

1915.*Present: Ennis J.*PACKEER ALLY *v.* BATCHA.1,631—*P. C. Matale 4,582*

*Cacao Thefts Prevention Ordinance, No. 8 of 1904—Person licensed to deal in rubber carrying on business by his servants.*

A person licensed to deal in cacao under the Cacao Thefts Prevention Ordinance (No. 8 of 1904) can carry on his trade in the way usual among traders, e.g., through servants; he is not bound personally to negotiate each purchase.

**T**HE facts are set out in the judgment.

*Dricberg*, for appellant.

*Garvin, Solicitor-General* (with him *Wadsworth*), for respondent.

*Cur. adv. vult.*

November 8, 1915. ENNIS J.—

This is an appeal from a conviction under section 4 of the Cacao Thefts Prevention Ordinance, No. 8 of 1904.

The accused is the servant of one Victoria, who holds a license to deal in cacao at 106, King street, Kandy. On July 9 he negotiated a purchase of cacao for his master, Victoria, from the superintendent of Alloowihare estate, Matale. The superintendent of Alloowihare estate holds a license to deal in cacao at the Alloowihare factory. Rs. 50 in advance was paid on July 9, and the receipt runs: "Received from Mr. J. L. Victoria, Matale . . . ." The balance was paid on July 12, and a similar receipt given.

The charge against the accused was that he purchased cacao without a license, in contravention of section 4 of the Ordinance.

Section 4 makes it unlawful for any person to purchase cacao unless he has been licensed to deal in cacao. Section 5 provides that the license is to specify the premises at which the licensee is authorized to deal in cacao, and sub-section (5) of section 5 provides for a special license to purchase cacao at places other than the

licensed premises. Section 9 provides, *inter alia*, that it shall be unlawful for any licensed dealer to purchase or take delivery of any cacao at any place other than licensed premises, unless specially licensed under section 5 (5).

Briefly, section 4 makes it an offence to purchase cacao without a license "to deal" in it, and section 9 makes it unlawful to purchase it except at licensed premises.

It is to be observed that section 9 does not say "his licensed premises." So, apparently, a licensed dealer can lawfully purchase and take delivery at any licensed premises. In the present case the Aloowihare estate was such a place. The point for determination on the present charge is whether or not the accused is a purchaser within the meaning of section 4.

It was urged by the Solicitor-General that the only privilege given by the license was to purchase cacao, and that the Ordinance throughout sought to prevent thefts of cacao by prohibiting the purchase except under license. It is true that the sole privilege given by the license is the right to purchase cacao, but the main preventive measure of the Ordinance lies in the condition that purchases are to be made in certain places only, and, in the provisions of the Ordinance, to compel purchasers to keep books. These show that the Ordinance seeks to prevent theft by measures which would make transactions in cacao traceable, rather than, as contended by the Solicitor-General, by insisting that every licensed purchaser is to conduct his own purchases. If the contention for the prosecution were right, why does the Ordinance not make the license a license "to purchase"? Instead of that, it expressly says that no one shall purchase cacao without a license "to deal" in cacao. A dealer is one who carries on a trade. The variation in the terms used in the Ordinance gives support to the contention advanced for the appellant that a license holder can carry on his trade in the way usual among traders, *e.g.*, through servants, and that he is not bound personally to negotiate each purchase. The special provision of the Ordinance that the names of partners are to be separately mentioned in the license seems to me to indicate that it was intended by the Ordinance that the real purchasers should be known, and, in my opinion, the preventive policy of the Ordinance does not require a construction which would give the words "to deal" a restricted meaning. By providing that delivery can be taken at licensed premises only, the Ordinance safeguards the possibility of transactions through a servant being untraceable.

The learned Magistrate is mistaken in holding that the accused was a partner of Victoria; the evidence shows that he was a servant only. In the present case he disclosed his principal when conducting the purchase.

I allow the appeal.

*Appeal allowed.*