

Present : Garvin S.P.J.

1930

WIJEYSINGHE v. MOHAMED.

567—P. C. Matale, 34,967.

Urban District Council—Regulations for prevention of contagious disease—
Application of Ordinance—Quarantine and Prevention of Diseases
Ordinance, No. 3 of 1897.

The Quarantine and Prevention of Diseases Ordinance, No. 3 of 1897, may be made operative within the limits of the area of an Urban District Council. A prosecution for the breach of a regulation passed under the Ordinance may be entered at the instance of the Chairman of the Urban District Council.

A PPEAL from an acquittal by the Police Magistrate of Matale.

Keuneman (with *Abeysekere*), for appellant.

H. V. Perera (with *Gratiaen*), for respondent.

Vernon Grenier, Acting Deputy Solicitor-General, for the Crown.

March 21, 1930. GARVIN S.P.J.—

This is an appeal from an acquittal. The respondent was charged with having stored "grain in quantities of more than 50 bags in premises No. 58, Trincomalee street, Matale, which is not a rat-proof grain store, in breach of regulation 89 (c) (9) of the regulations framed under section 4 of the Quarantine and Prevention of Diseases Ordinance of 1897." By a proclamation in the *Government Gazette* of February 17, 1928, this regulation was applied to and made operative within the area of the Urban District Council of Matale. It has been found as a fact that the respondent did store grain in quantities of more than 50 bags in the store referred to and it is an admitted fact that it is not rat-proof.

It was contended on behalf of the respondent that Ordinance No. 3 of 1897 must be treated as repealed for the purposes of the area for which the Urban District Council of Matale has been constituted and that the regulation No. 89 made under and in pursuance of the powers created under that Ordinance was not and could not be made operative within those limits. It was also urged that in the absence of a delegation such as is contemplated by Ordinance No. 3 of 1897 the prosecution is not sustainable. The Police Magistrate upheld those contentions and acquitted the accused.

It is perhaps convenient to deal with the second of these objections at the outset. Assuming that Ordinance No. 3 of 1897 is operative within the limits of the District Council of Matale, it was clearly within the power of His Excellency to bring regulation No. 89 into operation in that area. I am unable to see why a

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person who makes himself obnoxious to this regulation cannot be prosecuted at the instance of the Chairman of the Urban District Council.

The question for decision is whether Ordinance No. 3 of 1897 must for the purposes of the area in respect of which this Urban District Council has been constituted be treated as repealed. The Ordinances which are required by section 239 of the Local Government Ordinance of 1920 to be treated as repealed for the purposes of any area in respect of which an Urban District Council has been constituted are specified in schedule 7 and the portion of that schedule which is material to the question under consideration is as follows:— Ordinance No. 8 of 1866, intitled “ An Ordinance to provide against the spread of Contagious Diseases in this Island ” and all Ordinances passed in amendment thereof. The argument in short is that Ordinance No. 3 of 1897, intitled “ An Ordinance to make provision for the prevention, introduction, and spread of plague and other contagious and infectious diseases, ” is an Ordinance passed in amendment of Ordinance No. 8 of 1866.

The purpose of Ordinance No. 8 of 1866 as set out in the preamble is “ to provide against the introduction and spread of certain malignant diseases generally believed to be of a contagious or infectious nature.” This Ordinance is divisible into two parts. The first consisting of sections 2 to 9 authorizes the establishment of boards of health and contains certain provisions for controlling and preventing the spread of smallpox, cholera, or other diseases which may from time to time be named by the Governor in a proclamation ; the second part consists of sections 10 and 11 and contains the provisions enacted for the purposes of preventing the introduction into the Colony and spread therein of infectious or contagious diseases. The form which the legislation has taken is to vest in the Governor power to make regulations or orders to provide for the steps to be taken in the following cases and for the following objects :—

- (1) In respect of vessels which may at any time arrive at any port or place in this Island having on board any infectious or contagious diseases
- (2) In case of any infectious or contagious disease of a malignant nature, whether in man or beast, breaking out or spreading in any town or district of this Colony under circumstances which render it advisable that measures should promptly be taken for securing the public health.

