

1920.

*Present* : Bertram C.J.

PERERA *v.* WIJESURIYA.

27—*P. C. Colombo, 25,420.*

*Trade Marks Ordinance, No. 14 of 1888, s. 42—Use of Royal Arms by a notary on his deeds.*

A notary has no right by virtue of his office to use the Royal Arms on his notarial deeds.

THE facts appear from the judgment.

*Jansz, C.C.*, for the Crown, appellant.—The words “in such a manner . . . as aforesaid,” only qualify the phrase “or arms so nearly resembling the same as to be calculated to deceive,” and do not apply to the words “the Royal Arms.” Hence, deception will be of the essence of the offence where the Royal Arms are not used, but only when arms resembling the Royal Arms are used. In this case it is not denied that the Royal Arms have been used.

*Nagalingam*, for the accused, respondent. [BERTRAM C.J.—Is deception the gist of the offence ?] The words “calculated to lead other persons to believe” clearly indicate the creation of a false belief in the minds of others, and the word “lead” has to be construed to mean mislead. This section has been so construed in

England. See the case *Cameron v. Kennedy*<sup>1</sup> cited in *Stone's Justices' Manual* (46th edition), at page 1236. The offence, too, is created, not in an Ordinance relating to the Crown, but in one regulating the proprietary rights of private individuals, the object being to prevent a person in any trade or profession from gaining an unfair advantage over others engaged in a similar pursuit by falsely representing that he is carrying on his trade under the authority of Government, when, in fact, he is not.

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February 10, 1920. BERTRAM C.J.—

This is an appeal by the Crown, which raises a point of law on the interpretation of sub-section (3) of section 42 of the Trade Marks Ordinance, No. 14 of 1888. It appears that a notary, prosecuted under that section, has been accustomed to use the Royal Arms on his notarial deeds. The learned Magistrate, before whom he has been prosecuted, has held that by virtue of his appointment he is entitled so to do. He holds that the case does not come within the words of the sub-section, observing "the essence of the offence is the doing of an act by the accused calculated to deceive others that he was appointed to act as a notary by His Excellency the Governor, and how is it possible for him to be guilty of such an act if, in fact and in truth, he was so appointed."

Mr. Jansz, who appears for the Crown, has suggested an interpretation of the section which I do not think is tenable. He would read it in this way :—

Any person, who without the authority . . . . . assumes or uses in connection with any trade . . . . .

(a) The Royal Arms, or

(b) Arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade . . . . . by or under such authority as aforesaid, shall be guilty of an offence . . . . .

I do not think that this is a possible interpretation. The words "in such a manner" clearly govern both cases contemplated, namely, firstly, the case of the Royal Arms, and secondly, the case of Arms so nearly resembling the same as to be calculated to deceive. Nor, on the other hand, do I think that the learned Magistrate's interpretation is the correct one.

Mr. Nagalingam, who appeared in support of the judgment, argued that the word "lead" ought in the context to be construed to mean "mislead," and that the words in the context in which they are used suggest a false belief engendered in the minds of

<sup>1</sup> 64 J. P. 41.

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persons who are misled by the action of the offender. He says that the section assumes that any person who carries on his business under Royal or Government authority is entitled to use the Royal Arms.

There is undoubtedly something to support this view in the wording of the section, and it is, no doubt, because the wording is not artistic, that in the modern Act now in force in England the provision has been re-drafted. Our section was originally taken from section 106 of the Patent Designs Trade Marks Act, 1883. But that section has now been replaced by section 68 of the Trade Marks Act of 1905. Under the enactment thus re-drafted no possible doubt could arise. In spite of the fact that the drafting of the section might have been improved, I do not think that there can be any substantial doubt as to its meaning. To interpret it on the assumption that any person who carried on his business under a Royal or Government authority was entitled to use the Royal Arms would be contrary to the whole history on the subject. The use of the Royal Arms in connection with a trade or business was a privilege allowed to persons who were purveyors to the Royal household or to the households of members of the Royal Family. This is indicated by the special reference to His Majesty and the Royal Family in the section under consideration. There may have been certain extensions of this privilege, but this was the subject with which it was mainly concerned. But it was of the essence of the privilege that there should be a Royal or Government authorization to make use of this particular emblem. It would be quite contrary to one's experience of daily life to hold that, according to the custom with reference to which the enactment was made, any person who was carrying on his business under the license of a Government authority, was entitled to make use of the Royal Arms to indicate that fact. In my opinion, what the section means is this: that a person is not entitled by means of the Royal Arms to create the impression that he is carrying on his calling under a Royal or Government authority, however true that impression may be, unless he has express authority to use the Royal Arms for that purpose.

I am, therefore, of opinion that the appeal should be allowed, but as the words of the section are admittedly obscure, I think it would be sufficient to impose in this particular case a purely nominal fine of Re. 1.

*Set aside.*