

JAMAICA

IN THE COURT OF APPEAL

R.M. CRIMINAL APPEAL NO. 266/76

BEFORE: THE HON. MR. JUSTICE ZACCA J.A.  
THE HON. MR. JUSTICE MELVILLE J.A.  
THE HON. MR. JUSTICE ROBOOTHAM J.A.

R. v. ERROL SALMON

Mr. Berthan Macaulay, Q.C., & Mrs. Macaulay  
for Appellant

Mr. Henderson Downer for Crown.

September 28, 19, 30, December 16, 1977

ZACCA J.A.

The appellant was convicted by the Resident Magistrate for the parish of St. Thomas for a breach of Section 13 (1)(a) of the Trade Act. From this conviction he has appealed.

The facts are that a licence was granted by the Trade Administrator to one Lancelot Reid to import into Jamaica a Jaguar motor-car. A condition imposed on the grant of the licence was to the effect that the motor vehicle could not be sold within one year of its arriving in Jamaica. It is not disputed that there was a breach of the condition of the licence in that the car was sold within one year. On the face of the licence at the bottom is printed these words: "Permission is granted to import the goods described above subject to such condition as may be specified overleaf." At the very bottom of the licence was written the letters P.T.O. At the back of the licence in the top right hand top corner is rubber stamped the following: "That the motor vehicle mentioned in the licence shall not be sold, pledged, transferred or otherwise disposed of within a period of one year without the prior permission of the Trade Administrator."

The evidence led by the Crown showed that the application for the licence was made up by the appellant in the name of Lancelot Reid and that the appellant signed for Reid. The appellant admitted at the trial that the licence was handed to him at the Trade Administrator's Offices, the grant having been made. However he stated that the application which he made and signed for Reid was only done when he was informed by the Trade Administrator that the application originally made by Reid himself could not be found.

Daphne Lazarus, a Licencing Officer in the Trade Administrator's Department said that she did not recall that Reid's original application could not be found.

In June 1974 the appellant and Lancelot Reid approached Henry John Marzouca with a view to his purchasing the Jaguar car. Mr. Marzouca agreed to purchase the car for \$25,000. However the transaction was not completed on that day. Subsequently the appellant returned to Mr. Marzouca, this time without Lancelot Reid. The transaction was completed and Mr. Marzouca eventually paid for the car by two cheques, one for \$18,000 and another for \$7,000. The cheques were made payable to the appellant. As previously stated it is not disputed by the appellant that he sold the car to Mr. Marzouca within one year of the arrival of the car.

The appellant in his defence stated that Lancelot Reid was his uncle-in-law. He assisted Mr. Reid in preparing the application for a licence to import into Jamaica Mr. Reid's Jaguar motor-car. The appellant submitted the application and on his going back to the Trade Administrator's Department some three to four months later he was informed by Mrs. Lazarus that the application could not be found. It was as a result of this that he made up a fresh application in the name of Reid, and signed for Reid.

He subsequently returned to the Trade Administrator's Department where he was handed the licence. He gave it to a lady who was returning to England. At this time Mr. Reid was in England.

Mr. Reid returned to Jamaica and asked him to sell the Jaguar for him. He sold the car to Mr. Marzouca. The money received for the car was for the account of Mr. Reid. He, the appellant was promised \$2,000 for selling the car. He denied that he knew of the condition on the licence. Although he read the face of the licence he did not read the back of the licence.

The Resident Magistrate in her findings held that the appellant sold the car within the prohibited period and that the offence was one of strict liability. However she also found that there was evidence to infer mens rea in the appellant.

Mr. Macaulay for the appellant made two broad submissions:-

- (1) The words "any person" in Section 13 (1)(a) of the Trade Act can only apply to the licensee and therefore the appellant was wrongly charged. If the appellant had committed an offence it was for a breach of Section 13 (4).
- (2) Section 13 (1)(a) does not create an offence of strict liability but whether the offence was one of strict liability or not the Resident Magistrate failed to consider the defence of mistaken and honest belief put forward by the appellant.

For the Crown it was submitted that the words "any person" in Section 13 (1)(a) cannot be given a restricted meaning. It applied to any person including the licensee and was not restricted to the licensee. It was also submitted that the offence in Section 13 (1)(a) was one of strict liability.

As to the submissions of Mr. Macaulay for the appellant:-

- (1) It was submitted that when a licence is granted and imposes a condition, that condition is personal to the licensee and cannot be breached by a third party. Therefore the words "any person" in Section 13 (1)(a) can only refer to the licensee and does not include any other person. Mr. Macaulay relies on Section 13 (4) to show that there is another section under which the appellant could have been charged. He also relies on the definition of "licence" in Burrows Words and Phrases 2nd Edition at 158.

