

1944

*Present: Moseley S.P.J.*SILVA, *et al.*, Appellant, and MUTHAI, P. S., Respondent.

664—M. C. Negombo, 38,197.

Defence (Purchase of Foodstuffs) Regulations 6 (c)—Transporting country rice—Order of confiscation.

Where a Magistrate made order confiscating a cart and a bull, which had been used for transporting country rice without a permit in contravention of Defence (Purchase of Foodstuffs Regulations) Regulation 6 (c).

Held, that the order confiscating the bull was illegal.

A PPEAL from a conviction of the Magistrate of Negombo.

H. W. Jayewardene, for accused, appellants.

Walter Jayawardene, C.C., for respondent.

January 5, 1944. MOSELEY S.P.J.—

This is an appeal against an order by the Magistrate, Negombo, for confiscation of a cart and bull belonging to the appellant. The said cart and bull were used by another party who was convicted on his own confession for transporting country rice from one district to another without a permit. Regulation 6 (c) of the Defence (Purchase of Foodstuffs) Regulations, 1942, provides that in such a case the vehicle or vessel in which certain produce has been transported may, after notice to the owner of the vehicle or vessel, be confiscated provided that no such order shall be made if the owner proves to the satisfaction of the Court that the contravention of the Regulations was committed without his knowledge or consent.

In this case the appellant appeared to show cause and swore that he had lent the cart and bull to the accused in the case on a promise that they would be returned in the evening. They were not so returned and on the following morning the appellant was forced to send his children to school by rickshaw instead of in the cart which was the usual procedure. The appellant admitted he had not asked the accused where he was taking them, when he borrowed them. The learned Magistrate was not satisfied with this explanation and refused to believe that he would have lent his cart and bull to the accused without inquiring for what purpose they were being borrowed. He held that the appellant's inactivity, when the accused failed to return the cart and bull as promised, indicated that he was aware for what purpose the cart was being used. He, therefore, ordered confiscation of both cart and bull.

I am unable to say that the learned Magistrate erred in his failure to be satisfied with the ignorance of the appellant in this matter, but I am equally unable to hold that a bull in the circumstances of this case can be regarded as a vehicle or vessel. The order for confiscation in so far as it affects the cart is affirmed and that part of the order affecting the bull is set aside. Subject to the amendment of the order to that effect the appeal is dismissed.

Appeal dismissed subject to amendment of order.

Varied.

