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COURT OF APPEAL

92.

5th July, 1990

(Decision given 7th June, 1990)

Before: Sir Godfray Le Quesne, Q.C., (President)

The Deputy Bailiff,

J.M. Collins, Esq., Q.C.,

Her Majesty's Attorney General

-v-

Stuart Sean Hamon

Application for leave to appeal against conviction by the Royal Court (Criminal Assize) on the 14th December, 1989, on 3 counts of falsification of accounts

Reasoned Judgment.

W.J. Bailhache, Esq., Crown Advocate,

Advocate R.G.S. Fielding for the Applicant.

A-G

-v-

HAMON

JUDGMENT OF THE COURT

Stuart Sean Hamon was convicted at the Criminal Assizes on the 14th December, 1989 on three charges of falsification of accounts. He appealed against those convictions. At the conclusion of the hearing on the 7th June, 1990 we allowed the appeal and quashed the convictions, reserving the reasons for our decision. Those reasons we now proceed to give.

The Appellant entered the service of the Trustees Savings Bank Channel Islands, Ltd as a grade 2 general bank clerk on the 26th January, 1987. In September, 1987 he took up a post in the Finance Department of the Bank as a grade 3 bank clerk. His duties involved much use of personal computers. The Appellant enjoyed this work, and appears to have developed considerable skill in the use of computers.

Although his work in the Finance Department did not include opening accounts or making interest adjustments, the Appellant opened an account on computer, with no named holder,

on the 21st March, 1988. On the 7th April, 1988 he made an interest adjustment on this account from zero to £3.50, on the 6th October, 1988 a second interest adjustment from £3.50 to £5,000, and on the 13th October, a third interest adjustment from £5,000 to £15,000. These transactions formed the subject of the first count of the indictment on which the Appellant was tried. The particulars of the first count ~~was~~ were that he falsified computerised records by creating this account and making these adjustments, with intent to defraud.

The Appellant opened a second account, again on computer and with no named holder, on the 11th October, 1988. On the same day he made an interest adjustment on this account from zero to £5,000. On the 13th October he closed the account. This had the effect of capitalizing the sum of £5,000 which the Appellant transferred to his own deposit account with the Bank. These transactions formed the subject of the second count of the indictment.

On the 24th October, 1988 the Appellant opened a third account, again on computer and with no named holder, and on the same day made an interest adjustment from zero to £10,000. These transactions formed the subject of the third count.

The facts which we have stated were not in dispute. They established the first of the two elements which make up the crime of falsification of accounts, viz. the making of a false entry. The second essential element is the criminal intent -

intent to defraud. It was upon the presence or absence of this intent that the case turned at the trial. The Crown had to satisfy the jury that the Appellant made the false entries with intent to defraud.

It was not necessary for the Appellant to show what his intent had been. In fact, however, he did give evidence that he had acted not with intent to defraud, but with a different and innocent intent. His evidence, shortly put, was that he had not acted for the purpose of taking money from the Bank, but for the purpose of experiment. He thought he had detected points at which the information and the security provided by the Bank's computer systems could be improved. The first two accounts had been opened, and the interest adjustments upon them made, for the purpose of checking his ideas. He had closed the second account because he realised he did not need it for his experiments, but accidentally he had closed it in a way which caused the capitalization of £5,000. He could not see at once how to eliminate this sum, so he had put it into his own deposit account as a safe place of refuge until he could discover how to remove it from the computer's records. The third account had been opened because of another mistake which he had made in the course of his experiments.

It was necessary for the jury to understand that they could not convict the Appellant unless they were satisfied on all the evidence that he had acted with intent to defraud. They had also to understand that they would not be so

satisfied if they thought there was a possibility that the Appellant's own account of his intent might be true; if they thought that, the Appellant should be acquitted.

Mr Fielding, who represented the Appellant before us, did not criticise the Bailiff's direction to the jury on the latter point. His principal submission was that the Bailiff had failed to direct the jury on intent to defraud.

At the beginning of his address to the jury, the Bailiff said this:

> "...counts 1 and 3 differ from count 2, because the intent with which the accused is charged in counts 1 and 3 was to defraud the Bank by the false entry. Count 2 is to say that the fraud was in fact the transfer from his account to his own account, but you already heard of course from Mr Callender and other members of the Trustee Savings Bank that even in counts 1 and 3 the insertion of a figure of interest created an obligation, a real obligation on the Trustee Savings Bank towards the holder, if I can put it that way, of that account to pay the interest inscribed in it."

