-Registrar under the Registration Act (111 of 1877) was not a Judge, and, therefore, was not a 'Court' within the meaning of s. 195 of the Code of Criminal Procedure and as such his sanction was not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. West, J. had however, observed that:

> "An inquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons; between him and the community generally; but, even a judge, acting without such an object in view, is not acting judicially."

Relying on this observation counsel argued that the object of an inquiry under s. 171-A was to find out and establish the jural liability of the persons making the statement, viz., whether he had committed an offence or not, and as such the inquiry was a judicial proceeding. In our view the argument is not worthy of acceptance. At the stage envisaged by s. 171-A a Customs Officer is given the power to interrogate any person in connection with the smuggling of any goods which it is his duty to prevent. Such a person may have nothing to do with the smuggling of any goods although he may know where such goods are or who has or had them. Sub-s. (3) of s. 171-A does not compel any person to make a statement but if he makes a statement he has to state the truth so as to avoid punishment under s. 193 I.P.C. At that stage nothing may be known as (1)

(1) [1953] S.C.R. 730. (2) 12 Bombay 36 at 42.

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0 whether an offence has been committed or who has committed t and the person interrogated at that stage certainly is not a person accused of or charged with an offence. He is merely called upon to give evidence to facilitate the inquiry. He is not a witness giving evidence in a court and his testimony will make him liable under s. 193 I.P.C. only because of the express provision of law in sub.-s. (4) of s. 171-A.

Counsel also argued that as a Customs Officer according to all the decisions of this Court already mentioned, is to act judicially, a proceeding for recording evidence before him was a judicial proceeding. This wholly without any force because even administrative officers have to act judicially. Counsel further argued that a deeming provision in a statute was not necessarily designed to give an artificial construction to a word or a phrase but it might be used for other purposes also. He referred to the case of St. Aubyn v. Attorney-General(1) where it was said:

> The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purpose of a statute an artificial construction for a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."

It was argued that the Legislature might well have used the word "deemed" in sub-s. (4) of s. 171 not in the first of the above senses but in the second, if not the third. In

our view the meaning to be attached to the word "deemed" must depend upon the context in which it is used. In Lalji Haridas's case(2) this Court went elaborately into the question as to the extent of this deeming provision which would have been wholly redundant if the word 'deemed' in section 171-A(4) was used in any sense other than to give an artificial construction. The second branch of Mr. Jethmalani's argument under this head was that the principle underlying s. 132 of the Evidence Act was a principle of Common Law well known to criminal jurisprudence and as such was applicable even if s. 132 in terms was not attracted. In this connection, he referred us to certain observations of Subbarao, J. (as he then was) in Amba Lal v. The Union of India and Others(3) where in his dissenting judgment on the interpretation of ss. 168 and 171-A of the Act his Lordship had observed that:

> "To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may

(1) [1951] 2 A.E.R. 473 at 498.
(2) [1964] 6 S.C.R. 700.
(3) [1961] 1 S.C.R. 933.

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> apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply."

Counsel also referred us to the decision in Regina v. Benjamin Scott(1). The question before the court in that case was whether the answers to the questions put to the defend,ant before the court of bankruptcy relating to his trade dealings and estate tending disclose a fraud of concealment of his property was admissible evidence against him on indictment charging him with altering, mutilating and falsifying his books with intent to defraud his creditors. The examination was taken in conformity with s. 117 of the Bankrupt Law Consolidation Act (12 and 13 Vict. c. 106) which enacted that a bankrupt may be examined by the court "touching all matters relating to his trade, dealings or estate, or which may tend to disclose any secret grant, conveyance or concernment of his lands etc." There was no dispute that the questions put were relevant as touching matters relating to his trade etc. Delivering judgment in which three other Judges concurred, Lord Campbell, C.J. held that the defendant was bound to answer the questions although by his answers he might criminal himself. According to the learned Chief Justice:

> " .... and we think it would be contravention of the expressed intentions of the legislature to permit the bankrupt to refuse to answer such questions; for even since the reign of Elizabeth successive statutes have been passed, purporting to guard against frauds in bankruptcy and the bankrupt, when called upon to answer questions respecting his estate and effects, should not be allowed to avail himself of the common law maxim "nomo tenetur se ipsum accusare."

With regard to the maxim relied on by the defendant's counsel he said:

"But Parliament may take away this privilege, and enact that a party may be bound to accuse himself, that is, that he must answer questions by answering which he may be criminated."

He further held that the maxim could not be treated as an implied proviso to be subjoined to the 117th section.

Mr. Jethmalani however relied on certain observations of Coleridge, 1. in his dissenting judgment. In our view the maxim of the English Common Law can have no application here. Our law of evidence which is a complete Code does not permit the importation of any principle of English Common Law relating

(1) 169 English Reports page 909.

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evidence in criminal cases to the contrary. Section 2 of the Indian Evidence Act before its repeal by the Repealing Act (1) of 1938) provided as follows:

"2. On and from that day 1st September 1872) the following laws shall be repealed;

(1) All rules of evidence not contained in any statute, Act or Regulation in force in any part of British India;

(2) All such rules, laws and regulations as have acquired the force of law under the 25th section of the 'Indian Councils Act, 1861' in so far as they relate to any matter herein provide.d for; and

(3) The enactments mentioned in the schedule hereto, to the extent specified in the third column in the said schedule.

But nothing herein contained shall be deemed to affect any provision of any Statute, Act or Regulation in force in any part of British India and not hereby expressly repealed."

We may usefully refer to the judgment of the Privy Council in Sris Chandra Nandi v. Rakhalananda (deceased)(1) where the Judicial Committee approved of the statement of the law contained in the judgment of the High Court reading:

"It is to be noticed in this connection that s. 2(1) of the Indian Evidence Act repeals the whole of the English common law on evidence so far as it was in force in British India before the passing of the Indian Evidence Act, and that provision of the law in effect prohibits the employment of any kind of evidence not specifically authorised by the Act itself."

