HABIB *v.* ATTORNEY-GENERAL

SUPREME COURT (Bairamian, C.J.): September 24th, 1957
(Mag. App. No. 17/57)

[1] **Agency—formation—common law right to employ agent—right to employ unlicensed agent to deal in diamonds abrogated by Alluvial Diamond Mining Ordinance, 1956, s.18(3):** The prohibition against dealing in diamonds by unlicensed persons in s.18(3) of the Alluvial Diamond Mining Ordinance, 1956 is absolute and includes the unlicensed servants or agents of licensed dealers; the common law right of a person to employ an agent to buy or sell goods on his behalf is expressly taken away by the section (page 31, lines 12–20; page 32, lines 10–12; page 32, lines 21–27).

[2] **Contract—illegal contracts—agreement to commit unlawful act—no right of action based on felony:** Where it comes to the attention of a court, either from the evidence of the parties or from an outside source, that the contract upon which an action for the recovery of possession of diamonds is based was entered into with a view to carrying into effect anything prohibited by law, the court is bound to take notice of such an objection and will not lend its aid; the claimant has no right of action and it is not necessary to decide whether he is guilty of an offence or whether the diamonds claimed are his property (page 32, line 40—page 33, line 9; page 33, lines 13–37; page 35, lines 12–16).

[3] **Contract—illegal contracts—effect of illegality—since no right of action, court need not consider whether claimant guilty of offence or if goods claimed his property:** See [2] above.

[4] **Natural Resources—diamonds—unlawful dealing—court will not entertain action for recovery based on felony—unnecessary to consider whether claimant guilty of offence or if goods claimed his property:** See [2] above.

[5] **Natural Resources—diamonds—unlawful dealing—prohibition of dealing by unlicensed persons includes agent of licensed dealer—common law rights of agency abrogated by Alluvial Diamond Mining Ordinance, 1956, s.18(3):** See [1] above.

[6] **Statutes—interpretation—statute to be construed in conformity with common law unless contrary plainly intended:** Statutes should be construed in conformity with the common law rather than against it, except where or so far as the statute plainly intended to alter the course of the common law (page 32, lines 14–17).

[7] **Statutes—interpretation—general words—construction leaving existing policy of law unchanged to be adopted where possible:** The general words of a statute are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched (page 34, lines 17–22).

The appellant's servant was charged in a magistrate's court with unlawful possession of diamonds, contrary to s.61 of the Alluvial Diamond Mining Ordinance, 1956.

The appellant, a licensed dealer, handed his licence and the diamonds to his brother-in-law Ajami, who was not licensed, and sent him to Kenema to sell the diamonds. Ajami was caught and prosecuted. The appellant gave evidence for the defence and admitted giving the diamonds to Ajami. Ajami was convicted: the magistrate found that the appellant was the owner of the diamonds and ordered that they be returned to him. The Attorney-General appealed against this order and the case was remitted to the magistrate's court for determination of the ownership of the diamonds. The magistrate, after taking fresh evidence, found that the appellant had contravened s.12(8) of the Alluvial Diamond Mining Ordinance, 1956 in handing over his licence to Ajami; that he had failed to comply with the terms of his licence and that he had aided and abetted Ajami in the commission of an offence against the Ordinance. He ordered that the diamonds be forfeited to Her Majesty under s.62.

On appeal against this order it was argued for the appellant (a) that the only point in issue was whether he was the owner of the diamonds; (b) that there was no provision in the Alluvial Diamond Mining Ordinance which made it an offence for a licensed master to send his servant or agent to sell diamonds; and (c) that in giving the diamonds to Ajami the appellant had no illegal intention.

Cases referred to:

(1) *Brown Jenkinson & Co. Ltd.* v. *Percy Dalton (London) Ltd.*, [1957] 2 Q.B. 621; [1957] 2 All E.R. 844.

(2) *Callow* v. *Tillstone* (1900), 83 L.T. 411; 64 J.P. 823, distinguished.

(3) *Holman* v. *Johnson* (1775), 1 Cowp. 341; 98 E.R. 1120.

(4) *Langton* v. *Hughes* (1813), 1 M. & S. 592; 105 E.R. 222.

(5) *In re Mahmoud,* [1921] 2 K.B. 716; (1921), 125 L.T. 161, followed.

