

Hawkins J., who, in concurring, said that he thought it a very bad practice to allow a policeman to act as an advocate before any tribunal.

The question, however, is not whether it is a desirable practice that police officers should prosecute before the courts: the question is whether they have authority to do so, and this is expressly conferred upon them by s. 22 of the Police Ordinance 1939.

The appeal upon these two grounds therefore fails.

The only other question raised is that of sentence. As to this, the learned Magistrate has stated his reasons, and I see no grounds for interfering with the sentence which has been imposed.

The appeal is dismissed.

ISMAIL HUSSAIN *ats.* POLICE.

[Appellate Jurisdiction (Corrie, C.J.) February 2, 1944.]

Order of Competent Authority empowered by Regulations of the Governor—Interpretation and General Clauses Ordinance, 1929¹—whether Courts will take judicial notice of Orders—liability of a servant or agent in case of breach of Price Order²—no substantial miscarriage of justice.

Appellant was convicted of a breach of a Price Order—made by the Competent Authority appointed and empowered under Defence Regulations. He was at the time working as agent for a Transport Company.

HELD.—(1) An order of the Competent Authority is not an instrument of which judicial notice will be taken without proof.

(2) An employee has a duty to comply with a Price Order whatever his employer's instructions.

Cases referred to :—

(1) *Warrington v. Windhill Industrial Co-operative Society* [1918] 88 L.J.K.B. 280.

Buckingham v. Duck [1918] 88 L.J.K.B. 375 ; 120 L.T. 84 ; 26 Cox C.C. 349.

APPEAL AGAINST CONVICTION. The facts appear from the judgment.

P. Rice for the appellant.

A. G. Forbes for the respondent.

CORRIE, C.J.—This is an appeal against conviction upon an information charging the appellant with failing to comply with an order made by the Competent Authority under Regulation 50 of the Defence Regulations 1939. The particulars alleged are that he, on the 23rd January, 1943, charged a fare of £1 1s. 4d. in respect of a commercial vehicle on a journey from Nadi to Suva, being 8s. 4d. in excess of the fare prescribed by the Order.

¹ *Cap.* 1. *Vide now s. 2 (38) and s. 10.*

² *Vide now Orders under Price Control Ordinance, 1946.*

The Defence Regulations 1939³ were made by the Governor in exercise of the power conferred upon him by the Emergency Powers Defence Act, 1939, as applied by the Emergency Powers (Colonial Defence) Order in Council, 1939. The Order of the Competent Authority was made on the 14th August 1942 and was published in the *Fiji Royal Gazette* on the 19th August 1942, at page 316.

The appellant argues that this Order is not a matter of which the Court will take judicial notice, and that in the absence of formal proof of the Order, his conviction must be quashed. A similar argument is put forward with regard to the Order of the Financial Secretary made on the 1st June, 1942, under the Defence (Finance) Regulations 1940, headed "Purchases of United States Dollars", which was published in the *Fiji Royal Gazette* on the 5th June, 1942, at page 213.

In reply to this argument the prosecution rely upon Regulation 2 (4) of the Defence Regulations 1939, which provides that :—

" the Interpretation and General Clauses Ordinance 1929 shall apply to the interpretation of these Regulations and of any Orders or Rules made thereunder, as it applies to the interpretation of an Ordinance, and for the purposes of s. 2 of the said Ordinance, these Regulations and such Orders and Rules as aforesaid shall be deemed to be an Ordinance."

S. 2 (33) of the Interpretation and General Clauses Ordinance 1929¹ reads :—

" 2. In this Ordinance and in every other Ordinance and in all public documents enacted made or issued before or after the commencement of this Ordinance the following words and expressions shall have the meanings hereby assigned to them respectively unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided :—

"(33) ' Ordinance ' includes this and all other Ordinances and all notices Regulations Rules Proclamations or other instruments made in pursuance of any Ordinance and includes any Act of the Imperial Parliament having the force of law in the Colony."

The prosecution argue that it follows that both the Defence Regulations and an Order made thereunder are Ordinances within the meaning of s. 2 (33), and that, in consequence, s. 3 of the Interpretation Ordinance applies to them.

S. 3 provides that :—

" Every Ordinance shall be a public Ordinance and shall be judicially noticed as such unless the contrary is expressly provided by the Ordinance."

It must be noted, however, that by s. 2 of the Interpretation Ordinance the words therein defined are to have the meanings thereby assigned to them " unless there is something in the subject or context inconsistent with such construction ". We have, therefore, to consider

³ Repealed.

¹ Cap. I. s. 2 (38).

whether there is anything in the Interpretation Ordinance which is inconsistent with a construction of the term " Ordinance " in s. 3 to include all Ordinances as defined in paragraph (33) of s. 2.

Now s. 3 is not the only section of the Interpretation Ordinance which deals with the question of judicial notice. Section 10 provides that :—

“ Judicial notice shall be taken of any Order by the Governor
“ or Governor in Council made or purporting to be made in pur-
“ suance of an Ordinance or any Imperial Act.”

It is thus clear that if in s. 3 the term " Ordinance " were assigned the wide meaning given by s. 2 (33), s. 10 would be superfluous, as the Proclamations and Orders of the Governor or Governor in Council to which it relates would themselves be Ordinances, and would thus be the subject of judicial notice by virtue of s. 3.

Construing s. 3, therefore, so as to give effect to s. 10, I hold that the term " Ordinance " in s. 3 has not the extended meaning assigned by s. 2 (33), and that it does not include subsidiary legislation. It follows that the Order of the Competent Authority is not an Ordinance within the meaning of s. 3 and hence is not an instrument of which judicial notice is to be taken without proof. The Order of the Financial Secretary stands in the same position.

In the case of the present appeal, although the record does not show that either of these Orders was formally put in evidence, no objection was taken upon that ground. The question of the rate of exchange does not appear to have been raised : but the terms of the Order made by the Competent Authority were referred to in argument by counsel for the appellant.

As regards these Orders, therefore, I hold that no substantial miscarriage of justice has occurred, and that the provisions of the proviso to s. 22 (1) of the Appeals Ordinance 1934 should be applied.

By his third ground of appeal the appellant maintains that as he was acting as agent for the Island Transport Company, the offence (if any) must have been committed by the Company and not by him.

In support of his argument the appellant relies upon *Warrington v. Windhill Industrial Co-operative Society* [1919] 88 L.J.K.B. 280 and *Buckingham v. Duck* [1919] 88 L.J.K.B. 375.

Those cases however only decided that where an offence was committed under the Food (Conditions of Sale) Order 1917 or the Milk (Prices) Order 1917, the employer could be convicted although there was no *mens rea* on his part and the employee acted contrary to express Orders. Neither case has any bearing on the question of the liability of the employee.

In the present case it was clearly the duty of the appellant to observe the provisions of the Competent Authority's Order, and to charge only such fares as were allowed by that Order, whatever instructions he may have received from his employer.

The appeal is dismissed.
