

1904.  
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CAPPER v. SILVA.

P. C., Colombo, 88,442.

*Piracy of telegrams—Ordinance No. 19 of 1898, ss. 1 and 3—Failure to comply with provisions of Ordinance as to manner of publication.*

Under section 1 of Ordinance No. 19 of 1898, when any person has, in the manner mentioned in the Ordinance, published in a newspaper, published and circulated in Ceylon, any message by electric telegraph from any place outside the Island, lawfully received by such person, no other person shall, without the consent in writing of such first-mentioned person, print or publish such telegram, or the substance thereof, or any extract therefrom, until after a period of forty-eight hours from the time of first publication.

*Held*, that where A and B receive the same message by electric telegraph, B cannot, by non-compliance with the requirements of the Ordinance as to the manner of publication, or by giving his consent to the publication of the message by a third party, deprive A of the right of maintaining a prosecution against such third party, provided A had in publishing the message complied with the requirements of the Ordinance as to the manner of publication, and had not consented to the publication of the message by such third party, and such third party had published the message within forty-eight hours of its publication by A.

IN this case the complainant, the editor of the *Times of Ceylon*, prosecuted the accused, the editor of the Sinhalese newspaper called the *Sihala Samaya*, for breach of section 1 of Ordinance No. 19 of 1898. The telegram which the complainant complained of as having been pirated by the accused had also been

published in the *Ceylon Standard* newspaper before it appeared in the accused's paper, but the editor of the *Ceylon Standard* had failed to comply with the requirements of the Ordinance as to the manner of publication of telegrams necessary to ensure their protection under the Ordinance. The accused was convicted by the Police Magistrate.

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The accused appealed.

The case was argued on 26th September, 1904.

*Walter Pereira, K.C. (Batuwantudawe with him)*, for appellant.—Under section 1 of the Ordinance protection can be claimed in respect of such telegrams only as have been published in the manner thereafter mentioned, that is, in the manner required by section 3. That section provides that telegraphic messages under the protection of the Ordinance should be printed under the heading "By Submarine Telegraph," and should state the day and hour of their receipt. Now, the *Ceylon Standard* had published the message without compliance with these requirements, and as under section 1 publication of a telegram is an offence only when it has already been published in compliance with the requirements of section 3, it was clearly no offence to copy this telegram from the *Standard*, and the defence is that the accused copied from that paper. The mere fact that the *Times* also published the same news with compliance of the requirements of section 3 makes no difference. Whatever the practice may be, the two papers must be assumed to have received a telegram each containing the same news, and it was competent to one of the two papers, either by consenting to the re-publication of the telegram received by it or—what amounts to the same thing—by publishing it without compliance of the requirements of section 3, to render re-publication of the telegram by another person no offence under the Ordinance, although the other paper has published the news with compliance of those requirements. The remedy is a change of the system, or the conditions under which telegrams are distributed by the same agent or two or more newspapers, rather than a prosecution of this sort.

*Dornhorst, K.C.*, for respondent.—The non-observance of the requirements of the Ordinance by the *Standard* could not affect the rights of the *Times*. The same telegram was received by the two papers. The *Times* published it with compliance of the provisions of section 3, and while the *Standard* by infringing those provisions deprived itself of the right to maintain a prosecution for piracy, it could not prejudice the *Times* by such infringement.

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This is a prosecution under section 2 of Ordinance No. 19 of 1898. The complainant had published on the 25th and 26th May, 1904, a message by electric telegraph in the *Times of Ceylon*, lawfully received from London on the 24th and 25th days of May. The publication took place "in the manner hereinafter mentioned," as the 1st section of the Ordinance puts it. The complainant complains that one of the messages which appeared in the *Times* on the 25th of May, and which I may say was also published in the *Standard* on the 26th, was made use of by the defendant in the issue of the paper named the *Sihala Samaya*, which was published, I understand, on the 26th May at Colombo. The complainant says that the defendant had no consent from him for doing this, and that his publication took place within sixty hours of the receipt of the telegram, and before forty-eight hours had elapsed from the time of its first publication. If that was done wilfully, there was apparently a breach of the provisions of the Ordinance. Section 5 of the Ordinance provides for the receipt of evidence which shall be considered *prima facie* evidence that a message such as is contemplated has been published as described in the Ordinance.

According to section 3, telegraphic messages which are under the protection of the Ordinance are to be printed under the heading "By Submarine Telegraph," and are to state the day and hour of their receipt. The defendant has set up a number of defences, which may be stated together. He says that so long as it cannot be proved that he took the publication which appeared in his paper from the columns of the *Times*, he is not liable. He says he did not take it from the *Times*, but that he took it from the *Standard*, and that the *Standard* published the telegrams—I take, for example, the telegram from London dated May 24, beginning "General Kuroki reports that".....He says that he did not take that from the *Times* but from the *Standard* and the *Standard*, in publishing this message on the 26th of May, did not affix the heading "By Submarine Telegraph," and did not state the date and hour of the receipt of the telegram. He says also that he had the permission of the *Standard* to publish these telegrams, but that is not true. A letter is filed dated 25th of February, 1904, in which the defendant addressing Reuter's Telegram Company says that he has ceased publishing telegrams from the dailies as they had withdrawn their permission to do so. It was argued, however, that the defendant could not know when he found the message in question in the *Standard* that it was an item which he was not entitled to use. It may be

that the *Standard* by omitting the heading and date meant to intimate that it would not complain of the use of such messages by other people, but that intimation would only be effective so far as to deprive the *Standard* of any power to complain of the use of the messages. As a matter of fact the message appeared under the heading of "Reuter," and therefore the defendant had sufficient intimation that this was a message of the kind referred to in the Ordinance of 1898. As to the argument that, if there is no proof that this message was taken from the *Times*, no offence had been committed, if that were a sound argument it would be quite possible for a person, obtaining the contents of a telegram before it was communicated to the *Times* and other subscribers, to make use of it with impunity. In fact, this message was made use of before the complainant had published it; but my interpretation of the 1st section is that it is immaterial whether the message was made use of improperly before or after its publication in the journal which complains. I think that the period of sixty hours was allowed partly for the purpose of permitting journals to have time to make use of those messages, and that the object of the Ordinance, which is to secure the right of property in telegraphic press messages, would be defeated if those messages could be lawfully made use of by other persons before publication by the subscribing parties. But my impression, it seems to me, is strengthened by the words of section 1, because, in speaking of the publication by the complainant it uses the expression "any message by electric telegraph," and the act guarded against is the publication of the "telegrams." I think that the difference between the expressions is due to an intention that the telegram should be distinct from the actual message which is received by each individual subscriber. It was urged by Mr. Pereira that if this was the correct view, the moment that a subscriber had got one of those telegrams it could not be published by another subscriber without infringing the Ordinance. I think, however, that it is only reasonable to believe that where there is publication by one of the subscribers who has lawfully received the message, there can be no infringement of the Ordinance in the publication of the same telegram by another subscriber who had lawfully received the message.

I think that this appeal fails, and that the conviction should be affirmed.

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A.C.J.