

1919.

*Present* : De Sampayo J.

ELLEPOLA *v.* NADAR.

497—*P. C. Avissawella, 29,650.*

*Butchers Ordinance, No. 9 of 1893—Servant of licensed butcher slaughtering animal—Servant does not want license.*

A servant employed by a licensed butcher need not hold a license himself to slaughtering animals for his master.

**T**HE facts appear from the judgment.

*Croos-Dabrera* (with him *Balasingham*), for the appellant.—The accused was only a servant, and merely carried out the master's orders. The master was authorized by the license to carry on the trade of a butcher, and there is nothing in the Ordinance which prevents him delegating his servant to do the same.

In the judgment the accused has been convicted under one section, whereas in the conviction sheet he is found guilty under two sections.

No appearance for the respondent.

July 23, 1919. DE SAMPAYO J.—

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The conviction in this case cannot be sustained. The accused was charged (1) with having carried on the trade of a butcher without a license, in breach of section 7 of the Butchers Ordinance, No. 9 of 1893; and (2) with having slaughtered two goats suffering from disease and exposed for sale the flesh of such goats, in breach of section 12 of the Ordinance. The accused, when he first appeared, pleaded not guilty to the charge. The case having then been adjourned to another date, the Police Magistrate on that day recorded: "The accused at this stage admits the slaughtering of

ts on the direction of his employer, who holds a license." There-  
n the Magistrate, without hearing any evidence, proceeded to discuss the law applicable to the matter, and convicted the accused on the first charge. The accused's statement did not amount to an unqualified admission of guilt. On the contrary, the accused justified his act, and no conviction could have followed without evidence. I may in this connection direct the attention of the Police Magistrate to the fact that, although in his judgment he purported to convict the accused on the first charge only, in the formal "judgment sheet" the accused is convicted on both charges. But, apart from any question of procedure, the conviction for carrying on the work of a butcher without a license appears to me to be erroneous in point of law. The Magistrate thinks that as a "butcher," as defined in the Ordinance, includes "every person that slaughters animals," the accused should under the Ordinance have a license himself. This, I think, is not a true construction of the provisions of the Ordinance. A butcher must have a license for the purpose of carrying on his trade, but there is nothing to prevent his employing servants to do so, and in that case the servants' acts are his own, and he may be proceeded against for any breach of the Ordinance. To require every butcher to slaughter animals himself will be practically to prevent trade altogether. In my opinion the Ordinance is not intended to penalize servants employed under a licensed butcher, and this is, in accordance with the general principles, applicable to the question of criminal liability of a servant who acts under the orders of his master. If the act is in itself criminal, the master's orders will not, of course, exempt him from legal responsibility. Where, however, the act is one which is not by its nature criminal, and where it is lawful for the master to do it, the servant's act is likewise lawful. *R. v. James*;<sup>1</sup> *R. v. Valler*.<sup>2</sup> A statute which creates the offence may prohibit absolutely, or it may require the servant himself to be qualified to do the act, in which case the servant will be liable, though he acts innocently. See *Wilson v. Stewart*;<sup>3</sup> *R. v. Taylor*;<sup>4</sup> *Williamson v. Norris*;<sup>5</sup>

<sup>1</sup> 8 O. & P. 131.

<sup>2</sup> 3 B. & S. 913.

<sup>3</sup> 1 Cox. C. C. 84.

<sup>4</sup> 15 East 460.

<sup>5</sup> 1 Q. B. 7.

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DE SAMPAYO  
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*Pharmaceutical Society v. Wheeldon*; <sup>1</sup> *Pharmaceutical Society v. Nash*. <sup>2</sup> The Butchers Ordinance, however, does not absolutely prohibit the slaughtering of animals, nor does it require a butcher's servant to possess personally the requisite qualification by way of a license. That being so, the accused was, in my opinion, exempt from liability for slaughtering the goats in obedience to the orders of his master, who himself could lawfully have done so.

The conviction is set aside.

*Set aside.*

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