

1946

Present: Jayetileke J.

THE ATTORNEY-GENERAL, Appellant, and
FRANCIS, Respondent.

721—*M. C. Colombo, 11,250.*

Defence (Miscellaneous) Regulations, 1939—Charge under Regulations 17 (1), 52—Effect of expiry of a temporary enactment—Interpretation Ordinance (Cap. 2), s. 6 (3).

No proceedings can be taken upon a Defence (Miscellaneous) Regulation which has expired, although the offence in question was committed whilst the Regulation was in operation.

A PPEAL against an acquittal from the Magistrate's Court, Colombo.

H. H. Basnayake, K.C., Acting Attorney-General (with him *A. C. M. Ameer, C.C.,* and *H. Deheragoda, C.C.*), for the Attorney-General, appellant.

S. Nadesan (with him *Colvin R. de Silva* and *K. C. de Silva*), for the accused, respondent.

Cur. adv. vult.

October 25, 1946. JAYETILEKE J.—

This is an appeal by the Attorney-General against an order made by the Magistrate discharging the accused. On December 6, 1945, the accused was charged with having committed an offence under regulation 17 (1) of the Defence (Miscellaneous) Regulations punishable under regulation 52 (3) of the regulations. The trial of the accused was postponed on five occasions and was eventually taken up on March 3, 1946. On that date Counsel for the accused contended that the regulation under which the accused was charged had expired and, therefore, no proceedings could be taken upon it. The prosecuting Inspector admitted that the regulation had expired and stated that, in the circumstances, he could not proceed with the trial. Thereupon the Magistrate discharged the accused. At the argument before me the learned Attorney-General contended that though regulation 17 (1) had expired (1) the

accused could be dealt with under regulation 52 which was continued in force, (2) the accused could be proceeded against as the offence was committed whilst the regulation was in operation.

In order to examine these contentions it is necessary to state the relevant provisions of the law. The Defence (Miscellaneous) Regulations, 1939, were made by the Governor by virtue of the powers vested in him by section 1 of the Emergency Powers (Defence) Act, 1939. The provisions of that Act other than the sections mentioned in paragraph 3 were extended to Ceylon by the Emergency Powers (Colonial Defence) Order in Council, 1939. Section 11 of the Act, which is one of the sections the provisions of which were not extended to Ceylon, reads :—

11. (1) Subject to the provisions of this section, this Act shall continue in force for the period of one year beginning with the date of the passing of this Act, and shall then expire :

Provided that if at any time while this Act is in force, an address is presented to His Majesty by each house of Parliament praying that this Act should be continued in force for a further period of one year from the time at which it would otherwise expire, His Majesty may by Order in Council direct that this Act shall continue in force for that period.

(2) Notwithstanding anything in the preceding sub-section, if His Majesty by Order in Council declares that the emergency that was the occasion of the passing of this Act has come to an end, this Act shall expire at the end of the day on which the Order is expressed to come into operation.

(3) The expiry of this Act shall not affect the operation thereof as respects things previously done or omitted to be done.

The Emergency Powers (Defence) Act of 1940 extended the operation of the Act of 1939 for a period of one year and the Emergency (Colonial Defence) (Amendment) Order in Council, 1940, extended the Act of 1940 to Ceylon. Thereafter by various Acts and Orders in Council the Act of 1939 was continued in force in England and in Ceylon up to February 24, 1946. The Emergency Laws (Transitional Provisions) Act, 1946, made provision for the continuation of certain defence regulations until December 31, 1947, notwithstanding the expiry of the Emergency Powers (Defence) Acts of 1939 to 1945. The Emergency Powers (Transitional Provisions) (Colonies, &c.) Order in Council, 1946, gave the Governor power to provide for the continuation in force of any Defence Regulations having effect in Ceylon notwithstanding the expiry of the Emergency Powers (Defence) Acts, 1939 to 1945. In pursuance of that power the Governor on February 21, 1946, made the Emergency Laws (Transitional Provisions) Order, 1946, whereby he provided that the Defence Regulations specified in paragraph 1 of the Schedule shall be continued in force until December 31, 1947. Regulation 17 (1) has been omitted from that schedule but regulation 52 has been included in it. Regulation 52 is the general regulation which provides penalties for any breach of the regulations. It says that if any person contravenes or fails to comply with any Defence regulation he shall be guilty of an offence against that regulation. It does not create any new offence but it gives general power to punish any infraction of any regulation by

fine or imprisonment. It seems to me that it cannot stand alone but it must be read with a regulation which has full force and effect. Presumably it has been continued in force because it provides penalties for breaches of the regulations that are continued in force. I am of opinion that after the expiry of regulation 17 (1) there was no longer any offence against it for which a penalty could be imposed under regulation 52.

The second limb of the learned Attorney-General's argument is based on certain observations made by Parke B and Alderson B. in *Steavenson v. Oliver*¹. Parke B. said :—

“ With respect to the vested interests of those persons who held warrants as assistant-surgeons in the navy or army, the intention was, that all who were such either at the time of the passing of the Act or at any time before the 1st of August, 1826, should be in the same position, with respect to their right to practise as apothecaries as if they had been in actual practice as such before the 1st of August, 1815. I am the more disposed to think thus on the ground that the penalties given by this Act would probably survive its expiration, and that persons who violated its provisions might afterwards be punished in the way pointed out. If it were not so any person who had violated those provisions within six months prior to the expiration of the Act, would not be liable to punishment at all. It is, however, unnecessary to decide that point : it is enough to say that we think those who were qualified by being assistant-surgeons in the navy before the 1st of August, 1826, retained that qualification notwithstanding the expiration of that statute ”.

Alderson B. said :—

“ It seems to me that those persons who, during the year for which the last act was to continue in force, or previous to that period, had obtained rights under it, had obtained rights which were not to cease by the determination of the Act, any more than where a person commits an offence against an Act of a temporary nature, the party who has disobeyed the Act during its existence as a law is to become punishable on its ceasing to exist ”.

The appeal in that case turned upon the interpretation of section 4 of 6 Geo. 4. c. 133, which enacted that every person who held a commission as surgeon in the army should be entitled to practise as an apothecary without having passed the usual examination. The act was a temporary one and it expired on August 1, 1825. It was contended that a person who, under the act, was entitled to practise as an apothecary, would lose his right after August 1, 1826. But it was held that such a person would not be deprived of his right. The observations quoted above were made in a case in which the court had to consider whether on the construction of the particular enactment the privilege of practising which was given by it continued notwithstanding its expiration. The question

¹ (1841) 8 M & W 234 ; 151 English Report 1024 at 1027.

whether proceedings can be taken upon a statute which has expired is purely one of construction. Parke B. said in the course of his judgment :

“ if an Act expires the duration of its provisions is a matter of construction ”¹.

The effect of the expiration of a temporary statute is very clearly stated by Craie in his treatise on *Statute Law* (3rd Edition) at page 342 :—

“ As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired no proceedings can be taken upon it, and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires, any proceedings which are being taken against a person will *ipso facto* terminate ”.

It must be noted that section 11 (3) of the Emergency Powers (Defence) Act, 1939, which provided that the expiry of the Act, shall not affect the operation thereof as respects things previously done or omitted to be done was not extended to Ceylon. In the absence of a provision that offences committed before the expiry of regulation 17 can be dealt with as though the expiry had not taken place I am of opinion that the charge cannot be sustained. Section 6 (3) of the Interpretation Ordinance (Chapter 2) does not apply to written laws that have expired.

I would, accordingly, dismiss the appeal.

Appeal dismissed.
