

1966

Present : Alles, J.

S. MALLAWAARACHCHI, Appellant and L. C. WEWALA (S. I. Police),
Respondent

S. C. 1128/1966— M. C. Gampaha, 4951/A

Charge of contravening a Price Control Order—Alleged offence committed on the date of publication of the Order—Burden of proof—Control of Prices Act, ss. 4, 8 (2).

When an offence is alleged to have been committed in contravention of a Price Control Order on the very day when the Order was published, it is incumbent on the prosecution to establish that the Order was in operation before the detection of the offence.

APPEAL from a judgment of the Magistrate's Court, Gampaha.

A. Mahendrarajah, for the Accused-Appellant.

W. K. Premaratne, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 12, 1966. ALLES, J.—

The short point raised in this appeal is whether the law under which the accused-appellant was convicted was in operation at the time he is alleged to have committed the offence. The accused was charged with having refused to sell a Berek dry cell battery to one Fernando on 27th November, 1965 in contravention of Price Order No. 1 of 1965 made by the Controller of Prices under section 4 of the Control of Prices Act and published in *Government Gazette* No. 14,571 of 27th November, 1965 and thereby committed an offence punishable under section 8 (2) of the said Act. Neither Fernando nor the prosecuting officer nor the accused was aware of the existence of Price Order No. 1 of 1965 at the time of the alleged offence, which according to the evidence occurred at about 10.45 a.m. on the 27th November at the Gampaha Bazaar. The *Government Gazette* containing the relevant Order has been produced and marked P3 and Counsel for the appellant draws attention to the fact that unlike certain other Price Orders (vide Price Order published in *Government Gazette* No. 14,558 of the 13th November, 1965 and Price Order published

in *Government Gazette* No. 14,553 of the 17th November, 1965) the time at which the Controller made and signed the Order has not been mentioned. In the absence of the time in the present Order, Counsel submits that his client is entitled to an acquittal because it was incumbent on the prosecution to establish by other evidence that the Price Order in question was in existence before the detection of the offence. This same point was raised at the trial but the learned Magistrate, not being impressed by Counsel's submissions, convicted the accused and confiscated the unsold batteries.

Our Interpretation Act defines 'written law' to mean and include all Ordinances and Acts of Parliament and all orders, proclamations, letters patent, rules, by-laws, regulations, warrants and process of every kind made or issued by any body or person having authority under any statutory or other enactment to make or issue the same

'Written law' falls broadly into three different categories :

- (a) Ordinances and Acts of Parliament (Enactments)
- (b) Rules, regulations or by-laws made under Ordinances for general or special purposes
- (c) Proclamations, orders or notifications made under any enactments.

'Commencement' with reference to an *enactment* means the day on which the enactment comes into force. Therefore at whatever time an enactment receives the assent of the Governor-General, after having passed through both Houses of Parliament, the enactment would come into force after midnight of the previous day. The reason for this is obvious. An Act of Parliament receives considerable publicity during its passage in Parliament and the Governor-General's assent is only the formal approval necessary to bring the law into operation. A Price Control Order would fall into the third category of 'written law' and the time at which such an order comes into operation would have to be established by evidence and one form in which this could be done is by the production of the relevant *Gazette* containing the Price Order. No difficulty arises in a case where the offence is alleged to have been committed on a day subsequent to the day when the Order is published, but a difficulty does arise when the offence is alleged to have been committed on the same day that the Price Order is published in the *Gazette*. In such a case the prosecution must establish by satisfactory evidence that the Order was in operation at the time of the alleged offence. Presumably that is the reason why some Price Control Orders state the time at which the Order was made and signed. In England the position is somewhat different. Under Section 36 (2) of the Interpretation Act of 1889—

"Where an Act passed after the commencement of the Act or any order in council, order, warrant, scheme, letters patent, rules, regulations or by-laws, made, granted, or issued, under a power conferred by any such Act is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day."

Under section 4 (4) of the Control of Prices Act every Price Control Order shall come into operation when such Order is made and signed by the Controller and under sub-section 4 of the same section after the Order is signed public notice thereof shall forthwith be given in the manner laid down in either (a), (b) or (c) of the sub-section : (b) refers to the publication in the *Gazette*. Therefore the publication in the *Gazette* is only one method by which the public are notified of the existence of a Price Control Order which has already the sanction of law when the Controller made and signed the Order under section 4 (3) of the Act. One can understand the necessity for not publicising a proposed promulgation of a Price Control Order before publication because if these Orders are to be effective at all, it is essential that they should not be known before they are published. Nevertheless, when an offence is alleged to have been committed in contravention of a Price Control Order on the very day when the Order is published, it must surely be established that the Order was in operation at the time of the alleged offence. In this case, it has not been established in evidence that Price Control Order No. 1 of 1965 was in operation at about 10.45 a.m. on 27th November, 1965. In the absence of such evidence it is open to the accused to plead that he has not contravened the provisions of the Price Control Order and his appeal is therefore entitled to succeed. The appeal is allowed and the conviction quashed. The confiscated batteries should be returned to the accused.

Appeal allowed.