

1903.
January 15.

SAMARASINHA v. ALLIA MARKAR.

P. C., Kegalla, 24,418.

Local Board—Ordinance No. 13 of 1898—Prosecution for nuisance—Authority to prosecute—Dried prawns—"Fish"—Ordinance No. 15 of 1862, s. 1, sub-section 8.

Section 98 of the Ordinance No. 13 of 1898 does not make the direction of the Local Board a condition precedent for the prosecution of a person for committing a nuisance. It merely authorizes the Board to direct such prosecutions.

Dried prawns come within the meaning of the word "fish" in sub-section 8 of section 1 of Ordinance No. 15 of 1862.

THE Inspector of the Local Board of Kegalla complained that the accused, being a boutique-keeper, did expose for sale putrid dry fish unfit for human consumption, in breach of sub-section 8 of section 1 of Ordinance No. 15 of 1862.

The Police Magistrate, Mr. Allan Beven, found the accused guilty and sentenced him to a fine of Rs. 10.

The accused appealed.

H. A. Jayawardene, for appellant.—The prosecution is authorized by the Chairman of the Board, but that authority is not sufficient. The Local Board itself must give the authority (Ordinance No. 3 of 1898, sections 22, 98, and 107). The District Medical Officer, who was called to give evidence as to the unfitness of the prawns exposed for sale for human consumption, was not appointed as the Sanitary Officer of the Board. He had, therefore, no power to condemn any food. The food condemned by the Ordinance by sub-section 8 of section 1 seems to be dry fish and not fresh fish. Here fresh prawns were sold.

Rámanáthan, S.-G., for respondent.

15th January, 1903. WENDT, J.—

Two points have been raised upon this appeal. The first is, that no prosecution for the offence in question could be maintained without the sanction of the Local Board, and section 98 of Ordinance No. 13 of 1898 was relied upon. It is sufficient to say that that section does not make the direction of the Board a condition precedent, but merely authorizes the Board to direct any prosecution for any nuisance or proceedings to recover a penalty, and to pay the expenses consequent upon such proceedings.

The next point was, that the article exposed by the accused for sale was not "fish" within the meaning of section 1, sub-section 8, of the Nuisances Ordinance of 1862. The article in question was a quantity of dried prawns. It is not contended that the prawns when fresh were not "fish," but it is submitted that when they became "dry fish," they ceased to be fish at all. I cannot assent to this argument. Apart from any general question as to the meaning of the word fish, or as to its meaning in any other enactment, it is clear to my mind that in the present instance the word is used in its largest sense as indicating (like the other terms used, poultry, game, flesh, fruit, and vegetable) one of the broad classes into which the food of man is divisible.

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WENDT, P.J.

I have no doubt that dried prawns come within the words, as they certainly do within the spirit, of sub-section 8.

I therefore dismiss the appeal.

