

[JACKSON, C.J., AND MELISSAS, J.]
(March 11 and 18, 1949)

HASSAN OKTAY, *Appellant,*

v.

REX, *Respondent.*

(*Criminal Appeal No. 1864.*)

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Criminal Law—Theft by agent—Fraudulent Conversion—Theft by owner of a thing subject to a special interest of some other person—Cyprus Criminal Code, sections 245, 250 and 260 (b).

The appellant, as Secretary of the Co-operative Society of Mora, was entrusted with 2,000 okes of mixed wheat and barley for distribution by the Society among the villagers of Mora as part of their ration for the month of September, 1948. This wheat was delivered to the appellant, through an intermediary, from the Government store after he had paid for it with his own money to the office of the Controller of Supplies. The appellant sold the wheat so delivered to him to a certain baker in Nicosia at a profit. The Assize Court held that, in spite of the sale of the wheat to the appellant, the ownership of it remained in the Government and that the appellant was only a distributing agent, and it convicted him of theft, under sections 245 and 260 (b) of the Cyprus Criminal Code. It was argued for the appellant that he could not be convicted of stealing the wheat, for it had become his own property when it had been sold to him for his own money by an official of the Controller of Supplies.

Held : (i) that the view of the Assize Court could not be supported on that particular point of law.

(ii) On the assumption that the Government had parted with their ownership of the wheat, and that ownership of it passed to the appellant, the case was precisely one of those with which section 250 of the Cyprus Criminal Code was intended to deal. There was undoubtedly a conversion of the wheat to the use of the appellant by its sale to the baker, and this was a conversion which, but for the transfer of ownership to him, would "otherwise amount to theft" (section 250).

(iii) If the appellant became the owner of the wheat, he became the owner subject to a special interest in the villagers of Mora and he defeated that interest when he fraudulently converted the wheat to his own use. Accordingly he was guilty of theft under sections 245 and 250 of the Cyprus Criminal Code.

Conviction altered accordingly and appeal dismissed.

Appeal from conviction by the Assize Court of Nicosia, dated the 16th December, 1948.

Fuad Bey and *R. R. Denktash* for the appellant.

P. N. Paschalis, Crown Counsel, for the Crown.

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The facts of the case are fully set forth in the judgment of the Court which was delivered by :

JACKSON, C.J. : This is an appeal from a decision of the Assize Court, sitting at Nicosia, by which the appellant was convicted of stealing 2,000 okes of mixed wheat and barley, valued at £60. 2s. 7p., entrusted to him as Secretary of the Co-operative Society of Mora for distribution by the Society among the villagers of Mora as part of their ration for the month of September, 1948.

The charge upon which the appellant was convicted was framed under section 245 of the Cyprus Criminal Code, which defines the offence of stealing, and under section 260 (b), which prescribes the maximum penalty where the thing stolen is property entrusted to an offender in order that he may deliver it, or any part of it, to another person.

The facts, in so far as they are material to the question to be decided, are as follows : In September, 1948, the appellant was the Secretary of the Co-operative Society of Mora, the Committee of which had, at the request of the Controller of Supplies, undertaken the distribution among the villagers of Mora of mixed wheat and barley (referred to in this case as "standard wheat") purchased in bulk by the Controller of Supplies, on behalf of the Government, for distribution to the public at a fixed price. In the case of the village of Mora, the procedure was as follows : The appellant, as Secretary of the Co-operative Society, presented each month to the office of the Controller of Supplies in Nicosia a statement showing the quantity of standard wheat required by the villagers named in the list, on the basis of a ration of 10 okes per person per month. He then paid in cash for the quantity that the Co-operative Society was entitled to receive for distribution to the villagers. The price paid to the Controller of Supplies was at the rate of 5 piastres and 15 paras per oke and the arrangement was that the standard wheat should be sold to the villagers of Mora at 5 piastres and 30 paras per oke. The difference of 15 paras per oke in these two prices was intended to be kept by the Society to cover the cost of the transport of the wheat from Nicosia to Mora and incidental expenses.

The procedure was that, on payment by the appellant of the correct sum in cash at the Office of the Controller of Supplies, the appellant was given an invoice stating that a specified quantity of mixed cereal had been sold to the Co-operative Credit Society of Mora for a specified sum of money and that this sum had been paid. The appellant then presented this invoice at the Government store where the standard wheat was kept and received the quantity mentioned in the invoice, made up in sacks of 40 okes each. The appellant signed a receipt for the quantity delivered to him. The Committee of the Co-operative Society of

Mora appear to have left to the appellant the collection and distribution of the wheat ration for the village. Sometimes he used the money of the Society to pay for it and sometimes he used his own. There was evidence that there was a small profit left over after the distribution of the ration and that the Committee had allowed the appellant to keep it as some recompense for his work.

The monthly ration of standard wheat for the villagers of Mora was 4,000 okes. In September, 1948, half of this ration had been collected by the appellant early in the month and on the 27th September he came to the Office of the Controller of Supplies to collect the second half. It was in connection with the disposal of this second half of the ration, 2,000 okes, that the appellant was charged.

On the date mentioned he came to the Office of the Controller of Supplies in Nicosia, where he was known as the Secretary of the Co-operative Society of Mora, and presented his list showing that the villagers of Mora were entitled to a further issue of 2,000 okes of standard wheat for that month. He then paid to the cashier the sum of £60. 2s. 7p. and received an invoice stating that 2,000 okes of mixed cereal had been sold to the Co-operative Credit Society of Mora and that the sum mentioned had been paid for it. This was the invoice that entitled him to draw the stated quantity of standard wheat from the Government store. The money which he paid appears to have been his own.