A few pages later comes this critical passage:

> "But the real test, as both Counsel have put to you, and which I repeat is why did the accused make these entries? The Crown says it was part of a clear plan to defraud the Trustee Savings Bank. The accused says that he did the

entries innocently as part of an experiment and he regarded the entries not as true banking entries in the accepted sense of that term but merely as statistical entries. Is he therefore a naive computer enthusiast trying to help his employer or a glib, fraudulent criminal? That is really what you have to decide."

It is also necessary to quote two remarks occurring near the close of the Bailiff's address:

"The Crown has suggested there were four factors which you really must consider. First, did the entries actually defraud the Bank? Now, you've heard the evidence of the employees of the Bank, senior employees, to the effect that they did....And fourthly the Crown said did Mr Hamon know that what he was doing would have the effect of defrauding the Bank or at any rate making a liability which the Bank would have to meet?"

In our judgment, the Bailiff did not give the jury adequate directions on the meaning of "intent to defraud" This meant, on the facts of the case, intent to induce the Bank by deception to part with money or to alter its conduct. Nowhere in his address to the jury did the Bailiff tell them that this was the intent of which they had to be satisfied before they could convict. The evidence showed that the Bank's practice was to credit accrued interest to all accounts on the 20th November of each year. (Before that accrued interest would be paid out only if an account were closed).

The total amount of interest so credited would affect the Bank's actions in making investments or paying dividends. On counts 1 and 3 the jury should therefore have been told that they had to consider whether it was the Appellant's intent ~~to close the accounts before the 20th November 1989 and remove the interest shown as accrued, or~~ to leave this interest to be capitalized on the 20th November. On count 2 they should have been told to consider whether the Appellant's intent when he transferred £5,000 to his deposit account was to keep it there for his own benefit or to take it out.

The jury were not asked to consider these questions, nor was the meaning of "intent to defraud" explained to them. There is therefore no certainty that the verdict was the result of their being satisfied that the Crown had established the matters essential to a conviction.

There were also positive misdirections on the question of fraud. In the first passage which we have quoted from his address, the Bailiff reminded the jury of the evidence of officials of the Bank, that "the insertion of a figure of interest created an obligation... to pay the interest." He told them, in the last passage which we have quoted, that the effect of this was that the entries actually defrauded the Bank. Officials of the Bank did indeed give such evidence, but as a proposition of law it was clearly wrong. A false interest adjustment might give the appearance of a debt, but it could not possibly create a legally enforceable obligation.

The reference to count 2 in the first passage quoted may well have been understood by the jury to mean that the Appellant's transfer of £5,000 to his deposit account was necessarily fraudulent. This too was wrong. The character of the transfer depended upon the intention with which it was made.

Mr Bailhache submitted that the case was straightforward, and did not call for any sophisticated definition of fraud. The verdict showed that the jury did not accept the Appellant's evidence that he was conducting an experiment; if they did not accept that, it was too plain for argument that the Appellant's intent was to cause detriment to the Bank, i.e. an intent to defraud. We cannot accept these arguments. There are some expressions which can be left to a jury without definition or explanation, but in our judgment "intent to defraud", which has a technical legal meaning, is not such an expression. Furthermore, the positive misdirection about fraud to which we have referred makes it impossible to assume that the jury must have understood the expression correctly.

Mr Bailhache submitted finally that, if we concluded there had not been an adequate direction on intent to defraud, we should apply the proviso to article 25(1) of the Court of Appeal (Jersey) Law 1961 and dismiss the appeal. We are not prepared to do this. Since the critical question of intent was not put clearly to the jury, we do not feel able to say

that "no substantial miscarriage of justice has actually occurred".

It was for these reasons that we allowed the appeal and quashed the convictions.

Authorities

Archbold (36th Ed'n: 1966) paras. 1010 & 2073-2076.

R. -v- Wines (1954) 1 WLR 64.

In re London & Globe Finance Corporation, Ltd (1903) 1 Ch. 728 at 732.

A.G. -v- Ahier (1981) JJ 29 at 41.

A.G. -v- Forster (20th February, 1989) Jersey Unreported.

Scott -v- Metropolitan Police Commissioner (1975) A.C. 819 at 839C.

Arlidge & Parry on Fraud (1st Ed'n) paras 1.32-1.37; 3.45; 6.39-6.54.

R. -v- Steane (1947) 32 Cr. App. R.61 at 65 & 66.

R. -v- Ferguson (1913) 9 Cr. App. R.113.

R. -v- Broadbent (1967) JJ 803 at 810-12.

A.G. -v- Weston (1980) JJ 43 at pp.61/2 & 75/7.

R. -v- Kritz (1949) 33 Cr. App. R.169.