

1943

Present : Soertsz S.P.J.

JAYAKODI, Appellant, and PAUL SILVA *et al.*, Respondents.

159—M. C. Negombo, 36,586.

*Petrol (Control of Supplies) Ordinance, No. 52 of 1939, s. 11 (b)—Judicial notice of proclamation—Meaning of expression “vendor”—Liability of owner of depot.*

A Court is bound to take judicial notice of the date on which an Ordinance has been brought into operation.

The expression “vendor” in section 11 (b) includes not only the vendor who is for the time being in charge of a retail depot, but also the person to whom petrol is sold or delivered by a supplier, although the offence was committed in the absence of that person.

**A**PPEAL from a conviction by the Magistrate of Negombo.

G. E. Chitty, C.C., for the complainant, appellant.

H. V. Perera, K.C. (with him E. F. N. Gratiaen and H. W. Jayewardene), for the accused, respondent.

*Cur. adv. vult.*

April 21, 1943. SOERTSZ S.P.J.—

The Attorney-General appeals against the order made in this case acquitting the two accused of a charge that alleged that they "did within the jurisdiction of this court at Negombo between September 30, 1942, and November 10, 1942, being the vendors in charge of the retail depot No. 2 . . . fail to make entries in respect of sales and delivery of petrol by them in Register in the form set out in the Schedule to Ordinance No. 52 of 1939 in contravention of section 11 (b) . . . and had thereby committed an offence punishable under section 16 (1) of Ordinance No. 52 of 1939".

The ground upon which the Magistrate based his order of acquittal was that the prosecution had not proved that the Governor had fixed a date for the Ordinance under which the charge was laid to come into operation as was contemplated by section 4. In reaching the conclusion that such proof was essential the Magistrate purported to follow the decision given by this Court in the case of *de Zoysa v. Cumarasuriar*<sup>1</sup>.

On appeal Counsel for the accused-respondents supported this view of the Magistrate and also contended that the order of acquittal was right in regard to both the accused for the reason that the charge framed against them was bad for multiplicity and that as far as the first accused was concerned for the additional reason that he could not be said to be such a vendor as is contemplated by section 11 (b) for, admittedly, he was not present at any of the times at which the petrol, in respect of which the defaults were alleged, was sold and delivered.

To deal first with the reason the Magistrate gave for acquitting the accused, I fail to see that the decision in the case cited by the Magistrate has any application to the facts of this case. In that case, the accused was acquitted on the ground that although the Minister had proclaimed by notification in the *Gazette* that a partial blackout should be observed in the district concerned, there was no proof that the "competent authority" for that area had notified the public of the Minister's decision as was required by section 3 of Part 11 of the Lighting Restriction Order of 1940. In the case before me now, the charge is laid under an Ordinance enacted by the Governor as an Ordinance to come into operation on the Governor appointing a date for that purpose by proclamation in the *Gazette*. The moment that proclamation appeared, the Ordinance became law and the charge here is laid under sections 11 (b) and 16 of that law.

In virtue of section 57 of the Evidence Ordinance, the Court was bound to take judicial notice of that law as part of our statute law. Similarly,

<sup>1</sup> 23 C. L. W. 114.

the Court is bound to take notice of "rules having the force of law" but in such cases it was held by a Divisional Bench in *Sivasampu v. Juwan Appu*<sup>1</sup> that there must at least be some reference in the charge to the relevant *Gazette* for, in the absence of such a reference, there would not be compliance with section 167 (4) of the Criminal Procedure Code which requires that the charge shall state "the law and section under which the offence said to have been committed is punishable". In the days in which we had no compilation of Subsidiary Legislation, a reference to the *Gazette* was the only way in which the accused could be informed of the law under which he is charged. To-day, in most cases, that can be done by reference to the chapter and section of the different volumes of Subsidiary Legislation.

For these reasons, I do not agree with the view taken by the magistrate.

In regard to the second point, I do not consider that this is a case in which the accused have been charged in respect of each and every failure to make or cause to be made an entry as required by the Ordinance during the period covered by the terminal dates mentioned in the charge, but rather a case in which the substantial charge is that the accused failed to keep a Register in the manner required by the Ordinance. The dates are stated in the charge to give the accused sufficient particulars as required by section 168 of the Criminal Procedure Code.

So far as the third point is concerned, the first accused is clearly within the definition of "vendor" as stated in the Ordinance and I cannot see my way, in view of that definition, to hold as I was asked to do, that the person contemplated by section 11 (b) is the actual vendor or the person "for the time being in charge of any retail depot". The Statute seems to me to create an absolute liability and to involve in it "the person to whom petrol is sold or delivered by a supplier" (the first accused is that person in this instance), as well as "the person for the time being in charge of any retail depot" (the second accused is that person in this instance). If Counsel's contention represents the correct interpretation of section 11 (b) it is difficult to understand why the Legislature did not say "every person for the time being in charge of a retail depot" instead of saying "every vendor". I was addressed strongly in regard to the mitigating facts present so far as the first accused is concerned in order to drive home to me the hardship of his position if he is to be held criminally liable for something done in his absence and without his knowledge. But that is a matter for the Legislature or for the tribunal dealing with the case when it is considering the sentence.

I set aside the order of acquittal and enter conviction under the sections referred to and send the case back to the magistrate to pass such sentence as he thinks fit.

*Order set aside.*

<sup>1</sup> 38 N. L. R. 369.