

A

JONE MASIU

v.

B

REGINAM

[COURT OF APPEAL, 1970 (Marsack V.P., Bodilly J.A., Spring J.A.) 9th, 16th January]

Criminal Jurisdiction

C *Criminal law—immigration—whether presence of accused in Fiji unlawful—revised edition of laws—powers of commissioners on revision—section of Ordinance under which presence unlawful omitted from revised edition—Immigration Ordinance (Cap. 67—1955) s. 8(4) (c)—Immigration Ordinance 1962, ss. 14(2), 21—Immigration Ordinance (Cap. 70—1967) ss. 19(1) (i), 19(3)—Revised Edition of the Laws Ordinance 1965, ss. 4(1), 6(1), 7(2)—Interpretation and General Clauses Ordinance (Cap. 1) s. 13(2) (c)—Court of Appeal Ordinance (Cap. 8) s. 22(5).*

D

Interpretation—revised edition of laws—omission of section from Ordinance as revised—powers of commissioners—section not having become spent—omission ultra vires—revised edition to be the only proper Statute Book—meaning of Statute Book—Immigration Ordinance 1962, ss. 14(2), 21—Immigration Ordinance (Cap. 70—1967) ss. 19(1) (i), 19(3)—Revised Edition of the Laws Ordinance 1965, ss. 4(1), 6(1), 7(2).

E

Appeal—practice and procedure—powers of Court of Appeal—substitution of conviction under different section—unlawful presence in Fiji—Court of Appeal Ordinance (Cap. 8) s. 22(5)—Immigration Ordinance 1962, ss. 14(2), 21—Immigration Ordinance (Cap. 70) ss. 19(1) (i), 19(3).

On the 24th April, 1961, the appellant entered Fiji under the provisions of section 8 of the Immigration Ordinance (Cap. 67—Laws of Fiji, 1955). That Ordinance was repealed by the Immigration Ordinance, 1962, section 14(2) of which provided that it should be unlawful for a visitor who entered under section 8 of the repealed Ordinance to remain in Fiji after four months from the date of his entry. At a time when the appellant's continued presence had become unlawful by virtue of section 14(2), the Immigration Ordinance, 1962, was succeeded by the Immigration Ordinance (Cap. 70—Revised Laws of Fiji, 1967), from which however, section 14(2) of the Immigration Ordinance, 1962, was omitted. The Ordinance Cap. 70 was part of the Revised Edition of the Laws, 1967 and the omission was effected by the Commissioners under the Revised Edition of the Laws Ordinance, 1965.

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The appellant was charged in the Magistrate's Court with being unlawfully present in Fiji contrary to sections 19(1) (i) and (3) of the Immigration Ordinance (Cap. 70) and was acquitted; but on appeal by the Attorney-General to the Supreme Court this decision was reversed. On further appeal—

H

Held: 1. The Revised Edition of the Laws Ordinance, 1965, did not empower the Commissioners to make any amendment in the matter or substance of any Ordinance, and the deletion of section 14(2) of the Immigration Ordinance, 1962, amounted to such an amendment. That section had not become spent and the Commissioners had acted *ultra vires*.

2. Section 7(2) of the Revised Edition of the Laws Ordinance, 1965, which provided that the revised edition should be in all courts the sole and only proper Statute Book, lays it down that the courts may look to no other book purporting to be a Statute Book, but does not say that there exists in Fiji no law which is not found in its pages. A

3. Section 14(2) of the Immigration Ordinance, 1962, remained in force and its omission from the revised Ordinance did not absolve the appellant from prosecution arising from his continued presence in Fiji. B

4. Conviction of the appellant of an offence against section 19 of the Immigration Ordinance (Cap. 70) was not justified; in exercise of its powers under section 22(5) of the Court of Appeal Ordinance, the Court of Appeal would substitute a conviction of an offence against section 14(2) of the Immigration Ordinance 1962.

Case referred to:

Registrar of Titles, Selangor, Re a Reference by (1936) 6 M.L.J. 9. C

Appeal from a conviction by the Supreme Court sitting in appellate jurisdiction from the Magistrate's Court.

K. Govind for the appellant.

T. U. Tuivaga for the respondent.

The facts sufficiently appear from the judgment of the Court. D

Judgment of the Court (read by MARSACK V.P.): [16th January, 1970]—

This is an appeal against judgment of the Supreme Court, on appeal from the Magistrate's Court, reversing the decision of the Magistrate and entering a conviction against appellant for being unlawfully present in Fiji contrary to section 19(1) (i) and (3) of the Immigration Ordinance (Cap. 70).

