

1968

*Present : Samerawickrame, J.*

K. A. JAYAWARDHENA, Appellant, and  
R. THIRUCHELVAM, Respondent

*S. C. 1130/67—M. C. Colombo South, 77729/A*

*Criminal Procedure Code—Sections 338 (2) and 339—Time limit for appeal—Computation—Sundays cannot be excluded—“ Dies non ”—Holidays Act, No. 17 of 1965, s. 2 (a)—Applicability of maxim cessante ratione legis cessat ipse lex.*

As Sunday is no more a *dies non* by virtue of section 2 (a) of the Holidays Act, No. 17 of 1965, the provision of section 339 of the Criminal Procedure Code for the exclusion of Sundays in computing the time within which an appeal must be filed has ceased to be law.

**A**PPEAL from a judgment of the Magistrate's Court, Colombo South.

*V. S. A. Pullenayegum*, Senior Crown Counsel, with *L. D. Guruswamy*, for the complainant-appellant.

*M. Somasunderam*, with *S. Ponnambalain* and *V. Shanmuganathan*, for the accused-respondent.

*Cur. adv. vult.*

September 8, 1968. SAMERAWICKRAME, J.—

This is an appeal with the sanction of the Attorney-General against an order of acquittal of the accused-respondent on a charge under the Control of Prices Act. The order of the learned Magistrate was made on the 13th September, 1967, and the appeal has been filed on the 17th October, 1967. The first question that arises is whether the appeal has been filed in time. Section 338 (2) provides that where the Attorney-General sanctions an appeal, the time within which the petition of appeal must be preferred shall be 28 days. Section 339 of the Criminal Procedure Code provides that in computing the time within which the appeal must be preferred, Sundays and public holidays should be excluded. Whether this appeal is in time or not depends on whether the provision in Section 339 for the exclusion of Sundays has or has not been abrogated by reason of the enactment of Section 2 (a) of the Holidays Act, No. 17 of 1965. That Section is as follows :—“ It is hereby declared that any custom or usage or written law whereby every Sunday—(a) has been a *dies non* in Ceylon shall cease to have the force and effect of law in Ceylon, and accordingly that no Sunday shall, by reason only of such custom or usage or law which had or purported to have had such force and effect, be or continue to be such a *dies non* ”.

What a *dies non* is has been considered by a number of decisions of our Court. In *Appa Cutty v. Ayesha Umma*<sup>1</sup> it was held that a charge of resisting an arrest of the person in execution made upon the Hadji festival day could not be maintained because that day was not available for the service or execution of civil process. In *Georgina v. Ensohamy*<sup>2</sup> Wendt, J. said, “ I suppose *dies non* is an elliptical form of the expression *dies non juridicus*, ‘ not a court day ’.” He held that the sale in execution held by the Fiscal on such a day was bad. In the case of *Goonawardena v. Padrick Singho*<sup>3</sup> it was held that the ordinary inference from the fact that a day is a *dies non* is that proceedings of Court ought not to be taken on that day but it does not make these proceedings void. That was an action to set aside an award made in arbitration proceedings on the ground that proceedings had been held without objection on a Sunday. In the case of *Kulantaivelpillai v. Marikar*<sup>4</sup> Bertram, C.J. referred to the dictum of Wendt, J., that a *dies non* was merely a concise way of saying *dies non juridicus*. He said later : “ The effect, therefore, in my opinion, of the declaration of a day as a public holiday and a *dies non* by Ordinance No. 4 of 1886 is twofold. In the first place, it excuses judicial officers and their subordinate ministerial officers from the necessity of attending Court, or of performing any judicial or ministerial acts, on that day ; in the second place, it protects any member of the public from being forced to attend Court, or to attend any judicial proceeding held elsewhere than in Court, on that day. It does not, in my opinion, affect any judicial act or proceeding which may be validly done or taken in the absence of a party, and which consequently,

<sup>1</sup> (1890) 9 S. C. C. 121.

<sup>2</sup> (1903) 7 N. L. R. 129.

<sup>3</sup> (1918) 5 C. W. R. 310.

<sup>4</sup> (1918) 20 N. L. R. 471.

does not involve his personal attendance. Further, it does not preclude a judicial officer, or any of his ministerial subordinates, from waiving his privileges if he so decides, and from doing any act or taking part in any judicial proceeding on a day declared to be a holiday. There is nothing either in the Ordinance or in the principles laid down by Voet which declares null and void any judicial act which a judicial officer voluntarily elects to do and which does not involve the compulsory attendance before him of any party affected."

