

1942

Present : Cannon J.

S. G. DE ZOYSA (A.S.P., JAFFNA) v.
CUMARASURIA.

456— M. C. Jaffna, 19,190.

Lighting Restriction Order—Judicial notice—Proof of Order by Minister and of notice to Public—Defence (Miscellaneous) Regulations, No. 43.

A Court cannot take judicial notice of the fact that a blackout has been ordered in a particular place. There must be evidence that a blackout had been ordered by the Minister and notified to the public as required by law.

¹ (1892) 2 Ch. D. 53 at 58.

A PPEAL from a conviction by the Magistrate of Jaffna.

R. L. Pereira, K.C. (with him N. K. Choksy and N. Kumarasingham),
for accused, appellant.

E. H. T. Gunasekera, C.C., for complainant, respondent.

Cur. adv. vult.

July 14, 1942. CANNON J.—

This is an appeal against a conviction by the Jaffna Magistrate under the Lighting Restriction Order, 1940. The charge was that the appellant on May 11, 1942, failed to have the light in his house shaded or obscured in such manner as to ensure that no direct or reflected light from the building was visible from any point or place outside the building, in contravention of Lighting Restriction Order, 1940, made by the Governor by virtue of the powers vested in him by Regulation 43 of the Defence (Miscellaneous) Regulations and published in paragraph 15 of the *Government Gazette Extraordinary* No. 8,628 of June 28, 1940, and in paragraph 11 of the *Government Gazette Extraordinary* No. 8,859 of February 5, 1942, and thereby committed an offence punishable under section 52 of the Defence (Miscellaneous) Regulations.

The substance of the two paragraphs referred to in the charge is as follows:—Paragraph 15 states how lighting shall be obscured, e.g., “in such manner as to ensure that no direct or reflected light from the building is visible from any point or place outside the building”, while paragraph 11 states that the scope of the order includes Jaffna.

The facts were not disputed, and Mr. Pereira, for the appellant, admitted that they constituted an infringement of the Lighting Restriction Order. The appeal was on the law, two main points being taken, namely, (1) that the charge was defective, (2) that it was not proved that the Lighting Restriction Order was in force in Jaffna.

As regards the first ground it was agreed that the number of paragraph 11 in the *Gazette* of February 5, 1942, was changed to No. 10 in the *Gazette* of March 9, 1942, and that the appellant was not informed of this alteration in the number. Mr. Pereira contended that this was such a fundamental defect as to make the charge one not founded on the law. Now the paragraph had no material relevance other than to inform the appellant that the place where the light was unobscured was within the scope of the Order and, in my view, the fact that the number of the paragraph was incorrectly stated does not vitiate the conviction.

On the second point it was conceded by Mr. Gunasekera that unless there was evidence by which the Magistrate could be satisfied that a partial black-out was in force at the time of the alleged offence, the conviction could not be upheld. In his judgment, the Magistrate says: “By virtue of paragraph 7 of Part II. of the Lighting Restriction Order 1940, referred to in *Gazette* No. 8,628, the Minister of Local Administration has declared the whole of the Revenue District of Jaffna (excluding the Divisional Revenue Officer’s Division of Punakari-Tunnukai and that part of the Divisional Revenue Officer’s Division of Pachchilapalai

Karachchi, which lies to the south of the Jaffna lagoon) to come under the Emergency Partial Blackout from 6 P.M. on February 6, 1942, until further notice. This Notification is published in the *Government Gazette Extraordinary* No. 8,859 of February 5, 1942. The Emergency Partial Blackout affecting Jaffna is still in force. There is no evidence to the contrary." The only evidence before the Magistrate on this point was the *Gazette* to which he referred. It was suggested that a blackout was being observed in Jaffna on the date in question and that fact was therefore sufficiently notorious to justify the Magistrate in taking judicial notice of it; but a condition precedent to the charge being established was not that a blackout was being observed, but that it had been ordered by the Minister and notified to the public of Jaffna as provided by law. I do not think it can be assumed that such a fact was a matter of notoriety, and it follows that, even assuming it was true, the Magistrate could not act upon it without evidence of it being specifically adduced. The Defence (Miscellaneous) Regulations seem to have contemplated the necessity for such specific evidence, because in section 43 (2A) a method of proof is given. It states that in such proceedings "a certificate issued by or on behalf of the competent authority for any town, place or area to the effect that such Order was in operation in that town, place or area on any day or at any time or during any period mentioned in the certificate, shall be conclusive evidence" of such fact.

In short, no evidence was adduced that a blackout was in force, and therefore the conviction cannot be sustained.

The appeal is allowed.

Set aside.