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*360 The Queen v Vreones.

Positive/Neutral Judicial Consideration

Court
Crown Cases Reserved

Judgment Date
24 January 1891

Report Citation
[1891] 1 Q.B. 360

ICLR

Crown Cases Reserved.

Lord Coleridge , C.J. , Pollock , B. , Stephen , Charles and Lawrance , JJ.

1891
Jan. 24.

Criminal Law—Indictable Misdemeanour—Attempt to pervert the Course of Justice—Preparing False Evidence to be used in Arbitration.

The defendant was tried and convicted upon a count of an indictment alleging, in substance, that by the terms of a contract for the purchase of a cargo of wheat, to be shipped by the sellers from a port in the Black Sea to the buyer at the port of Bristol, it was provided that any dispute arising under the contract should be referred to two arbitrators, whose award should be final and conclusive, and might, upon the application of either contracting party, be made a rule of Court in England; that the defendant was appointed by the sellers to take samples of the cargo upon the arrival of the ship at Bristol; that such samples were then taken, and placed in bags sealed with the seals of the buyer and seller of the cargo, in accordance with the custom of merchants at the port, and for the purpose of being used as evidence before the arbitrators in case any arbitration was had under the contract; that the defendant afterwards, intending to deceive the arbitrators to be appointed under the contract, and wrongfully to make it appear to them that the bulk of the cargo was of better quality than it really was, so as to pervert the due course of law and justice, unlawfully and designedly removed the contents of the sealed bags and altered their character, and returned to the bags a quantity of wheat in a different condition, and altered in character and value, with intent thereby to pass the same off as true and genuine samples of the bulk of the cargo, and that afterwards the defendant forwarded the samples so altered to the London Corn Trade Association, with intent that the same should be used as evidence before such arbitrators, and thereby to injure and prejudice the buyer, and to pervert the due course of law and justice:-

Held, that the count stated an indictable misdemeanour at common law.

CASE stated by Denman, J., for the opinion of the Court for the Consideration of Crown Cases Reserved.

At the Bristol Autumn Assizes, 1890, the defendant, Anastasios Vreones, and his wife, Blanche Vreones, were tried before Denman, J., upon an indictment containing four counts. The defendant was found guilty upon each count, and his wife was acquitted.

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The first count of the indictment alleged that, before the commencement of the offence thereinafter mentioned, one Sidman Thomas Stephens, on behalf of himself and others, trading under the name, style, and firm of Wait & James, at Bristol, had entered into a contract with certain persons carrying on business under **361* the name, style, and firm of D. S. Sevastopulo & Co., for the purchase of a cargo of wheat then shipped, or about to be shipped, on board a vessel called the *Whinfield* , from Novorrissisk in the Black Sea to the port of Bristol, which said contract then contained a provision that, in the event of a dispute arising out of such contract, the same should be referred to two arbitrators, whose award should be conclusive and binding upon all disputing parties, and might, upon application of either contracting party, be made a rule of any of the divisions of Her Majesty's High Court of Justice in England; that the said ship *Whinfield* duly arrived at the said port of Bristol on March 15, 1890, with the said cargo of wheat, and it then became and was the custom of merchants using the said port to take from the said cargo samples of the wheat as composing the bulk of the same cargo, and, for the purpose of using the said samples in the event of a dispute between the buyer and the seller thereof as evidence as to the quality of the bulk of the said cargo in any arbitration which might be taken under the terms of the said contract, to seal such samples with the seals of the buyer and seller of such cargo, and forward the same so sealed and secured to the offices of the London Corn Trade Association, in 2, Lime Street Square, in the city of London; and, upon any such arbitration as aforesaid, the said samples so sealed and secured as aforesaid became and were evidence to be used before the arbitrators appointed to decide the question in dispute between the buyer and seller of such cargo; that at the time of the commission of the offence thereinafter mentioned, one Anastasios **Vreones** was a superintendent appointed by the said D. S. Sevastopulo & Co. to take samples of the said cargo, in accordance with the custom in this count before mentioned, and on March 17, 1890, and on divers other days between that day and the day of the taking of this inquisition, did so take such samples, to which samples the seals of the buyer and seller were duly affixed, in accordance with the said custom, and the said sealed samples then became and were evidence to be used in accordance with the terms of such contract upon any such arbitration as aforesaid; and that the said Anastasios **Vreones** and Blanche **Vreones**, having in their possession divers, to wit, ninety bags, each containing **362* samples of the said cargo so taken from the said ship *Whinfield* , as aforesaid, and duly sealed as aforesaid, afterwards, to wit, on the said 17th day of March, in the year aforesaid, and on divers other days and times between that day and the day of the taking of this inquisition, contriving and intending to deceive the said arbitrators so to be appointed as aforesaid, and wrongfully to make it appear to the said arbitrators, and to cause and induce such arbitrators to believe, that the bulk of the said cargo was of better quality than it in fact was, and by fraudulent and deceitful means to cause and induce such arbitrators to give their award in favour of the said D. S. Sevastopulo & Co., so as to pervert the due course of law and justice, unlawfully, knowingly, and designedly did take and remove from the said ninety sealed sample bags the contents thereof, and unlawfully, knowingly, and designedly did alter the character of such contents, and return to such sample bags a quantity of wheat in a different condition, and altered in character and value, with intent thereby to pass the same off as true and genuine samples of the bulk of the said cargo; and, having so altered the character of such samples, did forward the same to the said London Corn Trade Association in such altered condition, with the intent that the same should be used before such arbitrators as aforesaid as such evidence as aforesaid, and thereby to injure and prejudice the said Sidman Thomas Stephens and others, and by the means aforesaid to pervert the due course of law and justice, against the peace of our Lady the Queen, her crown and dignity.