Mr. Pullenayegum submitted that Section 339 of the Criminal Procedure Code does not provide that proceedings in Court should not be held on Sunday or that it is to be a *dies non*. It merely provides that in computing time within which an appeal may be preferred, Sundays should be excluded. The most that could be said was that it had excluded Sundays because it had recognised that Sunday was a *dies non* by virtue of some other provision of law. He pointed out that at a time when Sunday was a *dies non* by reason of the Holidays Ordinance of 1886, Section 339 (1) of the Code, as it originally stood, provided that in computing the time within which an appeal must be preferred, the day on which the judgment or order contained of was pronounced and all Sundays and public holidays shall be included. That provision was amended by Section 5 of the Ordinance No. 6 of 1924 by deleting the words "and all Sundays and public holidays" and by adding the words "but all Sundays and public holidays shall be excluded". Thus at one time, though Sunday was a *dies non*, it was a day to be counted in the computation of time in terms of this Section. Section 339 (1), as presently worded, did no more than perhaps recognise the fact that Sunday was a *dies non*. It could not, therefore, be said that it is a written law whereby Sunday had been a *dies non* in Ceylon within the meaning of Section 2 of the Holidays Act, No. 17 of 1965. That Act, therefore, did not have the effect of abrogating any provision of Section 339 and causing it to cease to have force and effect of law in Ceylon. It might well have been the intention of the Legislature that the provision of Section 339 of the Criminal Procedure Code should cease to have effect in so far as it provides that Sunday should be excluded in the computation of time and it might have been thought that Section 2 (a) of the Holidays Act would bring about that result. The terms of the provisions of Section 2 (a), however, were clear, and they did not have the effect of abrogating any part of the provisions of Section 339. He submitted that if the provisions of Section 2 (a) of the Holidays Act had failed to give effect to the intention of the Legislature, it was not a matter which could be remedied by the Courts but one which required an amendment duly made according to law.

Mr. Pullenayegum's arguments are not without force and I was attracted by them, but after careful consideration, I have arrived at a different view. The reason why Section 339 of the Criminal Procedure Code provided that Sundays should not be counted in computing the time within which an appeal might be filed is that Sunday being a *dies non*, the Magistrate's

Court or District Court, with which the petition of appeal had to be lodged' would not ordinarily be open to receive it. The legislature apparently considered that all the days to be counted in computing the time within which an appeal may be filed should be days on which the lodging of a petition of appeal in Court should be available to the appellant. It is true that the Section, as it originally stood, provided Sundays and public holidays should be included in computing the time, but the very fact that there was express provision to that effect shows that ordinarily only days on which a petition of appeal could be filed should be counted. After the section was amended in 1924, there can be no doubt that the rational basis for the exclusion of Sundays was that Sunday being a *dies non*, the lodging of a petition of appeal with a Court on it was not available to an appellant. By reason of the enactment of Section 2 (a) of the Holidays Act, No. 17 of 1965, Sunday has ceased to be a *dies non* and a petition of appeal may be lodged with a Court on that day. The rational basis for the provision for excluding Sunday when computing the time within which an appeal may be filed has thus been removed. Should the provision continue in force? In my view, it should not. This is a matter in which the maxim, *cessante ratione legis cessat ipsa lex* applies. The maxim has also been stated in the following way:— "Reason is the soul of law and when the reason for any particular law ceases, so does the law itself." (See Broom's Legal Maxims, 10th ed., p. 110).

I think there is such inconsistency, if not repugnancy, between a later statute which provides that no Sunday should be a *dies non* and an earlier statute which excludes Sundays in the computation of time on the basis that all Sundays are *dies non*, that the effect of the later statute is impliedly to repeal, abrogate or make the earlier statute cease to be of force or effect to the extent that it provides for the exclusion of Sundays.

I am, therefore, of the view that with the enactment of Section 2 (a) of Act No. 17 of 1965, the provision in Section 339 for the exclusion of Sundays in computing time ceased to be law. I am fortified in the view I have taken by the judgment of Tambiah, J. in *Chalo Nona v. Weerasinghe*<sup>1</sup> in which he held that as Sunday is no more a *dies non*, Sundays could not be excluded in determining the time within which an appeal may be filed in terms of Section 754 (2) of the Civil Procedure Code.

I, therefore, hold that this appeal has not been filed in time and I make order rejecting it.

*Appeal rejected.*

<sup>1</sup> (1967) 70 N. L. R. 46.