

1900.
June 30.

CADER LEBBE v. DON ISSAN.

P. C., Kalutara, 8,949.

Ordinance No. 1 of 1895 ss. 47, 48—Duty of parents to report birth of child—Duty of police officers and village headmen to give information of such birth “within seven days”—Rule of interpretation of Ordinance.

Under the Ordinance No. 1 of 1895 it is the duty of parents to report the birth of their child within forty-two days from its birth, and it is the duty of a police officer or headman who has received such information to report the matter to the registrar within seven days of his receiving the information.

If two constructions of an Ordinance are possible, one of which is reasonable and the other unreasonable, it is the duty of the Court to choose the one which makes the Legislature to express a reasonable intention.

THE accused, being a police headman, was charged with not giving information on a printed form (S, in second schedule of Ordinance No. 1 of 1895) to the registrar of Beruwalbadda of

the birth of a certain child on 7th February last within seven days of such birth, in breach of section 47 thereof.

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The accused admitted that he knew of the birth of the child, and explained that he sent a report of its birth to the registrar, though not on a printed form, because on that day he had no printed forms in his possession.

The Police Magistrate was of the following opinion:—

“ I take section 47 of the Registration Ordinance to be supplementary to section 12, so that if the parents of the children failed to register their births within the prescribed time, the headman shall inform himself of such births and notify them to the registrar.

“ I can quite understand that in some cases it would be a matter of difficulty for the headman to get information within seven days of a birth in his village, but I must administer the law as I find it. No duty is therein cast upon parents to inform the headman within seven days of a birth. So it is immaterial whether the father of the child gave information or not of the birth of this child on the day after its birth. The purpose of section 47 would be defeated if this was the case. The words of this section are distinct: ‘ It shall be the duty of every headman to *inform himself*,’ clearly showing that he must not omit to be informed, but must take steps to inform himself.

“ The accused admits that he did not send a report of the birth till the 27th February. His excuse as to not sending the report on a printed form is frivolous. If he had no printed forms in stock, he should have applied to the registrar before the stock in hand was exhausted. I find the accused guilty of a breach of section 47, and fine him Rs. 5 under sub-section (1) of section 48.”

The accused appealed.

H. Jayawardena, for appellant.

A. Driberg, for respondent.

BONSER, C.J.—

In this case the Police Magistrate has construed section 47 of the Ordinance No. 1 of 1895 in a way which does not commend itself to me. That section is as follows:—“ It shall be the duty of every police officer and village headman to inform himself of every birth and of every death occurring within his jurisdiction, and to give within seven days information thereof in writing in the Form S or T in the second schedule thereof, with the particulars required by this Ordinance to be registered, to the registrar of the division.” Section 48 provides that any

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person who omits to give any information or notice, or make any report required of him by this Ordinance, shall be guilty of an offence, and shall be liable on conviction before a Police Court to a fine not exceeding Rs. 100, or to simple or rigorous imprisonment for a term not exceeding six months, or to both fine and imprisonment, or on conviction before a District Court or the Supreme Court to such sentence as such Court is authorized by law to pass. It would appear that the intention of the Legislature was to limit the punishment to be inflicted by a Police Court, but to give a District Court or Supreme Court power to pass any sentence to the full extent of its powers. Now the Supreme Court is authorized to pass the sentence of death, so that it would seem that the Legislature has authorized it to pass sentence of death on a person for omitting to give information as to the birth of a child.

The question raised in this case was, what is the meaning of the words "within seven days"—seven days from what point of time? The Magistrate thought that the Legislature had expressed itself rather vaguely, but was of opinion that the Legislature must have meant seven days from the date of the birth or death, as the case may be, but not, as was contended on behalf of the accused, within seven days of the receipt of the information. He says the purpose of the section would be defeated if the time were to be reckoned from the date of the headman receiving the information, for that the date of his receiving information would be known only to himself. I must say that I cannot follow that contention.

The parents or the persons who gave the headman the information could be called to speak to the date on which they informed the headman, and, if within seven days from that date, he omitted to report the matter to the registrar, then he would be guilty of an offence. The Magistrate has held that the Legislature intended that the headman should be held guilty of an offence if he did not within seven days from the birth or death of the child, whether he knew of it or not, report the fact to the registrar. In my opinion, the Legislature never intended anything so unreasonable. If two constructions are possible, one of which is reasonable and the other unreasonable, it is the duty of the Court to choose the one which makes the Legislature to express a reasonable intention.

The form of the report given in the schedule shows clearly that the headman is only to report such information as he is able to obtain. The parents are also bound by this Ordinance to report the birth of a child. They are allowed, for that purpose, forty-two days from its birth; and within that time apparently

they have to give it a name; but I do not find any provision that they are to give it a name until they make their report. The headman, however, according to Form S, is bound within seven days from its birth to report the name of the child. He is also bound to report the father's name. But if the child is illegitimate, he has no means of ascertaining who the father is. He is not entitled to hold an inquisition into the paternity of the child. He is only bound to report the information he receives. That confirms me in the view that he is not bound to report the birth of a child when he is not aware that it has taken place.

In the present case there is evidence, upon which the Magistrate has not adjudicated, that the headman had information of the birth of the child, and that he did not make his report within seven days of receiving it.

I therefore send the case back for the Magistrate to adjudicate upon this question of fact.

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