

1908  
June 18.

Present: Mr. Justice Grenier.

THE KING *v.* VAN CUYLENBERG.

D. C. (*Crim.*), Kandy, 1,901.

*Cheating—Obtaining employment by means of forged certificates—“ Dishonestly ”—“ Wrongful loss ”—Ceylon Penal Code, ss. 22, 398, 400.*

The accused deceived B by producing some forged certificates of character, and thereby induced him to employ him and to pay him a salary. B stated in evidence that he would not have employed the accused if he had not been so deceived, and that the accused was an incompetent person, and that he suffered loss owing to accused's bad work. The accused was charged with cheating under section 400 of the Penal Code and was convicted.

*Held*, that the conviction was right.

**A**PPEAL by the accused from a conviction by the Acting District Judge of Kandy (G. S. Schneider, Esq.) on a charge of cheating under section 400 of the Penal Code. The facts material to the report are stated in the judgment.

*H. A. Jayewardene*, for the accused, appellant.

*Walter Pereira, K.C., S.-G.*, for the Crown.

*Cur. adv. vult.*

June 18, 1908. GRENIER A.J.—

I see no reason to interfere with the conviction and sentence in this case. The accused was clearly guilty of the offence of cheating under section 400 of the Ceylon Penal Code. It has been proved that he produced some false certificates of character and competency purporting to have been given to him by Mr. Lushington, and thus obtained employment under Mr. Bellario. There can be no question that he thereby deceived Mr. Bellario, and dishonestly induced him to employ him in his service as a conductor. Clearly, Mr. Bellario would not have engaged the accused had he known that the certificates were not genuine. The accused, therefore, made a false representation to Mr. Bellario, and was guilty of practising a deception on him. The prosecution has proved beyond all doubt that Mr. Bellario was deceived by the accused, and the question is whether he dishonestly induced Mr. Bellario to employ him in his service. The word “dishonestly” is defined in section 22 of the Penal Code and runs as follows: “Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly.”

A man's intentions, when not expressed, can only be gathered from what he does; and to my mind when the accused produced these false certificates to Mr. Bellario, his intention was to gain to himself wrongfully the salary attached to the post of conductor.

The evidence shows that the accused was an incompetent man, and Mr. Bellario in the evidence that he gave before the Police Magistrate stated that owing to accused's bad work he suffered loss. Mr. Bellario was not cross-examined on this point, and, as the learned District Judge has remarked, his evidence stands uncontradicted. But it is not necessary, as I read section 398, that there should have been any actual loss or damage. The words of the section are: "or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property." It seems to me that the employment of the accused, considering that he had produced false certificates of character and competency, was more than likely to cause damage or loss to Mr. Bellario. In the first place, the accused, if he had not committed the offence of forgery himself in regard to these certificates, certainly uttered them or made use of them for the purpose of obtaining employment; and it is only reasonable to presume that a person of his character would in all probability, if allowed to remain on the estate, cause loss or damage to the person whom he had deceived into employing him.

There is an illustration under section 398 which appears to me practically to meet the present case. That illustration (e) says: "A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z and thereby dishonestly induces Z to lend money; A cheats." If we applied the facts of his case to this illustration, the following will be the result:—A, by making use of certificates of character and competency which he knows are false, intentionally deceives Z and thereby dishonestly induces Z to employ him and to pay him a salary. In these circumstances it is clear that the offence of cheating has been committed in just the same way as stated in illustration (e).

I do not see what difference it would make, as argued by the appellant's counsel, if the accused had proved a competent conductor and had thus earned his salary. That question, however, need not be entered into, as the evidence is all one way, that the accused had proved himself incompetent.

It was argued for the appellant that the depositions of Mr. Bellario were wrongly admitted. Mr. Lushington's evidence shows that he saw Mr. Bellario in Matale on his way to Colombo to take steamer for Italy, and that to the best of his belief he did go away to Italy about three weeks before the trial of this case, and that he did not know when he was likely to return. Mr. Bellario's depositions were read

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without objection in the Court below, and not a single question was put to Mr. Lushington as to his means of knowledge of Mr. Bellario's whereabouts. I find that the Judge records that the facts were all admitted, except the one fact that Mr. Bellario suffered any loss. In these circumstances I am of opinion that the depositions of Mr. Bellario were rightly admitted and considered by the District Judge in his judgment.

*Appeal dismissed.*

