

goods or merchandise or loading or unloading the vehicle at premises situate within the street if it is not reasonably practicable to load or unload the vehicle in any neighbouring street not being a restricted street." This contention was rejected by the magistrate on the ground that the regulation envisaged that the van itself should be engaged in the operation during the permitted period. Further, a second proviso to the regulation required the driver to remain with the vehicle all the time. The magistrate also drew attention to regulation 4 and vehicles specifically exempted therein; Clerkenwell Magistrates' Court, April 18 (102 *Solicitors' Journal* 358).

Shops

On each of two summonses for carrying on a business in a place other than a shop at a time when it was unlawful to keep a shop open in Rochdale, the owner of a bus converted into a mobile shop was fined £3. The magistrates decided that for the purposes of hours of closing a mobile shop came within the provisions of the Shops Act, 1950; Stone: Rochdale Magistrates' Court (*Manchester Guardian*, June 5).

Case and Comment *

ABORTION

Manslaughter—unlawfully using an instrument to procure a miscarriage—preservation of life or health of woman

R. v. Newton and Stungo

Central Criminal Court: Ashworth J.: May 19, 1958.¹

Jean J. F. Smith was admitted to the National Temperance Hospital on October 15, 1957. She was then very ill and agitated but apparently suffering from no mental disorder. She died on October 24, 1957, the cause of death being renal failure following upon abortion. The prosecution alleged that the deceased had been referred to Dr. Newton by Dr. Stungo for termination of pregnancy and that Dr. Newton, after giving her an inter-uterine injection of utus paste, had sent her back to her hotel without further treatment or supervision. The defence was that the mental condition of Miss Smith required the termination of her pregnancy.

On a submission Dr. Stungo was found not guilty of being an accessory before the fact to using an instrument to procure a miscarriage.

Ashworth J. directed the jury: "The law about the use of instruments to procure miscarriage is this: 'Such use of an instrument is unlawful unless the use is made in good faith for the purpose of preserving the life or health of the woman.' When I say health I mean not only her physical health but also her mental health. But although I have said that 'it is unlawful unless,' I must emphasise and add that the burden of proving that it was not used in good faith is on the Crown."

On a verdict of guilty of manslaughter by unlawfully using an instrument to procure a miscarriage and of using an instrument to procure a miscarriage, Dr. Newton was sentenced to consecutive terms of three and two years' imprisonment respectively. He was found not guilty of manslaughter by criminal negligence.

[C. B. ORR, *Barrister-at-Law*.]

Commentary. The direction follows that laid down by Macnaghten J. in *R. v. Bourne* [1939] 1 K.B. 687. For a discussion of that case,

* Reported, unless otherwise stated, by Henry Palmer and David Calcutt, Barristers-at-Law. Commentary by Professor J. C. Smith, Barrister-at-Law.

¹ For the Prosecution: *R. E. Seaton* and *E. J. P. Cussen* (instructed by the Director of Public Prosecutions). For Dr. Newton: *Gerald Howard Q.C.*, and *N. Brodrick* (instructed by Messrs. Le Brasseur & Oakley). For Dr. Stungo: *N. Richards Q.C.* and *C. Humphreys* (instructed by Messrs. Le Brasseur & Oakley).

see Glanville Williams, *The Sanctity of Life and the Criminal Law*, p. 151.

CONSPIRACY

Conspiracy to defeat the course of public justice—evidence of a number of overt acts—one conspiracy only

R. v. Hammersley and Others

Court of Criminal Appeal: Lord Goddard C.J., Cassels and Diplock JJ.: *The Times*, May 13, 1958.²

The three appellants were convicted at the Central Criminal Court of a conspiracy to obstruct the course of public justice. They had been committed for trial upon a charge of conspiring together and with other persons unknown corruptly to solicit and obtain rewards for showing favours contrary to their duty as police officers and thereby obstructing and defeating the course of public justice contrary to the common law. The indictment upon which they had been convicted set out the statement of the offence as conspiracy to obstruct the course of justice and the particulars were that they conspired together and with other persons unknown to obstruct the course of public justice in that they should act contrary to their duty as police officers in relation to the administration of the law. The appellants appealed to the Court of Criminal Appeal on the grounds, *inter alia*, that (i) the indictment was bad because it did not follow the committal and (ii) the evidence in fact disclosed a number of separate conspiracies.

