

1954

Present : de Silva J.

M. RAMALINGAM (Office Assistant to the Government Agent, Northern Province), Appellant, and THE JAFFNA CENTRAL BUS CO., LTD., Respondent

S. C. 764—M. C. Mallakam, 6,447

*Interpretation Ordinance (Cap. 2)—Section 6—Prosecution under a repealed Ordinance—Retrospective effect on it of repealing statute—Motor Car Ordinance, No. 45 of 1933, ss. 29 (1), 150 (1), 158—Motor Traffic Act, No. 14 of 1951, s. 243.*

Where an offence is committed in contravention of an Ordinance which is subsequently repealed the prosecution in respect of it may, by virtue of section 6 (3) (b) of the Interpretation Ordinance, be instituted even after the repealing statute comes into force, unless the repealing statute expressly prohibits it. Section 6 (3) (b) of the Interpretation Ordinance is independent of section 6 (3) (c).

The accused was charged on July 3, 1953, with having possessed on April 1, 1950, a motor vehicle without a licence in contravention of section 29 (1) of the Motor Car Ordinance, No. 45 of 1933: The Motor Car Ordinance was, however, repealed on September 1, 1951, by section 243 of the Motor Traffic Act, No. 14 of 1951.

Held, that the prosecution was maintainable.

**A**PPEAL from a judgment of the Magistrate's Court, Mallakam.

H. A. Wijemanne, Crown Counsel, with V. S. A. Pullenayagam, Crown Counsel, for the complainant appellant.

C. Renganathan, with V. K. Palasunderam, for the accused respondent.

*Cur. adv. vult.*

November 16, 1954. DE SILVA J.—

The complainant-appellant who is the Office Assistant to the Government Agent, Northern Province, reported to the Magistrate's Court of Mallakam on the 3rd July, 1953, that the accused-respondent did, in or about the 1st April, 1950, in contravention of section 29 (1) of the Motor Car Ordinance No. 45 of 1938, possess a Motor Vehicle bearing registered number X 5355 for which a licence was not in force on 1st April, 1950, and the said accused-respondent had thereby committed an offence under section 158 read with section 150 (1) of the said Ordinance. To this charge the respondent on 7th August, 1953, pleaded not guilty.

When the case came up for trial on 27th May, 1954, the proctor who appeared for the defence submitted to the Court that the prosecution could not be maintained because the Motor Car Ordinance No. 45 of 1938 had been repealed by section 243 of the Motor Traffic Act No. 14 of 1951. After hearing the arguments addressed to him by the proctor for the respondent and the Crown Counsel who appeared for the prosecution, the learned Magistrate by his order dated 17th June, 1954, upheld the objection raised by the defence and acquitted the respondent. The complainant has appealed, with the sanction of the Attorney-General, from that order.

As stated above the respondent is charged with the contravention of section 29 (1) of the Motor Car Ordinance No. 45 of 1938. The date of the alleged offence is 1st April, 1950. The case was instituted on 3rd July, 1953. The Motor Car Ordinance No. 45 of 1938 was repealed by section 243 of Motor Traffic Act No. 14 of 1951 which came into operation on 1st September, 1951. Admittedly no provision was made in this Act for past contraventions of section 29 (1) of the Motor Car Ordinance of 1938 in respect of which legal proceedings had not been taken. The effect of such a repeal, it is contended on behalf of the respondent, is as stated by Tindal C.J. in *Kay v. Goodwin*<sup>1</sup> (decided before the Interpretation Act of 1889) where he says "I take the effect of repealing a statute to be to obliterate as completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and conducted whilst it was an existing law". Mr. Wijemanne, C.C., who appeared for the appellant, however, argued that no such drastic result would ensue by this repeal of the Motor Car Ordinance of 1938 in view of the provisions of section 6 (3) of the Interpretation Ordinance of 1901 (Cap. 2). This section reads as follows:—

6 (3). Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected—

- (a) the past operation of anything duly done or suffered under the repealed written law;
- (b) any offence committed, any right, liberty or penalty acquired or incurred under the repealed written law;

<sup>1</sup> (1830) 6 Bing. 576.

(c) any action, proceeding, or thing pending or incompleated when the written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal.