(6) *Minet* v. *Leman* (1855), 20 Beav. 269; 52 E.R. 606, *dictum* of Romilly, M.R. applied.

(7) *R.* v. *Coney* (1882), 8 Q.B.D. 534; 46 L.T. 307, distinguished.

(8) *R.* v. *Morris* (1867), L.R. 1 C.C.R. 90; 16 L.T. 636, *dictum* of Byles, J. applied.

(9) *Simms* v. *Registrar of Probates,* [1900] A.C. 323; (1900), 82 L.T. 433, distinguished.

Legislation construed:

Minerals Ordinance (Laws of Sierra Leone, 1946, *cap.* 144), s.60: The relevant terms of this section are set out at page 26, lines 34–37.

s.61: The relevant terms of this section are set out at page 26, lines 38–41.

s.62: The relevant terms of this section are set out at page 27, lines 1–3; page 34, lines 4–5.

Alluvial Diamond Mining Ordinance, 1956 (No. 2 of 1956), s.2: The relevant terms of this section are set out at page 26, lines 29–30; page 27, line 17.

s.18(3): The relevant terms of this sub-section are set out at page 27, lines 14–16.

s.21: "A person shall be guilty of a contravention of this section if he is in possession of diamonds and he fails to prove that he is lawfully in possession of such diamonds. . . ."

s.31(2): "Notwithstanding anything to the contrary contained therein, the Minerals Ordinance shall not apply to the prospecting, mining, dealing in, exporting, despatching and transporting of alluvial diamonds under this Ordinance."

C.B. Rogers-Wright for the appellant;
M.C. Marke, Ag. Sol.-Gen., and *N.E. Browne-Marke, Crown Counsel,* for the respondent.

BAIRAMIAN, C.J.:

This is an appeal against an order made by the magistrate sitting at Pujehun (Mr. W.S. Young) on May 31st, 1957, under s.62 of the Minerals Ordinance (*cap.* 144), that 1808 pieces of rough and uncut diamonds seized from one Abbess Ajami (who had been convicted of an offence under s.61) be forfeited to Her Majesty.

It will be useful to note that "mineral" by definition in s.2 of the Ordinance includes diamonds and that ss. 60 and 67 of the Ordinance were applied to diamonds in their rough or uncut state by an order of the Governor in Council (the Minerals (Application of Sections 60–67) Order in Council) made under s.59.

Section 60 of the Ordinance begins thus: "No person shall possess any mineral unless he is the lessee of a mining lease, or the holder of a mining right . . . or of a licence granted under s.64 or the duly authorised employee of such lessee or holder." Section 61 provides that: "Any person who, being found in possession of any mineral, does not prove to the satisfaction of the Court that he obtained such mineral lawfully, shall independently of any other liability be liable. . . ." Section 62 goes on to provide that when

a person is convicted the mineral to which the offence relates "shall unless proved by some other person to be the property of that other person be forfeited to [Her] Majesty. . . ."

In 1956 the Alluvial Diamond Mining Ordinance was passed to regulate the prospecting for, mining of, dealing in and exporting of alluvial diamonds. This Ordinance provides in s.31(2) that the Minerals Ordinance (*cap.* 144) shall no longer apply to the prospecting, etc. of alluvial diamonds under the new Ordinance. This new Ordinance is full of detail; here it is sufficient to note that a licence may be granted to mine, to deal in or to export alluvial diamonds. A licensed miner may sell his diamonds to a licensed dealer or a licensed exporter; and a licensed dealer may buy from a licensed miner and sell to a licensed exporter. Section 18(3) provides: "No person shall deal in alluvial diamonds except under and in accordance with the terms of a prospecting right or of a licence granted under this Ordinance." Section 2 has a wide definition of "deal in"; it includes an "offer to sell or purchase." Section 24 makes a contravention of s.18 a felony.

The appellant's licence, granted under the Ordinance, is in these terms:

> "Fee—£28. Alluvial Diamond Dealer's Licence D. Licence No. 312 is hereby granted to *A.K. Habib* of *8 Fenton Road, Bo,* employed *on his own account,* to buy alluvial diamonds from the holders of Alluvial Diamond Mining Licences and to sell such diamonds to the holders of Alluvial Diamond Exporter's Licences.
>
> This licence expires on December 31st, 1957.
>
> This licence is not transferable.
>
> Dated this *13th* day of *January,* 1957."

[The words in italics are written in by hand.]

