

A

SUVA CO-OPERATIVE ASSOCIATION LIMITED

v.

B

PRICES AND INCOMES BOARD

[SUPREME COURT, 1975 (Grant C.J.), 17th January]

Appellate Jurisdiction

C

*Prices and incomes—selling article above maximum retail price—offence of strict liability—owner vicariously responsible for sale effected by servant—Counter Inflation (Price Control) (No. 21) Order 1973—Counter Inflation Act 1973 ss. 11, 23 (a), 33(1), 35.*

*Master and servant—sale of goods—sale effected by servant of goods above maximum retail price fixed by counter inflation legislation—master vicariously liable as offence one of strict liability—Counter-Inflation (Price Control) (No. 21) Order 1973—Counter-Inflation Act 1973 ss. 11, 23(a), 33(1), 35.*

D

The appellant company displayed for sale in its Suva store a tin of mackerel salmon one cent above the maximum price fixed by legislation. This was purchased by an Inspector of the Prices and Incomes Board from a sales assistant at the counter of the store.

*Held* : The offence was one of strict liability, no scienter being required. The appellant company was therefore vicariously responsible for the sale effected by its servant.

E

*Per curiam* : There was nothing wrong in the Inspector obtaining evidence of a sale which contravened the counter inflation legislation simply because it was preceded by an offer to sell. He was not acting as an agent provocateur. (*Prices & Income Board v. Chow Cho*—Suva Criminal Case No. 542 of 1974—disapproved).

F

Cases referred to :

*Fitzpatrick v. Kelly* (1873) 28 L.T.R. 558.

*Mullins v. Collins* (1874) 29 L.T.R. 838 ; L.R. 9 Q.B. 292.

*Bond v. Evans* (1888) 21 Q.B.D. 249 ; 4 T.L.R. 614.

*Hotchin v. Hindmarsh* [1891] 2 Q.B.D. 18 ; 65 L.T. 149.

*Coppen v. Moore* (No. 2) [1898] 2 Q.B. 306 ; 78 L.T. 520.

*Houghton v. Mundy* (1910) 103 L.T. 60 ; 74 J.P. 377.

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*Whittaker v. Forshaw* [1919] 2 K.B. 419.

*Reynolds v. G. H. Austin & Sons Ltd.* [1951] 2 K.B. 135 ; [1951] 1 All E.R. 606.

Appeal against conviction in the Magistrate's Court for failing to comply with counter inflation legislation.

GRANT C.J. : [17th January 1975]—

H

On the 21st June 1974 at Suva Magistrate's Court the appellant Company was convicted after trial of failing to comply with the Counter-Inflation (Price Control) (No. 21) Order 1973 contrary to section 23(a) of the Counter-Inflation Act 1973 and under the powers conferred by section 33(1) and 35 of the Counter-Inflation Act 1973 was fined \$20.

The relevant portion of section 23(a) of the Counter-Inflation Act 1973 provides that no person shall sell goods at a greater price than the maximum price fixed and declared by an order made under the provisions of subsection (1) of section 11 of the Act. On the 30th October 1973 the Counter-Inflation (Price Control) (No. 21) Order 1973 was made in exercise of the powers conferred by section 11 of the Counter-Inflation Act 1973 and prescribed, inter alia, the maximum retail price within the city of Suva of a 7 oz. tin of Mackerel Salmon Style in natural oil at 17 cents. A

The uncontested facts of the case are simple. On the 11th December 1973 at the appellant Company's retail store in Suva an Inspector of the Prices and Incomes Board saw the item in question displayed for sale at 18 cents. He took the item to a lady in the store who accepted 18 cents from him and who sold the item to him at that price, being one cent more than the lawful price. The store in question was described as a supermarket, and the lady who sold the item to the Prices and Incomes Board Inspector was at a counter on which there was a cash register. B

The appellant Company has appealed against conviction on the grounds that the verdict cannot be supported having regard to the evidence, in particular that there was no evidence that the lady was a servant of the appellant Company or acting in the course of employment, no link between the lady and the appellant Company and no evidence that the lady was authorised to sell the item at that price. C

As to whether the lady was a servant of the appellant Company, the facts speak for themselves. At a counter in a supermarket she accepted money for an item which was on display for sale. These are the natural actions of a servant of the Company acting in the course of employment; and if she was not a servant of the Company and had no authority whatsoever to effect a sale of any kind, this would be peculiarly within the knowledge of the appellant Company on whom the onus of proof would lie. D

The question of whether the lady was authorised to sell the item at a particular price and of adducing evidence of a link between the lady and the appellant Company does not arise. The offence in question is one of strict liability, no *scienter* being required. It is not a matter of "allowing" or "causing" a sale, but of "selling" which imposes an absolute prohibition. In these circumstances the law of contract indicates who in law is the seller, namely the appellant Company, and if as in this case the offence is one of strict responsibility the appellant Company is vicariously responsible for a sale effected by its servant, even if its servant abused or exceeded her authority; unless the servant had no authority to effect a sale of any kind. E

The various principles above expressed are well established and are sufficiently illustrated by *Fitzpatrick v. Kelly* (1873) 28 L.T.R. 558; *Mullins v. Collins* (1874) 29 L.T.R. 838; *Bond v. Evans* (1888) 21 L.R. (Q.B.D.) 249; *Hotchin v. Hindmarsh* (1891) 2 L.R. (Q.B.D.) 181; *Coppen v. Moore* (No. 2) (1898) 2 L.R. (Q.B.D.) 306; *Houghton v. Mundy* (1910) 103 L.T.R. 60; *Whittaker v. Forshaw* (1919) 2 L.R. (K.B.D.) 419; and *Reynolds v. G.H. Austin & Sons Ltd.* (1951) 2 L.R. (K.B.D.) 135 (per Devlin J. at 149). F

On the hearing of the appeal, counsel for the appellant Company prayed in aid a judgment of the Suva Magistrates Court in *The Prices and Incomes Board v. Chow Cho* (Criminal Case No. 542 of 1974), in which the trial Magistrate after having found the offence proved proceeded to acquit the defendant because he disapproved of the fact that a Prices and Incomes Board Inspector G

- A was a party to the sale of an item at a price greater than the maximum price fixed, after an offer to sell at that unlawful price had already been made which is itself an offence under section 23 of the Counter-Inflation Act 1973. However, this the trial Magistrate was not entitled to do. If the trial Magistrate considered it necessary to express disapprobation he should have done so by way of the sentence imposed, for example by discharging the defendant absolutely. Further, the trial Magistrate does not appear to have been laying down a general proposition, his disapproval being based on the particular phraseology used by the Prices and Incomes Board Inspector in evidence.
- B Certainly, I can see nothing wrong in a Prices and Incomes Board Inspector obtaining evidence of a sale which contravenes section 23(a) of the Counter-Inflation Act 1973 simply because it is preceded by an offer to sell, bearing in mind the mischief aimed at by the Act and the fact that an offer to sell may turn on oral evidence only and be more difficult of proof than a sale in respect of which a sales slip or other documentary evidence can be produced.
- C In obtaining evidence of a sale which contravenes the provisions of the Counter-Inflation Act 1973 a Prices and Incomes Board Inspector is not, in my view, acting as an agent provocateur but as a guardian of the public interest.

The appellant Company was properly convicted and the appeal is dismissed.

*Appeal dismissed.*

H