IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Criminal Appeal No. 3 of 1978

Between:

APISAI VUNIYAYAWA TORA alias MOHAMMED TORA — Appellant

v.

R E G I N A M — Respondent

S.M. Koya for the Appellant
K. Ratneser, with Tevita Fa and M. Raza for the Respondent

Date of Hearing: 3rd July 1978
Delivery of Judgement: 28/7/78

JUDGMENT OF THE COURT

Henry, J.A.

Appellant was convicted in the Magistrate's Court at Lautoka of an offence under section 15(1) of the Sugar Industry Ordinance Cap. 180, as amended by section 4 of the Sugar Industry (Amendment) Ordinance 1969, and sentenced to imprisonment for twelve months. Particulars of the offence were that on August 4 1977, at Lautoka Mill, he hindered the making of sugar. An appeal to the Supreme Court was dismissed. This appeal is confined to questions of law.

Section 15(1), as amended, reads:

"15(1) Notwithstanding any other law in force in Fiji, any person who, other than during the existence of a dispute notified by the independent chairman under the provisions of section 4 or of the last preceding section, does any act or makes any omission the doing or omission of which hinders or is calculated to hinder orderly planting or growing or harvesting of cane, transport of cane to a mill, crushing the cane, making sugar at a mill, or transport or storing of sugar, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years."

The words which we have underlined were inserted by the 1969 amendment in substitution for the words:

"before the independent chairman has given notice of the issue of a certificate under (section 14)".

Section 3 provides for the appointment of an independent chairman. Section 4 sets out the duties of the independent chairman. For the purposes of this appeal the relevant duties are contained in the following subsections:

"(a) generally, at all times to use his best endeavours to promote good relations between persons engaged in the sugar industry, and the orderly and peaceable settlement of disputes therein;

(c) to endeavour to obtain agreement in all matters in the sugar industry as to which there is disagreement between the parties concerned, and, if he is unable to obtain agreement, to give a certificate that a dispute exists, and to notify the Chief Justice forthwith that he has done so;

(d) two years before the termination of any present or future contract of general application, to bring before the Council the question of a new contract of general application, and, if and when he deems it necessary, to issue a certificate that a dispute exists and thereupon immediately to notify the Chief Justice:"

There is a proviso which is not relevant.

"(e) forthwith to notify the Chief Justice that a dispute has ceased to exist under the last preceding paragraph, if the parties concerned reach agreement or if the representatives of the millers and growers on the Council agree on the terms of a new contract of general application and at least two-thirds of the growers accept such new contract;"

We turn now to section 14. Subsection (1) reads:

"14(1) For the purpose of this Ordinance no dispute shall be deemed to exist in the sugar industry until the independent chairman certifies that he has endeavoured to obtain agreement between the parties concerned and has failed."

The fact of the issue of a certificate is published in terms of subsection (7) which reads:

> "14(7) Upon issuing a certificate under this section the independent chairman shall forthwith give notice that he has done so by publication in the Gazette and in such other manner as he may deem best calculated to bring it to the attention of all persons concerned. The time of publication in the Gazette shall be deemed to be the time of the notification for the purposes of the next succeeding section."

To go back, subsection (2) requires the independent chairman forthwith to notify the Chief Justice of the grant of a certificate under subsection (1). Provision is made for the Chief Justice to consult the Minister responsible for the sugar industry. Comprehensive provisions are enacted whereby a tribunal is set up to decide the dispute. Subsection 4A, which was added by the 1969 amendment, is important because it was enacted at the time when section 15(1) was amended by reference to a defined period. Subsection 4A reads:

> "(4a). (a) The award of any person or persons appointed in pursuance of this section shall be submitted to the Chief Justice;
>
> (b) The Chief Justice shall cause such an award, or any notification made under the provisions of paragraph (e) of subsection (1) of section 4 or of the last preceding subsection, to be published in the Gazette and from the date of such publication it shall be deemed and held -

(i) that the dispute no longer exists;

(ii) that the grant or issue of the certificate by the independent chairman and the notification thereof to the Chief Justice shall stand revoked."

Subsection (5) must be noted. It reads:

"14(5) The award of any person or persons appointed in pursuance of this section may be made an order of the court by any of the parties to the dispute and shall be enforceable in the same manner as a judgment or order of the court to the same effect."

