

CRIMINAL JURISDICTION IN NEW ZEALAND

by Peter Graham.

Section 8 of the Crimes Act 1961 confers jurisdiction on the New Zealand Courts in respect of crimes on ships or aircraft beyond New Zealand. The section reads as follows :

- "8. Jurisdiction in respect of crimes on ships or aircraft beyond New Zealand - (1) This section applies to any act done or omitted beyond New Zealand by any person -
- (a) On board any Commonwealth ship; or
 - (b) On board any New Zealand aircraft; or
 - (c) On board any ship or aircraft, if that person arrives in New Zealand on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted; or
 - (d) Being a British subject, on board any foreign ship (not being a ship to which he belongs) on the high seas, or on board any such ship within the territorial waters of any Commonwealth country; or
 - (e) Being a New Zealand citizen or a person ordinarily resident in New Zealand, on board any aircraft:

Provided that paragraph (c) of this subsection shall not apply where the act was done or omitted by a person, not being a British subject, on any ship or aircraft for the time being used as a ship or aircraft of any of the armed forces of a country that is not a Commonwealth country.

(2) Where any person does or omits any act to which this section applies, and that act or omission would, if it occurred within New Zealand, be a crime under this Act or under any other enactment (whether that enactment was passed before or after the commencement of this Act), then, subject to the provisions of this Act and of that other enactment, he shall be liable on conviction on indictment or, in the case of a crime to which Part I of the Summary Proceedings Act 1957 applies, either on conviction on indictment or on summary conviction under that Part, as if the act or omission had occurred in New Zealand:

Provided that where any proceedings are taken by virtue of the jurisdiction conferred by this section it shall be a defence to prove that the act or omission would not have been an offence under the law of the country of which the person charged was a national or citizen at the time of the act or omission, if it had occurred in that country.

(3) Where at any place beyond New Zealand any person who belongs, or within three months previously has belonged, to any Commonwealth ship does or omits any act, whether on shore or afloat, not being an act or omission to which subsection (1) of this section applies, and that act or omission would, if it occurred within New Zealand, be a crime, then this section shall apply in respect of that act or omission in the same manner in all respects as if it had occurred on board a Commonwealth ship.

" (4) The provisions of this section shall have the same operation in relation to the Republic of Ireland and to the citizens thereof, and to ships registered therein or belonging thereto, and to persons who belong or have belonged to those ships, and to all other persons on board those ships, as if the Republic of Ireland were a Commonwealth country and as if the citizens thereof were British subjects.

(5) This section shall be read subject to the provisions of section 400 of this Act.

(6) In this section, the expression "British subject" includes a British protected person within the meaning of the British Nationality and Citizenship Act 1948.

(7) Nothing in this section shall apply with respect to any crime against the Shipping and Seamen Act 1952".

The expressions Commonwealth ship and New Zealand ship are defined as follows :

"Commonwealth ship" means a ship registered or required to be registered in any Commonwealth country, or recognised by the law of any Commonwealth country as a ship belonging to that country; and includes any ship for the time being used as a ship of any of the armed forces of any Commonwealth country:

"New Zealand ship" means a ship registered in New Zealand, or recognised by the law of New Zealand as a ship belonging to New Zealand; and includes any ship for the time being used as a ship of the New Zealand forces:

The section of the Act quoted above is to be read subject to the provisions of section 400 of the Act which reads as follows :

"400. Consent of Attorney-General to proceedings in certain cases for offences on ships or aircraft - (1) Proceedings for the trial and punishment of any person who -