On the same day, 27th September, and before taking delivery of the wheat, the appellant gave the invoice to an intermediary and asked him to sell the 2,000 okes of mixed wheat and barley mentioned in it to a certain baker in Nicosia at a price which would give the appellant a profit of approximately 10s. a sack of 40 okes, instead of 15 piastres a sack that he would get if he took the wheat back to the villagers of Mora, paying the cost of transport out of that margin. The baker refused to pay more than a sum which would give the appellant a profit of 7½ shillings a sack and when the baker's offer was conveyed to the appellant by his intermediary, he accepted it. The price which the baker agreed to pay for the 2,000 okes, or 50 sacks, of standard wheat was £78. 15s. 0p. The appellant, as we have already said, had paid £60. 2s. 7p. After the sale to the baker had been arranged, the appellant returned to Mora, leaving behind him, with his intermediary, the invoice with which delivery of the standard wheat could be obtained from the Government store. Delivery was obtained on the 30th September, and while the sacks were being unloaded at the baker's premises, and while the baker was counting out the money to pay the intermediary for them, an official of the Supplies Department, who had got wind of the transaction, intervened and the appellant was later charged with the theft of the wheat.

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Those were the facts and no doubt has been cast on them, but it was argued for the appellant that, on those facts, he is not guilty of the offence of which he was convicted, or indeed of any criminal offence. It was argued that he may or may not have incurred some civil liability to some unspecified persons, but that he could not be convicted of stealing the wheat, for it had become his own property when it had been sold to him for his own money by an official of the Controller of Supplies.

We have already said that the particular charge upon which the appellant was convicted was framed under section 245 of the Criminal Code, which defines the offence of stealing, and section 260 which prescribes a specially heavy punishment where the thing stolen falls within one of several descriptions. The charge alleged that the thing stolen in this case, namely the 2,000 okes of standard wheat, fell within the description (b) in section 260, since it was property which had been entrusted to the appellant in order that he might deliver it to someone else—in this case, the villagers of Mora. But it was said that section 260 does not in any way modify or change the essentials of the offence of stealing as defined by section 245, it only increases the penalty for stealing property of particular descriptions.

The argument for the appellant accordingly was, in effect, that if he could not be convicted under section 245, taken by itself, he could not be convicted under section 245 taken together with section 260. It was further argued that he could not be convicted under section 245 because he had bought the wheat and paid for it with his own money and had so become the owner.

The Assize Court held that, in spite of the sale of the wheat to the appellant, the ownership of it remained in the Government and the appellant was only a distributing agent. The first part of that statement was qualified to some extent in later passages of the Assize Court's judgment, but it seems clear that the Court's conviction of the appellant was based on their conclusion that some property *in the wheat itself* remained in the Government notwithstanding the sale to the appellant.

We would feel great difficulty in supporting the view of the Assize Court on that particular point of law, but there is another section of the Code upon which there was a good deal of argument during the trial but to which the Assize Court did not refer in their judgment. We refer to section 250 which deals, *inter alia*, with the theft of property, either by taking or by conversion, by a person who "is the owner of the thing taken or converted subject to some special property or interest of some other person therein." The taking or conversion must be "under such circumstances as would *otherwise* amount to theft," and the

section declares that if the taking or conversion occurs under such circumstances, it is immaterial that the person who takes or converts is the owner of the thing taken or converted subject to some special interest in some other person.

In this case there was undoubtedly a conversion of the wheat to the use of the appellant by its sale to the baker, but it was argued that the conversion could not amount to theft because the appellant was the owner of the wheat. For that reason, it was said, the appellant was not a person entrusted with the wheat, within the meaning of section 260 of the Code, in order that he might deliver it to somebody else.

Assuming that argument to be correct and that the Government had parted with their ownership of the wheat, and assuming that ownership of it passed to the appellant, the case seems to us to be precisely one of those with which section 250 of the Code is intended to deal. The appellant's conversion of the wheat to his own use was a conversion which, but for the transfer of ownership to him would "otherwise" (to quote from section 250) have amounted to theft under section 245 and 260 (b). But section 250 provides that if that is the case, it is immaterial that the person who converts property is the owner of it, provided that his ownership is subject to some special interest in somebody else.

In our view the villagers of Mora undoubtedly had a special interest in wheat sold by the Controller of Supplies to the appellant, as Secretary of their Co-operative Society, for delivery to them at a fixed price. He could not have obtained the wheat from the Controller except for that special purpose, and he obtained only the quantity shown to be required for villagers to whom no ration had already been delivered in that particular month. It is universally known that the price at which the Government sells standard wheat for distribution to the public, by way of ration, is heavily subsidised and the Controller of Supplies would certainly not have sold this wheat to the appellant, either at the price he paid or at all, in order that he might immediately re-sell it at a substantial profit on the black market.

If, therefore, the appellant became the owner of the wheat, he became the owner subject to a special interest in the villagers of Mora and he defeated that interest when he fraudulently converted the wheat to his own use. Accordingly there can be no doubt, in our opinion, that he was guilty of theft under section 245 of the Criminal Code read with section 250. Since he was convicted under other provisions of the Code, we think that his conviction should be altered to a conviction for theft under the two sections that we have quoted but this appeal must be dismissed.

Conviction altered.

Appeal dismissed.

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