

1941

*Present : Howard C.J.*WEERASINGHE *v.* SAMY CHETTIAR.

661—M. M. C. Colombo, 64,849

*Vehicles Ordinance (Cap. 155)—By-laws made under section 56 of Ordinance No. 4 of 1916—Omission of section 56 from Revised edition—By-law kept alive—Revised Edition of Legislative Enactments Ordinance (Cap. 1), s. 11.*

Section 11 of the Revised Edition of *Legislative Enactments Ordinance* continues all by-laws in force on the date on which the Revised Edition is brought into operation and the omission of section 56 of Ordinance No. 4 of 1916 from the *Vehicles Ordinance* does not affect the continuity of the by-laws kept alive under that section.

An error in stating the section under which the breach of a by-law is made punishable is covered by section 171 of the *Criminal Procedure Code*.

**A** PPEAL from a conviction by the Municipal Magistrate of Colombo.

*S. N. Rajaratnam*, for the accused, appellant.

*H. W. R. Weerasooriya, C.C.*, for the complainant, respondent.

*Cur. adv. vult.*

November 21, 1941. HOWARD C.J.—

In this case the appellant was charged with being the driver of a single-bullock cart and driving the same on a public highway whilst seated inside the cart, in breach of section 5, chapter 6, of the Municipal by-laws, and thereby committing an offence punishable under rule 2, chapter 25, of the Municipal by-laws.

The first point taken by Mr. Rajaratnam on behalf of the appellant is that the by-law which the appellant is charged with contravening is no longer in force. It appears that the by-law was made under the provisions of Ordinance No. 9 of 1901. The Ordinance was repealed by Ordinance No. 4 of 1916. Section 56 (1) of the 1916 Ordinance kept all by-laws alive. Chapter 155, however, which appears in the Revised Edition of the laws omits section 56. I am of opinion that there is no force in this contention. Section 12 of the *Interpretation Ordinance* provides that when any rules made under any Ordinance which has been repealed are kept in force by the repealing Ordinance, such rules shall be deemed for all purposes to have been and to be made under the

corresponding provisions of such repealing Ordinance and shall be enforceable as if they had been so made. Having regard to the provisions of that section, the rules made under Ordinance No. 9 of 1901 are to be deemed for all purposes to have been made under Ordinance No. 4 of 1916. With regard to the effect of the omission of section 56 of Ordinance No. 4 of 1916, from chapter 155, I am of opinion that the subsidiary legislation made under that Ordinance, that is No. 4 of 1916, is kept alive by virtue of section 11 of chapter 1. This section, as the result of an amendment made by section 3 of Ordinance No. 16 of 1939, was repealed by the following provisions :—

“ All subsidiary legislation, all appointments and acts made or done under any legislative enactment included in the revised edition and in force on the date appointed by the Governor under section 10 shall continue in force until otherwise provided ; and references in any such subsidiary legislation to the legislative enactment under which such subsidiary legislation is made, or to any other legislative enactment, shall, where necessary and practicable, be deemed to apply to the corresponding legislative enactment in the revised edition.”

By reason of this provision the by-law in question is kept alive although section 56 of Ordinance No. 4 of 1916, has been omitted from chapter 155. For the reasons I have given I am of opinion that the by-law is in force.

The second point taken by Mr. Rajaratnam is that a person who contravenes the by-law in question does not commit an offence punishable under rule 2, chapter 25, of the Municipal by-laws, Mr. Weerasooriya does not contest this point, but maintains that, although no offence was committed under rule 2 of chapter 25, an offence was committed under the general section with regard to contraventions of the Ordinance contained in Chapter 155. This provision has replaced section 21 of Ordinance No. 4 of 1916, which in its turn replaced section 21 of Ordinance No. 9 of 1901. I agree with Mr. Weerasooriya's contention that an offence was committed under section 19 of chapter 155. It is true that the attention of the appellant was not directed to the fact that he committed an offence under this particular section of the law. On the other hand, I do not think that he has been prejudiced in any way by such failure to direct his attention to the right section. I think the case is met by section 171 of the Criminal Procedure Code.

A further point has been raised by Mr. Rajaratnam that the by-law in question is *ultra vires* as being unreasonable. I am not prepared to hold that this by-law was unreasonable inasmuch as, although hardship may be caused, one can see the intention behind the enactment of such a by-law.

For the reasons I have given I think that the Magistrate was correct in coming to the conclusion that the appellant had contravened the by-law.

I vary the order by recording that instead of the offence being punishable under rule 2, chapter 25, of the Municipal by-laws it is punishable under section 19 of chapter 155. The appeal is dismissed.

*Appeal dismissed.*