

1945

Present: **Howard C.J.**

GOONERATNE, Appellant, and **THOMIS**, Respondent.

452—*M. C. Galle, 44, 434.*

Defence (Control of Prices) (Supplementary Provision) Regulation 6—Keeping stock of controlled articles in premises—Small quantity of onions for retail trade—Premises not a store or other place.

The accused was charged under regulation 6 of the Defence (Control of Prices) Regulations with keeping a stock of controlled articles, viz., two bags of red onions at premises, which is not a registered store, without furnishing to the Controller a return specifying such store or other place.

¹ (1880) 44 L. T. R. 187 at 188.

The evidence established that the onions were found in the upstairs of the premises occupied by the accused where he carried on a retail trade.

Held, that the accused had not offended against the provisions of the regulation.

A PPEAL against an acquittal by the Magistrate of Galle.

T. K. Curtis, C.C., for the complainant, appellant.

C. S. Barr Kumarakulasingham for accused, respondent.

Cur. adv. vult.

May 22, 1945. HOWARD C.J.—

The complainant in this case, with the sanction of the Attorney-General, appeals from a judgment of the Magistrate, Galle, acquitting the respondent on a charge under Regulation 6 of the Defence (Control of Prices) (Supplementary Provisions) of keeping on December 18, 1944, a stock of price-controlled articles, to wit, 2 bags of red onions weighing 1 cwt. 1 qr. 26 lbs., at premises No. 19, Fowl Market, Galle, which is not a registered store without furnishing to the Controller a return specifying such store or other place. The evidence for the Crown was supplied by a Price Control Inspector stationed at Galle and a similar officer in charge of the register kept at Colombo under the above-mentioned regulation. On the evidence of the latter officer it was established—

- (a) that red onions are controlled articles within the Galle Municipal area;
- (b) that No. 19, Fowl Market Stores, was not a registered store under section 5 of the Regulations;
- (c) that the respondent did not make any return prior to December 18, 1944, specifying that he had any quantity of red onions in such premises.

It was proved by the Price Control Inspector, Galle, that on December 18, 1944, he went to No. 19, Fowl Market Street, Galle, and on searching the premises he found two bags of red onions upstairs in the building. The onions were weighed in the presence of the respondent who said he occupied the premises and carried on business there. The onions weighed 1 cwt. 1 qr. 26 lbs. This witness also stated that the respondent had a Municipal licence to sell things, but he did not know if he was a retail or wholesale dealer.

The respondent in giving evidence stated that he did retail business and had purchased the onions in Colombo for the purpose of retail trade.

The Magistrate, although of opinion that the onions were surreptitiously kept for purposes of sale in the black market, held that there was no evidence to hold that the place where the red onions were found was a place in the nature of a store. He also stated that the object of the

regulations was to prevent hoarding and the respondent did not hoard the onions on the day in question. The Magistrate, therefore, acquitted the respondent.

Regulation 6 of the Regulations in question is worded as follows:—

“ Every person who desires to keep any stock or quantity of any price-controlled article at any store or other place which is not a registered store, shall furnish to the Controller a return specifying such store or other place, and the Controller may in respect of such store or other place exercise the powers conferred on him by Regulation 5.”

Regulations, 2, 3, 4 and 5 refer to persons carrying on business as importers or wholesale traders in the particular article. Regulation 6 enables the Controller to treat persons other than importers or wholesale traders who desire “ to keep any stock or quantity of any price-controlled article at any store or place ” as if they were within the ambit of Regulation 5. Regulation 7 enables the Controller to call upon persons having in their possession any quantity of a price-controlled article in excess of a certain amount to furnish a return setting out the quantity of such article in their possession and the premises at which such quantity is kept. The respondent in this case was not an importer or wholesale trader nor had he been called upon for a return under Regulation 7. The only question for me to decide is whether the Magistrate was right in holding that it was not established that the respondent had in his possession “ a stock or quantity of red onions at any store or other place not a registered store.”

The question as to whether a house not registered as a store where a quantity of a price-controlled article was found constituted “ a store or other place ” was considered by Keuneman J. in *Panditharatne v. Koutsz*¹. In the course of his judgment the learned Judge stated as follows:—

“ There are two factors of importance. One is the large quantity of paper kept at the accused's house. The other is the admission by the accused that his house was utilized for the stocking of the paper for economical reasons. I think there is sufficient evidence that the house “ Epsom ” can be regarded as a store or other place in the nature of a store. There can be no question that it is substantially used for storing paper.”

In this case the amount of onions found on the premises was not a large quantity and might well have been purchased for purposes of retail sale. Nor can it be said that the premises or a large part of them were utilized for the storing of the onions. In this connection one must not be unmindful of the fact that onions are perishable articles. It has been laid down by this Court on numerous occasions that an appeal against an acquittal will only succeed when it is perfectly clear to the Appellate Court that the finding of the lower Court is erroneous. I am not satisfied in this case that the finding of the lower Court was erroneous. In these circumstances the appeal is dismissed.

Appeal dismissed.

¹ 44 N. L. R. 210.