A licensed dealer is expected to produce his licence when selling diamonds on demand by the purchaser: see s.19(3) of the Alluvial Diamond Mining Ordinance.

I proceed to the facts of this case. Ajami was found in possession of diamonds on February 8th, 1957 and the diamonds were seized. He was prosecuted under s.61 of the Minerals Ordinance (*cap.* 144). The criminal proceedings are in evidence; I quote a little of Ajami's testimony:

> "I know A.K. Habib [the present appellant]. I live with him. He is my brother-in-law. Mr. Habib has a licence to buy and sell diamonds. I assist Mr. Habib in buying and

selling diamonds. . . . On February 6th, 1957 I went with Mr. Habib to sell diamonds to the Corporation. We were not offered the price we asked. . . . On February 7th Mr. Habib gave me the diamonds to go to Kenema while he went to Freetown. He gave me three packets (Exhibits B1–B3) to take to Kenema. I went to Kenema. I went to the Corporation. We did not agree on the price."

From there Ajami went to Fairo, where he was caught. In cross-examination he agreed that he had no licence of any kind and had no licence to assist the appellant in his business of dealing in diamonds: he said that he applied for a dealer's licence on January 16th, 1957 as he wanted himself to deal in diamonds.

The appellant also gave evidence which confirmed that of Ajami. He stated that he had applied on January 16th, 1957 for four agent's licences, one of which was for Ajami. In cross-examination the appellant agreed that he had not received the licences for which he had the deposit; that his wife was with him and that she had a dealer's licence. At the adjourned hearing he said that before leaving Bo for Freetown on February 7th he handed his licence and the diamonds to Ajami and (I quote)—"instructed him to go to the Diamond Corporation at Kenema to sell the diamonds if the price was satisfactory. The only authority I have to deal in diamonds is Exhibit J. I have no other licence." The magistrate (Mr. S.C. Betts) convicted Ajami under s.61 of the Minerals Ordinance (*cap.* 144). On the evidence in the criminal case alone he decided that the appellant was the owner of the diamonds and made an order that they be returned to him.

The Attorney-General appealed against the order for the return of the diamonds to Habib and Boston, J. made the following order:

"Under s.18 of the Appeals from Magistrates Ordinance (*cap.* 14) I order that the case be remitted to the Magistrate's Court at Pujehun for determination of the ownership of the 1,808 pieces of rough and uncut diamonds. The decision of the magistrate as to the ownership of the diamonds is reversed and the order set aside. The magistrate at Pujehun is to arrange the date of hearing."

That was how Mr. Young at Pujehun came to take fresh evidence.

[The learned Chief Justice then reviewed the evidence given by the appellant, who repeated what he had said in the criminal proceedings. He continued:]

In his decision Mr. Young pointed out that the appellant did not

prove that he was one of those persons who could possess diamonds under s.60 of the Minerals Ordinance (*cap.* 144) and had no claim under that section. He then proceeded to consider the position under the Alluvial Diamond Mining Ordinance, 1956 and concluded that the appellant contravened s.12(8), which provides that an alluvial diamond dealer's licence shall not be transferable, and did not comply with the terms of his licence. The learned magistrate stated: "He the appellant [wilfully] and knowingly parted with the possession of these diamonds to a person whom he fully knew had no right to have custody of them. He therefore aided and abetted Ajami in the commission of an offence against the Ordinance." To this he added in para. (iv) of his summary:

> "Speaking in the language of the principles of equity, I have to say that he who applies for restoration of possession of diamonds must do so with clean hands. He must not be a party to the commission of an offence against the Ordinance either wilfully or negligently."

Paragraph (v) goes on to say:

> "When Ajami was arrested, he declared the diamonds to be his property and did not then refer to Habib. His subsequent evidence that these diamonds belonged to Habib was a mere defence at his trial for the offence of unlawful possession of these diamonds."

The decision winds up thus:

> "Taking the circumstances into consideration, I cannot order these diamonds to be restored to the applicant Habib. As there is no other applicant, I order that these 1,808 pieces of diamonds seized from Ajami be forfeited to Her Majesty."

The ground of his decision seems to be the one he gave in para. (iv) of his summary.

For the appellant the argument in the present appeal was that the evidence was solely to the effect that the appellant was the owner who had sent Ajami to sell the diamonds to the Corporation, but there was no express finding that the appellant was the owner. On this point of ownership there was no counter-argument for the Attorney-General. The debate was mainly on whether the appellant was entitled to have the diamonds back.

