

1947

Present : Soertsz S.P.J.

THE ATTORNEY GENERAL, Appellant, and CADER,
Respondent.

1,252—M. C. Colombo, 31,543.

*Quarantine and Prevention of Diseases Ordinance, s. 5 (1)—Charge under—
Jurisdiction of Municipal Magistrate—Time limit for prosecution—
Municipal Councils Ordinance, ss. 52 (2), 269.*

An offence under the Quarantine and Prevention of Diseases Ordinance is triable by the Municipal Magistrate of Colombo.

The period of limitation mentioned in section 269 of the Municipal Councils Ordinance is restricted to an offence under that Ordinance and is not applicable to an offence under the Quarantine and Prevention of Diseases Ordinance.

A PPEAL from an order made by the Municipal Magistrate of Colombo.

T. S. Fernando, C.C., for the Attorney-General, appellant.

M. M. Abdul Cader, for the accused, respondent.

Cur. adv. vult.

March 19, 1947. SOERTSZ S.P.J.—

This is an appeal by the Attorney-General from an order made by the Municipal Magistrate of Colombo refusing to try and decide a charge made against an accused under section 5 (1) of the Quarantine and Prevention of Diseases Ordinance (Chap. 173) on the ground that he had no jurisdiction to try a charge under that Ordinance. It is clear from the order he made that he felt himself bound by the view taken by my Lord The Chief Justice in the case S.C. 550 M.M.C. Colombo 29,753, said to be reported in Vol. 32 C. L. W. page 71. In that case the learned Chief Justice not having been informed of a certain Government Notification held "the jurisdiction of the Municipal Magistrate was qualified by section 52 of the Municipal Councils Ordinance (Chap. 192) and the offences which he is empowered to hear, try and determine are offences committed within the Municipality in breach of any Municipal by-laws or under Chapter 193 or under any of the Ordinances specified in a tabular statement annexed to this section. The Quarantine and Prevention of Diseases Ordinance does not appear in that tabular statement, nor has it been added by any subsequent

order of the Governor made under sub-section 2 of that section". Counsel appearing for the appellant in that case, evidently, was not aware of the Government Notification dated February 12, 1915, appearing in Government Gazette No. 6,698. There was no appearance for the respondent in that case. The Notification is in these terms: "His Excellency the Governor in Executive Council has in exercise of the powers vested in him by sub-section 2 of section 54 of the above Ordinance been pleased to order that the jurisdiction of the Municipal Magistrate of Colombo be extended to offences under the Quarantine and Prevention of Diseases Ordinance, 1897". Section 54 cited in the Notification has been replaced by section 52 (2) of the Municipal Councils Ordinance in force today. The Notification by His Excellency the Governor has been kept alive in the new Legislative Enactments of section 3 of the Revised Edition of the Legislative Enactments (Amendment) Ordinance, No. 16 of 1939. Counsel for the respondent, however submitted that it would be futile to send this case back for trial because he contended that the prosecution of the alleged offence was barred by section 269 of the Municipal Councils Ordinance because that section provided "that no person shall be liable to a penalty or fine under this Ordinance unless the complaint respecting such offence shall have been made within 3 months next after the commencement of such offence". He pointed out that the offence in this case was alleged to have been committed between December 26, 1945, and July 3, 1946, and the complaint was on July 1, 1947. But the answer to this argument is that the offence in this case now before me is not an offence under the Municipal Councils Ordinance, but one under the Quarantine and Prevention of Diseases Ordinance. I therefore remit the case for trial to the Municipal Magistrate, Colombo.

Appeal allowed.
