1937 *Present :* **Abrahams C.J., Maartensz and Soertsz JJ.**

SIVASAMPU *v.* JUAN APPU.

620—P. C. Chilaw, 1,368.

Charge—Offence laid under by-law or regulation—Publication in Gazette—*Proof of rule—Evidence Ordinance, s. 57—Interpretation Ordinance, No. 21 of 1901, s. 11.*

Where a charge is laid under a statutory rule, regulation, or by-law which is required by law to be published in the *Government Gazette*, the prosecution is not bound to produce the *Gazette* in which the rule or regulation or by-law appears in proof thereof in order to establish the charge.

There would be a sufficient compliance with the requirements of the law if in the complaint or report to Court there is a reference to the *Gazette* in which the rule invoked appears.

Marambe v. Kiri Appu* (2 C. L. W. 122) and *Inspector of Police v. Punchirala* (5 C. L. W. 38) *overruled.

THE accused was charged with having failed to affix a board bearing the name of the owner legibly painted in white on a black ground to the right side of the tent in breach of section 7A of the by-laws framed under section 18 of the Vehicles Ordinance, No. 4 of 1916, and published in *Government Gazette* on August 17, 1917. The summons was issued and the accused pleaded to the charge. At the conclusion of the trial, the defence brought to the notice of Court that the actual *Gazette* was not produced. The learned Magistrate acquitted the accused in view of the decision in *Marambe v. Kiri Appu*[1].

The complainant appealed with the sanction of the Attorney-General. Moseley J. who heard the appeal referred the case to a Bench of three Judges in view of the conflicting decisions.

Ilangakoon, K.C., A.-G. (with him *Crossette-Thambiah, C.C.*), for complainant, appellant.—This case has been referred to a Bench of three Judges by Moseley J. to decide whether the *Gazette* containing the by-law should be produced when a person is prosecuted for a breach of the by-laws. There has been a considerable conflict of opinion on this point.

[ABRAHAMS C.J.—Are you going to argue that the *Gazette* need not be proved ?]

Yes. The fact that the learned Magistrate did issue the summons shows that he had taken sufficient notice of the *Gazette*.

[ABRAHAMS C.J.—There is this difference, namely, that the Courts must take judicial notice of the Ordinances, but someone must prove the regulation.]

The Evidence Ordinance says that the Courts of Law must take judicial notice of laws, regulations, &c., when they are published.

[ABRAHAMS C.J.—There must be the publication. It is the duty of the Magistrate to satisfy himself that there was a law before issuing summons.]

That is so. If he was not satisfied he can call for it. After taking sufficient notice, he cannot say that the complainant did not produce the *Gazette*. All *Gazettes* are available in Court. So long as the place where

[1] *(1932) 2 C. L. W. 122*

the rules are is specified, it is sufficient. They need not be produced in every case. Considering the number of excise cases, it would be an impossible task to produce them always.

[ABRAHAMS C.J.—Suppose they are not given the force of law. Then they have to be produced before the Magistrate.]

In England it has been held that the whole *Gazette* must be produced. Section 11 (1) (*e*) of the Interpretation Ordinance, No. 21 of 1901, covers this case.

[ABRAHAMS C.J.—What about sub-section (*f*) ? Does not that say that it must be produced ?]

That is if the Magistrate is not aware of it. Publication is notice of the existence of the laws. Laws published in the *Gazette* must be taken to be known. Once the particulars of the offence, the rule and the number and date of *Gazette* are given, it is sufficient evidence for section 78 of the Evidence Ordinance.

[ABRAHAMS C.J.—Would it be judicial notice or would it be that his having issued summons shows that he had looked into it ?]

Under section 57 (1) of the Evidence Ordinance, the rules need not be published.

[SOERTSZ J.—That is the Court may take judicial notice under section 56 or call for it under section 57.]

The Court will presume that the rule is made, unless it is challenged or unless it manifestly cannot be made. In cases where the rules need not be published in the *Gazette,* they must be proved as regards the making and contents. These must be proved at the time of the receipt of the plaint, or else the conviction would be bad.

[ABRAHAMS C.J.—Suppose the rules do not exist.]

The general rule is that the prosecution must prove every fact in issue. The existence of the rule must be proved to the satisfaction of the Court.