Subsection (6) deals with the powers of the Minister. It reads:

"14(6) The Minister in his discretion shall decide whether such dispute may, be dealt with under the ordinary machinery available in Fiji for the settlement of industrial disputes or whether, having regard to the serious effects on the sugar industry in Fiji which it is likely to produce, the dispute shall be dealt with under the provisions of this section. The Minister shall notify the Chief Justice, the independent chairman and the parties to the dispute of his decision; and if his decision is that the dispute shall be dealt with under the provisions of this section the Chief Justice shall then appoint a person or persons to decide the dispute, with or without advisers, as provided for in subsection (2) of this section."

Upon reading section 4 and 14 (as amended) together it will be seen that a comprehensive scheme has been set up for the decision of disagreements and disputes in the sugar industry. Any dispute, after prior attempts at settlement have failed, and the independent chairman so certifies, becomes the subject matter for decision by a tribunal. The time when a dispute is deemed to exist is defined in section 14(1) and the time when a dispute ends, or is deemed no longer to exist, is also defined in sections 4 and 14 (as amended). Accordingly, the time during which a dispute relevant to section 15(1) is in existence is fixed by the provisions of sections 4 and 14.

Appellant was the General Secretary of the Fiji Sugar and General Workers Union (which will be referred to as "the Union"). He was also the President of the Fiji Council of Trade Unions. On August 2, 1977, members of the Dockside and Waterside Union stopped work for the second time that year. As a result no shipping was available for loading sugar from the Lautoka Mill until work on the wharf resumed. The Fiji Sugar Corporation (hereinafter called "the Corporation") employed some 230 casual workers at its Lautoka Mill as part of its operations in producing sugar. Their primary duty was the transport of sugar from the Mill to the wharf where it was loaded onto ships by members of the Dockside and Waterside Union. Casual workers are called for duty whenever work is available. They may be laid off on 1½ hours prior notice. As a result of the

strike by the members of the Dockside and Waterside Union, the casual workers were told on August 2 not to report for work the next morning.

On August 3, at about 5.15 p.m. appellant telephoned the Managing Director of the Corporation enquiring about the employment of the casual workers. He gave notice that the work-force of the Union would be withdrawn from the Mill unless the casual workers were given immediate employment or were paid one or two weeks wages in lieu of such employment. On August 4, just after midday, about 80 members of the Union together with appellant, attended a meeting at the Mill. Within an hour after that meeting concluded, a large majority of the members of the Union stopped work. The making of sugar was clearly hindered.

At the time material to this appeal a dispute (which will be called "the notified dispute") had been in existence since June 3, 1977 when the independent chairman had given a certificate under section 14(1) and had duly published it in the Gazette. The reasons for the action taken by appellant were set out in a press release signed by appellant. The relevant portion reads:

> "The Fiji Sugar and General Workers' Union is involved in a stop-work protest meeting. It will be for an initial period of 24 hours, after which the Union will review the situation. The stop-work meeting was been held for the following reasons:

(a) In protest against the outright refusal of the F.S.C. to consider the Union's request for reasonable notice or pay in lieu of notice to the 230 so-called permanent casual workers who are Union members and who were laid off when the Dock-workers went on strike on Tuesday.

(b) In protest against the high handed and indifferent attitude of the Fiji Government in the way it has been handling the Dock-workers strike. We protest in the strongest possible terms against the detention in prison, because of the strike of Taniela Veitata, the Industrial Advisor to the Dockworkers Union.

The time has now come when all Trade Unionists in this country must form a united front to protest their basic and fundamental rights, among which is the right to strike. We will not tolerate any move from any quarter to remove that right."

It is common ground that these matters are not related to, and are completely independent of, any matter which arose under the notified dispute.

The first ground of appeal raises the question whether, in view of the existence of the notified dispute, appellant committed an offence under section 15(1) as charged. This will be dealt with on the assumption that it was properly proved that appellant was a party to an act hindering the production of sugar. There was ample evidence to prove this.

The learned Magistrate, after rejecting a submission made by counsel for appellant on the meaning of the expression "a dispute" in section 15(1), said:

"It is therefore clear that in using the words 'a dispute' the clear intention is to include only such disputes as have been certified by the

Independent Chairman as until such certificate has been given 'no dispute shall be deemed to exist'.'

