

particular part where the machines were, where he slipped and fell" (*per* Lord Sumner). I note that in his opinion Lord Sumner agreed that if the accident had happened in the street, the case would have been different.

In the present case Solomon came by his death when he was on the highway for a purpose (no doubt a very necessary purpose) of his own. He was not there in respect of any special duty which he owed to his master. It therefore follows that the accident did not arise "out of and in the course of" his employment within the meaning of the Ordinance. I set aside the order appealed from, but make no order as to costs.

Order set aside.

1949

Present: Basnayake J.

DINAPALA, Appellant, and INSPECTOR OF POLICE,
GALLE, Respondent

S. C. 954—M. C. Galle, 8,889

Explosives Ordinance—Keeping fireworks—Breach of Special Order—Chapter 140—Sections 28 and 7.

A special order under section 28 of the Explosives Ordinance does not come within the ambit of section 7, and a breach of the order is not punishable under that or any other section.

APPPEAL from a judgment of the Magistrate, Galle.

D. S. Jayawickrama, for accused appellant.

R. A. Kannangara, *Crown Counsel*, for the Attorney-General.

Cur. adv. vult.

March 23, 1949. BASNAYAKE J.—

The accused-appellant has been convicted of the following charges and ordered to pay a fine of Rs. 150 on the first charge and a fine of Rs. 50 on the second:—

- (1) "That you did, within the jurisdiction of this Court, at Dadalla, on February 20, 1948, keep fireworks containing a mixture of potassium chlorate and aluminium powder in breach of the Special Order No. 1 made under section 28 of Chapter 140

of the New Legislative Enactments of Ceylon published in *Government Gazette* No. 8,295 of June 11, 1937, and thereby committed an offence punishable under section 7 of Chapter 140 of the New Legislative Enactments of Ceylon.

- (2) "At the same time and place aforesaid the above-named accused did keep explosives exceeding sixty pounds in a place except in a store for explosives either lawfully existing or licensed under the Explosives Ordinance for keeping such explosives or in premises registered under the Explosives Ordinance for keeping such explosives in breach of section 15 (1) of Chapter 140 of the New Legislative Enactments of Ceylon and thereby committed an offence punishable under section 15 (3) of Chapter 140 of the New Legislative Enactments of Ceylon."

The facts relating to the charges are as follows :—

On February 20, 1948, Sub-Inspectors Schokman, Jayasekera and Seedin visited the fireworks factory of one Deonis, a brother-in-law of the accused. The accused was in the factory at the time actively engaged in the manufacture of fireworks. The Sub-Inspectors went from there along with the accused to a tea boutique about a quarter of a mile away. They recovered therefrom 175 boxes of triangular crackers called "batta", 58 packets of crackers, and 14 boxes of mixed fireworks. Some of them were in, and others on the top of, a glass show case of the boutique. The Government Analyst examined specimens of these crackers and fireworks and he identified potassium chlorate and aluminium powder in all the specimens.

I shall now discuss the charges in their order. The first charge alleges an offence punishable under section 7 of the Explosives Ordinance. The material portion of that section reads: "The breach of any of the regulations made under the provisions of this Ordinance shall constitute an offence punishable on conviction, by a fine not exceeding two hundred rupees". It is not alleged in the charge that the accused committed a breach of any of the regulations made under the Ordinance. The allegation is that he committed the breach of a special order made under section 28. Does a special order come within the ambit of the words "any of the regulations made under the provisions of this Ordinance" in section 7? Section 3 provides for the making of rules, section 5 provides for the making of regulations, and section 6 gives both classes of delegated legislation upon publication in the *Gazette* the same force as if they had been inserted in the Ordinance. There is a further class of delegated legislation spoken of as "special rules" in section 18. Then comes the class of delegated legislation known as "special order" empowered by section 28. The expressions "rule", "regulation", "special rule" and "special order" are not defined in the Ordinance. But it is clear from the context of the Ordinance that those expressions have not been used indiscriminately to mean the same thing. It seems to me that in the Explosives Ordinance the Legislature intended to create four classes of instruments of delegated legislation. Delegated legislation by "special

order" is rare in Ceylon although in English legislation the term "special order" is "used with bewildering variety". I have no doubt in my own mind that a "special order" under section 28 does not come within the ambit of section 7. The breach of a special order is therefore not punishable under the latter section. The breach of a special order not being punishable under section 7 or any other section of the Explosives Ordinance, the conviction on the first charge cannot be sustained and must be set aside.

