

## MORRIS, HEDSTROM, LTD. *ats.* THE POLICE.

[Appellate Jurisdiction (Corrie, C.J.) March 15, 1943.]

*"Booking fee"*—Chargeable under s. 4—(5) of the Prices of Goods Ordinance 1940<sup>1</sup>—series of items appearing in monthly account—payment on account before end of succeeding month—whether payment to be treated as payment in full of earliest items in account and so credited with "discount".

During the month of August 1942 Mr. Forbes purchased goods on credit from the Appellant to the total price of £27 3s. 4½d. In rendering an account for the goods during the following months the Appellant added the statutory "booking fee" of 5%. On September 30th Mr. Forbes forwarded a cheque for £25 to the Appellant with the account for August attached. In due course he received a receipt for this payment on account but no discount was allowed or credited in respect of the payment. There were similar facts in respect of purchases during the months of September and October—payments on account being made but no discount being allowed in respect of those payments.

Evidence was given for the Appellant as to a trade practice in the Colony of rendering monthly accounts and allowing 2½% discount for settlement not later than the last day of the month following purchase.

**HELD.**—Applying the rule in *Clayton's Case*, the payment on account was a payment in full of goods purchased during the previous month starting from the beginning of that month with "discount" allowed.

**[EDITORIAL NOTE.**—S. 4—(5) of the Prices of Goods Ordinance, 1940 (since repealed) was as follows:—

"(s) In addition to the maximum price which may be charged under the foregoing subsections of this section a vendor may charge an additional sum not exceeding five per centum of the price of any goods sold where the sale is otherwise than for cash: Provided that where any such additional charge has been made and payment is made on or before the last day of the month following that in which the goods are delivered the vendor shall allow a discount of two and a half per centum of the price of the said goods". There is no corresponding provision in the Price Control Ordinance 1946.

(1) *Clayton's Case (Devaynes v. Noble)* [1816] 35 E.R. 767; 12 Dig. 483.

(2) *Hooper v. Keay* [1875] 1 Q.B.D. 781.

(3) *In re Sherry* [1884] 25 Ch. D. 692.

APPEAL against Conviction .

R. A. Crompton for the Appellant.

A. G. Forbes for the Respondent.

CORRIE, C. J.—The facts which give rise to this appeal are set out in the judgment of the Learned Magistrate and I need not now recapitulate them.

The question at issue is this. Is there something in the nature of the present case which takes it out of the operation of the rule in *Clayton's Case*? The Appellant contends that this case differs number of items in respect of purchases of goods made at different dates in the course of the month, nevertheless there was only one single debt in respect of all the purchases during the one month, and that is shown by the fact that

<sup>1</sup> *Rep. Vide Price Control Ordinance, 1946.*

it would have been open to the vendor, the Appellant, to sue for the whole amount of these items as giving rise to a single cause of action. In these circumstances the Appellant says the rule in *Clayton's case* does not apply.

I am unable, however, to see how that view is to be reconciled with the judgment in *Hooper and Keay*, 1 Q.B.D., page 781, in which case the Clayton rule was applied. Again, the Appellant's contention seems to me to be ruled out by a passage in the judgment of Lord Selborne, L.C. in *re Sherry*, decided in 1884 and reported in 25 Ch. D. page 692. The passage in question is reported on page 702. In that the Lord Chancellor said—

“The principle of *Clayton's Case* and of the other cases which deal with the same subject, is this, that where a creditor having a right to appropriate moneys paid to him generally, and not specifically appropriated by the person paying them, carries them into a particular account kept in his books, he *prima facie* appropriates them to that account, and the effect of that is, that the payments are *de facto* appropriated according to the priority in order of the entries on the one side and on the other of that account.

“It is, of course, absolutely necessary for the application of those authorities that there should be one unbroken account, and entries made in that account by the person having a right to appropriate the payment to that account; and the way to avoid the application of *Clayton's Case*, where there is no other principle in question, is to break the account and open a new distinct account, . . . .”

That is to say, where you have a series of entries in a single account the rule in *Clayton's Case* is to be applied.

The only other question that I have to refer to is the question of the extent to which a payment on account comes within the Clayton Rule. In the course of argument the instance was given of a single purchase during the month and a payment on account of the following month. It seems to me to be doubtful whether a payment on account in those conditions would be a payment within the meaning of s. 4, sub-s. 5 of the Prices of Goods Ordinance 1940,<sup>1</sup> added by s. 3 of the Prices of Goods (Amendment) Ordinance 1941. But where, as in the present case, you have a series of items included in the one account and, on or before the last day of the month succeeding the month in which the purchases were made, a payment on account of the total of the price of such purchases, such payment is to be treated as a payment in full of the earliest items in the account to a value which with 2½% added amounts to the sum paid on account.

Applying this principle to the actual case before us, the payment by Mr. Forbes of £25 was a payment in full for goods purchased during the month of August 1942 starting from the beginning of that month, up to a sum which with 2½% added amounted to £25.

The Appellant, therefore, in insisting that the discount of 2½% provided for by s. 4, sub-s. 5 of the ordinance was not to be allowed in respect of that payment of £25 was in error as to the meaning of the subsection, and it follows that the appeal is to be dismissed and the conviction affirmed.

<sup>1</sup> Repealed. Vide Editorial Note.