

R. v. P. C. NICOLAI.

CRIMINAL APPEAL CASE No. 48 OF 1941.

Sugar Prices Order, 1940—mistake in sale of sugar no defence.

It is no defence to a charge to allege that the offence was committed in error. If the Court is satisfied that the offence was committed unintentionally this can and should be taken into consideration when deciding on the sentence.

As to the necessity of establishing *mens rea* in statutory offences, of late years the tendency of the Courts has been to attach less importance to this when the offence is the construction of an absolute prohibition, see *Gardner v. Akeroyd* 1952 2 A.E.R. 306.

Law, C.J. and Robinson, J.: It is clear from the evidence that the accused sold white sugar at a price in contravention of the Sugar Prices (Mongu-Lealui District) Order, 1940 (Government Notice No. 230 of 1940). In defence, the accused says that this was done in error, and quite unintentionally, and that she took steps immediately to rectify the mistake. This plea cannot avail her in law, because the Order in question imposes an absolute restriction against sale above a particular price, and it is immaterial whether the accused knew or did not know she was contravening this prohibition. (See *Hobbs v. The Winchester Corporation* (1910) 2 K.B.P., p. 471.) In our opinion, therefore, the Magistrate was right in finding the accused guilty of the offence charged. The question of sentence remains to be considered. The accused appears to have taken prompt action to correct what we believe to have been a mistake on her part. We feel, therefore, that a fine of 10s. would have been amply adequate in the circumstances, and we substitute this sentence for the sentence of £10 imposed by the Magistrate. The difference will be refunded to the accused.