Ameer Ali on Evidence (*9th ed.*) deals with this point at page 498. If the ordinary man is supposed to know the existence of the law, then it is not too much to ask the Court to take judicial notice of the fact.

[MAARTENSZ J.—If the charge says that a rule is framed on such a day by the Municipal Council, is that sufficient ?]

That is sufficient. The *Gazette* need not be mentioned. It is not a legal requirement. The reference is given as a matter of practice, because there is no other convenient form. The rule and the date must be given.

[MAARTENSZ J.—You have to prove that it is published.]

Once it is published, it has the force of law, and the Magistrate must take judicial notice of it. Without the date and the number the charge is badly framed, but it is not necessary. (*De Silva v. Don Francis* [1]) In the earlier cases, the point had not been critically examined. (*Ekneligoda v. Kiri Banda* [2]). The other cases in point are :—*Peries v. Theresa Nona* [3], *Peachy v. Mastankanny* [4], *Marambe v. Kiriappu* [5], *Almeda v. Singhoappu* [6], *Inspector of Police v. Punchirala* [7], *Dunuwila v. Ukkuwa* [8].

[1] *(1924) 2 Times 194.*
[2] *(1890) 9 S. C. C. 60.*
[3] *(1927) 8 Ceylon Law Recorder 116.*
[4] *(1892) 1 S. C. R. 247.*
[5] *(1932) 2 C. L. W. 122.*
[6] *(1936) 5 C. L. W. 21.*
[7] *(1935) 5 C. L. W. 38.*
[8] *(1936) 6 C. L. W. 150.*

May 17, 1937. SOERTSZ J.—

The matter that arises for our decision on this reference is whether in cases in which a charge is laid against an accused under a rule or a regulation or a by-law which requires publication in the *Government Gazette* the production of the relevant *Gazette* is imperative. This question has come up for authoritative decision in consequence of certain conflicting rulings by this Court.

In *Marambe v. Kiri Appu* [1] Macdonell C.J. said " the charge is defective in that there was a failure to specify the *Gazette* containing the rules which the accused is said to have contravened *and of course the* Gazette *ought to have been produced* ". Koch J. followed this ruling in *Inspector of Police v. Punchirala* [2], and relying on it and the other cases he cited in the course of his judgment said " in a series of decisions it has been held that there rests on the prosecution the obligation to produce and prove the rule.".

But in the case of *Peries v. Theresa Nona* [3], Lyall Grant J. held that " the correct way to set out such a notification in the charge is by reference to the copy of the '*Ceylon Government Gazette*' in which it appears.". In the case of *De Silva v. Don Francis* [4], Bertram C.J. took the same view and dissenting from the ruling of Wood Renton C.J. in *Lovell v. Dondiya* [5], held that it was not necessary to produce the rule under which the charge was brought because the Court must take notice of all rules having the force of law.

After careful consideration we find ourselves in agreement with the view of Bertram C.J. and Lyall Grant J. Section 57 of the Evidence Ordinance enacts that " the Court shall take judicial notice of the following facts :—(1) *All laws or rules having the force of law*, now or hereafter in force or hereafter to be in force in any part of the Colony " . . . . . and that " in all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary, to enable it to do so.". In England, the law in regard to this matter appears to be that " Public General Statute, like the rules of the Common law or general custom of the realm, *need not be either pleded or proved*, because the courts are bound ex officio to take judicial notice of them. Production at the trial of a public general statute is not for the purpose of putting it in evidence, but merely in aid of the memory of the Court and Jury " *Archibald's Criminal Pleadings, Evidence and Practice, 1934 ed., pp. 408-409.* But in the case of statutory rules, *i.e.*, of subordinate legislation, the matter is governed by special acts such as the " Documentary Evidence Act ", 1868, and the Rules Publication Act, 1893.

