

Case referred to :—

Elias v. Pasmore [1934] 2 K.B. 164.

APPEAL BY THE PROSECUTION BY WAY OF CASE stated against an order of a District Commissioner made in the course of criminal proceedings.

A. G. Forbes for the appellant.

S. B. Patel, for the respondent.

CORRIE, C.J.—I hold that s. 19 of the Prices of Goods Ordinance, 1940, does not authorize the seizure and removal by a person authorized by the Competent Authority of books or documents, without the consent of the person having their custody ; and the seizure of the respondent's books and documents was, therefore, unlawful. As regards such of them, however, as are to be used in connexion with criminal proceedings against any person, it is clear, on the authority of *Elias v. Pasmore* [1934] 2 K.B., 164, that the seizure is excusable and that the police have the right to retain such books and documents until the conclusion of such proceedings. With regard to any books or documents not to be used ; while it appears on the authority of the same case that the police retain them at their peril, it is clear that the District Commissioner had no jurisdiction in the course of criminal proceedings against the respondent to make any order as to books and documents not related to those proceedings.

The appeal is allowed and the judgment of the District Commissioner is set aside.

SWAMI RUDRANAND *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) October 18, 1943.]

Regulation 22—(1) (a) of the Defence (General) Regulations, 1942—endeavouring to seduce from their duty persons engaged in the performance of an essential industry—no allegation as to particular persons—whether information too vague—whether cane growers have a duty to harvest cane.

Appellant was convicted by a Court of Summary Jurisdiction of the offence created by Regulation 22—(1) (a) of the Defence (General) Regulations 1942. The evidence was that he had attempted to persuade cane growers not to harvest cane. The cane growers concerned were lessees or owners of their own farms and had an agreement with the Colonial Sugar Refining Company as to the harvesting of cane by the cane growers and the purchase of same by the Company.

HELD.—(1) The particulars in the information need not be more precise than those required by the Incitement to Disaffection Act, 1934 and need not specify the particular persons whom the accused is alleged to have endeavoured to seduce from their duty.

(2) It is necessary to show that the persons whom the accused "attempted to seduce" were under a duty—a contractual duty may be of this category.

Cases referred to :—

Ahmed Angullia v. Estate & Trust Agencies (1927) Ltd. [1938] A.C. 624.

[**EDITORIAL NOTE.**—The chief interest in this decision is the finding as to the effect of the "Memorandum of Purchase" generally executed by cane growers dealing with the Colonial Sugar Refining Company Ltd.]

APPEAL AGAINST CONVICTION. The facts appear from the judgment.

S. B. Patel for the appellant.

A. G. Forbes for the respondent.

CORRIE, C.J.—This is an appeal against the judgment of the Court of Summary Jurisdiction sitting at Ba, whereby the appellant was convicted of unlawfully endeavouring to seduce from their duty persons engaged in the performance of an essential service, to wit the sugar industry, contrary to Regulation 22, 1 (a) of the Defence (General) Regulations, 1942.

The first ground of appeal is that the information was defective, in that it did not specify the particular persons whom the accused was alleged to have endeavoured to seduce from duty. Comparison with the Incitement to Disaffection Act, 1934, and the form of information under that Act show that no particular persons need be specified in a charge under that Act, and there is nothing in the Regulation under which the appellant was charged which would require more precise particulars to be given.

The second ground of appeal is :—

(a) That there was no evidence, on which the learned Resident Magistrate could convict, of the fact that the accused endeavoured to seduce from their duty persons engaged in the performance of an essential service, to wit, the sugar industry.

(b) That, if there was any evidence, it was too general and too vague on which to found a prosecution.

As to this, I hold that, assuming cane growers are under a duty to harvest their cane, there is clear and sufficient evidence of an endeavour to persuade them not to do so, in breach of their duty.

The third ground of appeal is that there was no evidence that it was the duty of the persons engaged in the sugar industry to harvest the cane.

It is to be noted that the only persons engaged in the sugar industry whom the appellant is charged with endeavouring to persuade are cane growers, and not persons in the actual employment of the Company. The appellant maintains that growers are under no duty to cut their cane or to deliver it to the Company. The reply of the prosecution is that the growers owe a duty by reason of their contractual obligations to the Company.

If such obligations exist, there is support for this view in the judgment of the Judicial Committee in *Ahmed Angullia v. Estate & Trust Agencies* [1927] *Ltd.*, reported in 1938 A.C. 624, in which their Lordships said, at page 635, "But the breaking of an enforceable contract is an unlawful act."

The question therefore arises whether cane growers are under any enforceable contract to harvest their cane and deliver it to the Colonial Sugar Refining Company.. In support of the view that they are so bound, evidence was given by Mr. Rourke, the Manager of the Company's mill at Rarawai, who stated "We have an agreement under which it is their duty to sell us the cane and their obligation to harvest it. The contract is in stock form, Exhibit C."

Exhibit C is headed "Memorandum of Purchase of Cane". On examining its provisions, we find that it is expressed to be an undertaking by the Company to purchase cane up to a specified maximum area and to pay for it at fixed rates, provided that the grower fulfils the conditions as to growing, harvesting and delivery of cane prescribed in the Memorandum and complies with the terms of clause 12 as to the removal of crops on neighbouring areas. Clause 16 provides that this undertaking to purchase cane under the foregoing conditions shall not apply unless accepted by all the growers supplying cane to Rarawai Mill. The Memorandum is signed by the Manager of the mill. Appended are the words "I accept", signed by the grower, and followed by a certificate that the Memorandum was read and explained to him, that he appeared to understand it and signed the above acceptance in the presence of the certifying witness.

The Court is asked to hold that the terms of clause 16 and the acceptance by the grower constitute an agreement by the grower to fulfil the conditions of the Memorandum as to growing and harvesting cane, and that such agreement is enforceable against the grower by legal proceedings. I am unable to take that view. I hold that what is accepted by the grower is, first, that if he fulfils all the prescribed conditions, the Company will purchase from him not more than the specified amount of cane and will pay for it at rates not exceeding those prescribed; and, secondly, that if he does not fulfil the conditions of the Memorandum, the Company shall be under no obligation to purchase any cane from him.

As the Company owns the only sugar mills in the Colony, the inducement to the grower to conform to the requirements of the Memorandum is obviously of a most compelling nature; but the Memorandum does not, in my view, constitute a contract legally enforceable against the grower; and hence the passage from the judgment in the *Ahmed Angullia* case, which has been cited above has no application.

In the absence of an enforceable contract, I hold that there was not evidence before the Court that a grower is under a duty to cut his cane and deliver it to the Company. It follows that in endeavouring to persuade growers not to cut and deliver their cane to the Company the appellant was not endeavouring to seduce them from their duty.

The conviction and sentence must therefore be set aside and the appellant acquitted.