

1940

*Present : Moseley S.P.J.*NESADURAI *v.* PERERA.780—*M. M. C. Colombo, 1,827*

*Municipal Councils Ordinance, s. 208 (Cap. 193)—Notice to provide drainage works—Non-compliance with notice.*

Non-compliance with a notice given under section 208 of the Municipal Councils Ordinance is not an offence.

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

*U. A. Jayasundere*, for accused, appellant.

No appearance for complainant, respondent.

*Cur. adv. vult.*

February 18, 1940. MOSELEY S.P.J.—

The appellant was convicted on a charge of failure to carry out certain works which he had been required to execute by written notice issued by the Commissioner of the Municipal Council of Colombo under section 208 of Chapter 193 of the The Legislative Enactments of Ceylon. Section 229 of the Ordinance contains a table of penalties which may be imposed in respect of offences, and in pursuance, presumably, of the provision of a penalty prescribed for an offence against the provision of section 208, the appellant was fined Rs. 30, in default thirty days simple imprisonment. He was further given time to start and finish the work by October 10.

The grounds of appeal, as set out in the petition, are that the appellant has done nothing in contravention of the section. At the hearing, however, Counsel for the appellant limited his argument to the contention that section 208 does not create an offence. That it does not do so in so many words must be conceded. Moreover, section 222, makes express provision for the case where an owner or occupier neglects to comply with the requirements of any notice served upon him in pursuance of any section of this part of the Ordinance by permitting the Chairman to cause the required works to be executed and to recover the cost from the owner or occupier. Such a provision, of course, does not necessarily negative the power of the legislature to create an offence out of the neglect to comply with the requirements of such a notice. It may well be in the interests of public health that works of the description contemplated should be carried out with expedition. In such a case it would not be unreasonable to provide for the execution of the works by the Council and, in addition, to make the neglect of the owner punishable. For example, section 213 of the Ordinance, while it does not expressly create an offence, imposes upon an owner a requirement non-compliance with which would, in my view, constitute an offence for which a penalty is prescribed by section 229. The section goes on to invest the Chairman to carry out the required work and recover the cost from the owner.



It would not therefore be safe to assume that the legislature, having in mind the provision of section 222, did not *intend* to create an offence in the case of neglect, on the part of an owner, to comply with the requirements of a notice issued by the Chairman in pursuance of the provisions of section 208.

The point for decision is whether or not section 208 creates an offence.

A reference to section 229, which declares that a contravention of any provision of this part of the Ordinance is an offence, shows that penalties are provided in respect of nineteen sections. Of these sections, seven, in so many words, create offences; six, by imposing liabilities or prohibitions, do so in effect; five merely give the Chairman power to require certain things to be done, and, if they are not done by the owner, to have them done at his expense. As to the remaining section, viz., 206, a penalty for contravention is provided by section 229, and while it may be possible to guess at the intention of the legislature there is not even a vague hint as to the offence which it is intended to penalize. It would seem, then, that the provision of penalties for the contravention of certain sections has been made without much thought regarding the offences which those sections might be supposed to define. If the legislature intends to create an offence it should do so in unequivocal terms. It is not, in my opinion, sufficient merely to frame a table setting out a penalty for breach of a section. In case *Truck & Sons v. Priester*<sup>1</sup>, Lindley L.J. observed: "It is a well settled rule that the Court will not hold that a penalty has been incurred unless the language of the clause which is said to impose it, is so clear that the case must necessarily be within it".

Now, is the language of section 208 so clear that it is beyond doubt that a person who omits to comply with the requirements of the Chairman set out in a notice has committed an offence? Section 229 which prescribes the penalty begins with these words: "Whoever contravenes any provision of this part of the Ordinance shall be guilty of an offence". It does not proceed to say "or whoever fails to comply with any notice issued under any provision of this part". Compare the language of section 208 with that of section 213. In the latter case we have ". . . the owners shall, within thirty days after notice . . . cause . . .". Non-compliance with the requirements of the notice would seem, beyond all doubt, to be an offence, notwithstanding the fact that the section goes on to empower the Chairman to carry on with the work and charge the cost to the owner. Section 208, however, merely provides for the issue by the Chairman of a notice requiring the owner to execute certain works within a reasonable time. Nowhere in the section is any obligation placed upon the owner to carry out those requirements. For the consequence of non-compliance one has to refer to section 222, which seems to indicate clearly that no more is expected from the owner than that he shall bear the expenses of any works carried out by the Chairman in consequence of the owner's neglect to comply with a notice.

If it was the intention of the legislature that non-compliance with such a notice should be an offence, it has not, in my opinion, declared its

<sup>1</sup> 19 Q. B. D. 629.

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intention with the clarity which Lindley L.J. thought necessary. Moreover, considering this part of the Ordinance as a whole, and the number of instances, viz., section 218, in which an offence is explicitly created, there is no reason for thinking that it was intended that non-compliance in this particular case should be an offence.

I would allow the appeal.

*Set aside.*