The allegation in the second charge is that the accused "did keep explosives exceeding sixty pounds in a place except in a store for explosives either lawfully existing or licensed under the Explosives Ordinance for keeping such explosives or in premises registered under the Explosives Ordinance for keeping such explosives". That allegation does not bring him within the pale of any offence under the Ordinance or any other enactment.

The accused had a licence to stock explosives in the premises in which they were found although the premises were not registered for the storage of explosives. It is not alleged that he kept explosives in breach of his licence. He has therefore committed no breach of section 15 of the Explosives Ordinance. The conviction on this charge too cannot be sustained and must be quashed.

When he imposed a fine of Rs. 50 on the accused in respect of the second charge the learned Magistrate does not appear to have had before him the provisions of section 15. It is therefore necessary that I should draw his attention to that section. The consequences of a breach of section 15 are the forfeiture of all or any part of the explosives found in premises in which they are kept contrary to its terms and a maximum penalty of one rupee for every pound of explosives so kept. Although the word used in section 15 for the purpose of indicating the pecuniary forfeiture that may be imposed thereunder is "penalty" and not "fine", I am of opinion that the "penalty" prescribed therein is in fact what in the language of the Criminal Procedure Code is a fine. The definition of the expression "fine" in section 2 of the Criminal Procedure Code is in my view wide enough to embrace the pecuniary forfeiture provided in section 15 under the nomenclature of "penalty". All the penal provisions of the Explosives Ordinance, save section 7, speak of penalty. The use of the expression "fine" in that section does not in my view afford a sound basis for holding that the expression "penalty" should bear a different meaning. According to Wharton's Law Lexicon a penalty is a sum, also called a fine, recoverable in a Court of Summary Jurisdiction from a person infringing a statute. In my view a penalty imposed under section 15 may be recovered in the same way as a fine. The Customs Ordinance is another Ordinance wherein the words "penalty" and "fine" are used indiscriminately. In that Ordinance special provision is made (section 139) that all penalties and forfeitures incurred thereunder may be recovered by civil suit in the name of the Attorney-General. It is unnecessary for the purposes of this case to consider whether penalties under the Customs Ordinance may also be recovered in the manner prescribed in the Criminal Procedure Code.

In passing I wish to say a word about the way in which the Explosives Ordinance is described in the charges. It is referred to as "Chapter 140 of the New Legislative Enactments of Ceylon". The correct way to describe an Ordinance in the Revised Edition of the Legislative Enactments is by its short title. It is sufficient to refer to the Explosives Ordinance as "the Explosives Ordinance" without more. So in the case of any other Ordinance in the Revised Edition.

The appeal is allowed and the accused is acquitted.

Appeal allowed.

1949

Present: Gratiaen J.

WIJE, Appellant, and ABEYSUNDERA (Excise Inspector),
Respondent

S. C. 695—M. C. Teldeniya, 6,379

Sentence—Imposition of fine without imprisonment—Means of accused should be considered—Time should be given for payment—Payment of Fines (Courts of Summary Jurisdiction) Ordinance, No. 49 of 1938.

The terms of the Payment of Fines (Courts of Summary Jurisdiction) Ordinance are specially designed to give a convicted person, in cases where the imposition of a fine is thought to be appropriate, an opportunity of paying within a reasonable time an amount which is fixed with reference to his means.

APPPEAL from a judgment of the Magistrate, Teldeniya.

T. B. Dissanayake, with V. S. A. Pullenayagam, for the accused appellant.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 14, 1949. GRATIAEN J.—

The accused in this appeal is 17 years old. He has been convicted of two offences punishable under the Excise Ordinance, namely of possessing a small quantity of fermented toddy in excess of the permitted amount, and of having been tempted to sell a part of it to a decoy for cents 25. He was sentenced on each count to pay a fine of Rs. 250 or in default to undergo a term of six weeks rigorous imprisonment to run consecutively.

On the merits I am satisfied that the charges have been clearly proved, and the convictions must therefore be affirmed. The appeal against the sentences remains for consideration.

No previous convictions had been recorded against the appellant, and having regard to his age, the learned Magistrate rightly decided that the imposition of a fine in lieu of a sentence of imprisonment would meet