It was conceded by learned counsel for the appellant that the appellant did not come within s.60 of the Minerals Ordinance (*cap.* 144) so there was no question of Ajami being an "authorised employee" within that section. Learned counsel argued that there

was no provision in the Alluvial Diamond Mining Ordinance, 1956 which made it an offence for a master to send a servant to sell diamonds; that in giving the diamonds to Ajami the appellant had no illegal intention; and that if Ajami was going to the Diamond Corporation it would have been "lawfully."

If Ajami's offence was unlawful possession, the word "aiding" could not in the circumstances apply to the appellant because their relationship was that of master and servant: that was part of the argument. On aiding and abetting, counsel cited *R.* v. *Coney* (7) and *Callow* v. *Tillstone* (2) to show that something more active than the mere handing over of the diamonds was required. He described the appellant's giving the diamonds to Ajami to sell to the Corporation as a bailment, and submitted that the only issue was whether the appellant was the owner of the diamonds.

I am indebted to Mr. M.C. Marke, the learned Acting Solicitor-General, for a clear and concise argument which was to the following effect: *ex concessis* the appellant must rely on the Alluvial Diamond Mining Ordinance, 1956, under which he holds a dealer's licence; but this Ordinance does not provide for employing an agent, although it does provide for a manager for a licensed miner and an agent for a licensed exporter. The inference is that a licensed dealer's servant cannot deal in diamonds even on behalf of his master so the appellant contravened the Ordinance in handing the diamonds to Ajami and the court should not lend its aid. Mr. Marke cited s.18(3) of the Ordinance (which prohibits an unlicensed person from dealing in alluvial diamonds) and relied on *Holman* v. *Johnson* (3); *In re Mahmoud* (5); and *Brown Jenkinson & Co. Ltd.* v. *Percy Dalton (London) Ltd.* (1) in support of the proposition that it was contrary to public policy to base a claim on an illegal act.

Mr. C.B. Rogers-Wright in reply argued that the maxim *expressio unius est exclusio alterius* did not apply to this case; that "agent" in the sections differed from servant; and that the interpretation of the Crown led to harshness and hardship, citing *Simms* v. *Registrar of Probates* (9).

I would begin by observing that the diamonds must, for the purposes of the appellant's claim, be alluvial. If they were not alluvial, the appellant who concedes that he does not come within s.60 of the Minerals Ordinance (*cap.* 144), would have been guilty of an offence against ss. 60 or 61 of that Ordinance in possessing them and they would be liable to forfeiture under s.62; so he could not have claimed to be the owner. Consequently it must be part

of his case that the diamonds are alluvial, that he bought them under the licence granted to him under the Alluvial Diamond Mining from miners licensed under this Ordinance, and that he was therefore entitled in law to possess them and be the owner. It follows that his claim to the diamonds in this case must rest on this Ordinance and on the hypothesis that the diamonds are alluvial. The difficulty in his way lies in s.18(3) of that Ordinance which provides that—"No person shall deal in alluvial diamonds except under and in accordance with the terms of a prospecting right or of a licence granted under this Ordinance" and in the provision in s.24 which makes a breach of s.18(3) a felony.

It seems to me that an argument that a servant is not the same as an agent does not help, nor does one that the appellant had no illegal intention when giving the diamonds to Ajami with instructions to sell them at Kenema. A servant is a "person"; and the prohibition in s.18(3) is absolute, subject to the exception in the case of persons dealing "under and in accordance with the terms of a prospecting right or of a licence"; but Ajami was admittedly not one of the excepted persons for he had not been granted any right or licence under the Ordinance. It is incontrovertible that the appellant, on his own evidence, was asking Ajami to commit a felony against s.18(3) of the Ordinance.

That is sufficient to dispose of this appeal. At the same time it is worth noting also that s.21 of the Ordinance makes it an offence (it is a felony under s.24) for a person to be in possession of diamonds if he fails to prove that he is lawfully in possession. Thus the mere handing of diamonds to Ajami created a presumptive felony of its own. The wording of s.21 of the Alluvial Diamond Mining Ordinance, 1956 is similar to that of s.61 of the Minerals Ordinance (*cap.* 144) which under Ajami was convicted. The difference of substance is that s.24 of the Ordinance of 1956 empowered a magistrate to sentence an offender to up to two years' imprisonment instead of the maximum of one year in the older section—an indication that in 1956 the legislature was viewing the possession of alluvial diamonds with more concern.