The facts may be shortly stated. Appellant entered Fiji on the 24th April, 1961 and under the provisions of section 8(4) (c) of the Immigration Ordinance then in force, (Cap. 67), was entitled to remain in the Colony without a permit for a stay not exceeding 4 months. Appellant remained in Fiji longer than the prescribed period and in September and December 1961 received formal notice in writing from the Immigration Officer that unless he returned immediately to Tonga he would render himself liable to prosecution and deportation. In the event, appellant has remained in Fiji ever since the date of his first arrival and no action was taken against him under the Immigration Ordinance until the present proceedings were instituted. E

These facts are not in dispute. The whole question involved in the appeal turns on the interpretation of the relevant Ordinances. F

The Immigration Ordinance (Cap. 67) was repealed by the Immigration Ordinance, No. 2 of 1962. This latter Ordinance provided that visitors wishing to remain in the Colony for a stay not exceeding 4 months were entitled to a visitor's permit; but they could not remain, as they could under section 8(4) (c) of Cap. 67, without this permit. Apart from certain stated exceptions which are not relevant to the present appeal, any person entering the Colony without the appropriate permit was classed as a prohibited immigrant. Section 21 of the Immigration Ordinance, 1962, expressly provided that any person whose presence in the Colony was unlawful under the Ordinance (Cap. 67) should be deemed to be unlawfully in the Colony. There is an express provision regarding visitors who had entered the Colony as did appellant, in section 14(2) of the 1962 Ordinance, which reads— G

A " 14. (2) It shall be unlawful for a visitor who has entered the Colony under the provisions of section 8 of the Immigration Ordinance (now repealed) to remain in the Colony after the expiry of four months from the date of his entry."

In 1967 the Revised Edition of the Laws of Fiji was brought into force, by Governor's Proclamation, under the Revised Edition of the Laws Ordinance 1965. This included the Immigration Ordinance (Cap. 70), which omits section 14(2) and also section 21 of the 1962 Ordinance.

B The question for determination by this Court is whether appellant can properly be convicted of the charge of being unlawfully present within Fiji contrary to section 19 of the Immigration Ordinance (Cap. 70).

The argument on the appeal was concentrated very largely on two sections of the Revised Edition of the Laws Ordinance, 1967. These are—

C " 6. (1). The powers conferred upon the Commissioners by the provisions of section 4 of this Ordinance shall not be taken to imply any power in them to make any alteration or amendment in the matter or substance of any Ordinance.

D 7. (2). From the date named in the said proclamation the revised edition of Ordinances shall be deemed to be and shall be without any question whatsoever in all Courts of Justice and for all purposes whatsoever the sole and only proper Statute Book of the Colony in respect of Ordinances in force on such date as may be specified by the Governor by notice in the Gazette."

E Counsel for appellant contended that section 7(2) was the over-riding section, and that if the omission of section 14(2) of the 1962 Ordinance amounted to a repeal of that section, and consequently an amendment in the matter or substance of the Ordinance, and if that were held *ultra vires* of the Commissioners, yet the provisions of section 7(2) put it beyond the powers of the Court to hold that Cap. 70 was anything but a complete and accurate statement of the law of Immigration. Counsel conceded that this interpretation would lead to the result that a person who for years had been liable to conviction for a criminal offence would cease to be so liable, not because of an express repeal of a statutory provision, but merely by its omission from a revised edition of the laws.

F There was some support for this view in a decision of the Court in Malaya to which Counsel for respondent very fairly drew our attention. This was *re A Reference by the Registrar of Titles Selangor* (1936) 6 M.L.J. 9. In that case it was held that though the Commissioner drawing up a revision of the Civil Procedure Code had acted *ultra vires*, the amendment he had made was in force. A full report of this decision was not, however, available to us, and we do not know the reasoning on which the judgment was based.

G There is no doubt that the interpretation of the two apparently conflicting sections 6(1) and 7(2) is a difficult matter. It is quite clear, in our view, that the Commissioners had no power to make any amendment in the law of their own authority; and we are satisfied that the deletion or omission of section 14(2) of the 1962 Ordinance did amount to an amendment of the law. It was conceded at the hearing of the appeal that the Commissioners purported to act under the powers expressly granted to them by section 4(1) of the Revised Edition of the Laws Ordinance, which authorised them to omit, *inter alia*, any parts of Ordinances which had become spent. It may well have been thought that in view of the years which had elapsed since a visitor was entitled to remain in Fiji up to 4 months without a permit, the provision had become spent; and that there was little if any possibility that there were still any persons liable to prosecution under section 14(2) of the 1962 Ordinance.