He then, after referring to sections 14 and 15, went on to say:

> "..... the legislature therefore quite unequivocally intended for the word dispute in S. 15(1) to bear the same meaning as that attributed to it in the preceding section."

The point was taken no further. We agree with this finding but it does not answer the question which requires determination.

The learned Judge dealt with the matter in the following passage:

> " Under S. 14 a dispute does not exist until the independent chairman has certified that he has failed to get the parties to agree. Therefore, in my view the dispute must be one which has been referred to the independent chairman.
>
> The Magistrate did not agree with the submission that a dispute was in existence which had anything to do with the matters connected with the charge therein. They were obviously not matters which could have been reported to the independent chairman.
>
> In my view in order that a hindrance to sugar making shall not constitute an offence under S. 15(1) it must arise from a course of conduct related to the subject matter of a particular dispute which has been certified as such by the Chairman. Such an approach is, I think, dictated by ordinary commonsense. It would be futile to refer one certified dispute to arbitration in order to avoid a close down of the mill and then permit a subsequent 'wild-cat' strike on some other matter unrelated to the former dispute on the ground that a certified dispute is in existence."

He was of opinion that the learned Magistrate held that the facts or omissions in section 15(1) must be acts or omissions which relate to a dispute earlier certified by the

independent chairman under section 14(1), but the learned Magistrate did not categorically say so. However that may be, the learned Judge clearly held that an act or omission, to come within section 15(1), must be related to the subject matter of "a particular dispute which has been certified as such by the independent chairman". No reasons were given for this conclusion either by analysis of the legislation or by the citation of any legal principal of construction. The conclusion reached may be desirable but appellant is charged with criminal conduct and he can be responsible only if section 15(1) yields the meaning given to it by the learned Judge. His conclusion, without giving any reason, appears to be that the words "any act" or "any omission" do not mean what they say but are qualified by some term such as "other than acts or omissions arising from a course of conduct related to a notified dispute".

Section 15(1) must now be examined more carefully. It contains two elements - the definition of a substantive offence which can conveniently be called any act or omission interfering with sugar production. It further contains a definition of the time during which such an offence may be committed. This can be demonstrated by underlining the ingredients of the substantive offence and placing the time element in brackets. Section 15(1) then appears as follows in its essential parts:

> "..... <u>any person who</u>, (other than during the existence of a dispute notified by the independent chairman under the provisions of section 4 or the last preceding section,) <u>does any act or makes any omission</u> ....."

The contention of counsel for appellant is that the time, during which a dispute, notified under section 14, is in existence, is clearly defined and that, during that time, the operation of section 15(1) is wholly suspended. The contention of counsel for the Crown is that sections 4, 14 and 15(1), when read together, limit such suspension of criminal responsibility to acts or omissions referable to "the dispute" notified by the independent chairman under section 14 subsection (1) and (2). With the greatest respect the argument is not easy to follow. Counsel stressed that the reference in section 15(1) to "a dispute notified ....." meant "the dispute" which was then in course of being resolved under the procedures set out in section 4 or section 14. In so saying he was not in conflict with counsel for appellant. Accordingly both counsel were at one on the period of time during which there was a suspension, so the difference between their respective submissions was whether the suspension referred to <u>any</u> act or omission set out in section 15(1) or only to <u>such</u> acts or omissions as were then referable to the subject matter of "the dispute" notified by the independent chairman. The argument of counsel for the Crown can succeed only if the words "any act" or "any omission" are so controlled by the provisions of the Ordinance

that they ought to be construed narrowly and not in their ordinary meaning.

The mischief at which the Ordinance is aimed is clear. It is the control of disputes and disagreements generally in the conduct of the sugar industry. Any act or omission which interferes with sugar production, as detailed in section 15(1), is an offence, but an exception was made. If that exception is as wide as counsel for appellant contends, then during the existence of a notified dispute, when the machinery for the determination of the dispute is in progress, any person may with impunity, so far as concerns section 15(1), interfere with sugar production. No act or omission having that effect would be cognizable under section 15(1). Counsel for the Crown on the other hand says that the only permissible disruption is confined to a class of acts or omissions which in some way (not precisely defined by him) relate to the notified dispute. The legislature did, during the existence of a notified dispute, give licence for acts or omissions disrupting sugar production and the question is what is the extent of such licence. It should be noted that section 15(1) is not the only remedy available. Under section 14(6) which we have set out additional powers are available to the Minister for dealing with disputes and disagreements.