The appellant is claiming the diamonds in this case on evidence that he gave them to Ajami to sell, which involves (a) a possession in Ajami which is presumptively unlawful; and (b) an instigating of Ajami to commit the felony of unauthorised dealing. The argument for the appellant has been stated; in view of s.18(3) of the Alluvial Diamond Mining Ordinance it is not acceptable. I do not

think that any of the cases counsel cited help his case. The facts in *R.* v. *Coney* (7) and in *Callow* v. *Tillstone* (2) differ widely from the facts in the present case. As for *Simms* v. *Registrar of Probates* (9), the language of the relevant statute was capable of two interpretations and it was therefore right to adopt that one which did not offend one's sense of justice. Here the language of s.18(3) is clear and it is a complete answer to the argument for the appellant that, as he could lawfully sell to the Corporation, he could equally lawfully send his servant to sell on his behalf.

The most forcible way I can think of for upsetting that argument is this: the common law enables a person to employ an agent to buy or sell goods on his behalf; and, to quote the words of Byles, J. in *R.* v. *Morris* (8) (L.R. 1 C.C.R. at 95; 16 L.T. at 637)—

> ". . . it must be remembered that it is a sound rule to construe a statute in conformity with the common law, rather than against it, except where or so far as the statute is plainly intended to alter the course of the common law."

Therefore, the appellant submits, at common law he was at liberty to send Ajami to sell his diamonds to the Corporation. That would be the argument.

The answer is in the words "except where . . . the statute is plainly intended to alter the course of the common law" in that quotation. In s.18(3) of the Alluvial Diamond Mining Ordinance there is the plain intention to alter the course of the common law: s.18(3) expressly prohibits any and every person from dealing in diamonds unless licensed and "dealing in" includes offering for sale; but Ajami was not licensed in any way. If Ajami were to offer the diamonds for sale he would be committing a felony; therefore the appellant could not send Ajami to sell his diamonds.

It is evident from the fact that the appellant applied for four licences in January 1957, intending one for Ajami, that he knew he could not send an unlicensed person to sell diamonds on his behalf. His wife had a licence; she might have gone to Kenema to sell the diamonds or they could have been left at home until the appellant returned to Freetown. An argument of hardship does not come with good grace in the circumstances. Be that as it may, the position is that the appellant embarked on a transgression of the law in giving Ajami the diamonds to sell and he is faced with the objection that he cannot ask the court for its aid in view of his conduct.

There is no need for me to say whether the appellant was guilty of any offence; it is sufficient to bear in mind that the bailment

which the appellant set up was a breach of the Ordinance and was illegal and its purpose felonious besides. In *In re Mahmoud* (5) Bankes, L.J. said ([1921] 2 K.B. at 724; 125 L.T. at 162):

> "The language of the clause is clear. It makes it illegal, on the part both of the buyer and of the seller, to enter into a contract prohibited by the clause. . . . It is not material to consider, for the purpose of deciding this case, whether or not the respondent has been guilty of an offence under the Order."

Likewise the language of s.18(3) of the Alluvial Diamond Mining Ordinance is clear. Bankes, L.J. went on to quote from *Langton* v. *Hughes* (4) where Le Blanc, J. said (1 M. & S. at 596; 105 E.R. at 223): "It is an established principle, that the Court will not lend its aid in order to enforce a contract entered into with a view of carrying into effect anything which is prohibited by law." Scrutton, L.J., in the same case of *In re Mahmoud* (5), says (*ibid.*, at 729; 164):

> "In my view the Court is bound, once it knows that the contract is illegal, to take the objection and to refuse to enforce the contract, whether its knowledge comes from the statement of the party who was guilty of the illegality, or whether its knowledge comes from outside sources. The Court does not sit to enforce illegal contracts."

This accords with the statements of Lord Mansfield in *Holman* v. *Johnson* (3) ((1775), 1 Cowp. at 343; 98 E.R. at 1121):

> "The principle of public policy is this; ex dolo malo non oritur actio. No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise ex turpi causa or the transgression of a positive law of this country, there the Court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff."