Mr. Wijemanne relies on section 6 (3) (b) and contends that in spite of the repeal of the Motor Car Ordinance of 1938 the offence committed by the respondent before such repeal is kept alive and he is liable to be prosecuted and punished in respect of that offence. Mr. Renganathan for the defence submits however, that section 6 (3) (b) cannot stand alone but it is subject to section 6 (3) (c). According to him, and this view was shared by the learned Magistrate, section 6 (3) (b) merely keeps alive the offences, rights, liberties, or penalties acquired or incurred under the repealed written law for the purpose of punishing or enforcing them under section 6 (3) (c). The latter section deals with actions, proceedings, &c. which were pending at the time of the repeal. Therefore it is argued that only those offences, rights, &c. referred to in section 6 (3) (b) in respect of which actions have been filed or proceedings instituted can be punished or enforced as the case may be. Attention was also drawn to the fact that in section 6 (3) (c) no reference is made to the institution of actions or proceedings whereas in Section 38 of the Interpretation Act of 1889 of England and section 6 of the General Clauses Act of 1897 of India which correspond to section 6 (3) of our Interpretation Ordinance express provision is made for the institution of proceedings in respect of the rights, privileges, penalties, &c. saved by those sections.

The contention that section 6 (3) (b) cannot stand by itself is quite untenable in my view. Sections 6 (3) (b) and 6 (3) (c) refer to two categories of matters. Section 6 (3) (b) sets out in general the various matters which are saved after the repeal. If the defence contention is correct, then at the end of section 6 (3) (b) some such words as "provided that an action proceeding or thing has been instituted" should have been inserted. If the intention of the legislature was to save only those rights, &c. in respect of which proceedings were pending effect to that intention could easily have been given by the insertion of the necessary words. It is clear from the language used in this section that there was no such intention. The meaning of the words appearing in this section is neither obscure nor ambiguous and therefore speculation regarding the intention of the legislature becomes unnecessary. The grant of a right implies the grant of the means necessary for its enforcement. Section 6 (3) (c) makes provision for pending cases or proceedings as distinct from those matters in respect of which no action has been taken at the time of the repeal. It would appear that this section apart from saving pending cases, &c. (which perhaps is not quite necessary in view of 6 (3) (b)) provides for the continuity of the procedure under the repealed law in respect of them, even though the repealing law sets up a different procedure to be followed in the proceedings taken under it.

If the defence contention that only those offences and rights in respect of which proceedings were pending at the time of the appeal were saved is correct then it would result in a serious encroachment on vested rights.

It is not the policy of civilized countries, except for very good reason, to deprive parties of the rights they have already acquired, by resorting to retrospective legislation. If a particular law is to operate retrospectively there must be express provision in it to that effect. It is a well known principle of judicial interpretation that the Courts would refuse to recognize a law to be retrospective unless it is clear from its provisions that it was so intended. Section 6 (3) of the Interpretation Ordinance provides that in the absence of express provision to the contrary the repeal of a written law shall not affect the matters set out in section 6 (3) (b).

It is true that the corresponding sections in the English and the Indian Acts make provision for the institution of actions and proceedings. That provision was made, probably, from an abundance of caution. Section 6 of the Indian Act is almost identical with section 38 of the Interpretation Act of England. Section 6 (3) of our Interpretation Ordinance is more concise although it achieves the same result.

In the case of *Akilandanayaki v. Sothinagaratnam et al.*<sup>1</sup> which was decided by a Bench of five Judges the effect of sections 6 (3) (b) and 6 (3) (c) was considered in relation to the Jaffna Matrimonial Rights and Inheritance (Amendment) Ordinance, No. 88 of 1947. It was contended in that case that the provisions of that Ordinance were retrospective in effect. Gratiaen J. who prepared the main judgment, with which the other judges agreed, held that in view of Section 6 (3) (b) the vested rights of the plaintiff in Thediatheddam property were not affected by the repealing Ordinance. It was not even contended in that case that section 6 (3) (b) was governed by section 6 (3) (c). It is true, however, that at the time the repealing Ordinance came into operation an action brought by the plaintiff in regard to the property involved was already pending. Gratiaen J., however, held that the plaintiff was entitled to succeed under section 6 (3) (b) as well as under 6 (3) (c). In the light of this decision the order of the learned Magistrate cannot be upheld. Accordingly I set aside the order of acquittal and direct the Magistrate to proceed on with the trial.

*Acquittal set aside.*