According to the argument of counsel for the Crown there are two classes of acts or omissions being:

(a) those related to the subject matter of a notified dispute, and,

(b) those not so related.

Thus the first class is an offence only if done other than during the existence of a notified dispute. The second class is, however, always cognizable as an offence under section 15(1). With the greatest respect this argument of counsel did not satisfactorily explain how the distinction could, as a matter of the proper construction of section 15(1), be made. He stressed again and again that section 15(1), where it used the term "a dispute" meant "the dispute" which had arisen either under section 4 or section 14. There is no doubt that it does but counsel did not explain how this imported into section 15(1) the particulars of such a dispute so that such particulars would determine whether or not they were acts or omissions set out in section 15(1). The distinction between particulars of a notified dispute and the existence of a notified dispute, which are different concepts, seemed to be ignored.

We return to an examination of section 15(1). In defining the period during which the section runs the words used are not ambiguous. The period of exception is "other than" a stated period. No difficulty arises so far. The period which is excepted by this expression is "during the existence of a dispute notified under section 4 or section 14". This is a simple definition of a period of time ascertainable from section 4 and 14 which define, for the purposes of

the Ordinance, how long a dispute exists. The only question which can arise so far is whether or not, at the time of an alleged offence, a notified dispute is in existence. No expression in this portion of section 15(1) by reference to section 4, section 14 or otherwise, puts in issue the particulars of the notified dispute. They are irrelevant. The words used are clear and unambiguous.

Section 15(1) then, after earlier referring to any person, goes on to provide that any act or omission of the nature set out shall be an offence. The words are:

> "..... any person who,.....does <u>any</u> act or makes <u>any</u> omission ...."

For the argument of the Crown to succeed the expression "any act" or "any omission" must be confined to conduct other than that which brought the exception into operation. An examination of the exception itself does not disclose any such reference to conduct and there is nothing else in section 15(1) which controls the extent of the acts or omissions. Sections 4 and 14 cannot be resorted to because they are referred to in section 15(1) only for the purpose of defining a period of time. The acts or omissions have no necessary or particular reference to a dispute concerning the production of sugar. This may be illustrated by the alleged action of appellant in hindering the making of sugar by inciting a strike to further a dispute in which the Dockside and Waterside Union was involved as earlier set out in this judgment. Moreover when a qualification of

such a term as "any act" or "any omission" is to be introduced into a penal statute the matter introduced ought to be capable of definition. No doubt, if section 15(1) referred to the notification in the Gazette and that notification had particulars of the dispute at least those particulars could be ascertained but what would the qualifying words be: "in furtherance of", "relating to", "arising out of", "with regard to" or some other expression? Such expressions may not all have the same meaning. We cite this only to illustrate one difficulty.

If the literal meaning is given to section 15(1) this does not defeat any obvious intention of the legislation. The general intention is to protect the sugar industry in the production of sugar by making any acts or omissions of the defined type an offence. It is also the intention that during the existence of a notified dispute the generality of that protection was to be qualified and that during a period, at least to some extent, such acts or omissions would cease to be cognizable as an offence. It is a matter for the Courts to determine what the language means. It may well be that, if attention had been drawn to the present problem, the Ordinance would have been so drawn as to meet it. We do not know. It may be that, when enacted, it was considered that it would be sufficient to control disputes in the manner in which we have held section 15(1) operates. Again we do not know. The present problem in respect of the type of action now taken may not have been foreseen. The legislation intended to permit disruption of sugar production during a period so the intention of

the legialature is not defeated. It is only, on its true construction, seemingly less adequate than may now be considered desirable. Unless the permitted interference, which is in respect of "any act" and "any omission" can, by some recognized canon of construction, be read as meaning only sone acts or omissions, which can be defined with reference to the Ordinance, the plain words must prevail.