- (a) Whether or not he is a New Zealand citizen or a person ordinarily resident in New Zealand, is charged with having committed beyond New Zealand an offence on board or by means of any ship or aircraft which is not a New Zealand ship or a New Zealand aircraft, or an offence to which subsection (3) of section 8 of this Act applies; or
- (b) Whether or not he is a New Zealand citizen or a person ordinarily resident in New Zealand is charged with having committed, anywhere within New Zealand or in the space above New Zealand, an offence on board or by means of any ship or aircraft which belong to the Government of any country other than New Zealand or is held by any person on behalf or for the benefit of that Government, whether or not the ship or aircraft is for the time being used as a ship or aircraft of any of the armed forces of that country -

shall not, by virtue only of the provisions of this Act, be

"instituted in any Court except with the consent of the Attorney-General and on his certificate that it is expedient that the proceedings should be instituted; and where the proceedings would be instituted only by virtue of the jurisdiction conferred by paragraph (c) of subsection (1) of section 8 of this Act the Attorney-General shall not give his consent unless he is satisfied that the Government of the country to which the ship or aircraft belongs has consented to the institution of the proceedings:

Provided that a person charged with any such offence may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(2) Nothing in this section shall apply with respect to any offence against the Shipping and Seamen Act 1952".

The power given by ss.8 and 400 has been invoked on only two occasions in recent years. One case dealt with a foreign ship and the other was concerned with a New Zealand ship.

In the case of the foreign ship, five members of the crew were interviewed about their possession of footwear stolen from the ship's cargo. The crew of the ship were Singaporeans and the country to which the ship belonged was the Netherlands. The offence was discovered when a crate of footwear was found to be broken open when the ship arrived in New Zealand and a subsequent search of the crew's quarters resulted in the finding of the footwear.

The Solicitor-General, who is empowered to exercise all the powers of the Attorney-General, considered the following matters :

1. Expediency: The word expedient is defined in the Oxford dictionary as

"Advantageous, fit, proper or suitable to the circumstances of the case".

It was proper or suitable to the circumstances of the case that thefts of goods consigned to New Zealand should be punished by the Courts in New Zealand. Similarly, the Solicitor-General determined that it was expedient that the guilty be convicted and the innocent not be left in any doubt. The Solicitor-General also considered it to be expedient that a final decision be arrived at. In this he followed the principle enunciated in R. v. Barnett [1919] 1 K.B. 640.

2. Consent of other country: When the ship arrived in New Zealand the members of the crew concerned were arrested and appeared in the Magistrates Court. Fortunately New Zealand has problems somewhat similar to those of Australia and due to industrial stoppages the ship was delayed in New Zealand for a sufficient length of time for the matter to be referred to the Dutch government. The Police referred the question of prosecution

through the Ministry of Foreign Affairs to the Dutch Government and a cable was received from the New Zealand Embassy at The Hague stating that the New Zealand Embassy had spoken to the Deputy Director of General Affairs at the Foreign Ministry in the Netherlands, who after consulting the Ministry of Justice informed our Ambassador that the Netherlands consented to the institution of the proceedings. The Solicitor-General accepted the cables as sufficient for him to be satisfied that the Government of the Netherlands had consented to the institution of the proceedings without the necessity for a formal written consent.

Before giving his consent to the prosecutions therefore the Solicitor-General was called upon to make two specific findings, namely a finding on the question of expediency and a further finding on the question of consent by the Dutch Government.

The defendants were all convicted and a substantial fine was imposed.

The other case related to New Zealanders aboard a New Zealand ship. In that case when the ship was berthed at Adelaide in Australia the Third Officer was violently assaulted by a member of the crew. The South Australian Police attended on the ship but decided not to take any action but leave the matter to be dealt with when the ship returned to New Zealand.

In this case the Police instituted the proceedings without the Solicitor-General's consent. When they realised they did not have the consent they withdrew the charge. This was not necessary as s.400 specifically provides that a person charged may be arrested and remanded notwithstanding that consent has not been obtained but further or other proceedings are not to be taken until the consent has been obtained.

As this was a New Zealander aboard a New Zealand ship the Solicitor-General was only concerned with the question of expediency. He enquired into the time which had elapsed since the assault and the reasons for the Australian Police not taking action when the matter was referred to them. He was also concerned with the withdrawal of the information and the possibility that the defendant gained the impression that the prosecution was being dropped. Having regard to all these matters and the necessity for the maintenance of discipline aboard a ship, the Solicitor-General again reached the conclusion that it was expedient for consent to be given in this case.