

WILLIAMS v. REGEM

Supreme Court (Purcell, C.J.): September 19th, 1922

- 5 [1] Criminal Procedure — charges — form of charges — defective charges — if particulars reveal different offence from that charged, fatal despite guilty plea: When the particulars of an offence charged do not reveal such offence but a different offence which is not charged, a conviction cannot be supported even if the defendant pleads guilty to the charge at his trial (page 51, lines 26—32; page 52, lines 34—39).
- 10 [2] Criminal Procedure — pleas — plea of guilty — effect of plea — no effect when charge a nullity: See [1] above.

The defendant/appellant was charged in the Court of the Provincial Commissioner, Moyamba, with conduct likely to lead to a breach of the peace.

15 The defendant's servant killed a cow near the drinking water of Moyamba and washed its entrails in the drinking water. This was an offence under the Public Health (Protectorate) Rules, 1915, Pt. IV, r. 1, but instead of being charged under this enactment, the defendant was charged with conduct which was contrary to

20 local law and custom and likely to cause a breach of the peace.

The defendant pleaded guilty to the charge and was sentenced more severely than would have been permissible under the Public Health (Protectorate) Ordinance, 1915. He then applied for and obtained leave to appeal on the ground that since he had been

25 born in Freetown and was a British subject he was not a native and was not subject to the local law and custom.

On appeal he contended that despite his plea of guilty the conviction was wrong since the charge to which he pleaded was unintelligible and did not disclose any offence known to law and that he should instead have been charged under the Public Health

30 (Protectorate) Ordinance, 1915.

For the Crown it was contended that although the Public Health (Protectorate) Ordinance, 1915 had not been referred to in the charge, since the particulars described an unlawful activity

35 amounting to an offence under the Ordinance with which he could have been charged, the conviction should stand.

The appeal was allowed.

Legislation construed:

40 Protectorate Ordinance, 1901 (No. 33 of 1901), s. 101:
 "The District Commissioner shall have power and authority to settle

any matters within his District which have their origin in Poro laws, native rites, or customs, land disputes, or any other disputes which if not promptly settled might lead to breaches of the peace; and any disregard or defiance of any such settlement shall be deemed to be an offence."

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Public Health (Protectorate) Rules, 1915, Pt. IV, r. 1:

The relevant terms of this rule are set out at page 52, lines 1—7.

Beoku-Betts for the appellant;
de Hart, Ag. Sol.-Gen. for the Crown.

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PURCELL, C.J.:

This is an appeal from the conviction by the Acting Provincial Commissioner (Mr. Addison) sitting at Moyamba. On the first case the charge was framed as follows:

"That the said Sidiki of Moyamba, Moyamba District, Central Province, Protectorate of Sierra Leone, on April 8th, 1922, at the aforesaid town of Moyamba by means of his servant (Santiggie) unlawfully did conduct himself in a manner likely to lead to a breach of the peace. To wit did kill a cow near the drinking water of the town of Moyamba, did wash its guts in the said drinking water to the danger of the health of the inhabitants of Moyamba and contrary to local law and custom: Protectorate Courts Jurisdiction Ordinance, 1903, s. 21; Protectorate Courts Jurisdiction Ordinance, 1905, s. 7; and Protectorate Ordinance, 1901, s. 101."

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Now it is quite clear that the defendant pleaded guilty to this charge and in the result was fined £5 or two calendar months imprisonment with hard labour. I have examined the record which is faulty by a clerical error and it was abundantly clear in looking at the record as a whole that he did in fact plead guilty. Looking at what the defendant was really charged with doing, it is quite clear that this charge should have been framed quite differently.

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Under s. 3 of the Public Health (Protectorate) Ordinance, 1915, the Governor in Council has power to declare that any town or place in the Protectorate shall be a sanitary district. Under the Moyamba Sanitary District Order, 1921 made by the Governor on May 30th, 1921 Moyamba was declared to be a sanitary district, and under Order in Council No. 30 of 1921 dated December 5th, 1921, the Public Health (Protectorate) Rules framed under s. 4 of the Public Health (Protectorate) Ordinance, 1915 were applied to the town of Moyamba. Rule 1 of Part IV reads as follows:

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“No person shall do any act by which water intended solely or partly to be used as drinking water or for domestic purposes shall be fouled or rendered likely to be fouled either by washing themselves or other persons or animals, clothes, or other articles in or near it, or by depositing human or other animal excreta or any refuse, filth, rubbish or dead animal or other noxious substance, in or near it or in any other way.”

And under s. 5 (2) of the Public Health (Protectorate) Ordinance, 1915 a fine of £1 for the first offence and a fine not exceeding £5 for the second offence, with the alternative of a term of imprisonment for any subsequent offence can be imposed for a breach of these rules. Now it is quite clear that this charge should have been framed after an intelligent survey had been taken of this Ordinance, of these Orders in Council and of these Rules.

It is quite clear to my mind that whoever framed this charge in the way that it has been framed entirely misconceived the nature of the transaction. By no stretch of the most vivid imagination can it be said that the defendant's conduct was likely to lead to a breach of the peace. It might just as reasonably be said that it was likely to lead to an astronomical observation of one of the planets. It was in fact likely to lead to legal proceedings being taken against the defendant if an intelligent court messenger had passed near by at the time or the matter had been reported to the District Commissioner.

I am satisfied that the defendant is what is called a non-native. It appears that he is a member of the Sera Coolie tribe and was born in Freetown and is a British subject, and for that reason he is obviously a non-native. The defendant has sworn an affidavit setting out all the facts with regard to his birth and his subsequent history which I accept as being true, at any rate so far as this case is concerned I feel bound to do so as it is absolutely uncontroverted; however, I entertain no doubt that the facts as set out in his affidavit are substantially true and being so concludes the matter as to defendant's nationality. It would appear if the facts are correct that the defendant contravened the rule with regard to polluting a well and laid himself liable to a fine of £1. He has in fact been fined £5 for conduct likely to lead to a breach of the peace, and for the reason I have just stated, I consider that the conviction was wrong (in spite of his having pleaded guilty).

Appeal allowed.