The other three counts charged the defendants with unlawfully uttering the samples as false tokens, whereby Stephens and others were defrauded and deprived of their just rights, and with unlawfully uttering them as false tokens, with intent to defraud Stephens and others, and the arbitrators; but, as no judgment was given upon the second, third, and fourth counts, it is unnecessary to set them out.

The following facts were proved at the trial, and stated in the case:—

On December 11, 1889, one Stephens, a corn merchant at Bristol, entered into a contract with one Sevastopulo for the purchase of a cargo of wheat, to arrive by SS. *Whinfield* , consisting **363* in part of "Azina wheat about as per sample No. 10," and in part of "Azina wheat about as per sample 'Rugby,' both samples old crop sealed and in our possession." About half the cargo was to consist of each quality. The samples referred to in the contract were called the "standard" samples.

The contract contained the following clauses:—

> "Difference in quality shall not entitle the buyer to reject except under the award of arbitrators, or the committee of appeal, as the case may be. All disputes arising out of this contract, whether between the parties hereto, or between one of them and the trustee in bankruptcy of the other, shall be referred according to the rule endorsed. Power to either party to make this stipulation a rule of Court. Neither party, nor any one claiming under them, to bring any action until dispute settled by arbitration, and

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> it is expressly agreed that the obtaining an award from either tribunal, as the case may be, shall be a condition precedent to the right of either contracting party to sue the other in respect of any claim arising out of this contract."

By rule 9, endorsed on the contract:

> "When buyer requires arbitration on quality or/and condition upon samples previously drawn and sealed, he shall make his claim and nominate his arbitrator within fourteen clear days of the final discharge of the shipment."

Rule 10 provided that "all disputes arising out of this contract shall be from time to time referred to two arbitrators, one to be chosen by each party in difference, the two arbitrators having power to call in a third in case they shall deem it necessary." The rules further provided for the appointment of arbitrators in the cases of the neglect or refusal of one party to appoint an arbitrator, or of the death, refusal to act, or incapacity of any one or more of the arbitrators, and in other contingencies. A right of appeal was given to a committee of appeal appointed under the rules of the London Corn Trade Association, and various conditions had to be performed by the parties to the contract in order to obtain an arbitration, or to appeal to the committee of appeal from the decision of the arbitrators.

The standard samples were in this case as usual sealed by the sellers' broker in the presence of the buyer's broker, and kept by ***364** him; and on that being done, the money provided for by the contract was paid.

The *Whinfield* arrived on March 15, 1890, when, in accordance with the usual practice, a superintendent (in this case the defendant, A. **Vreones**) was appointed by the seller, and one Brockman, the buyer's under-foreman, by the buyer, to take samples of the wheat as it came up from the holds. It is unnecessary to describe the mode in which these samples are taken; but they are taken for the purpose of being used as evidence in case any arbitration should take place as to the quality of the cargo, and are called the "arbitration samples."

In the present case ninety of these samples were taken - forty-five of each kind of wheat - and, in the ordinary course, sealed by the defendant, as superintendent of the seller, and by the under-foreman of the buyer in the usual way, and at the same time the buyer's under-foreman, Brockman, took samples for the buyer's use from the same bulk sample from which the samples in these ninety bags were taken.

