

19th November, 1985.

POLICE COURT APPEALS.

A.G. -v- Paul Hogan

DEPUTY BAILIFF: The appellant in this case was convicted by the learned Magistrate of an infraction of Article 2(1) of the Shellfish (Underwater Fishing) (Jersey) Regulations, 1983 by, in effect, fishing for Ormers near the 'Minquiers' and using breathing apparatus. He does not deny that in fact he was fishing for Ormers and did catch some Ormers at a point which was outside a distance of 3 nautical miles from the centre of the point due at sub-north at the Minquiers and he says that because that is so, he had not committed an offence. The Regulations themselves refer to the 'sea' but do not define what the 'sea' means nor what area is meant by that term. The appellant has suggested that by the enactment of the Sea Fisheries (Jersey) Law, 1962, and the powers conferred in that Law upon the States to pass regulations, that the regulations made under that Law correspond to regulations made in pursuance of the Order in Council of 1884, which allowed the primary regulations to be made. It is said therefore, that because that is so, the regulation made under Article 2 must be construed in accordance with the restrictions imposed by Article 1(2) a, b, and c but particularly b and by relating those restrictions to the final regulations, it followed that orders made under the final regulations were the equivalent of the regulations made under Article 2 and were thus restricted to the limited area. Unfortunately, that argument collapses - ingenious though it is - by the very fact that the moment the restrictions imposed by Article 2 b, and c have not been brought into effect by the appointed day regulations under the law and therefore, interesting and ingenious though that argument is, it cannot stand and I am not at all sure indeed, whether even if the regulations had been brought into effect whether that particular argument of the appellant's submissions would have commended itself to the Court. What might have commended itself but I do not pronounce on it, is the argument that because final regulations made in accordance with the 1884 Law must not be contrary to any permanent law and because the Sea-Fisheries (Jersey) Law is a permanent law, always assuming that all the parts of it had been brought into effect, then if there was a conflict between a regulation and a Sea-Fisheries Law as to what the meaning of the "sea" is in a regulation, the meaning of the "sea" in a regulation should be restricted to the same meaning as the "waters" in the Sea-Fisheries (Jersey) Law, 1962 because to do otherwise would be to infringe the powers of the Order in Council conferring upon the States the ability to make

primary regulations but I am not pronouncing on that. I am saying that that might be a matter for argument on another occasion - it is not an argument that can be advanced today. Another point of course, which is in support of that argument, that the interpretation of the golden rule would apply and it could be that of course, it would be absurd that there should be two different areas within which two different regulations affect fishing but that argument was countered by the Solicitor General. Firstly, by pointing out, as he has already done, we accept that the two restrictive parts 2(b) and (c) of the law of 1960 have not been brought into force and secondly the States may well have intended that the limitations, even if they were in force, were not to govern the wider interpretation of the word 'sea' in the triennial regulation. It is accepted that of course, that if the triennial regulation stands alone that 'sea' means territorial waters and that being so it is quite clear that the appellant was, in fact, fishing within territorial waters and we find that we cannot accept the submission that there is a restriction as suggested on the meaning of the word 'sea' by the appellant and the appeal is therefore dismissed.

From the way in which this case proceeded before the Magistrate, we would not think it right to interfere with the amount of the fine which he imposed, of £125. He had heard all the evidence, he had knowledge of the fact that there were 177 Ormers. We cannot find the fine to be inconsistent with similar fines in relation to the kind of thing the regulations are designed to stop. However, when we come to the question of the confiscation of the gear, or the apparatus, we have this difficulty: that within five months of the confiscation being imposed, the learned Magistrate is reported as saying and as far as I know it has not been challenged that that is wrong, in the case of three young men who were convicted in September of doing the same sort of thing - off Anne Port, I think it was - that if they had not been first offenders he would have confiscated their apparatus.

It seems to us that the Magistrate had it in his mind that he should issue a warning to persons who fish for this rare commodity as it has now become - and we take judicial notice of the fact that it is a rare commodity, and people who fish in contravention of the orders of the States, with underwater breathing apparatus, clearly are endangering what is left of the species around this coast, and certainly in normal circumstances people who insist on doing it will have their apparatus taken away, but under these particular circumstances we think that the Magistrate, having formed in his mind five months later, a principle, should have applied it earlier. We really think that we should quash the order for confiscation, and the apparatus is returned, but I do issue a warning to you, Mr. Hogan, don't be tempted again to do it, because we won't take the same view next time. No order for costs.