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Dec. 16.

[CROWN CASE RESERVED.]

THE QUEEN *v.* TANKARD.

*Criminal Law—Embezzlement—Illegal Association—Property—Beneficial Owners—*31 & 32 Vict. c. 116, s. 1—*Companies Act*, 1862 (25 & 26 Vict. c. 89), s. 4.

The defendant was convicted on an indictment, drawn under 31 & 32 Vict. c. 116, s. 1, and charging him with having, whilst one of a number of beneficial owners consisting of himself, J., and others, embezzled money belonging to such beneficial owners. It was proved at the trial that the prisoner was the treasurer and a member of a trading club, which was an unregistered association of more than twenty persons such as is prohibited from being formed by s. 4 of the Companies Act, 1862, and that he received money belonging to the association and failed to pay over or account for it:—

Held, that the prisoner was properly convicted.

CASE reserved by the recorder of Bradford.

The prisoner, Michael Naylor Tankard, was tried at the Bradford Quarter Sessions, held on October 20, 1893, for that he on, &c., “being then one of a number of beneficial owners called the Bowling Feast Club, consisting of the said M. N. Tankard, W. K. Jackson, and others, did then, and whilst he was one of such beneficial owners as aforesaid, receive and take into his possession certain money to the amount, &c., for and in the name of and on account of the said beneficial owners, and the said money then fraudulently and feloniously did embezzle; and so the jurors, &c., do say that the said M. N. Tankard then in manner and form aforesaid the said money the property of the said beneficial owners as aforesaid from the said beneficial owners as aforesaid feloniously did steal take and carry away contrary to the statute,” &c.

The indictment was drawn under 31 & 32 Vict. c. 116, s. 1, which enacts that “if any person, being a member of any co-partnership, or being one of two or more beneficial owners of any money . . . shall steal or embezzle such money . . . every such person shall be liable to be . . . tried, convicted, and punished for the same as if such person had not been or was not a member of such co-partnership, or one of such beneficial owners.”

It was proved that the prisoner, W. K. Jackson, and about twenty-eight other persons, were the members of and constituted the Bowling Feast Club mentioned in the indictment, the prisoner being the treasurer of the club. The club traded with its members in coal and cloth, from which trading profits were made. Profits were also derived from fines and interest on loans paid by the members, and the whole of the proceeds of the club, consisting of such profits and the subscriptions, were divided equally among all the members at a fixed date in each year. The prisoner failed to produce or account for certain moneys, mentioned in the indictment, which he had received on account of the club, and for which he was accountable under the rules of the club. The club was not registered as a company under the Companies Act, 1862 (25 & 26 Vict. c. 89), or formed in pursuance of any other Act of Parliament, or of letters patent. The prisoner was convicted, and sentenced to a term of imprisonment.

The question for the opinion of the Court was whether he was properly convicted on the indictment.

T. R. D. Wright, for the prisoner. The conviction is bad, because the evidence established that the Bowling Feast Club was an illegal association within s. 4 of the Companies Act, 1862 (25 & 26 Vict. c. 89), which enacts that "no company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act," for the purpose of carrying on any business (other than banking) that has for its object the acquisition of gain, unless it is registered as a company under the Act, or formed in pursuance of some other Act or of letters patent, or is a company engaged in working mines within the jurisdiction of the Stannaries. This association, therefore, was incapable of holding property, or entering into valid contracts in respect of it. The incapacity has been established in civil actions: *Jennings v. Hammond* (1); *Shaw v. Benson* (2); *In re Padstow Total Loss and Collision Assurance Association*. (3) If the property had been laid in the indictment as the property of "The

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(1) 9 Q. B. D. 225.

(2) 11 Q. B. D. 563.

(3) 20 Ch. D. 137.

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Bowling Feast Club," it would be the same thing as if it had not been laid in any one, and the difficulty was not got over by laying it as the property of the prisoner, W. K. Jackson, and others, when once the evidence established that it was really the property of an illegal association. *Reg. v. Stainer* (1) is not an authority against this contention. The decision only was that a society in the nature of a trade union could prosecute its servant for embezzlement, notwithstanding that some of the society's rules were void as being in restraint of trade. In *Reg. v. Hunt* (2) it was held that the clerk of an association made criminal by statute could not be convicted of embezzling the money of the association. It is no answer to the objection to say that, if it be well founded, the property of the association could be lawfully taken by anybody who could get it, and that such a result is an absurdity. In *Reg. v. Robson* (3) a member of an association having for its object, not the acquisition of gain, but "the spiritual and mental improvement of its members," was held not to be a member of a "co-partnership" within 31 & 32 Vict. c. 116, s. 1, and therefore not liable to be convicted of embezzling the moneys of the co-partnership. It followed there that any member could steal or embezzle the property of the association without being liable to be convicted. *Rex v. Boulton* (4) does not apply to the present case. The Companies Act, 1862, deprives such an association as this of any legal existence. Therefore, when the property passed to the prisoner no civil proceedings could be brought against him in respect of it; and, it is contended, no criminal proceedings.

Walter Beverley, for the Crown, was not heard.

LORD COLERIDGE, C.J. The indictment in this case is drawn under 31 & 32 Vict. c. 116, s. 1, which is in these terms:—[His Lordship read s. 1.] It would almost seem as if the enactment was for the very purpose of sweeping away such an objection as has been taken here. There are a number of persons who join themselves together, not for any criminal purpose, but their joining together is not legalized. It is true that they have no legal existence as a company, association, or co-partnership; but

(1) 39 L. J. (M.C.) 54.

(2) 8 C. & P. 642.

(3) 16 Q. B. D. 137.

(4) 5 C. & P. 537.

they are none the less beneficial owners of property. In the indictment, the property was properly laid in the prisoner, W. K. Jackson, and others as beneficial owners. It does not follow that, because the club had no legal existence as a company, association, or co-partnership, the members had no legal existence as beneficial owners of property. It is untrue to say that they are not beneficial owners in fact. It has been decided, in *Reg. v. Stainèr* (1), before trade unions were legalized, that, where the property was laid in an association in the nature of a trade union, it did not follow that a person could not be convicted of stealing or embezzling their property, because the association did not in all respects conform to the law, and the grounds of that decision apply here. It seems to me that the case for the prisoner is gone the moment his counsel is obliged to admit that, if his contention be good, the property belonged to nobody, and could, so to speak, be scrambled for. It would be a very strong thing to hold that an association not expressly sanctioned by law, yet not criminal, is incapable of holding any property at all.

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 C.J.

I am of opinion that the conviction should be affirmed.

MATHEW, J. I am of the same opinion. I think that the persons who framed s. 1 of 31 & 32 Vict. c. 116, did it for the purpose of meeting such cases as this. The members of the club were clearly "beneficial owners" within the meaning of the section.

GRANTHAM, J. I am of the same opinion. The statute 31 & 32 Vict. c. 116, to my mind, is conclusive.

LAWRANCE and COLLINS, JJ., concurred.

Conviction affirmed.

Solicitor for the prisoner: *M. Banks Newell, Bradford.*

Solicitor for the Crown: *The Solicitor to the Treasury.*

(1) 39 L. J. (M.C.) 54.