

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. 5 10

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. 15

Appeal dismissed.

THOMAS v. JOHNSON 20

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). 25 30

[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). 35

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). 40

Two trade unions amalgamated. The appellant, the general secretary of the amalgamated union, omitted to have it registered but carried on with business. He was prosecuted and found guilty.

5 The appellant appealed on the ground that s.10 of the Trade Unions Ordinance (*cap.* 242) did not apply to an amalgamation of two trade unions.

Legislation construed:

10 Trade Unions Ordinance (Laws of Sierra Leone, 1946, *cap.* 242, s.10(1):

“No trade union or any member thereof shall perform any act in furtherance of the purposes for which it has been formed unless such trade union has first been registered.”

(2) Any trade union or any officer or member thereof who contravenes the provisions of this section shall be guilty of an offence against this Ordinance.”

15 Both parties appeared in person.

BAIRAMIAN, C.J.:

20 The appellant in this case was prosecuted as general secretary of the Sierra Leone Maritime and Waterfront Workers Union for doing acts in furtherance of the objects of the Union contrary to s.10(2) of the Trade Unions Ordinance (*cap.* 242).

25 The facts in the case were that two unions amalgamated and the appellant failed or omitted to have the amalgamation registered. The magistrate found the appellant guilty on the ground that he did not produce the notice of amalgamation endorsed with the word “registered” and duly authenticated which the appellant said he had received from the Registrar of Trade Unions.

30 One of the points argued in the appeal by Mr. Thomas was that s.10 of the Trade Unions Ordinance does not relate to an omission to register an amalgamation of two trade unions, but only to the case of not registering an original trade union. There is a difference between the two cases.

35 When a trade union is first formed, s.9 requires that it shall apply for registration; s.10(1) goes on to say that the trade union or its members shall not perform any acts in furtherance of the purposes for which it has been formed unless the trade union has first been registered; and s.11 goes on to provide for the manner of registering the trade union. It is clear that these three sections relate to a trade union when first formed. What the magistrate should have considered but did not was whether s.10 also relates to the case of
40 two registered trade unions which are amalgamated.

The appellant has argued that s.10 does not relate to the case of omitting to register two trade unions which are amalgamated, and I agree with him. It is a well known fact that a person is not to be convicted under a section unless it is clear that the language of the section embraces the particular case for which he is prosecuted. 5
It is the duty of the respondent to show that its language embraces the case of an omission to register an amalgamation of trade unions. The respondent has not done so and, speaking for myself, I cannot see how the language of s.10 can embrace such a case. The rule is also that where there is doubt on the point, the benefit of the doubt must be given to the person prosecuted. Whichever way one looks at it, it was wrong to convict the appellant under s.10 for an omission to register an amalgamation of two registered trade unions. The appellant has argued that such an omission is not an offence at all under the Trade Unions Ordinance. I am only concerned with the question whether it is right to convict him under s.10; and my view is that it was a mistake. 10 15

The respondent this morning has tried to argue that the appellant should have proved that each one of the two trade unions which were amalgamated was registered. That was never a point in this case. In the judgment it is said: 20

“In this case the complainant has established that there was an amalgamation of two registered trade unions now known as the S.L.M. and W.W. Union, which the defendants admit. The first defendant has not denied that he is the general secretary of this Union. Whether the Union is properly registered or not is a fact peculiarly within the knowledge of the defendants. . . .” 25

It all relates to the amalgamation of two registered trade unions and there is no point in the respondent now trying to shift the case to something which was never before the magistrate. 30

The appeal is allowed; the conviction and sentence are set aside and costs granted to the appellant in the case both in this court and in the court below. He is allowed all his costs and my reason for allowing them is this: the respondent had counsel while the appellant had no counsel and I think it was the duty of counsel to consider whether it was proper to prosecute the appellant under s.10. The appellant has been put to a great deal of trouble by this prosecution, for no good reason as far as I can see, and he should get his costs. 35 40

Appeal allowed.