

1945

Present: Canekeeratne J.

PERERA, Appellant, and JOHREN (S. I. Police),
Respondent.

72—M. C., Panadure, 34,759.

Appeal—Alteration of verdict—Conviction under repealed regulation—New regulation corresponding to repealed regulation—Power of Appeal Court to alter verdict—Criminal Procedure Code (Cap. 16), s. 347 (b).

Where the accused was charged for committing an offence under a regulation which had in fact been repealed—

Held, that the conviction should be quashed though a new regulation was substituted for the repealed regulation.

Brereter v. Ratranhamy (1940) 42 N. L. R. 149, distinguished.

A PPEAL from a conviction by the Magistrate of Panadure.

H. V. Perera, K.C. (with him G. P. J. Kurukulasuriya and V. Arulambalam), for the accused, appellant.

T. K. Curtis, C.C., for the Attorney-General.

Cur. adv. vult.

July 16, 1945. CANEKERATNE, J.—

The accused was charged on December 12, 1944, for committing an offence under the regulation published in *Government Gazette* No. 9,166 on September 3, 1943: this regulation was repealed on May 26, 1944. The effect of repealing a statute is to obliterate it as completely from the records of the legislature as if it had never been passed and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law¹.

It is contended that as a new provision has been substituted for the repealed regulation the conviction can be altered to one under the new regulation under section 347 (b) of the Criminal Procedure Code (Chapter 16) and the case of *Brereter v. Ratranhamy*² is quoted as an authority. The accused in that case did an act on July 22, 1933, which was an offence under section 36 (1) (d) of Ordinance No. 11 of 1933; the accused was charged about 1940 with committing an offence under section 35 (1) (d) of the New Tea Control Ordinance (Ordinance No. 12 of 1938, Chapter 299) and was convicted.

The Ordinance of 1933 was a temporary statute which was to expire on a given date: it imposed a penalty and provision was therein made that

¹ *Kay v. Gordon* (1830), 6 Bing. 576.

² (1940) 42 N. L. R. 149.

offences committed before the day appointed for its expiration, may be punished after that day¹. In appeal the conviction was altered to one under the Ordinance of 1933. The facts of that case are entirely different from what happened in this case. The accused, Perera, has not been properly charged and the proceedings are a nullity.

I quash the conviction and leave it to the authorities, if so advised, to take any action against the accused.

Conviction quashed.