So much of Ordinance No. 8 of 1866 as relates to the introduction into the Colony of infectious or contagious diseases, *i.e.*, sections 10 and 11, were repealed by section 2 of Ordinance No. 3 of 1897; in all other respects Ordinance No. 8 of 1866 remains unaltered.

Ordinance No. 3 of 1897 is not expressed to be passed in amendment of Ordinance of 1866. The method adopted by the Legislature was to repeal the provisions of Ordinance No. 8 of 1866 which related to the prevention or the introduction and spread of infectious or contagious diseases and to enact a separate Ordinance for that purpose.

There are now two Ordinances : the one, Ordinance No. 8 of 1866, limited to the prevention of the spread of smallpox, cholera, and such other diseases as the Governor may by proclamation name; the other, Ordinance No. 3 of 1897, enacted with the object of preventing the introduction and spread of the plague and other contagious and infectious diseases.

Ordinance No. 3 of 1897 is wider in its scope, and the wide powers to make regulations may result in overlapping, but the two Ordinances are in no sense interdependent. They are, on the contrary, wholly independent of each other, and the repeal of one of them will not affect the other. The function of an amending Ordinance is by alteration or addition or by both alteration and addition or substitution to improve an existing Ordinance and make it more effective for the purpose it is intended to serve.

This, it seems to me, is what the Legislature expressly refrained from doing, preferring to excise from No. 8 of 1866 the provisions designed to give effect to one of the purposes for which that Ordinance was enacted and to enact a separate Ordinance to carry out that object.

There is no other Ordinance passed in amendment of Ordinance No. 8 of 1866, and the suggestion was made that the words in schedule 7 can be given no meaning unless Ordinance No. 3 of 1897 was meant. This circumstance presents no real difficulty. The words were possibly repeated once too often or perhaps were inserted *ex majore cautela* by the draftsman who might conceivably have been misled by the Editor's Note (as amended by Ordinance No. 3 of 1897) which will be found printed immediately below the title of Ordinance No. 8 of 1866 in the Revised (1923) Edition of the Legislative Enactments.

Ordinance No. 11 of 1920, which is very wide and comprehensive in its scope, vests in a District Council all such powers as are deemed necessary for the purposes of Government and administration within the area for which it is constituted. An examination of the provisions of this Ordinance and a comparison with the Ordinances enumerated in schedule 7 shows that the reason for this repeal for the purposes of any area in which a District Council is constituted is that the Local Government Ordinance has created and vested in District Councils as they are constituted all the

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powers necessary for carrying out within their respective areas the objects and purposes for which the Ordinances enumerated in the schedule were enacted.

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Among the powers committed to a District Council is the power to make and bring into operation rules by which it can achieve all that is aimed at by Ordinance No. 8 of 1866. There is therefore no longer any reason why that Ordinance should continue to be operative within the local limits assigned to such a Council. But it has not and cannot be vested with the powers created by Ordinance No. 3 of 1897, which is concerned not merely with any particular local area but the whole Island. It may well be necessary in the general interests of the Colony to make and enforce within a particular local area regulations which may not be necessary from the point of view of the interests of that area nor within the power of the District Council to make.

I am unable to see that the retention of Ordinance No. 3 of 1897 in full operation within the local limits of a District Council conflicts with the policy of the Legislature so far as it can be gathered from a consideration of the relevant provisions of the Local Government Ordinance.

Ordinance No. 3 of 1897 has not, in my opinion, ceased to be operative within the area for which the District Council of Matale has been constituted.

On the facts proved the accused has been shown to have committed a breach of regulation No. 89. He is convicted of the charge laid against him.

In view of the doubt which appears to have existed as to whether this regulation was operative within the area, I propose to treat this as a test case and accordingly sentence the accused to pay a fine of Rs. 10.

Set aside.

