

1948

Present: Cannon J.

BUYZER (Sub-Inspector of Police), Appellant, and  
SUMANAPALA, Respondent.

1,036—M. C. Ratnapura, 44,249.

*Defence (Control of Textiles) Regulations, 1945—Power of Deputy Controller of Textiles to sanction prosecution—Regulations 53, 57.*

A prosecution for contravening any of the Defence (Control of Textiles) Regulations, 1945, may be sanctioned by the Deputy Controller of Textiles by virtue of the provisions in Regulation 53.

**A** PPEAL against an order of discharge entered by the Magistrate of Ratnapura.

T. K. Curtis, C.C., for the complainant, appellant.

K. C. Nadarajah, for the accused, respondent.

*Cur. adv. vult.*

<sup>1</sup> *Ameer Ali on Evidence, 9th Ed. p. 545.*

<sup>2</sup> *7 Exch. 639.*

<sup>3</sup> *Ameer Ali on Evidence, 9th Ed. p. 544.*

October 10, 1945. CANNON J.—

Charges under Regulations 4 and 14 of the Defence (Control of Textiles) Regulations, 1945, were preferred against the respondent and the Magistrate discharged him at the close of the case for the prosecution on the ground that the prosecution had not been sanctioned by the Controller of Textiles as required by Regulation 57. This Regulation reads as follows:—

No person shall be prosecuted for contravening any of these regulations except by or with the written sanction of the Controller.

The prosecution had in fact been sanctioned by the Deputy Controller whose endorsement of the proceeding reads "Prosecution sanctioned. (Signed) Percy A. Senaratne, Deputy Controller of Textiles. 1.5.45." The complainant with the sanction of the Attorney-General appeals against the Magistrate's decision on the ground that the sanction given by the Deputy Controller is deemed to be a sanction given by the Controller by virtue of the powers conferred on the Deputy Controller by Regulation 58 which reads:—

Subject to the general direction of the Controller—

- (a) any power or function conferred upon or assigned to the Controller by any of the provisions of these regulations may be exercised or discharged by any Deputy Controller of Textiles, and
- (b) any such power or function other than power or function under regulation 57 or regulation 58, may be exercised or discharged by any Assistant Controller of Textiles or by any other officer authorised in writing in that behalf by the Controller.

For the respondent it is contended that the words "Subject to the general direction of the Controller" mean that the Deputy Controller had no such powers unless the Controller gave them to him and that therefore his sanction of the prosecution should have included some express indication that he had been ordered or authorised by the Controller to give the sanction; that without such an indication as *e.g.*, "By order of the Controller" the Court would have no cognisance that the proceedings had in fact been authorised by the Controller.

The distinction between (a) and (b) in the Regulation appears to be that (a) gives the powers to the Deputy Controller, and (b) empowers the Controller to give certain of the powers to officers subordinate to the Deputy Controller. The performance of such duties by the Deputy Controller on the one hand and by his subordinates on the other is to be under the control of the Controller. I am therefore of opinion that in the case under appeal the prosecution was validly sanctioned by the Deputy Controller by virtue of the provisions in Regulation 58.

The order of the Magistrate is set aside and the case remitted to him for further trial according to law.

*Order set aside.*