1945 *Present:* **Keuneman J.**

CAROLIS APPU, Appellant, *and* A. G. A., HAPUTALE, Respondent.

197—M. C. Badulla-Haldummulla, 1,452.

Defence (Purchase of Foodstuffs) Regulations, 1942—Charge of transporting kurakkan without a permit—No reference made in charge to the Gazette in which the regulation is published—Validity of charge.

Where the transport of kurakkan without a permit is made an offence by an amendment to the Defence (Purchase of Foodstuffs) Regulations, 1942, and no reference is made in the charge to the *Gazette* in which the amending regulation was published.

Held, the failure to refer to such *Gazette* was fatal to the conviction.

APPEAL from a conviction by the Magistrate of Badulla-Haldummulla.

H. V. Perera, K.C. (with him *L. E. J. Fernando*) for accused appellant.

M. Spencer, C.C., for Attorney-General.

Cur. adv. vult.

March 27, 1945, KEUNEMAN J.—

This accused was charged with having transported seven bushels of kurakkan in lorry No. CE 2699 without a permit issued by the Government Agent, Uva, and Deputy Food Controller, Badulla, or anyone authorized by him in breach of Regulation 4 of the Defence (Purchase of Foodstuffs) Regulations, 1942, published in *Gazette* No. 9,004 of September 11, 1942, and that he had thereby committed an offence punishable under section 52 (3) of the Defence (Miscellaneous) Regulations.

It has been pointed out here that the *Gazette* referred to, namely 9,004 of September, 11, 1942, referred only to the transport of country paddy and country rice and did not make it an offence to transport kurakkan at all. It is true that there is a later *Gazette* No. 9,103 of March 26, 1943, which makes it an offence to transport country paddy, country rice or kurakkan except under a permit. It is obvious that if *Gazette* No. 9,004 is looked at, the accused is not guilty of any offence. The question is whether the failure to refer to the *Gazette* No 9,103 which does constitute the offence is fatal.

A Divisional Court in *Sivasampu v. Juan Appu* [1] discussed this question among others and Soertsz J., who wrote the judgment in the case, states as follows: "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 the condition precedent has been satisfied. In our view there is sufficient compliance with the requirement if in the complaint or report to the Court there is reference to the *Gazette* in which the rule involved 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 ". He went on to hold thereafter that the production of the *Gazette* in the case was not necessary.

[1] *33 N. L. R. 369.*

Now, in the present case it does appear that there is no reference to the *Gazette* which may constitute an offence of transporting kurakkan and I think that this defect is one which invalidates the conviction. It is not merely a matter of making a mistake with regard to the number and the date or either of them, but it goes further and declares that the authority for the charge is a *Gazette* which in point of fact has no application to the case at all. In the circumstances I set aside the conviction in this case and discharge the accused.

Conviction set aside.