

provisions quoted above but s. 4 of the amending Ordinance repeals and replaces (*inter alia*) s. 11 of Cap. 152 and in proviso (b) to sub-s. (3) of the new s. 11 :—

“(b) nothing in this Ordinance shall be construed to prevent
“ a Company from deducting the normal tax from dividends payable to shareholders or to a particular class of shareholders.”

It will be observed that the words relating to preference shareholders which formerly appeared in s. 3 (1) (c) of Cap. 152 have been omitted.

In these circumstances the plaintiff comes to the Court to ascertain whether the defendant Company is still bound to deduct income tax from dividends paid to its preference shareholders or, if not so bound, whether it may do so, at its discretion. As a preference shareholder, he contends that the answer to both questions should be in the negative.

The defendant Company does not wish to take sides as between different classes of its own shareholders ; it only desires equitable treatment for both. The second defendant, however, espouses the cause of the ordinary shareholders, of which he is one, and although he does not contend that the defendant Company is bound to deduct income tax from the dividends of the preference shareholders, he does claim that proviso (b) gives the Company the power to do so, a power which it may exercise or not at its discretion.

I am unable to accept this view. Paraphrased proviso (b) of s. 11 (3) says in effect that if a Company has the right to deduct income tax from the dividends paid to its shareholders, nothing in the Ordinance is to prevent it from exercising such right.

Whether a Company has the right to deduct anything from the dividends it has promised to pay to its shareholders depends upon the contract existing between the Company on the one hand and the shareholders on the other. In the present case, it is admitted that there is nothing in the preference share certificates nor in the Memorandum or Articles of Association of the Company which gives a right to the Company to make any deduction from the fixed cumulative dividend of 6 per cent which it has contracted to pay to its preference shareholders.

In these circumstances, the two questions propounded by the plaintiff must be answered in the negative. As the law now is, the Company is neither obliged nor has it the power to deduct income tax from the dividends of its preference shareholders.

SUBBAIYA PILLAI *ats.* POLICE.

[Appellate Jurisdiction (Thomson, J.) March 3, 1946.]

Defence (Liquor) Regulations, 1943—Reg. 70¹—supplying liquor to a prohibited person—whether recipient of liquor is an accomplice whose evidence requires corroboration.

Subbaiya Pillay was convicted of the offence of supplying liquor to one Ismail a prohibited person, the only evidence as to the supplying being that of Ismail himself.

¹ *Ref. Vide Liquor Ordinance, 1946, s. 70.*

HELD.—A prohibited person to whom liquor is supplied is an accomplice in the commission of the offence of supplying liquor to a prohibited person.

Cases referred to :—

(1) *R. v. Sockett* [1908] 1 Cr. Ap. 101 ; 72 J.P. 428 ; 24 T.L.R. 893 ; 14 Dig. 93.

(2) *R. v. Jellyman* [1838] 8 C. & P. 604 ; 14 Dig. 451.

(3) *R. v. Tyrrell* [1894] 1 K.B. 710 ; 63 L.J.M.C. 58 ; 70 L.T. 41 ; 10 T.L.R. 167 ; 17 Cox. C.C. 716 ; 14 Dig. 93.

(4) *Bechu ats. Police* [1944] 3 Fiji L.R.

(5) *Jenks v. Turpin* [1884] 13 Q.B.D. 505 ; 53 L.J.M.C. 161 ; 50 L.T. 808 ; 49 J.P. 20 ; 15 Cox. C.C. 486 ; 25 Dig. 424.

(6) *R. v. King* [1914] 111 L.T. 80 ; 30 T.L.R. 476 ; 14 Cox. C.C. 223 ; 10 Cr. App. 117 ; 14 Dig. 457.

APPEAL against conviction.