Lord Atkin who delivered the judgment of the Judicial Committee pointed out that evidence which was not admissible under the Indian Evidence Act could not be let in for the purpose of bringing out the truth and said:

"What matters should be given in evidence as essential for the ascertainment of truth, it is the purpose of the law of evidence, whether at common law or by statute to define. Once a statute is passed, which purports to contain the whole law, it is imperative. It is not open to any Judge to

exercise a dispensing power, and admit evidence not admissible by statute, because to him it appears that the irregular evidence would throw light

(1) I.L.R. [1941] 1 Calcutta, 468.

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upon the issue. The rules of evidence, whether contained in a statute or not, are the result of long experience, choosing no doubt to confine evidence to particular forms, and therefore eliminating others which it is conceivable might assist in arriving at truth."

The question there related to the admissibility of evidence which according to the Judicial Committee should not have been adduced. The question before us is somewhat different but if the Indian Evidence Act is 'a complete Code repealing all rules of evidence not to be found therein, there is, in our opinion, no scope for introduction of a rule of evidence in criminal cases unless it is within the four corners of s. 132 or some other provision of the Evidence Act. As the Act does not apply to interrogations by a Customs Officer exercising powers under s. 171-A of the Sea Customs Act s. 132 of the Evidence Act cannot be attracted.

Lastly it was contended that s. 171-A did not authorise interrogation of a subject to extract admissions from him which could be used against him on a future occasion. In aid of this proposition reliance was placed on a decision of the House of Lords in Commissioners of Customs and Excise v. Harz(1). The main question there was whether the answers given by the respondents in the course of interrogation by Customs Officer were admissible in evidence. The power to. interrogate was said to be derived from the Finance Act, 1946, s. 20 (3) which provided in substance that every person concerned with the purchase or importation of goods etc. shah furnish to the commissioners within such time and in such form as they may require information relating to the goods or to the purchase or importation thereof etc., and shall upon demand made by any officer or other persons authorised in that behalf by the commissioners produce any. books or accounts or other documents of whatever nature relating thereto for inspection by that officer or person. On a construction of that provision Lord Reid was of the view that there was. nothing therein to require the trader to give answers which might incriminate him. His Lordship also observed that the section gave the officer no right to submit the respondents to prolonged interrogation they had to. undergo and the respondents could not have been prosecuted if they had refused to answer. His Lordship observed that the right of the CommiSsioners to require information was quite different and said:

"If a demand for information is made in the proper manner the trader is bound to answer the demand within the time and in the form required whether or not the answer may tend to incriminate him, and if he fails to comply with the demand he can be prosecuted. If he

(1) [1967] 1 All. E.R. 177.

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answers falsely he can be prosecuted for that, and, if he answers in such a manner as to incriminate himself, I can see no reason why his answer should not be used against him. Some statutes expressly provide that

> incriminating answers may be used against the person who gives them and some statutes expressly provide that they may not. Where, as here, there is no such express provision the question whether such answers are admissible evidence must depend on the proper construction of the particular statute. Although 1 need not decide the point, it seems to me to be reasonably clear that incriminating answers to a proper demand under this section must be admissible if the statutory provision is to achieve its obvious purpose."

Prima facie these provisions,are against the contention of the appellant. In that case the House of Lords in effect held that the provision of law did not entitle the Commissioners "to send a representative to confront the trader, put questions to him orally and demand oral answers on the spot; and that it does not entitle them to send their representative to subject the trader to a prolonged interrogation in the nature of a cross-examination." The provisions of s. 171-A are in sharp contrast to the provision of law before the House of Lords. Here the statute expressly authorises officers of customs to secure the attendance of persons to give evidence or produce documents or things relevant in any enquiry in connection with the smuggling of goods. A limit is set to the right to obtain production in sub-section (2) of the section and subsections (3) and (4) lay down that if a person summoned does not state the truth in such an examination he may be proceeded against under s. 193 I.P.C. for giving false evidence.

Counsel also drew our attention to the new sections 107 and 108 of the Customs Act, 1962 where the power to, examine persons has been given to all officers of customs by the first of the above mentioned sections and the power to summon persons to give evidence and produce documents as in s. 171-A is given to a gazetted officer of customs under s. 108 of the new Act. In our view, this difference is immaterial for the purpose of this case and there is nothing in s. 171-A which limits the right of interrogation to questions the answers whereto may not incriminate the person interrogated.

The High Court considered at some length the question as to whether the statement of the accused under s. 171-A(4) should be considered as a whole or whether reliance could be placed upon portions thereof rejecting the rest. It was argued before the High Court that inasmuch as the statements were sought to be relied

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upon as a confession the court was bound to take into account not only the portions containing admissions but also the explanations which followed. The High Court held that a statement under s. 171-A did not stand at par with a confession so that it had to be taken as a whole or rejected as a whole. Even with regard to the statements portions of which are inculpatory against the maker and other portions which are not, it has been held in a recent decision of this Court that the inculpatory portion can be accepted if the exculpatory portion is found to be inherently improbable--vide Nishi Kant v. State of Bihar(1). In this case the explanations contained in the statements were considered by the courts below and for reasons given they thought fit to reject the same and we see no reason to come to a different view.

[The Court then considered the case of the other accused and held :]

The net result is that all the appeals excepting that of accused No. 3, Meghraj Gopaldas Jham fail and are hereby dismissed. Meghraj Gopaldas Jham's appeal is allowed and he is set at liberty. His bail bond will be cancelled.

G.C.

(1) [1969] 2 S.C.R. 1033.

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