

1916.

Present: Wood Renton C.J. and De Saunpayo J.

BENAH v. MOHIDEEN.

*2—P.C. Matale, 4,526.**Cacao Thefts Prevention Ordinance, 1904, s. 4—Licensed dealer buying cacao through unlicensed agents.**A licensed dealer in cacao is not at liberty to effect his purchases through unlicensed agents.***T**HE facts appear from the judgment.*Bawa, K.C., and Driberg, for accused, appellant.**Garvin, S.-G., and Fernando, C.C., for the Crown.**Cur. adv. vult.*

January 28, 1916. WOOD RENTON C.J.—

This appeal came before me in the first instance alone, and as the point involved in it is one of considerable difficulty and importance, I referred it to a Bench of two Judges. The appellant was charged with, and has been convicted of, an offence under section 4 of the Cacao Thefts Prevention Ordinance, 1904,¹ which prohibits the purchase of cacao by unlicensed persons. The evidence shows that, acting as the agent of Mr. Victoria, a licensed dealer in cacao in Matale, the appellant made an offer to Mr. Miller, the superintendent of Wiltshire estate, which the latter accepted to purchase a certain quantity of cacao. Mr. Miller was aware that this purchase was being effected on Mr. Victoria's behalf. The account for the cacao was rendered to Mr. Victoria, and was paid for by him. Neither Mr. Miller nor the appellant has any license to deal in cacao. The question that arises for decision is whether a transaction such as I have described is a "purchase" of cacao by an unlicensed person within the meaning of the Ordinance of 1904; or, in other words, whether a licensed person can legally effect purchases of cacao by an unlicensed agent. That question has to be answered with reference to the provisions of the enactment as a whole. The appellant's counsel referred us to a series of decisions under the English Licensing Acts, dealing with the doctrine of agency in its application to the sale of intoxicating liquor, and counsel for the Crown relied upon a body of similar authorities under the English Sale of Food and Drugs Act, 1875, and Pharmacy Acts. The cases under these enactments, however, assist us for the most part only by their clear enunciation of the principle that

¹ No. 8 of 1904.

for the purpose of arriving at a solution of such a problem as we have here to deal with, each enactment has to be interpreted in the light of its own provisions.

After careful consideration I have come to the conclusion that the appellant has been rightly convicted under section 4 of the Cacao Thefts Prevention Ordinance, 1904,¹ and that under that Ordinance a licensed dealer in cacaos is not at liberty to effect his purchases through unlicensed agents. On this point I am unable to agree with the decision of Ennis J. in *Packeer Aiy v. Batcha*.² It is no doubt true that, as a matter of contract, the purchase of cacao herein question was made, not by the appellant, but by Mr. Victoria. But in another case³ I have ventured to express the opinion that the term "purchase" in section 4 of the Ordinance of 1904 should be interpreted in its popular sense, without reference to the rules laid down by the Sale of Goods Ordinance, 1898,⁴ in order to ascertain the civil rights and liabilities of parties to an ordinary contract of sale, and that where there is a *consensus ad idem* in regard to the *res* and the *merx*, there is a purchase within the meaning of the section. Applying the principle of that decision to the present case, I think that there may be for the purposes of the Cacao Thefts Prevention Ordinance, 1904,¹ a "purchase" by an agent, even although the real purchaser in the eye of the civil law is his principal. I may refer, in this connection, to the case of *Hoyle v. Hitchman*, in which it was held that where an article of food, which was not of the nature, substance, and quality of the article demanded, was sold to an inspector of nuisances, who was merely an employee of a local authority, and who bought the article with money belonging to the local authority by which he was employed, there was a sale "to the prejudice of the purchaser" within the meaning of the Sale of Food and Drugs Act, 1875.⁵ The object of the Ordinance of 1904 was to prevent those petty thefts of cacao which in their cumulative effect are productive of so much mischief in this country. The Ordinance was made applicable in the first instance not to the Colony as a whole, but to those districts, villages, or parts of the Island only in which it was proclaimed, and its provisions have in fact been applied in a careful and tentative manner. The Legislature has placed no restrictions on the sale of cacao by licensed dealers to unlicensed purchasers. But the Ordinance is clearly based on the assumption that the purchase of cacao by licensed dealers would ordinarily be effected at their licensed premises. It is only where a licensed dealer has obtained under section 5 (5) of the Ordinance a special license in that behalf, which the Government Agent has a discretion to grant or to refuse,

1916.