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Whatever may have been the reason for their action we are satisfied that, as events have shown, section 14(2) had not become spent; and that, therefore, the Commissioners had acted *ultra vires* in that by the omission of the subsection in question they had in fact amended the law. A

Unless, then, there is a specific provision in the Ordinance that an act of the Commissioners, even if performed *ultra vires*, should nonetheless have legislative effect, the law on the point in issue must remain in force. That is to say, that section 14(2) of the 1962 Ordinance should still remain operative. B

It is the contention of the appellant that such specific provision does exist, in section 7(2) of the Revised Edition of the Laws Ordinance 1965. It is, therefore, necessary to examine carefully the wording of that section and to interpret it in accordance with the recognised principles of construction of statutes. One of the cardinal rules of such construction is that where more than one interpretation is possible, that should be adopted which avoids inconsistency with other statutes or other sections of the same statute. In particular, the interpretation should, if the wording permits, be such that it does not render any other section of the statute of no legal import, on the principle *ut res magis valeat quam pereat*. C

Clearly, if the phrase "sole and only proper Statute Book" is to be read as having words such as "and there shall be no other law in force in Fiji" implied, then section 6 of the Ordinance is rendered meaningless, for notwithstanding the injunctions therein contained that the Commissioners must not alter the law, it opens the door to their doing so. If however no such wording is implied then we think that section 7(2) nevertheless contains a plain meaning of its own without doing any violence to the provisions of section 6. The expression "Statute Book" in its ordinary sense we take to mean a book or series of books in which the laws are set out for convenience of reference. The version of any law contained in the Statute Book is not in substitution for the original document by which any particular law has received the Royal Assent. It is merely a volume in which a duplication of that document appears. The effect of section 7(2) of the Ordinance is to lay it down that a Court of Justice may look to no other book purporting to be a Statute Book than the edition authorised by the Revised Edition Ordinance. But, on this interpretation, it does not go the length of saying that there exists in Fiji no law which is not found within its pages. D

This interpretation would also overcome the difficulty which would otherwise arise from section 13(2) (c) of the Interpretation and General Clauses Ordinance (Cap. 1), which reads— E

"13. (2). Where an Ordinance repeals in whole or in part any other enactment then, unless the contrary intention appears, the repeal shall not— F

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;....." G

No contrary intention appears in Cap. 70; and so the liability incurred by appellant to prosecution under section 14(2) should not be affected by the Ordinance (Cap. 70).

If we are correct in this conclusion, then section 14(2) of the Immigration Ordinance remains in force, and appellant is not, by reason of the omission of that section from the revised Ordinance, absolved from the liability to prosecution arising from his continued presence in the Colony. A note of the Record of Proceedings in the Supreme Court reads— H

A “Both counsel agree that sole issue is whether section 14(2) was in force at date of respondent’s arrest. If so, he should have been found guilty. . . .”

But that is not the end of the matter of this appeal.

Appellant is charged with the offence of being unlawfully present in Fiji contrary to section 19 of the Immigration Ordinance (Cap. 70). Any offence committed by appellant has been so committed in breach of section 14(2) of the 1962 Ordinance and not otherwise.

B The subsection under which he is charged reads—

“19. (1) Any person who—

(i) unlawfully enters or is unlawfully present within Fiji in contravention of the provisions of this Ordinance;

C shall be guilty of an offence against this Ordinance.”

D It is common ground that the Ordinance (Cap. 70) contains no provision equivalent to that of section 14(2) of the 1962 Ordinance, under which appellant could properly have been charged. That being so, appellant cannot properly be convicted, in our view, of the offence with which he is charged, that is to say, an offence constituted by section 19 of the Immigration Ordinance (Cap. 70). But it is clear that he has committed an offence under section 14(2), and for the reasons we have given we think his liability under that section still subsists. Accordingly we are of opinion that this is a proper case for us to invoke the powers conferred on the Court by section 22(5) of the Court of Appeal Ordinance. We are satisfied that on the facts as found appellant, having entered the Colony under the provisions of section 8 of the Immigration Ordinance (Cap. 67), remained in the Colony after the expiry of 4 months from the date of his entry. Consequently he should

E be convicted of that offence.

This Court accordingly substitutes for the conviction entered by the Supreme Court a conviction for the offence of being illegally in the Colony contrary to section 14(2) of the Immigration Ordinance 1962. We see no reason to alter the penalty imposed by the learned Judge in the Court below; accordingly on the conviction now entered we sentence him to pay a fine of \$20 or to 4 weeks imprisonment in default of payment.

F *Alternative conviction substituted.*