

1931

Present : Macdonell C.J.

BARTHOLOMEUSZ *v.* SINNETAMBY

445—P. C. Kandy, 35,673

*Excise Ordinance—Notification prohibiting sale of ganja under s. 16 (3)—
Rules passed subsequently under s. 31—Effect of subsequent notification
—Ordinance No. 8 of 1912, ss. 16 and 31.*

Where the Governor, in exercise of the powers vested in him by section 16 (3) of the Excise Ordinance, issued a notification prohibiting the possession of ganja,—

Held, that the notification in question was not affected by a notification made under section 31 of the Ordinance by which the Governor purported to repeal all the rules previously made under the Excise Ordinance.

A PPEAL from a conviction by the Police Magistrate of Kandy.

Soertsz, for the accused, appellant.

L. M. de Silva, Deputy S.-G. (with him *Deraniyagala*), for the Attorney-General.

December 3, 1931. MACDONELL C.J.—

In this appeal it is quite clear that the finding on the facts is correct.

The only point really before me is this point of law which has been raised. To decide it, we must understand what the Interpretation Ordinance, No. 21 of 1901, lays down, particularly section 11 (1) (a), where it says that a rule may at any time be amended or revoked by the same authority and in the same manner by that in which it was made, and this provision is supplemented by section 11B of the same Ordinance, which says that, where an Ordinance confers power to make any instrument, that is to say, any orders, rules, or regulations, expressions used in the instrument shall, unless the contrary

intention appears, have the same respective meanings as in the Ordinance conferring the power. If we keep these sections in mind—and I am very much obliged to learned counsel for drawing my attention to them—then the difficulty raised on the appeal disappears. The Governor in Executive Council is by section 16 (3) of the Excise Ordinance, No. 8 of 1912, empowered to issue an instrument, that is to say, an order by means of notification, prohibiting the possession by any person throughout the whole Island of any excisable article, and by Excise Notification No. 26 he has exercised that power with regard to the excisable article known as *ganja*. Then applying section 43, we find that a person who possesses *ganja* does so in contravention of “an order made under this Ordinance” and, if so, is punishable accordingly. It is perfectly true that under an entirely different section, number 31, the Governor has in accordance with the powers given him by that section made an instrument, that is to say, certain rules, which rules are to be found in Excise Notification No. 135 (see again section 11 (1) (a) of the Interpretation Ordinance). The authority by which the Governor makes these rules is to be found in section 31 of the Excise Ordinance which is an entirely different one from the authority, section 16 (3), under which he has made the order to be found in Excise Notification No. 26. Consequently when Excise Notification No. 135 purports to repeal all rules previously made under the Excise Ordinance, No. 8 of 1912, it does not do anything more than it has power to do, it repeals all rules made under the authority of section 31 of the Ordinance. It does not repeal orders made under a different authority, namely, section 16 (3) of the Ordinance, nor does it purport to do so. I am quite satisfied that this disposes of the appeal before me, and in support of it one can look at the contents of the Notification No. 135 which are in their subject-matter quite different from the contents of Notification No. 26. I am quite satisfied that Excise Notification No. 26 is still of full force and effect and also, although it is not necessary for the decision of this case, Notification No. 46. For the foregoing reasons I am of opinion that this appeal must be dismissed.

Appeal dismissed.