1945 *Present:* **Cannon J.**

EDIRISINGHE, Appellant, *and* CASSIM (S. I. Police), Respondent.

583—M. C. Colombo, 190 (D. R.).

Charge—Accused charged under Defence Regulation—Gazette not referred to in charge or evidence—Judicial notice of proclamation.

Where the accused was charged for contravening a Defence (Control of Textiles) Regulation, which was not to come into force until such date as was fixed by the Governor and notified in the *Gazette*, but no reference was made, either in the charge or in the evidence, to the *Gazette* which brought the Regulation into force—

Held, that the Court could take judicial notice of the date on which the Regulation came into operation.

Jayakodi v. Paul Silva (44 N. L. R. 379), followed.

APPEAL from a conviction by the Magistrate of Colombo.

H. Wanigatunge for the accused, appellant.

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

Cur. adv. vult.

July 25, 1945. CANNON J.

The appellant was charged with keeping for sale or supply on December 21, 1944, regulated textiles, to wit, 181 shorts, 26 khaki shorts, 14 handkerchiefs and 4 banians without a permit from the Controller of Textiles in contravention of Regulation 25 of The Defence (Control of Textiles) (No. 1) Regulations, 1943.

He was convicted and fined Rs. 500 or 6 weeks' imprisonment, in default of payment. Regulation 25 is in Part 4, which by Regulation 22 was not to come into force until such date as was fixed by the Governor and

Proviso to section 42 of Ordinance No. 11 of 1933.

notified in the *Gazette*. In the *Gazette* of December 18, 1944, the prescribed date was notified as December 20, 1944. The appeal is against conviction and sentence, and is based on law and the facts.

Mr. Wanigatunge contends that there should have been at the trial either a reference in the charge to the *Gazette* of December 18, 1944, or evidence given that the Regulation had come into force; and that without this the conviction was bad. It is not suggested that any prejudice was caused to the appellant by these omissions. The same point arose in *Jayakodi v. Paul Silva* [1], which was an appeal by the Attorney-General against an acquittal which had been ordered by the Magistrate on the ground that the prosecution had not proved that the Governor proclaimed such a prescribed date. Soertsz J., in overruling the Magistrate's view, said—

> 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.
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> 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, 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* [2] 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. Today, in most cases, that can be done by reference to the chapter and section of the different volumes of Subsidiary Legislation.

Mutatis mutandis the language of Soertsz J. is appropriate to this case. As regards Mr. Wanigatunge's contention that the Defence Regulations come within the finding of the Divisional Court in *Sivasampu v. Juwan Appu*, I do not think that, though the Defence Regulations are not Ordinances, they could be classified as Subsidiary Legislation, for they are made by the Governor by virtue of powers vested in him by Acts of the Imperial Government and Orders-in-Council. However, the view expressed by Soertsz J. disposes of the point, which now has no substance unless the subsidiary legislation be of the nature of, say, a local by-law which would not ordinarily be included in the official compilations of Subsidiary Legislation.

As regards the evidence and sentence no sufficient arguments have been adduced to justify any intervention in the Magistrate's decision, and

[1] *44 N. L. R. 379.* [2] *38 N. L. R. 369.*

on the question of sentence Mr. Curtis pointed out that the Magistrate did not order confiscation because he thought he had no power to do so. Such a power was, however, given in the amended Regulation No. 4 of 1944, published in the *Gazette* No. 9,250 of March 28, 1944.

The appeal is dismissed

Appeal dismissed.