It is nothing to the point to say that commonsense is the criterion, or that some kind of futility arises in certain circumstances. When the language of the legislation is plain in its literal sense the principle to be applied was stated by Lord Reid in Luke v. Inland Revenue Commissioners (1963) 1 All E.R. 655 where his Lordship said at p.664:

> " How then, are we to resolve the difficulty? To apply the words literally is to defeat the obvious intention of the legislation and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result we must do some violence to the words. This is not a new problem, though our standard of drafting is such that it rarely emerges. The general principle is well settled. It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail."
>
> (The underlining is ours.)

His Lordship went on to say further at page 666:

> " If it is right that, in order to avoid imputing to Parliament an intention to produce an unreasonable result, we are entitled and indeed bound to discard the ordinary meaning of any provision and adopt some other possible meaning which will avoid that

> result, then what I am looking for in examining the obscure provision at the end of s. 161(1) is not its ordinary meaning (if it has one) but some possible meaning which will produce a reasonable result. I think that the interpretation which I have given is a possible interpretation and does produce a reasonable result, and therefore I adopt it."

The question then is do the literal words defeat the obvious intention of the legislature and produce a wholly unreasonable result. They do not. They may fail to proscribe undesirable conduct during a defined period but section 15(1) still has a wide operation at all other times. However desirable it may be in view of the present use of industrial disruption to further causes unrelated to a particular industry, that is a matter for the legislature to make a proper provision. The Courts are bound by established rules of construction. Unless, in a case such as the present, a situation arises in which the words of Lord Reid apply, or, the literal construction brings about an absurdity, which the legislation could never have contemplated, the literal meaning must prevail.

It was argued that subsection (4) of section 15, which provides for a remedy by way of injunction for breaches of section 15(1), would be rendered practically nugatory if the construction we have given section 15(1) is adopted. We do not agree that this would necessarily be so because section 15(1) operates at all times except for a defined period of time. Subsection (4) does not impinge upon the terms of subsection (1).

It is merely an alternative and additional method of enforcement and so cannot aid in the construction of the offence which it is intended to enforce. One must first determine what the subject matter of the remedy is.

Before we leave this part of the appeal we desire to state that we are conscious of the fact that the way is open for the production of sugar to be seriously jeopardised for the period during which a dispute is deemed to exist. We are also mindful that, during an excepted period, there may be disruption in respect of other matters which are then under action by the independent chairman, or ought to be referred to him for action, or even matters completely irrelevant to the sugar industry. Two examples are given in the actions of appellant. Because such situations may arise we have given the most careful consideration to section 15(1) both before and after it was amended. We have further given the most anxious consideration to see whether, on permissible canons of construction, it was possible to confine the period of exception only to acts or omissions relevant to the dispute which brought the exception into operation. Similarly we considered carefully whether, by confining the operation of section 15(1) to any person engaged in the sugar industry, the words "any act" and "any omission" might be restricted during the existence of a notified dispute. But, in every such case, we found it was necessary to add some expression which, by a limitation or exception, qualified the

terms "any act" and "any omission". We found no legal basis for adding any qualification to those words. To do so would be legislating to get a better protection for the sugar industry than the plain words mean in their context. That is not our function. We can only think that the amendment to section 15(1) was, like that made to section 14, enacted with a desire for additional clarity, and, in particular to make it plain when the dispute ceased to exist and when the notification no longer had effect. The result of the amendment is that the period of exception is made clearer but it has left the words "any act" and "any omission" completely unqualified.

Ground 2 was abandoned. Grounds 3, 4 and 5 deal with the question whether the learned Magistrate applied correct principles in respect of the onus of proof and whether he was correct in drawing an inference of guilt. We have carefully considered the judgment as a whole and we are of opinion that the learned Magistrate did apply the onus of proof correctly by placing it fairly on the prosecution and not in any sense on the defence and that there was ample evidence upon which it could be held that appellant was a party to a stopping of work which hindered sugar production.

Ground 6 refers to a claim that the learned Magistrate was wrong in rejecting a defence of mistake under section 10 of the Penal Code Cap. 11. Before the learned Judge two matters were put forward, namely:

"(1) That the 230 'casual workers had been dismissed' (permanently) from employment, and

(2) That S.15(1) of the Sugar Industry did not apply because there was 'a dispute' in existence at the time of the stop-work."

The first was not argued before us. It has no merit. Concerning the second matter, as appellant said in his unsworn statement, he did not feel he acted wrongly as the arbitrators award had not been made and a certificate of dispute was still in existence. It was a fact that these matters existed at the time but his belief, whether or not their existence meant that he was not guilty of an offence, is not a mistake of fact, it is a matter of construction of a statute and therefore a matter of law.

