

1946

Present : Dias J.

MUHEED, Appellant, and ABEYESINGHE (P. S. 271),
Respondent.

1,100—*M. C. Kegalla, 10,975.*

*Defence Food Control (Special Provisions) (No. 3) Regulations, 1943,
Regulation 15 (2)—Charge of unlawful possession of rice ration books—
Prosecution must prove actual and exclusive possession.*

In a prosecution for possession of rice ration books other than those issued to the accused and the other members of his household, in breach of Regulation 15 (2) of the Defence Food Control (Special Provisions) (No.3) Regulations, 1943, it must be proved that the accused's possession of the books was actual and exclusive.

A PPEAL against a conviction from the Magistrate's Court, Kegalla.

F. A. Hayley, K.C. (with him *H. W. Jayewardene*), for the accused, appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

Cur. adv. vult.

¹ (1943) 44 N. L. R. 466 at 468.

October 29, 1946. DIAS J.—

The appellant was charged under section 52 (3) (a) of the Defence (Miscellaneous) Regulations of 1942 with having, in breach of Regulation 15 (2) of the Defence Food Control (Special Provisions) (No. 3) Regulations, 1943, on January 10, 1946, in his possession certain rice ration books other than those issued to himself and the other members of his household.

Two accused were originally charged. The police withdrew the charge against the 2nd accused.

The appellant is the manager of one Ahamad's boutique. There are several salesmen employed in it, and 142 householders are "attached to it" for purposes of drawing their rations.

On the day in question at 3.30 p.m. Captain Samaraweera, the supervising officer of the Kegalla Food Control Department, searched this boutique in the presence of the Assistant Superintendent of Police and the appellant. In a drawer of an almirah behind the cashier's table were found nine rice ration books. These admittedly did not belong to any person living in that boutique. Three of these books belonged to the household of a man called Abdul Hamidu, and four of them belonged to a woman, Kiribandu. Both these persons were called by the prosecution. Hamidu says that on the day in question he came with the books to the boutique to buy goods. Malarial fever came on while he was there. He slept on some bags. Later having purchased his things he went away leaving his ration books behind by mistake. Kiribandu says that she went to the boutique leaving a sick child at home. Another child came and told her that the patient was in convulsions. The distracted mother ran home forgetting to take the ration books. This evidence is rounded off by the accused who says that he has nothing to do with sales, and until the authorities found them in the almirah, he did not know they were there. He did see some ration books on a table in the boutique and sent word to the owners before the search.

A more foolish prosecution cannot be imagined. Possession, to be criminal, must be actual and exclusive, for criminal liability does not attach to constructive possession, *Banda v. Haramanis*¹.

Where a person is charged with being in possession of a thing unlawfully the prosecution must prove that such possession was with the knowledge and sanction of the accused—*Talaisingham v. Muttiah*².

The evidence led for the prosecution itself proves that the presence of these books in the almirah cannot be held in law to be in the possession of this accused. Were a guest to visit the house of Captain Samaraweera, the supervising officer, Food Control, Kegalla, and accidentally left behind his ration book, which Captain Samaraweera kept in his almirah until it was reclaimed, he will, I think, be indignant were he to be charged under this Regulation and fined Rs. 10.

I quash the conviction and acquit the appellant.

Appeal allowed.

¹ (1919) 21 N. L. R. 141.

² (1936) 39 N. L. R. 140.