

1911.

Present: Wood Renton J.

## THE ATTORNEY-GENERAL v. BANDA.

736—P. C. Kandy, 26.974.

*Conducting an elephant along a public road at midday outside the Municipal limits—Offence under s. 84 of the Police Ordinance—“Throughout the Island” means every part of the Island, and not inhabited parts only—Ordinance No. 16 of 1865, ss. 12, 84, 90.*

Section 12 of Ordinance No. 16 of 1865 enables the Governor to bring any provision of the Ordinance into operation, either throughout the Island (that is to say, in every part of the Island, and not in inhabited parts only), or in any province, district, town, or place.

The Courts have ample power to discourage prosecutions, either by a refusal to issue process or by the infliction of a purely nominal penalty, in cases where it would be absurd and unjust as a matter of administration to enforce the provisions of the Ordinance in uninhabited places.

*Tillainather v. Vadivelu*<sup>1</sup> commented upon.

**A**PPEAL by the Attorney-General against an acquittal. The accused was charged under section 84 of Ordinance No. 16 of 1865 for having conducted an elephant at 1 o'clock in the afternoon along a public road outside the Municipal limits of Kandy. The learned Magistrate made the following order:—

Mr. Jonklaas urged that there is no necessity to obtain a license to conduct an elephant along the high road anywhere except within the limits of a Municipality or town. But *vide* extract from *Gazette* No. 5,588 of December 2, 1898, and the definition of the word “town” the beginning of Ordinance No. 16 of 1865; this definition would appear to mean that an offence against section 84 can be committed on any road in the Island; but “set out for the purpose of this Ordinance” is not clear to me. I am unable to find any Supreme Court decisions on the point, and asked for instructions as to the correct interpretation of the word “town” in this Ordinance.

The Attorney-General declines to give instructions in summary case. As the Ordinance is not clear, and as I have no proof before me of the use of the words “town limits” to cover any village road in the Island, the accused will get the benefit of the doubt, and I acquit him.

The Attorney-General appealed.

*Walter Pereira, K.C., S.-G.*, for the appellant.—By virtue of the powers vested in the Governor by section 12 of the Ordinance, it has been declared by the Proclamation dated November 29, 1898, that section 84 of the Ordinance No. 16 of 1865 shall have operation

<sup>1</sup> (1905) 8 N. L. R. 164.

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“ throughout the Island.” The term includes every part of the Island, and every road. The interpretation of the words “ set out for the purposes of this Ordinance ” is not necessary for this case.

*H. A. Jayewardene*, for the respondent, relied on *Tillainather v. Vadivelu*.<sup>1</sup>

November 14, 1911. WOOD RENTON J.—

This is an appeal by the Attorney-General against the acquittal of the accused-respondent, who was charged in the Police Court of Kandy with having conducted an elephant along the public road at 1 o'clock in the afternoon in breach of section 84 of Ordinance No. 16 of 1865. The learned Police Magistrate has not adjudicated upon the facts, and if he is wrong in his decision on the law, the case will have to go back for trial in due course. Section 84 of Ordinance No. 16 of 1865 provides that no elephant shall be allowed to pass along any street, road, or thoroughfare within any town and limits, except between the hours of 2 and 8 in the morning, and that any person committing a breach of this provision shall be guilty of an offence punishable with a fine not exceeding £5. The evidence for the prosecution showed that the act of the accused-respondent in conducting the elephant had been committed outside the Municipal limits and not in any town, and the Police Magistrate took the view that under those circumstances the respondent had not brought himself within the prohibition created by section 84 of Ordinance No. 16 of 1865, inasmuch as under section 6 of that Ordinance the word “ town ” is defined as including any village or limits set out for the purposes of the Ordinance. The Police Magistrate said that he was unable to interpret the words “ set out for the purposes of the Ordinance,” and as the Attorney-General declined to give instructions in a summary case, he acquitted the respondent. The present appeal is brought against that acquittal.