Ground 8 is a complaint that the names of the persons whom appellant counselled or procured to commit the offence were not named in the charge and that such persons were not charged and convicted. The evidence accepted at the trial was sufficient to prove that appellant did counsel or procure the work-force to stop work. In the circumstances the failure to identify the persons at the meeting whom appellant counselled or procured is not a fatal defect. The actual charging and convicting of such persons is irrelevant.

Ground 9 is a claim that the learned Magistrate should have ordered the trial to be heard by another Magistrate. This matter was fully dealt with by the learned Judge and we agree entirely with his findings.

Ground 10 reads:

"Whether Section 15(1) of the Sugar Industry Act is ultra vires the Constitution of Fiji upon the grounds that:-

(a) that it offends Articles 12 and 13 thereof and;

(b) that it cannot be shown to be reasonably justifiable in a democratic society."

Article 3 of the Constitution of Fiji is in the nature of a preamble. In dealing with the protection of fundamental rights and freedoms of the individual it provides:

".....the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

A similar provision appears in the Constitution of Malta which came before the Privy Council in Oliver and Anor. v. Buttigieg (1966) 2 All E.R. 459. Lord Morris of Borth-y-Gest said at p.461:

"The provisions of Part 2 are to have effect for the purpose of protecting the fundamental rights and freedoms, but the section proceeds to explain that, since even those rights and freedoms must be subject to the rights and freedoms of others and to the public interest, it will be found that in the particular succeeding sections which give protection for the fundamental rights and freedoms there

> will be 'such limitations of that protection as are contained in those provisions'. Further words, which again are explanatory, are added. It is explained what the nature of the limitations will be found to be. They will be limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

His Lordship when dealing with the nature of the publication in question, further said at p. 465:

> "Though the 'Voice of Malta' had been in disfavour with the church authorities there was no suggestion that its publication offended against the provisions of any law. Its publication was permissible and legitimate. The public were free to buy it."

Article 13 may conveniently be dealt with first. Subsection (1) provides:

> "13(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests."

Subsection (2) qualified subsection (1). It is unnecessary to set subsection (2) out. Section 15(1) of the Sugar Industry Ordinance does not purport to deal with freedom of assembly or association. Article 13 does not apply.

Article 12 subsection (1) reads:

> "12(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence."

Subsection (2) qualifies the wide words of subsection (1). We find no occasion to refer to its contents. The relevant portion of Article 12 is the protection of the right "to impart ideas and information".

The primary purpose of section 15(1), as indeed are sections 3, 4, 14 and 15 as a whole, is to settle disputes and disagreements which may interfere with the production of sugar. a commodity which is essential to the economy of Fiji. Section 15(1) is part of the legislative scheme to achieve that purpose by enacting a penal provision. It is aimed at restraining acts or omissions which hinder or are calculated to hinder "orderly planting or growing or harvesting of cane, transport of cane, crushing the cane, making sugar at a mill or transport or storing of sugar". None of these matters is related to "the imparting of ideas and information". These are all physical results. The argument of counsel for appellant appears to be that because in this case, but not necessarily in all cases, the imparting of ideas or information is a part of the proof of the offence, which itself is in no way aimed at restricting the right to freedom of expression, then the offence legislated for by section 15(1) is contrary to the protection provided by Article 12. The subject matter

of section 15(1) is the test, not the manner in which proof is offered to establish that someone is a party to the offence. The matters put forward by counsel are matters of evidence to prove an offence which itself has no relation to freedom of speech in the context of Article 12. In our view Article 12 does not have the effect contended for. This ground fails.

The appeal will be allowed on the ground that section 15(1) was in a state of suspension at the time when appellant committed the acts which were found against him. If the sugar industry ought to be protected against such conduct which is clearly inimical to the welfare of Fiji, then it is for the legislature to enlarge the scope of section 15(1).

The appeal is allowed and the conviction and sentence are quashed.

(Sgd.) T. Gould
VICE PRESIDENT

(Sgd.) T. Henry
JUDGE OF APPEAL

(Sgd.) B.C. Spring
JUDGE OF APPEAL