

March 25, 1931. MAARTENSZ A.J.—

The accused in this case was charged under section 10 of the Guides Ordinance, No. 27 of 1906. The offence described in the charge is an offence under the second part of section 8 of the Ordinance. But as the objection that the accused had not been properly charged was not pressed, I am able to deal with the appeal on its merits.

The facts are as follows :—On the day in question at 10.30 A.M. police constable Tennekoon saw the accused loitering about in Victoria park and sent him away. At 4 P.M. he saw the accused enter the park with some passengers and show them round, pointing out various “things”. As the passengers entered their car after being shown round the accused offered them some flowers and received some money.

On almost exactly the same facts Lyall Grant J. held in the case of *Kandiah v. Endy Singho*¹ that the accused was not guilty of an offence under section 8 of the Ordinance. In view of this decision Dalton J., before whom the present appeal came up on March 3, directed that the appeal should be re-listed for argument after notice had been given to the Attorney-General.

1931

Present : Maartensz A.J.

TENNEKOON v. MARTIN.

59—*M. C. Colombo*, 16,719.

Guides Ordinance—Plying for hire as guide—What constitute offence—Ordinance No.27 of 1906, s. 8.

To establish a charge under section 8 of the Guides Ordinance, the prosecution must prove that the accused offered his services as a guide for a reward, that his offer was accepted, and that he acted as a guide.

A PPEAL from a conviction by the Municipal Magistrate of Colombo.

R. C. Fonseka, for appellent.

Pulle, C.C., for the Crown.

Crown Counsel who appeared in support of the conviction drew my attention to certain observations made by Lyall Grant J. regarding the evidence and contended that his decision was based on a disbelief of the evidence rather than on a finding that the evidence did not in law establish that the accused had committed the offence with which he was charged.

I am unable to accept this contention. No doubt some defects in the evidence were commented on, but the effect of the decision is that the evidence even if accepted did not prove that the accused plied for hire as a guide.

¹ (1930) 31 *N. L. R.* 483.

Apart from this authority, I am of opinion that the evidence in this case fails to establish certain facts which the prosecution was bound to prove.

The relevant provision of section 8 enacts that "every unlicensed person who shall ply for hire as a guide shall be guilty of an offence".

The prosecution, to establish the charge under this section, was bound in my opinion to prove that the accused offered his services as a guide for a reward, that his offer was accepted, and that he acted as a guide.

I do not think it was necessary to prove that the amount of the reward was agreed on, for the guide might leave the amount to the discretion of the employer.

The evidence in this case does not establish that the accused gave his services to the passengers for reward, whether agreed on or otherwise, and the prosecution fails. I accordingly set aside the conviction of the accused and acquit him.

Set aside.