The fraud alleged in the indictment consisted in the fraudulent tampering with these arbitration samples after they were sealed by both parties. It was proved at the trial that the whole of these ninety arbitration samples were taken to the house in which the **Vreones** lodged before being sent to London to be kept by the London Corn Trade Association in order to be used in evidence in case of a dispute arising which should be referred to arbitration.

It was proved that the prisoner Anastasios **Vreones**, sometimes when his wife was present, sometimes when alone, sometimes through his wife, whom the jury acquitted as not being aware of any intention to defraud, tampered with these arbitration samples by pulling down a portion of the tops of the bags through the string on the side opposite to the seal, then cleaning the contents from cockles, rye, and small wheat by sifting, picking, and using flannel to which the cockles adhered, and in replacing the wheat so cleaned in the bags without breaking the seals, so as to produce a very much better sample than the standard samples, and than any of the other samples taken from the bulk. The motive suggested for this conduct was that in case of any dispute arising ***365** as to the quality of the cargo the purchaser might be defeated by the production of the samples before any arbitrators who might be appointed.

No arbitrators were in fact appointed, nor did the purchaser take any steps in that direction, the reason assigned being that the arbitration samples as altered having been found on comparison superior to the standard sample, and to all the samples fairly taken by either or both parties, it would have been hopeless to proceed to arbitration.

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The evidence shewed that there was no substantial difference between the cargo and the standard sample so far as the wheat No. 10 was concerned; but as regards the "Rugby" wheat it was proved that there was an inferiority which would amount to 112*l.* in value in that portion of the cargo as compared with the standard samples. The arbitration samples, as altered, shewed wheat of a very superior quality to either the bulk or the standard samples of this portion of the cargo, and also, but not to the same extent, as regards the wheat of quality No. 10.

At the end of the case for the prosecution it was urged by the counsel for Anastasios that the indictment ought to be quashed upon the ground that it contained no charge for which an indictment for misdemeanour could be supported.

Denman, J., left the case to the jury, and, upon their finding a verdict of guilty against Anastasios **Vreones**, bound the defendant over to come up for judgment when called upon.

The defendant's counsel moved in arrest of judgment in case that should be necessary.

The questions for the opinion of the Court were, with respect to the first count, whether it contained a statement of an indictable misdemeanour, and whether there was evidence in support of it.

C. W. Mathews , for the defendant. The first count of the indictment states no criminal offence. There is no averment that the evidence was ever tendered or used in any proceeding; nor that any legal proceeding was ever in existence in which it could be used; nor that any Court or legal officer was in existence before whom it could be used. The averments shew ***366*** nothing more than an intention by the defendant to deceive in future proceedings, if they should ever be had. There is no act stated which is sufficiently proximate to the offence to make what the defendant did criminal. The defendant has done no more than put himself in a position to commit a fraud upon the contingency occurring of a reference to arbitration as provided by the contract. Under the rules endorsed upon the contract with respect to arbitration, various steps must be taken by the parties in order that the right to refer may occur, and various things could be done by either party which would prevent the arbitration being heard. In all the cases of indictments charging the manufacture or preferring of false evidence, the evidence has, in fact, been used before a properly constituted Court. It is conceded that, if the tampering with the samples had been done by two or more persons, an indictment against them for conspiracy would lie; but then the criminal offence is the agreement to bring about an unlawful result by unlawful means. So in indictments for subornation of perjury, it is the act of suborning the other person which is criminal. *Rex v. Crossley* [1] is not against my contention, because a false oath was in fact taken, though the affidavit was never used. The offence was in taking the false oath. *Rex v. Heath* [2] was decided on the same principle. The evidence given at the trial was not sufficient to support the first count of the indictment.

Poole, Q.C., (Bernard Coleridge , with him), for the Crown, was not heard.

LORD COLERIDGE, C.J.

