

1945

Present: Cannon J.

SILVA, Appellant, and DASANAIKE, Respondent.

994—*M. C. Negombo, 42,647.*

Control of Prices (Miscellaneous Articles) Ordinance—Ordinance No. 39 of 1939—Paragraph 5 of the orders made under section 3—Failure of trader in thread to exhibit notice setting out maximum price—Duty of prosecution to prove sale and not a mere exposure for sale.

Where a trader in thread is charged for failing to exhibit in a conspicuous position a notice setting out the maximum controlled price, in breach of paragraph 5 of the orders made by the Controller of Prices (Miscellaneous Articles) under section 3 of Ordinance No. 39 of 1939, it is necessary for the prosecution to prove an actual sale, and not a mere exposure for sale, of the specified thread.

A PPEAL from a conviction by the Magistrate of Negombo.

Maçkensie Pereira for the accused, appellant.

M. P. Spencer, C.C., for the Crown, respondent.

Cur. adv. vult.

January 17, 1945. CANNON J.—

The appellant was summoned for, that he, being a trader in thread, failed to exhibit in a conspicuous position a notice setting out the maximum controlled price of Telephone Brand Thread, in breach of Condition V. of the orders made under section 3 of Ordinance No. 39 of 1939 by the Controller of Prices (Miscellaneous Articles).

The evidence shows that there were 14 balls of such thread in the show-case in the appellant's boutique, and that there was no maximum controlled price of the thread exhibited in the boutique. The Magistrate convicted the appellant. He appeals on the ground that as no sale of the thread took place he was not guilty of any offence under paragraph V. which has been, I think, erroneously described as a "condition" in the summons. By paragraph V. the Controller directs in the following words—"That any trader who at any premises sells any thread of the description and grade specified in the schedule hereto shall exhibit in a conspicuous position at those premises a notice in which there shall be set out the maximum price fixed by this order in respect of that description and grade".

It is not disputed that the thread in question is of the description and grade mentioned in the schedule; or that there was no sale; but it is contended against the appellant that the exposure of goods for sale brought him within the terms of the order.

Only one authority has been cited to me, namely, *Pakiampillai v. Merry*¹. In that case Wijeyewardene J. expressed the opinion that it was not necessary for the purpose of a prosecution of this nature to prove a contract of sale 'enforceable by action' within the meaning of section 4 of the Sale of Goods Ordinance. That case, however, is

¹ 44 N. L. R. 142.

distinguishable from this. In that case there was a transaction of sale and in this there was no such transaction at all. In that case the learned Judge undoubtedly meant to say that where there has been what purported to be a transaction of sale, then whether or not it might prove ultimately to be a defective contract, this would not affect the vendor's liability under the Ordinance in question. That case is, therefore, not an authority for the submission of the respondent. For the Crown it has also been suggested that the words in paragraph 5, "Any trader who sells any thread" are words of description meaning any trader whose business includes the selling of thread and do not mean that an actual sale is required. Reference to paras. 3, 4 and 6 of the Order shows however, that the draughtsman was referring to the transaction of sale not to the description of the vendor. Para. 3 states that "Any sale of any thread shall be deemed", &c. Para. 4 says that "Every person who sells any thread" shall give a receipt for the amount. Para. 6 directs that "every trader who has sold thread" in the 3 months prior to the date of the order shall, &c.

As regards the argument that the word "sells" in para. 5 is meant to catch up an exposure for sale, one must look to the rules for the interpretation of statutes. But, first of all, a reference to two important English statutes may be helpful. Their phraseology indicates that the legislature was treating the word "sells" as a transaction quite distinct from exposure for sale. In the Food and Drugs Act, 1938, section 1 (ii), reads as follows:—"No person shall sell, or have in his possession for the purpose of sale, any food or drugs, &c.". In the Fertilizers and Feeding Stuffs Act, 1926, Section 7 (i), reads "Any person who sells or offers or exposes for sale for use as food, &c., or has in his possession, packed and prepared for sale for such use, &c.". Maxwell on the Interpretation of Statutes, compendiously summarises the principles applicable to this case. In the 8th Edition at page 231 appears the following—"Where an enactment may entail penal consequences no violence must be done to its language to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language. To determine that a case is within the intention of a statute its language must authorise the Court to say so, but it is not admissible to carry the principle that a case which is within the mischief of a statute is within its provisions so far as to punish a crime not specified in the statute because it is of equal atrocity or of a kindred character with those which are enumerated".

I think the exposure of this thread for sale was within the mischief aimed at by this order, but the order does not say so. For the above reasons I am unable to read into the word "Sells" the words "exposed for sale". The appeal must be allowed and the conviction quashed.

Appeal allowed.