

A

SAMPLE AND ANOTHER v. HULME.

[QUEEN'S BENCH DIVISION (Lord Goddard, C.J., Hilbery and Ashworth, JJ.),
October 4, 1956.]

B

Street Trading—Pedlar—Definition—Travelling and trading on foot—Salesman travelling in motor van to street and there going from house to house on foot—Pedlars Act, 1871 (34 & 35 Vict. c. 96), s. 3.

C

The appellants travelled to a street in a town by motor van and then went from house to house in that street on foot offering goods for sale. Neither appellant had obtained a pedlar's certificate. On an appeal by the appellants against convictions for acting as pedlars without such a certificate, contrary to s. 4 of the Pedlars Act, 1871, it was contended that the appellants were not travelling and trading on foot within the meaning of the definition of pedlar in s. 3 of the Act*, and so were not acting as pedlars.

Held: in going from house to house after leaving the motor van the appellants were travelling and trading on foot and so were rightly convicted. Appeals dismissed.

D

[For the definition of a pedlar, see 22 HALSBURY'S LAWS (2nd Edn.) 105, para. 189; and for cases on the subject, see 33 DIGEST 568, 535-539.

For the Pedlars Act, 1871, s. 3, s. 4, see 14 HALSBURY'S STATUTES (2nd Edn.) 1078, 1079.]

Case Stated.

E

This was a Case Stated by the Dewsbury justices in respect of their adjudication as a magistrates' court sitting at the Town Hall, Dewsbury, in the County of Yorkshire. On July 1, 1955, informations were preferred by the respondent against the appellants that each of them on May 26, 1955, at Dewsbury had unlawfully acted as a pedlar within the meaning of the Pedlars Act, 1871, without having obtained a certificate contrary to s. 4 of the Act.

F

The justices heard the informations on Jan. 19, 1956, and found the following facts: The appellants were employed as salesmen by a firm. On May 26, 1955, the appellants with two other employees of the same firm travelled to Dewsbury in a motor van in which there were also goods that the appellants intended to offer for sale or use as samples. The appellants had no horse or other beast bearing or drawing burden. In Dewsbury the motor van was parked in Reform

G

Street. The appellants left the van and went separately and on foot from house to house in Reform Street carrying goods with them. The appellant Sample offered for sale to a Mrs. Gledhill of 54, Reform Street, Dewsbury, one pair of blankets and one carpet. She agreed to buy the goods which were then left in her possession. A small deposit was paid. The appellant Sample gave two payment cards to her. The sale took place at the door of her house.

H

At the time of the sale the appellant Sample had also in his possession an eider-down. The appellant Walmsley offered for sale to a Mrs. Brierley of 34, Reform Street, Dewsbury, aforesaid, towels, sheets and a table cover. She agreed to buy a table cover which was left in her possession. The appellant Walmsley gave a payment card to her. The sale took place at the door of her house.

I

It was contended by the appellants that on the evidence adduced by the prosecution there was no case in law to answer in that the appellants had not acted as and were not pedlars as defined by s. 3 of the Pedlars Act, 1871. It was contended by the respondent that on the evidence the appellants did so act and were pedlars.

* The terms of the definition are printed at p. 448, letter D, post. Section 4 of the Pedlars Act, 1871, provides: ". . . Any person who—(1) acts as a pedlar without having obtained a certificate under this Act authorising him so to act . . . shall be liable for a first offence to a penalty not exceeding 10s., and for any subsequent offence to a penalty not exceeding £1."

The justices were of the opinion that the appellants had acted as pedlars as defined by s. 3 of the Act at a time when they were not holders of pedlars' certificates and accordingly found that the charges against them had been proved and ordered each of them to pay a fine of 10s. and 7s. 6d. costs. The question for the opinion of the High Court was whether on these facts the justices came to a correct determination in point of law. A

Richard Elwes, Q.C., and P. M. Syrett for the appellants. B
A. G. F. Rippon for the respondent.

LORD GODDARD, C.J.: This is a Case Stated by justices for the county borough of Dewsbury, before whom the appellants were charged with unlawfully acting as pedlars within the meaning of the Pedlars Act, 1871, without having obtained a certificate, contrary to s. 4 of the Act. C

The facts found by the justices show that these men, who are employed by a firm at Barnsley, travelled by motor van to Dewsbury and then got out of their van at Dewsbury and proceeded to go from house to house offering goods for sale. The question was whether they were acting as pedlars and, with all respect to the strenuous argument of counsel for the appellants, I should not have thought there was the smallest doubt about it. D

The Pedlars Act, 1871, s. 3, provides:

"The term 'pedlar' means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft." E

As the word "or" is disjunctive, the section reads in this way: "without any horse . . . travels and trades on foot and goes . . . to other men's houses carrying or exposing goods for sale". It seems to me that it is impossible to say that because a man arrives at a fixed point and there leaves his vehicle and proceeds to walk through the town, it may be for a mile or it may be for six miles, he is not travelling on foot. He is going from house to house and he is travelling from house to house. The word "travelling" cannot be used here as meaning travelling by train or travelling from one town to another. The man travels on foot as soon as he has left his car or his van or a house. I think that the justices came to the only possible conclusion, and I would dismiss this appeal. F G

HILBERY, J.: I agree.

ASHWORTH, J.: I agree.

Appeals dismissed.

Solicitors: *Paisner & Co.* (for the appellants); *Sharpe, Pritchard & Co.*, agents for *Town clerk*, Dewsbury (for the respondent).

[Reported by HENRY SUMMERFIELD, Esq., Barrister-at-Law.]