K. A. Stuart, for the appellant submitted that Ismail was an accomplice and, since the Magistrate held him not to be an accomplice, appellant was convicted without regard to the rule requiring corroboration of the evidence of an accomplice. For authority as to what is an accomplice he referred to :—

R. v. Sockett, R. v. Jellyman, R. v. Tyrrell.

E. M. Prichard, for the respondent, referred to :—

Bechu ats. Police, Jenks v. Turpin.

and submitted that nothing was to be drawn from the fact that Ismail was himself guilty of an offence as it was not the same offence as was charged to appellant. The rule as to corroboration applies only to cases where the witness concerned is an accomplice in the commission of the offence charged and to no other case. He referred to *Phipson on Evidence, 8th Edition, p. 478* and *R. v. King* as authority for this submission.

K. A. Stuart, for the appellant, in reply : *Bechu's* case is distinguishable because in that case no offence was committed by the soldier who received the liquor. In *Jenks v. Turpin* the essential matter was the control of the gaming house.

THOMSON, J.—The appellant in these proceedings was prosecuted in the Magistrate's Court at Nadi with two other defendants, Nel Compain and Rosie Compain, on a charge of supplying liquor to one Ismail who at the material time was an Indian prohibited by law from having liquor, in contravention of Regulation 70 of the Defence (Liquor) Regulation, 1943. In the event the two other defendants were acquitted but the appellant was convicted, and it is against that conviction that he now appeals.

It is clear from the evidence that the appellant's conviction stood or fell according as the evidence of Ismail, the recipient of the liquor, was or was not believed, and it therefore falls to be considered whether or not Ismail was an accomplice in the offence in such a sense as to cause his evidence to invite corroboration. In my opinion, he was. By s. 21 of the Penal Code a person is deemed to have taken part in committing an offence who "does . . . any act for the purpose of enabling or aiding another person to commit the offence". It is

possible that as a matter of interpretation this is to be restricted to acts which are unlawful either *per se* or by reason of the intent with which they are done. But even subject to this restriction what Ismail did clearly brought him within the scope of the section. By being in possession of the liquor, he was himself committing an offence in contravention of Regulation 69 and he was also doing an act which not only enabled but was necessary to enable the appellant to commit the offence in contravention of Regulation 70 with which he was charged.

At this stage, and in parenthesis, I would observe that to my mind this case is clearly to be distinguished from the local case of *Bechu v. the Police* (Fiji Criminal Appeal No. 1 of 1944). In that case the person who was alleged to be an accomplice had himself at no time committed any offence, and moreover, at the time that judgment was given (14th September, 1944), the Penal Code was not in force.

Having come to the conclusion that Ismail was an accomplice, it follows that a conviction could not be based on his evidence unless it was corroborated by other evidence implicating the defendant, or unless the Magistrate (who was, of course, sitting without a jury) directed himself as to the danger of convicting in the absence of corroboration. It is admitted that there was no corroboration, and from the learned Magistrate's announced decision at the close of the case for the prosecution that, in his opinion, Ismail was not an accomplice, it is impossible not to draw the inference that he failed to administer to himself the necessary warning.

The conviction, therefore, cannot stand and so it becomes unnecessary to consider the other grounds of appeal or in particular to express regret that the learned Magistrate has failed to throw the bright light of exposition on the darkness that at present surrounds the course of reasoning that enabled him to conclude at one and the same time (as he must have concluded) that the defendant Nel Compain's evidence was so truthful as to justify her own acquittal but so untruthful as to justify the conviction of the present appellant.

The appeal is allowed and the conviction quashed.

INDIAN TRADING COMPANY OF FIJI *ats.* POLICE.

[Appellate Jurisdiction (Thomson, J.) March 20, 1946.]

Defence (Liquor) Regulations 1943¹—application for wholesale liquor licence—notice of objection by police—District Commissioner's Court as a licensing Court—whether matter to be determined otherwise than on sworn evidence.

The appellant Company applied in writing for a wholesale liquor licence and notice of objection was given by the police. The Acting Chief Magistrate held a Court to determine the matter and decided to refuse the application after hearing representations as to the facts by

¹ Repealed. Vide *Liquor Ordinance, 1946, Part II.*