Section 13 (1) of the Trade Act states:-

"Any person who -

- (a) contravenes or fails to comply with any term, condition, or restriction of, or subject to which, any licence is granted under Section 11.....

shall be guilty of an offence and on summary conviction thereof before a Resident Magistrate shall be liable to a fine not exceeding three thousand dollars and in default of payment to imprisonment with or without hard labour for a term not exceeding twelve months."

Section 11 (1) states:-

"Where an Order made by the Minister under the provisions of section 8 prohibits the importation or exportation of any goods except under the authority of a licence granted by the Minister, the Minister may, subject to the provisions of this section, grant or withhold licences for the importation or, as the case may be, exportation of such goods."

Section 11 (2) states:-

"A licence granted under this section -

- (a) .....
- (b) may be absolute or conditional."

In construing whether the words "any person" in Section 13 (1) (a) refer only to the licensee it is necessary to look at Section 13 (1) (b) and (c) and also Section 13 (4).

Section 13 (1) states:-

"Any person who -

- (b) in or in connection with any book, account or other document or any estimate, return or information which he is required to produce or furnish by virtue of any Order made under this Act, wilfully or recklessly gives any false or misleading information or makes any false or misleading statement; or
- (c) assaults or obstructs any person duly authorised by an Order made by the Minister under this Act to enter or inspect any premises while such person is acting in the execution of his duty under this Act,

shall be guilty of an offence....."

Section 13 (4) states:-

"Any person who attempts to commit or conspires with any other person to commit, or does any act preparatory to, or in any way aids and abets the commission of an offence under sub-section (1) (a), shall be guilty of an offence punishable in like manner as the said offence and the provisions of sub-section (3) shall apply in the case of an offence under this sub-section as it applies in the case of an offence under sub-section (1) (a).

It is clear that the words "any person" in Section 13 (1) (b) and (c) and Section 13 (4) mean, any person whatsoever and not one particular person. Should therefore the words in Section 13 (1) (a) be given a restricted meaning? In Farrell v. Alexander (1976) 2 All E.R. 721 the House of Lords in construing Section 85 (1) and (2) of the Rent Act 1968 (U.K.) held that the words "any person" were not restricted to a landlord

but included anyone, whether or not the landlord, who as a condition of the grant of a tenancy, required the payment of, or, in connection with such a grant, received, a premium over and above the rent payable to the landlord under the lease.

Section 85 of the U.K. Rent Act 1968 contains the following:-

"(1) any person who, as a condition of the grant, renewal or continuance of a protected tenancy, requires, in addition to the rent, the payment of any premiums or the making of any loan whether secured or unsecured shall be guilty of an offence under this section.

(2) any person who, in connection with the grant, renewal or continuance of a protected tenancy, receives any premium in addition to the rent shall be guilty of an offence under this section."

It is true that Section 13 (4) applies to persons other than the licensee and if the appellant had committed any act within the purview of this section he could have been so charged. Let us look at the following example. "Suppose the licensee had returned to England and told the appellant that he was leaving the car with him and that he should sell it for him after one year had elapsed. However within the year the appellant sold the car. Could he have been charged under Section 13 (4)? We think not. It would not be an attempt to commit an offence under Section 13 (1) (a); he would not have conspired with the licensee; nor would he have aided or abetted the licensee. Is he therefore to go free?

The section refers to "any person." Those words, in our view, are wide enough to include licensees, agents or other persons. They applied to the appellant because he sold the car in breach of the condition on the licence. If it were otherwise then the words would be given a restricted meaning in Section 13 (1) (a) but a wider meaning in Section 13 (1) (b) and (c) and 13 (4).

We are of the opinion that if the Legislature desired the words to have a restricted meaning, the section would have read "any person to whom a licence has been granted....."

It follows therefore that the appellant was properly charged under Section 13 (1) (a). Whether or not his conviction was proper will depend on a consideration of whether the offence was one of strict liability or whether the appellant had the necessary mens rea in that he knew of the condition attached to the licence.

Mr. Macaulay in his arguments had made certain submissions and cited certain cases to show that the appellant could have been charged under Section 13 (4). In view of our conclusion it is unnecessary to consider them.

The learned Resident Magistrate in her findings came to the conclusion that there was evidence before her to infer mens rea. This could only mean that she was saying that the appellant, having received the licence and read the face of it as he stated, was fully aware of the condition imposed on the licence. We are of the view that there was evidence before the Resident Magistrate for her to make such a finding and we would therefore not disturb her finding as to mens rea.

It follows therefore that whether or not the offence is one of strict liability, the appellant was properly convicted. The appeal is accordingly dismissed. The conviction and sentence of the Resident Magistrate affirmed.

In view of our findings above we do not consider it necessary to decide whether or not Section 13 (1) (a) creates an offence of strict liability.