

no. 5/1946.

Gilley

v.

Kelly

Reasons for Judgment
(Order)

dated August 15, 1946.

JUDGMENTS.

LATHAM, C.J: It is conceded, and must be conceded, that, in order to establish the case presented by the prosecutor, the onus is on the prosecutor to prove that the defendant did not require the production of a consumer's licence corresponding in number with the number endorsed on the ration tickets, (in respect of which he admittedly disposed of motor spirit) as required under Regulation 27 of the Liquid Fuel Regulations.

The evidence as to the possession of Howard's licence at the relevant time is ambiguous and unsatisfactory. It is consistent with the evidence that Howard's licence was produced by some person, and the defendant's admission that he sometimes did not inspect licences is not a clear admission that he did not do so in the case of the tickets in question.

In my opinion the appeal should be dismissed.

JUDGMENT.

RICH J.

I agree that we are not justified in overruling the decision of Judge Markell. The case is important and presents some suspicious circumstances. ^{But} an examination of the transcript shows that the case broke down on the testimony which the informant adduced. The real lesson that may be drawn from the case is that even in these days criminal prosecutions require careful preparation and the adduction of exact evidence of the elements of the offence and ^{the} ^{of} ~~exclusion~~ all reasonable hypotheses consistent with innocence including those in which otherwise the defence might not take any vivid interest.

I agree that the appeal should be dismissed.

JUDGMENT:

STARKE,J: I agree that the Informant did not establish the offence charged in the information.

*Exem 1.**Oral judgment*

The offence with which the respondent was charged is created by reg, 51 (I)(c). It is that without lawful excuse he did have in his possession, otherwise than in accordance with the regulations, certain motor spirit ration tickets. "In accordance with the regulations" means in a way allowed by the regulations. It was, therefore, for the informant, who is the appellant, to establish the negative proposition that the respondent's possession of the ration tickets arose in no way that is allowed by the regulations. If that were established, then the respondent might, nevertheless, exculpate himself on the ground that a lawful excuse existed. But of that the proof would lie upon him. He is the holder of a retailer's licence to dispose of motor spirit and, in the circumstances of the case, it would be unreasonable to suppose that he obtained possession of the ration tickets in any manner allowed by the regulations unless it were in pursuance of reg. 27 (I). Upon that element of the charge it was therefore incumbent on the informant to show only that the respondent had not obtained the motor spirit ration tickets in the manner allowed by reg. 27. To do this it would be necessary, I think, to show that, either the motor spirit in respect of which they were obtained by him was not disposed of to the holder of a consumer's licence or to his servant or agent authorized under reg. 38, or that the consumer's licence was not produced to the respondent by the holder or such ^{servant} ~~such~~ or agent immediately before such disposal, or that the ration tickets ~~were~~ were not then delivered to the respondent, or that they did not correspond to the quantity of motor spirit to be disposed of. I am not inclined to think that proof of failure to comply with sub.reg. (I)(c), or sub. reg. 3 would be enough, because those regulations relate to matters to be done after delivery of the tickets to the retailer disposing of motor spirit and, therefore, after the inception of his possession of the ration tickets.

In the present case, I think that it is impossible to say that the hypothesis is wholly unreasonable that the motor spirit ration tickets in question were delivered to the respondent by the

servants of the holder of the consumer's licence on an occasion when motor spirit was disposed/^{of} to them and that they produced the consumer's licence. It was, therefore, necessary for the informant to exclude that hypothesis by reasonable evidence to the contrary. The evidence adduced to do so is meagre, confused and unsatisfactory and, although I am not sure that there is not a great deal of unreality in the hypothesis in question, I have reached the conclusion that we ought not to interfere with the learned chairman's decision absolving the respondent from the charge on the ground that it was not proved to his satisfaction. I do not think that any significance on this point should be attached to his use of the word deliberate in reference to the respondent's alleged conduct.

I think that the appeal should be dismissed

JUDGMENT.

McTIERNAN J

I agree that the appeal should be dismissed. I think that the evidence is not sufficient to satisfy a court beyond reasonable doubt that the defendant did not comply with reg. 21(1). The only evidence on this issue is vague and unsatisfactory; it permits of a reasonable hypothesis inconsistent with guilt.

JUDGMENT.

WILLIAMS, J: I also agree that the appeal should be dismissed. The Crown admits that one ingredient in the prosecution, which must be proved beyond reasonable doubt, is that Howard's licences were not produced to the defendant by himself, his servants or agents, when tickets purporting to be signed by him were exchanged for petrol. Howard was called by the Crown, but was not asked any questions, either in examination in chief or in re-examination to prove that these licences could not have been so produced. He was asked two questions on this point in cross-examination, one of which tends to show that the licences were produced by his drivers and the other that he himself always produced the licences to the defendant. But it appears from his evidence that he obtained petrol in two ways, by giving the ration tickets to his drivers and by leaving the tickets for his drivers with the defendant. When he gave ^{the} tickets to his drivers he should have given them the licences to produce to the defendant, and the evidence is left in doubt, it seems to me, whether when he says that he himself produced his licences to the defendant, he is not referring to the occasions when he himself left the tickets with the defendant.

Howard's drivers were not called by the Crown. His Honour said, and I think that this is the gist of his judgment, that he must be satisfied that the defendant did not inspect the tickets and did not examine the licences to see in whose name they were issued, and that the case must be proved strictly. I agree with those remarks and am not prepared to hold that His Honour, who had the advantage of seeing the defendant in the witness box and of gathering an impression as to his honesty, was not entitled not to be satisfied that the licences were not produced.

For these reasons I agree that the appeal should be dismissed.