The first count of the indictment in substance charges the defendant with the misdemeanour of attempting, by the manufacture of false evidence, to mislead a judicial tribunal which might come into existence. If the act itself of the defendant was completed, I cannot doubt that to manufacture false evidence for the purpose of misleading a judicial tribunal is a misdemeanour. Here, in point of fact, no tribunal was misled, because the piece of evidence was not used; ***367*** but I am of opinion that that fact makes no difference; it is none the less a misdemeanour although the evidence was not used. All that the defendant could do to commit the offence he did. There was a contract for the sale of a cargo of wheat, and it provided a mode of settling by arbitration possible disputes which might arise. The particular piece of evidence, namely, the samples of wheat placed in sealed bags, would be, if not absolutely conclusive, of the greatest possible weight in determining any dispute as to the quality of the wheat sold. The contract provided that difference in quality should not entitle the buyer to reject except under the award of arbitrators, or the committee of appeal, as the case might be; that all disputes arising out of the contract should be referred to arbitration, and that where the buyer required arbitration on quality or condition upon samples previously drawn and sealed, he should make his claim and nominate his arbitrator within fourteen days of the final discharge of the shipment. In accordance with that stipulation samples were obtained, according to the usage, on behalf both of buyer and seller, and placed in sealed bags, to be sent to London for the purpose of being used by the tribunal appointed, if the case went to arbitration, under the contract. It was conceded by counsel for the defendant, and it is found in the case, that all that the defendant could do to tamper with those samples and corrupt the evidence upon which the tribunal was to act he did. He interfered with the perfection of the samples as samples, by making them shew a higher quality or condition of grain; and having done this in a most clever and fraudulent manner, without breaking the seals of the bags, the samples were transmitted to the Corn Trade Association in London, to be kept there, and used as evidence in the arbitration, in case an arbitration was held. They were not in fact so used;

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but I am of opinion that the defendant was none the less guilty of a punishable offence. I think that an attempt to pervert the course of justice is in itself a punishable misdemeanour; and though I should myself have thought so on the grounds of sense and reason, there is also plenty of authority to shew that it is a misdemeanour in point of law. There is, of course, no case in which the facts are exactly like these; but in ***368** *Reg. v. Crossley* [3] the principle which applies here was clearly laid down. The defendant in that case was charged with making a false affidavit. Lawrence, J., pointed out that it would be absurd to make the guilt of the defendant depend upon the subsequent use of the false affidavit, the defendant being equally guilty of perjury though no use had been afterwards made of it. I agree that this case is not exactly the same. In *Reg. v. Crossley* [4] , when the false affidavit had been made, the defendant no doubt had completed the act which constituted the offence. Exactly the same principle applies here, because the offence of the defendant was completed, so far as his act could complete it, when he sent to London the samples which might or might not be used in the arbitration. I am, therefore, of opinion that the first count of the indictment contains a perfectly good statement of an offence at law, and that there was ample evidence to support the charge. It is not necessary to give any opinion upon the questions which are said to arise upon the other counts of the indictment. I am of opinion, for the reasons which I have given, that the conviction should be affirmed.

POLLOCK, B.

I have come to the same conclusion. This is an indictment for a fraud or cheat at common law. If it had been charged as a cheat against a private individual, I should have felt bound to give effect to the argument of the defendant's counsel. In cases where a cheat or fraud against private individuals is charged, the two conditions - (1) that the act has been completed, and (2), that there has been injury to the individual - are conditions precedent to the offence. But this is not the case of a private fraud. It is an offence which comes within the description in East's Pleas of the Crown, c. 18, s. 4: “There is also another head of public cheats indictable at common law, which are levelled against the public justice of the kingdom, such as the doing of judicial acts without authority in the name of another”; and the author goes on to say: “There is a precedent of an indictment against a married woman for pretending to be a widow, and as such executing a bail bond to the ***369** sheriff for one arrested on a bailable writ. This perhaps was considered as a fraud upon a public officer in the course of justice.” I am quite clear that the condition precedent that there must be injury to the individual does not apply in the present case. It applies in cases of cheating or defrauding private individuals, because otherwise a mere naked lie might constitute an offence. But very different considerations apply to the class of cases in which the present is included. The real offence here is the doing of some act which has a tendency and is intended to pervert the administration of public justice. The question is, whether the sending of these adulterated samples, which by previous arrangement were to be sent to the association in London to be used by the arbitrators, is such an act as I have described. I think that it was. I think that the arbitrators are to be considered as a tribunal administering public justice. Such a tribunal is one specially sanctioned by Courts of law, and its decisions are enforced and carried out by the Courts of law. I am of opinion that by tampering with the evidence which was to be laid before that tribunal the defendant was interfering with the course of justice. I agree with my Lord that his act was completed.

STEPHEN, J.

I am of opinion that the conviction should be affirmed on the grounds stated by the Lord Chief Justice.

CHARLES, J. I am of the same opinion.

LAWRANCE, J. I entirely agree.

Representation

Solicitor for the Crown: The Solicitor to the Treasury . Solicitor for defendant: William Webb .

Conviction affirmed. (W. A.)

Footnotes

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1 *7 T. R. 315* .
2 Russ. & Ry. 184.
3 *7 T. R. 315* .
4 *7 T. R. 315* .