

1915.

Present : Wood Renton C.J.

SANGARALINGAM v. MOHAMMED ALLY.

1,782—P. C. Matala, 4,708.

Purchase of cacao by unlicensed persons—Attempt to purchase—When is purchase complete?—Cacao Thefts Prevention Ordinance, 1904, s. 4.

The accused (a boutique keeper), who had no licence to deal in cacao, called into his verandah N, who had brought with him a quantity of cacao from his village, and, after some haggling, fixed the price at 31 cents per pound. The accused began to weigh the cacao so as to ascertain its total quantity, and had actually weighed the greater portion of it when his operations were interrupted by the appearance of a police constable, who charged accused under section 4 of the Cacao Thefts Prevention Ordinance, 1904.

The Police Magistrate held the sale was not complete, and acquitted the accused.

Held, that there was a purchase of cacao by the accused.

The Legislature has not penalized any attempt to commit the offence under section 4 of the Cacao Thefts Prevention Ordinance.

THE facts are set out in the judgment.

Garvin, S.-G., for the Crown, appellant.

Wadsworth, for the respondent.

December 21, 1915. WOOD RENTON C.J.—

This is an appeal by the Solicitor-General against the acquittal of the respondent, on what purported to be a charge under section 4 of the Cacao Thefts Prevention Ordinance, 1904.¹ That section prohibits in effect the "purchase" of cacao by unlicensed persons. The respondent was charged with an attempt to commit the offence which it created. It is clear that the Legislature has not, either in the Ordinance of 1904 or elsewhere, penalized any attempt of this character, and the accused would be entitled to be acquitted on the charge in the record as it stands. The case involves, however, a point of law of great public interest and importance, which was argued and decided by the Police Magistrate at the trial, and counsel for the appellant and the respondent alike agree that I should amend the charge into one of a purchase prohibited by the section, and not merely an attempt to make such a purchase, in order to give a ruling on the main issue. When the appeal was first argued before me, I thought it desirable to send the case back so

¹ No. 8 of 1904.

as to enable the prosecution, and, if need be, the defence, to put all the available evidence before the Court. The record has now been returned, and the evidence must be regarded as complete. The accused is a boutique keeper. He has no licence to deal in cacao. On the day of the alleged commission of the offence he called into his verandah a man, Naida, who had brought with him a certain quantity of cacao from his village, and asked the price for which Naida was prepared to sell it. After some haggling the price was fixed at 31 cents per pound. The accused began to weigh the cacao so as to ascertain its total quantity, and had actually weighed the greater portion of it, when his operations were interrupted by the appearance of a police constable, who promptly charged him with an offence under the Ordinance of 1904. The learned Police Magistrate held that the action of the police constable had been premature, inasmuch as the sale was not complete, and he forthwith acquitted the accused. Against that acquittal the Solicitor-General, as I have already mentioned, appeals. I have no doubt but that there was in the present case a "purchase" of cacao by the accused in the ordinary sense of the term. The parties were agreed as to the subject-matter, namely, the whole of the cacao which Naida had with him for sale, and as to the price. The only point that remained undetermined was to ascertain by measurement of how many pounds the purchase was to consist. The contention however, of counsel for the accused is that the term "purchase" in section 4 of the Ordinance of 1904 must be determined with reference to the provisions of the Sale of Goods Ordinance, 1896,¹ that there was here merely an agreement to sell, and that the transaction would become a sale and a purchase only when there was a transfer of the property within the meaning of the rules embodied in section 18 of the latter Ordinance. It is obvious that if section 4 of the Ordinance of 1904 is to be construed in this sense it will practically become a dead letter. It would be all but impossible for any officer of police to ascertain, in the case of transactions of this kind, the intention of the parties as to the point of time at which the actual property was to be transferred. He would always be liable to be met with the objection that he had intervened at too early a stage in the negotiations, and it would be difficult, if not impracticable, to rebut this defence. In these circumstances, I am glad to be able to come to the conclusion that the provisions of section 4 of the Cacao Thefts Prevention Ordinance, 1904,² are to be construed without reference to the technical rules prescribed by the Sale of Goods Ordinance, 1896,¹ for the purpose of determining the rights of parties in civil cases. The object of the former Ordinance was to provide a summary and effective remedy for an offence which is equally common and mischievous. The term "purchase" in that section is, in my opinion, satisfied

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Set aside.