In Ceylon, the effect of section 57 of the Evidence Ordinance is to put " all laws *and rules having the force of law* " on the same footing. But

[1] *2 C. L. W. 122.*
[2] *5 C. L. W. 38.*
[3] *(1927) 8 Ceylon Law Recorder 116.*
[4] *2 Times of Ceylon Law Reports 194.*
[5] *4 Leader Law Reports 124.*

section 11 of the local "Interpretation Ordinance", No. 21 of 1901, provides that "where any Ordinance whether passed before or after the commencement of this Ordinance, confers power on any authority to make rules . . . . . all rules shall be published in the *Gazette* and shall have the force of law as fully as if they had been enacted in the Ordinance". So that inasmuch as the rules of subordinate legislation require publication in the *Gazette* for acquiring the force of law, there should be some material before the Court to show that that condition precedent has been satisfied. In our view there is sufficient compliance with that requirement if in the complaint or report to the Court there is reference to the *Gazette* in which the rule invoked appears, for in that case under section 114 of the Evidence Ordinance, the Court may presume that the Official Acts of stating the rule and citing the *Gazette* "have been regularly performed" (illustration *e*). The production of the *Gazette* is not necessary unless it is called for in aid of the memory of the Court or under the last part of section 57. To take the present case, the rule or by-law involved in it is one made under section 18 of the Vehicles Ordinance, No. 4 of 1916. In regard to by-laws made under that section, section 21 (1) of the Ordinance provides that all by-laws when made . . . . . "shall be published in the *Government Gazette*, and shall thereupon become as legal, valid and binding and effectual as if the same had been inserted in the Ordinance, and all Courts Judges, Magistrates shall take judicial notice thereof". In the report made by the prosecuting inspector to Court it is alleged that "the accused failed to affix a board bearing the name of the owner legibly painted in white on a black ground to the right side of the tent in breach of section 7A of the by-laws framed under section 18 of the Ordinance No. 4 of 1916 and published in the *Government Gazette* on August 17, 1917, and thereby committed an offence punishable under section 21 of Ordinance No. 4 of 1916". There is here sufficient material for the Court to presume under section 114 of the Evidence Ordinance that the rule is correctly stated and that it has the force of law, and for it to act on that presumption. The production of the *Gazette* is therefore not necessary. Nor will the non-production of the *Gazette* embarrass the Court at all, for every Court is provided with copies of every *Gazette* and has, moreover, the right to call for a *Gazette* in aid of its memory or under section 57 of the Evidence Ordinance by way of proof of the by-law or rule. That is the position as far as the Court is concerned.

In regard to the accused he is not entitled to claim that a charge laid against him under a rule, regulation, or by-law should be supported by a copy of the *Gazette* containing it. Section 167 of the Criminal Procedure Code lays down rules for the framing of a charge. It says that a charge is sufficiently laid if it states the offence with which the accused is charged. "If the law which creates the offence gives it any specific name the offence may be described in the charge by that name only; if the law which creates the offence does not give it any specific name so much of the definition of the offence must be stated as will give the accused notice of the matter with which he is charged; and the law and section of the law under which the offence is punishable shall be stated in the charge".

It is obvious that the charge in this case has been framed in meticulous compliance with these requirements. I am therefore of opinion that the prosecution had discharged the burden that rested on it by placing before the Court material to show the existence of a valid by-law and facts to establish that the accused had offended against it. It was not open to the Magistrate to acquit the accused on the ground that "the failure to produce the *Gazette* in which the rules are is a vital irregularity". When he issued process, it must be assumed in the circumstances of this case that he had taken judicial notice of the by-law and, therefore, under section 56 of the Evidence Ordinance the prosecution was exempted from the necessity of proving it, for that section says "no fact of which the Court will take judicial notice need be proved". It was, however, open to the Court to act under the last part of section 57 and to call for the *Gazette* if it thought fit. I would therefore hold that the order of acquittal was wrong. It does not seem necessary to send the case back for further trial for, as far as the Magistrate is concerned, he appears to have acquitted the accused not because he had any doubts as to the existence and validity of the by-law but because he thought on the authority of *Marambe v. Kiriappu* (*supra*), that the production of the *Gazette* was *sine qua non*. As far as the accused is concerned there is no point in sending the case back because he has declared that he calls no defence. His proctor appears to have relied entirely on the authority of that case. There was no cross-examination of any of the witnesses.

I would set aside the order of acquittal and remit the case to the Magistrate for sentence to be passed under section 21 of Ordinance No. 4 of 1916.

ABRAHAMS C.J.—I agree.

MAARTENSZ J.—I agree.

Set aside.