It is clear that the court itself is bound to take the objection and refuse its aid when it comes to its notice, no matter how, that the claim arises *ex turpi causa* or the transgression of a positive law of the country. If the case were between the appellant and Ajami, the court would have been bound to refuse an order on Ajami to return the diamonds or pay damages, on the ground that the bailment was illegal and its purpose felonious. Likewise the court is bound to refuse its aid to the appellant on precisely the same ground.

It has been argued for the appellant that the sole issue was whether the appellant was the owner of the diamonds in view of the wording of s.62 of the Minerals Ordinance (*cap.* 144); that is, that the diamonds seized—"shall unless proved by some other person to be the property of that other person be forfeited. . . ." This would have been the issue if the appellant had been at liberty to make a claim. In my view he was debarred by his evidence for the defence in the criminal case against Ajami from applying for the diamonds in the case and equally debarred by his subsequent evidence before Mr. Young.

Fundamentally the point is this: was it intended by the legislature by those words in s.62 of the Minerals Ordinance (*cap.* 144) to abrogate the principle in *Holman* v. *Johnson* (3)? I think not. To the *dictum* in *R.* v. *Morris* (8) I add another from the judgment of Romilly, M.R. in *Minet* v. *Leman* (6) on statutory construction (20 Beav. at 278; 52 E.R. at 610):

> ". . . [T]he general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched. . . .
>
> This principle of construction, as a general proposition, cannot be disputed."

It is similar to the *dictum* in *R.* v. *Morris*: it furnishes a useful test, which I had in mind earlier also when dealing with the point of agency.

As always with any maxim, the question is its application to the particular case. I think that here it applies. There is room for s.62 of the Minerals Ordinance (*cap.* 144) to operate consistently with the existing policy of the law, in certain cases where the mineral found in the possession of the person convicted under s.61 was stolen or obtained from the owner by false pretences. If the police lie in wait near a mining camp or a miner's store and catch a person coming away with mineral, it should of course be restored to the owner of the camp or store. Or suppose that a person representing himself as the holder of a dealer's licence persuades a licensed miner to sell alluvial diamonds to him on credit and that person is caught; if the miner is blameless and able to identify the diamonds they should, of course, be restored to the owner. These are proper cases of restitution, and I think that it was to such cases that s.62 was meant to apply. Counsel for the appellant made no attempt to show that s.62 was plainly intended to alter the course of the

common law, nor can I see anything in the language of the section to lend any colour to the view that there was any intention to abrogate the principle in *Holman* v. *Johnson* (3). There is something similar to s.62 of the Minerals Ordinance (*cap.* 144) in s.24(3) of the Alluvial Diamond Mining Ordinance, 1956 and in s.4(3) of the Diamond Industry Protection Ordinance, 1956. I cannot think that the legislature was so inconsistent as to create certain offences on the one hand and on the other to ask the courts to help persons who had participated in such offences; and I particularly bear in mind that all offences under the Ordinance involve forfeiture of the diamonds to which the offences relates.

On the view I have taken it is unnecessary to consider whether the diamonds seized from Ajami were proved to be the appellant's property; for, even if they were, the court could not in the circumstances make an order in his favour. His appeal against Mr. Young's decision is therefore dismissed.

Appeal dismissed.

THOMAS *v.* JOHNSON

SUPREME COURT (Bairamian, C.J.): October 15th, 1957
(Mag. App. No. 2/57)

[1] **Statutes—interpretation—criminal and penal statutes—construction in favour of accused—no conviction unless language of section clearly includes particular case:** A person cannot be convicted under a section unless the language of the section embraces the particular case for which he is prosecuted, and where there is any doubt on the point the benefit of that doubt must be given to the accused (page 37, lines 3–5; page 37, lines 9–11).

[2] **Trade and Industry — trade unions — registration — prohibition from carrying on business unless registered—Trade Unions Ordinance (cap. 242), s.10 inapplicable to unregistered amalgamation of two registered unions:** Section 10 of the Trade Unions Ordinance (*cap.* 242), which prohibits the carrying on of business by a union which is not registered, refers only to a trade union when first formed and not to an unregistered amalgamation of two unions which have previously been registered separately (page 36, line 39—page 37, line 3).

The appellant was charged in a magistrate's court with doing acts in furtherance of the objects of an unregistered trade union, contrary to s.10 of the Trade Unions Ordinance (*cap.* 242).