

opinion the plaintiff is not entitled to object to the defendant filing an amended plea unless the plaintiff satisfies the Court that the conduct of the defendant in not paying the costs which she has been ordered to pay is vexatious. There is no allegation to that effect. The respondent's attorney has made an affidavit stating that the respondent is endeavouring to obtain money to pay the costs, and therefore, quite apart from the want of allegation of vexatious conduct on the part of the defendant, it is not a case in which the Court ought to prevent the defendant from placing her defence on record. The application must be refused.

Mr. *de Waal* has urged that, in view of the fact that the respondent's attorney stated that the costs would be paid "by the end of the week," and that no further notice was taken of the plaintiff's letter of the 22nd February, the Court ought not to grant the respondent her costs of the application. But I do not think the respondent ought to be refused costs. The application fails by reason of there not being sufficient grounds set out in the application for the order which is asked. As I have said, there is nothing to show that there has been vexatious conduct on the part of the respondent, and, therefore, the ordinary course should be followed, namely, that the application being refused, the respondent is entitled to the costs of the application.

Attorney for Applicant: *J. Aaronson*; Attorney for Respondent: *M. Lichtenstein*.

[Reported by *Adolf Davis*, Esq., Advocate.]

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REX v. WEYMAN.

1913. March 3. WESSELS, MASON, and GREGOROWSKI, JJ.

*Criminal law.—Habitual criminal.—Counterfeit coin.—Ordinance 26 of 1904, sec. 24.—Act 9 of 1911, schedule.*

Among the offences mentioned in the schedule to Act 9 of 1911 is "counterfeiting coin or uttering counterfeit coin knowing the same to be counterfeit"—*Held*, that under such offence was included a contravention of sec. 24 of Ordinance 26 of 1904.

Argument on question reserved for the decision of the Provincial Division by *CURLEWIS, J.*

The accused was charged with contravening sec. 24 of Ord. 26 of 1904 (uttering or passing counterfeit coin) and pleaded guilty. He admitted a number of previous convictions, including three for housebreaking with intent to steal and theft, and was at the time of his trial undergoing a sentence of six years' hard labour passed on him by the High Court at Durban on the 25th August, 1911. CURLEWIS, J., declared the accused an habitual criminal.

In his minute on the case the learned judge remarked: "In view of the fact that a contravention of sec. 24 of Ord. 26 of 1904 is not one of the crimes mentioned in the Schedule to Act 9 of 1911, though the common law offence of counterfeiting coin or uttering counterfeit coin knowing the same to be counterfeit is mentioned in that schedule, I reserved for the consideration of the Transvaal Provincial Division whether the sentence passed by me is legal."

*F. W. Beyers, K.C., A.-G.* (with him *A. A. Schoch*), for the Crown, submitted that both the common law and statutory crime of uttering or passing counterfeit coin were covered by the schedule.

No appearance for the accused.

WESSELS, J.: The accused was charged with contravening sec. 24 of Ordinance 26 of 1904. He pleaded guilty and was sentenced. At the time of his trial he had been several times previously convicted and sentenced for various crimes, and the question arose whether he could be declared an habitual criminal in terms of Act 9 of 1911. This Act provides that any person in the Union who has twice been convicted, before or after the commencement of the Act, of an offence mentioned in the schedule to the Act, if he be again convicted after the commencement of the Act of any of the offences mentioned in the schedule, may be declared an habitual criminal by the presiding Judge. The section which the accused was charged with contravening (sec. 24 of Ordinance 26 of 1904) says that "Any person who utters, pays, passes off, tenders, offers or otherwise uses as current coin any counterfeit coin which he knows to be counterfeit shall be liable upon conviction to imprisonment with hard labour for a period not exceeding seven years." The question for decision is whether, inasmuch as the schedule to Act 9 of 1911 merely mentions "Counterfeiting coin or uttering

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Sec. 24 of Ord. 26 of 1904 reads: "Any person who utters, pays, passes off, tenders, offers or otherwise uses as current coin any counterfeit coin which he knows to be counterfeit shall be liable upon conviction to imprisonment with hard labour for a period not exceeding fourteen years."

counterfeit coin knowing the same to be counterfeit," and does not refer to sec. 24 of Ordinance 26 of 1904, the accused could be declared an habitual criminal under the circumstances of the present case. It seems clear to me that the schedule to Act 9 of 1911 merely describes particular classes of offences in general terms. Thus it speaks of "theft," "extortion by threats," "offences described in any law for regulating dealing in precious metals or in precious stones," etc. There was no intention on the part of the legislature to specify the particular statute by virtue of which the crime was constituted, but merely in a general way to describe the crime which may make of a convicted prisoner an habitual criminal. Take, for instance, the case of theft. A person who steals stock is guilty of theft. But the legislature has found it good to make certain special provisions with regard to persons who steal stock, therefore we have a statute called the Stock Theft Ordinance, in which various punishments are affixed to the stealing of stock. Now a person who steals stock commits theft, though he also transgresses the statute. So in the case of goods stolen from the railway, a person who steals such goods commits theft, but he also commits a breach of a particular statute. So also in the present case a person who counterfeits coin or utters counterfeit coin commits the crime of counterfeiting or uttering counterfeit coin, and the fact that a special punishment is established for the offence by an Act of Parliament does not the less make such a person guilty of counterfeiting coin or uttering counterfeit coin. I think, therefore, the learned judge was correct in declaring the accused an habitual criminal.

MASON, J. : I concur. I do not think that the offence of counterfeiting coin becomes less counterfeiting coin because there is a statutory provision as to the punishment for that offence, that statutory punishment being, I believe, a less punishment than might be inflicted under the common law.

GREGOROWSKI, J. : I agree.

[Reported by *Adolf Davis*, Esq., Advocate.]

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