

1951

Present : Palle J.

W. A. ROMANIS SINGHO, Appellant, and ABEYSINGHE  
(P. S. 271), Respondent

*S. C. 988—M. C. Ratnapura, 19,715*

*Co-operative Societies Ordinance (Cap. 107)—Section 2 (2)—Orders made by Minister—  
Judicial notice—Evidence Ordinance, s. 57 (1).*

Section 2 of the Co-operative Societies Ordinance as amended by a later Proclamation provides :—

- “ 2. (1) There may be appointed a Registrar of Co-operative Societies for the Island or any portion thereof and such number of Deputy or Assistant Registrars as may be necessary.
- (2) The Minister may, by general or special order published in the *Gazette*, confer on any Deputy or Assistant Registrar all or any of the powers of a Registrar under this Ordinance. ”

*Held*, that an order published by the Minister under section 2 (2) is not one of which judicial notice must be taken.

**A**PPPEAL from a judgment of the Magistrate's Court, Ratnapura.

*M. D. H. Jayawardene*, for the accused appellant.

*A. C. Alles*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

April 2, 1951. PULLE J.—

The case against the accused-appellant is that on the 10th February, 1950, he disobeyed wilfully a written order to produce the books, cash, securities and papers belonging to Pohorabawa Co-operative Stores Society of which he was the Treasurer. The order was given by a writing dated 31st January, 1950, by Mr. G. H. K. Gunawardena, an inspector of Co-operative Societies. The learned Magistrate has in a carefully considered judgment found that the appellant who was duly served with the written order wilfully disobeyed it. This is a finding that cannot possibly be challenged.

It is submitted on behalf of the appellant that the conviction is bad on the ground that the charge was defective. It has not been possible to examine the contents of the charge for the reason that the charge sheet is missing from the record. As the learned Magistrate has pointed out in a report, it is possible that the charge sheet was mislaid when the record was detached loose and rebound before transmission to the Registry. It is clear from the record that the accused was charged from the charge sheet and it was, therefore, not open to the appellant to urge that the trial was held without the appellant being charged as required by the Criminal Procedure Code. I permitted the learned Counsel for the appellant to make his submission on the basis that the allegations contained in the report filed under section 148 (1) (b) had been incorporated in the charge sheet. The only point of any substance urged was that the prosecution had not set out in the report section 17 of the Co-operative Societies Ordinance (Chapter 107), as amended by the Co-operative Societies (Amendment) Act, No. 21 of 1949.

In my opinion the failure to set out section 17 is not fatal to the charge. The appellant was informed in the written order served on him that Mr. Gunawardena had been authorized to make the demand under section 17 (2A) (b) of the Ordinance. A copy of this order was an exhibit in the case and in his evidence also Mr. Gunawardena mentioned section 17 as the one under which he was authorized to act. I, therefore, hold that the submission that the charge was defective fails.

On an examination of the documents on which Mr. Gunawardena relied to establish that he had legal authority to issue an order to the appellant I find that they are defective. The order P 1 dated the 31st January, 1950, recites that Mr. Gunawardena was authorized by the Registrar of Co-operative Societies. This recital is incorrect because in document P 3 dated the 10th October, 1949, Mr. S. B. Yatawara has in the capacity of *Deputy Registrar, Co-operative Societies*, had authorized Mr. Gunawardena to audit accounts and to obtain books, papers, &c., from registered Co-operative Societies. If in point of fact it was proved that Mr. Yatawara was empowered to issue an authority to Mr. Gunawardena the incorrect recital would not have vitiated the order P 1 issued by Mr. Gunawardena. The question then is whether Mr. Yatawara's authority dated 10th October, 1949, is valid.

Section 17 of the Co-operative Societies Ordinance empowers only the Registrar to cause to be audited by some person authorized by him the accounts of a registered Society. In the face of this section alone

the authority issued by Mr. Yatawara cannot be justified. Section 2 of the Ordinance as amended by the Proclamation issued by the Governor-General dated February 4, 1948, reads as follows :—

“2. (1) There may be appointed a Registrar of Co-operative Societies for the Island or any portion thereof and such number of Deputy or Assistant Registrars as may be necessary.

(2) The Minister may, by general or special order published in the *Gazette*, confer on any Deputy or Assistant Registrar all or any of the powers of a Registrar under this Ordinance.”

It does not appear either in the report made to the Magistrate under section 148 (1) (b) of the Criminal Procedure Code or in the evidence that the Minister by a general or special order published in the *Gazette* conferred on Mr. Yatawara all or any of the powers of a Registrar under the Ordinance. My attention, however, has been drawn to such an order published in the *Gazette* of the 7th January, 1949. The question then arises whether the Minister's order is one of which I must take judicial notice. The answer must be in the negative. In my opinion the order does not fall within the ambit of section 57 (1) of the Evidence Ordinance as a law or a rule having the force of law. Under section 57 (1) I could take judicial notice of Mr. Yatawara's accession to office as Deputy Registrar of Co-operative Societies and of his functions in that capacity but not the extended functions conferred by the order in question.

I am, therefore, compelled most reluctantly to reach the decision that the prosecution has failed to adduce sufficient proof that the order issued by Mr. Gunawardena was one which the appellant disobeyed at his peril.

The conviction and sentence are set aside and the appellant is acquitted.

*Appeal allowed.*

---