

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 30/81

BEFORE: THE HON. MR. JUSTICE ZACCA, J.A.
THE HON. MR. JUSTICE ROWE, J.A.
THE HON. MR. JUSTICE CAREY, J.A.

REGINA

VS.

LAWRENCE WALTER

Mr. K.D. Knight for the appellant.

Mr. Howard Cooke for the Crown.

April 3; May 20, 1981.

ZACCA, J.A.

The appellant, a clerk in the accounting office of the St. Ann Parish Council was convicted in the Resident Magistrate's Court for the Parish of St. Ann on the second count of an indictment which charged two counts. He was found not guilty on count 1 which charged him for larceny of a Salary Register Book but was convicted on the second count which charged him with taking a Salary Register Book for a fraudulent purpose.

There was an industrial dispute at the office of the St. Ann Parish Council on December 13, 1979. On that date an officer of the Parish Council was in the process of computing the salary for monthly paid employees. A Salary Register Book is provided for this purpose and this book was being used by this officer. He worked until 7.30 p.m. that night and left the book on the desk of the salary officer. There was evidence led by the Crown that without the use of the register it would be impossible to prepare the salaries for the monthly paid employees. The appellant, however, in his

evidence stated that salaries could be prepared despite the removal of the register.

On the morning of December 14, 1979, the Salary Register Book could not be found. It had been removed from the desk where it had been left the night before.

Evidence was given by one Veta James, a messenger and cleaner employed to the Parish Council, that on the morning of December 14, 1979, at about 6.45 a.m. she was at work. She saw the appellant who told her that he was working. She testified to seeing the appellant take the Salary Register Book from the accounts office and he left with it. The appellant told the messenger that if anyone asked her if she had seen him, she was to say that she had not seen him.

The Salary Register was recovered on December 17, 1979, when it was seen on a ledge 8 - 10 yards from the ground in the premises of the Parish Council's office.

The appellant gave evidence at his trial and denied taking the book. He also denied placing the book on the ledge. He stated that he did not tell the messenger to say that he was not there that morning, although he did not wish it to be known that he had come to the office that morning as there was a strike on. The appellant, himself, was involved in the strike.

The learned Resident Magistrate in his findings of fact came to the conclusion that the appellant had taken the book on the morning of December 14. He also made this finding of fact:-

"Accused removed the register Exhibit 1 in order to prevent the continuation of the computation by Mr. Green, the then salaries clerk, of the salaries of the monthly paid employees - an official act, and in so doing had a fraudulent purpose."

It was on the basis of these findings that the appellant was convicted on count 2 of the indictment which charged the appellant with an offence contrary to Section 11(d) of the Larceny Act which states as follows:-

"11. Every person who, for any fraudulent purpose, takes and carries away, destroys, damages, or obliterates, the whole or part of -

.....

(d) any original document relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any Court of Justice or in any Government building or public office,

shall be guilty of felony,"

On the hearing of the appeal the finding of fact that it was the appellant who took away the Salary Register was not in issue, but it was contended by learned Counsel for the appellant that the learned Resident Magistrate having found that the removal of the book was to prevent the continuation of the computation of salaries, was in error in holding that the removal was therefore for a fraudulent purpose. It was submitted that in order to establish a fraudulent purpose, it must be shown that the appellant intends to act in a dishonest way which causes a material gain or loss to another. A mere inconvenience was insufficient to establish a fraudulent purpose.

For the Crown it was contended that the appellant must have intended that the taking of the register would disrupt the administration and proper functioning of the Parish Council and therefore the taking was for a fraudulent purpose. It was further submitted that in the absence of any explanation by the appellant, it could be presumed that he took the book for a fraudulent purpose.

The Court was referred to Paragraph 1571 of the 3rd Edition Archbold Pleading and Practice where in setting out the evidence necessary to be proved in an offence under Section 30, Larceny Act which is similar to our Section 11(d) it is stated:-

"Prove..... That he took it for a fraudulent purpose, which in most cases can only be a matter of inference from circumstances, and is not capable of direct proof. The mere taking is evidence from which fraud may fairly be presumed unless it is satisfactorily explained by the prisoner."

The Oxford Dictionary defines "fraud as including:-

"guilty or addicted to fraud, deceitful or dishonest characterised by or in the nature of fraud, serving the purpose of or accomplished by means of fraud."

The appellant denied taking the book, This is tantamount to failing to give any explanation as to why he took the book. In the circumstances of the instant case can it be said the taking was for a fraudulent purpose.

Mr. Knight for the appellant brought to our attention the case of R. v. Bailey (1872) 1 C.C.R. 347. Whilst this case does not assist him we commend him for bringing it to our attention. In that case the prisoner's goods had been seized under warrants of execution of a county court and being in the possession of the bailiff, the prisoner, with intent to deprive the bailiff, as he supposed, of his authority, and so defeat the execution, forcibly took the warrants from him. It was held that the prisoner was not guilty of larceny, but that he was guilty of taking the warrants for a fraudulent purpose within the meaning of Section 30, Larceny Act. Our Section 11(d), Larceny Act is similar to Section 30, Larceny Act.

In R. v. Bailey (supra) at 349 Cockburn, C.J. said:-

"I think the first count, charging larceny, will not hold, it is clear that the prisoner took the warrants from the bailiff thinking that his authority depended on his possession of the warrants, and that by taking them away he would put an end to the authority. But this was not done animo furandi; it was not done *lucri causa*. It was no more stealing than it would be to take a stick out of a man's hand to beat him with it.

Under the second count, the question is whether what was done was done with a fraudulent purpose. I think it was so. The purpose was to deprive the officer of the power to execute process, and so to defeat the execution."

Also at 349 Lush J. stated:-

"I quite concur, on consideration, in the judgment of the Court. I thought at first that what the statute meant was an intention to use the documents for a fraudulent purpose."

So far as our researches, as well as those of Counsel have gone, the only reported case on the meaning of 'fraudulent purpose' in Section 30 of the 1861 Larceny Act (U.K.) is that of R. v. Bailey (supra). It is referred to in the 3rd. Edition of Halsbury's Laws of England, Vol. 10 at page 1507 note (p) where it is stated that:-

"The fraudulent purpose need not be to defraud any person by using the document, an intention to defeat the execution of process is sufficient."

This case is also referred to in the Second Edition of Words and Phrases Legally Defined.

In the instant case there was an industrial dispute in the St. Ann Parish Council's office. The inescapable inference to be drawn from the fact that the appellant removed the Salary Register in a clandestine early morning visit to the Parish Council's office is, as found by the learned Resident Magistrate, that the appellant had the intention to frustrate the continuation of the computation and preparation of the salaries of the monthly paid employees of the Council. In so doing it is reasonable to infer that he intended to disrupt the proper administration of the functioning of the Parish Council in furtherance of the industrial dispute to which he was a party. Removal and secreting of the Council's books would amount to a wholly impermissible manner of conducting an industrial dispute and would in our view have exactly the same consequence viz. attempting to render powerless the Parish Council in its affairs as did Baily's actions towards the bailiff.

We therefore hold that in removing the Salary Register in the manner and for the purposes referred to above, the appellant did so with a fraudulent purpose and that there is no merit in his appeal.

The appeal will therefore be dismissed and the conviction and sentence affirmed.