It appears to me that the decision of the Police Magistrate is wrong in point of law. Section 12 empowers the Governor, with the advice and consent of the Executive Council, by Proclamation in the *Government Gazette* from time to time, to declare that such of the provisions of Ordinance No. 16 of 1865 as to him may seem advisable “ shall come into operation throughout the Island, or in any province, district, town, or place as shall appear to him to require the same.” In the present case, by Proclamation dated December 2, 1898, and made under section 12 of the Ordinance of 1865, section 84 of that Ordinance has been brought into operation throughout the Island. Apart from any judicial authority bearing upon the question, the construction of section 12 of Ordinance No. 16 of 1865 seems to me to be clear. It enables the Governor, with the prescribed formalities, where he may consider it desirable

<sup>1</sup> (1905) 8 N. L. E. 164.

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to do so, to bring any provision of the Ordinance into operation, either throughout the Island—that is to say, in every part of the Island, or in any province, district, town, or place. It would be, I think, to run counter both to the letter and to the intention of section 12 to treat the words “ throughout the Island ” as if they came after the clause “ or in any province, district, town, or place, ” instead of before it. The section to my mind presents no difficulty in construction, and I do not see that there is anything unreasonable in the law which it enacts. It may quite well be that there are provisions of the Ordinance, such, for example, as section 90, in which the beating of tom-toms is forbidden, which it would be absurd and unjust as a matter of administration to enforce in uninhabited parts of the Island. But the Courts have ample power to discourage prosecutions in such cases, either by a refusal to issue process or by the infliction of a purely nominal penalty, without our being compelled to seek relief by construing section 12 of Ordinance No. 16 of 1865 in a sense which its language does not admit. The case, however, of *Tillainather v. Vadivelu*<sup>1</sup> has been cited by the respondent’s counsel in support of a contrary construction of section 12 of the Ordinance of 1865. That was a decision of three Judges, and if it is clearly applicable to the present case, I am of course bound by it. It is very difficult, and my difficulty on this point is, I find, shared both by the Solicitor-General and by the counsel for the respondent, to understand what the *ratio decidendi* in *Tillainather v. Vadivelu*<sup>1</sup> actually was. Sir Charles Layard dissented from the view of the majority of the Court, which, so far as I am able to interpret it, seems to have been this. The question to be decided was whether by a Proclamation under section 12 of the Ordinance, identical in terms with that with which we have here to deal, the provisions of section 90, by which the beating of tom-toms is forbidden, had been extended to the village of Batticotta, the limits of which had not been defined in the Proclamation. Section 12 does not in terms require this to be done. But the contention would seem to have been put forward that the provisions of section 13, which enact that the Proclamation establishing a police force in any town shall specify and define the limits of such town, applied by way of analogy to Proclamations under section 12. The majority of the Court rejected that argument, and held that as Batticotta was a village, the Proclamation of section 90 had made the provisions of that section applicable to it as such. I cannot find that either of the Judges constituting the majority of the Court expressly held that the provisions of section 90 could only be extended by a Proclamation under section 12 to villages. In the course of his judgment Mr. Justice Grenier said that the words “ throughout the Island ” in section 12 must be taken to mean throughout the inhabited parts of the Island, and not also

<sup>1</sup> (1905) 8 N. L. R. 164.

throughout the uninhabited parts. In the present case the alleged offence under section 84 was committed on a high road. It is, therefore, unnecessary for me to give a formal decision as to the meaning of the words " throughout the Island " in section 12. But I feel bound to say that if it were necessary to do so, I should myself respectfully construe these words as meaning through every part of the Island, and should leave cases of hardship or of absurdity to be discouraged by those who are charged with the administration of the law. On the grounds that I have indicated I set aside the acquittal of the accused-respondent, and send the case back for trial in due course in the Police Court of Kandy.

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*Set aside and sent back.*

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