Held, dismissing the appeal as to (i), the real conspiracy was that these three men agreed to defeat public justice by not bringing persons before the courts or by warning persons of charges that were going to be brought. The indictment differed in form from the committal but this court thought that the depositions disclosed the conspiracy set out in the indictment. As to (ii), this conspiracy did, of course, involve entering into illegal agreements with other persons, but the evidence shown by a large number of overt acts, disclosed only one conspiracy, not a series of conspiracies. [H. P.]

Commentary. As is common in conspiracy cases there was no direct evidence of that agreeing together, which is the *actus reus* of

² For the appellant Hammersley: *Donald McIntyre Q.C.*, *David Peck* (instructed by Messrs. John Hay and Chapman-Walkers, Brighton). For Heath: *Edward Clarke*, *Basil Hobson* (instructed by the Registrar, Court of Criminal Appeal). For Bellson: *Victor Durand Q.C.*, *J. W. Harkess* (instructed by Cyril H. Chapman, Brighton). For the Crown: *Sir Harry Hylton-Foster Q.C.*, *S.-G.*, *G. Howard Q.C.*, *A. P. Babbington* (instructed by the Director of Public Prosecutions).

the crime. The prosecution's case was that the accused's overt acts, tending to obstruct the course of public justice, were done in concert and thus pointed to a prior conspiracy. The case was one of great complexity as the acts alleged ranged over a period of eight years. The appellants argued that the evidence showed a series of separate agreements. The court's view seems to have been that while there may have been other conspiracies there was one main conspiracy: "The prosecution showed . . . that they were agreed that they would defeat public justice by not bringing persons before the courts, and that was the conspiracy: 'We won't do our duty as we ought, we won't report to our superior officers.'" (*The Times*, May 13.) But can it really be supposed (with great respect) that the accused ever actually agreed together in such vague and general terms, and without reference to any particular perversion of the course of justice?

The courts have from time to time expressed disapproval of the use of a count for conspiracy where the ulterior crime has been summated. See *R. v. Luberg* (1927) 19 Cr.App.R. 133; *R. v. West* [1948] 1 K.B. 709, 720. The reason is that in a conspiracy case the accused is subject to certain disadvantages, notably that the acts of one conspirator in furtherance of the conspiracy are evidence against all. But cf. Glanville Williams, *The Criminal Law*, 530. In the present case the Solicitor-General is reported to have said that the conspiracy count was left alone in the indictment and not joined with other counts so as to avoid any possibility of confusion. It was chosen, not for some sinister motive to give unfair advantage to the Crown, but because it was a portrait of the case.

COURT OF CRIMINAL APPEAL

Discretion of Home Secretary in referring cases to the Court—technical irregularity in sentence

See EX P. KINALLY, p. 474, *post*.

EVIDENCE

Corroboration of accomplices—Scots law—reset

See HARRIS v. CLARK, p. 476, *post*.

Larceny from British Transport Commission—statutory declarations as to preparation of parcels, not as to delivery to the Commission

R. v. Marley

Court of Criminal Appeal: Lord Goddard C.J., Cassels and Diplock JJ.: May 14, 1958.³

M. was convicted at quarter sessions of the larceny of a quantity of clothing. The larceny was committed by taking the

³ For the appellant: *Lewis Langdon* (instructed by the Registrar, Court of Criminal Appeal). For the Crown: *M. Corkney* (instructed by the Solicitor, British Transport Commission).