

1955

Present : Gunasekara, J.

K. A. KULATUNGE, Appellant, and THE SUPERINTENDENT,
ELECTRICAL DEPARTMENT, WELIGAMA URBAN COUNCIL,
Respondent

S. C. 400—M. C. Matara, 34,7-11

Electricity Act, No. 19 of 1950—Section 66—Cutting electric wire—Ingredients of offence—“ Unlawfully ”.

In a prosecution under section 66 of the Electricity Act for cutting electric wires the complainant must establish that the accused acted unlawfully when he cut the wires.

APPPEAL from a judgment of the Magistrate's Court, Matara.

G. E. Chitty, with *A. K. Premadasa*, for accused-appellant.

Christie Seneviratne, with *D. S. Nelhsinghe*, for complainant-respondent.

Cur. adv. vult.

February 25, 1955. GUNASEKARA, J.—

The appellant was convicted of an offence punishable under section 66 of the Electricity Act, No. 19 of 1950, alleged to have been committed by him on the 5th December, 1953, and was sentenced to six weeks' rigorous imprisonment.

The section is in the following terms :

“ Whoever unlawfully and maliciously cuts or injures any electric line or works with intent to cut off any supply of energy shall be guilty of an offence punishable with a fine not exceeding five hundred rupees or with imprisonment of either description for a term not exceeding six months or with both such fine and such imprisonment. ”

At the time of the alleged offence the Urban Council of Weligama was supplying the appellant with electricity for payment, in pursuance of an agreement that they had entered into in April, 1947. The agreement contains a clause stating that the Council “ reserves the right to connect other consumers to the service main wherever the supply to the original applicant is not affected thereby ”. In purported exercise of such a right the Council connected the house of another of its customers, Edmund, to the service main supplying the appellant's house. The new service main was fixed to a support on a wall of the appellant's house and was stretched over his roof to that of Edmund's house 90 feet away. This had been done in the appellant's absence and in spite of his having on an

earlier occasion objected to its being done. He returned home just as the Council's workmen had finished their work and he asked them to disconnect the wires that they had fixed. They refused to do so and he thereupon cut the wires (which were already charged with electricity) at the place where they had been fixed to the support.

One of the ingredients of the offence alleged to have been committed by the appellant is that he acted "unlawfully" in cutting the wires. Therefore the conviction cannot stand unless there is proof of facts that made it unlawful for him to cut them although they had been attached to his house in spite of his objection and those who fixed them refused to remove them. His act could not be unlawful unless the Urban Council and its servants acted lawfully in fixing the service main for the supply of electricity to Edmund's house.

Section 2 (1) of the Electricity Act provides that (except in certain circumstances that have no application to the present case) "no person unless he is authorised in that behalf by a licence granted by the Minister, shall . . . for any fee or reward supply electrical energy to any other person", and in terms of section 62 (1) a contravention of this provision is an offence. The respondent was cross-examined at the trial as to whether the Urban Council had a licence to sell electrical energy and he said that it had but that he had "not brought the licence". In re-examination he repeated his assertion that "the Weligama Urban Council is a licensee", but the licence was not produced. Even the witness's statements that the Council had a licence did not refer to the time of the alleged offence but the time of the trial.

Among the provisions that may be included in a licence issued under the Act, are, as may be expected, provisions relating to "the authorised area of supply" (section 4), and a licensee is prohibited from supplying electrical energy to any person outside that area unless the supply to that person has been authorized by an order made by the Minister (section 10 (4)). Even if it is assumed that at the material time the Council held a licence to supply electrical energy for payment there is no evidence as to what was the authorized area of supply at that time or whether Edmund's house, or even the appellant's house, was situated in that area, or whether the Council was in any manner authorized under the Act to supply electrical energy to either house for payment. The "right to connect other consumers to the service main" which the Council purported to reserve to itself in its agreement with the appellant can only be a right to connect consumers whom it could supply with electricity without contravening the law. In the absence of evidence of the terms of the licence, if indeed the Council had one which was in force on the 5th December, 1953, the prosecution has failed to establish that the appellant acted unlawfully when he cut the wires.

I set aside the conviction of the appellant and the sentence passed upon him and I acquit him.

Appeal allowed.