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RANKIN C.J.*Benab*
*v. Mahideen*¹ No. 8 of 1904.² 15 N. L. R. 459.³ P. C. *Matala*, No. 4,708 (S. C. Mins.,
December 21, 1915).⁴ No. 11 of 1898.⁵ (1879) 4 Q. B. D. 233.⁶ 38 & 39 Vict., c. 63, s. 6.

1916. that he is entitled to purchase cacao at any place other than his
 own licensed premises. It is unnecessary for the purposes of this
 case to decide the point, but as at present advised I am not prepared
 to accept the view suggested in (31—P. C. Matala, No. 4,562,¹ that
 the omission of the word "his" in section 1, sub-section 1 (a), of
 the Ordinance in the clause "other than licensed premises,"
 enables one licensed dealer to purchase cacao at the premises of
 another without the special permit provided for in section 5 (5). I
 am inclined to think that to interpret the law in that sense would
 to a great extent stultify the provisions of sections 11 and 16 as to
 the inspection of licensed premises. The prohibition in section 4
 of the purchase of cacao by any unlicensed person is as wide and
 as peremptory as it could well be made. Sections 8 and 12 make
 special provision for the case of partners, enabling them to deal in
 cacao under a single license, but rendering each member of the firm
 liable for the acts or omissions of his co-partners, unless he is able
 to supply affirmative proof of his innocence. I cannot believe that
 an enactment of this kind would have found its place in the Ordinance
 if the intention of the Legislature had been to leave every licensed
 dealer free to employ as many agents as he chose, and to make the
 liability of those agents for their conduct dependent only on the
 ordinary civil law. Moreover, section 9, sub-section 1 (b), presents,
 in my opinion, an insuperable obstacle in the way of the success
 of this appeal. It provides that: "It shall be unlawful for any
 licensed dealer to purchase or to take delivery of cacao from any
 person who is not personally known to him, or from any person
 whom he knows or has reasonable grounds for believing is under
 the age of twelve years, or from any estate labourer."

This enactment clearly contemplates the personal purchase of
 cacao by licensed dealers. It is absurd to suppose that the Legis-
 lature could have intended to authorize such a dealer to engage the
 services of as many agents as he desired, and at the same time to
 impose upon this facility a restriction which would render it futile,
 namely, that each of these agents should be in a position to say
 whether every would-be vendor was or was not personally known
 to his employer.

I am not greatly impressed with the argument, which was urged
 upon us in appeal, that if we interpret section 4 of the Cacao Thefts
 Prevention Ordinance, 1904,² in the sense above indicated, a
 licensed dealer will be unable not only to effect purchases, which he
 himself has directly made, through a servant, but even to employ
 his servant for subsidiary and wholly innocent purposes, such as
 the entry of the delivery of cacao at his licensed premises, or its
 removal therefrom. The question in each case will have to be
 determined whether there has been a "purchase" by the agent in
 the sense which I have endeavoured to explain above; and there

¹ S. C. Mins., October 26, 1915.

² No. 8 of 1904.

is nothing in this decision that can prevent the employment of the servants of the licensed dealer in any form of service which the Legislature has not either expressly or by necessary implications prohibited. I am glad to be able to arrive at this solution of the difficulty before us, because I feel that to interpret the Cacao Thefts Prevention Ordinance¹ in any other sense would be to reduce its provisions to a nullity.

1916.

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Renton C.J.

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I would affirm the conviction, but as the case is practically a test one, and as there is no suggestion that Mr. Victoria acted in this matter otherwise than in good faith, I would reduce the sentence to a fine of Rs² 20.

DE SAMPAYO J.—I agree.

Affirmed.
