to guard myself from subscribing to the opinion suggested by a sentence in that decision, that opinion being that a Sub-Magistrate would act as a Court, only when he grants sanction for offences mentioned in section 195, clauses (*b*) and (*c*), that he could never act as a Court when he grants sanction for any of the offences mentioned in clause (*a*) and that therefore sub-section (7) could never apply to a sanction given by a Sub-Magistrate for such an offence. N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

KANDASAMI PILLAI AND ANOTHER (ACCUSED), PETITIONERS,*

v.

EMPEROR.

1918. July 17, Aug. 12 and 23.

Defence of India Act (IV of 1915), sec. 2—Rules framed under—creating offences—Time from which acts specified in rules are offences—Special tribunals, no creation of—Trial by Magistrates as under Criminal Procedure Code, validity of—Sanction for prosecution by Acting District Magistrate, validity of—General Clauses Act (X of 1897), sec. 17, Cl. 1.

Rules framed under section 2 of the Defence of India Act must be read as part of that section and are effective from the date of their publication and are not dependent on the remainder of the Act being brought into operation.

Held accordingly that a person in the Presidency of Madras, who, in contravention of the rules, dissuades any one from entering into His Majesty's Military Service, is guilty of an offence though the remainder of the Act had not been brought into operation in this province.

Held further that in the absence of a notification creating special tribunals for the trial of such offences under the Defence of India Act, such offences are triable by the ordinary Magisterial Courts of the country in the manner provided by the Criminal Procedure Code as 'offences against other laws' within schedule II of the Code.

By virtue of section 17, clause 1, of the General Clauses Act (X of 1897) an Acting District Magistrate is competent to sanction a prosecution in all cases where a District Magistrate can sanction the same.

PETITION under sections 435 and 439 of the Code of Criminal Procedure against the judgment of F. A. COLERIDGE, the

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* Criminal Revision Case No. 815 of 1917 (Criminal Revision Petition No. 660 of 1917).

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Sessions Judge of Madura, dated 27th July 1917, in Criminal Appeal No. 31 of 1917, preferred against the judgment of P.C.C. PANDIYAN, the Subdivisional First-class Magistrate of Melur, dated 11th July 1917, in Calendar Case No. 41 of 1916.

The accused in this case were charged and convicted by the First-class Magistrate of Melur in the Madura District under rule 29 of the rules framed under section 2 of the Defence of India Act for having dissuaded one Ramu Pillai from entering military service. The pleas of the accused were (1) that they did not dissuade, (2) that even if they had done so it was no offence as the rules were not in force in the Madras Presidency, (3) that the First-class Magistrate of Melur had no jurisdiction to try the case as all offences under the Act were to be tried by a special tribunal composed of three persons as provided by the Act and (4) that no sanction of the District Magistrate was obtained for the institution of the proceeding. Overruling all these pleas, the Magistrate convicted the accused. The Sessions Judge in appeal confirmed the conviction but reduced the fine. The accused preferred to the High Court this revision petition.

A. Subbarama Ayyar with *K. R. Guruswami Ayyar* for the petitioners.—The conviction is illegal. As the first two sections alone of the Defence of India Act are declared to be operative from the time of the passing of the Act and 'the rest of the Act' is to be operative on notification in the official Gazette to that effect, rules framed under section 2 of the Act can only come under the terms 'the rest of the Act' and acts constituted by the rules as offences can become offences only from the time 'the rest of the Act' is notified to come into operation. As no such notification has been made for this Presidency, as regards 'the rest of the Act' the act done is no offence; see Maxwell's Interpretation of Statutes, Fourth Edition, page 76 and *Institute of Patent Agents* v. *Lockwood*(1). This decision shows that the words 'as if the rules were enacted in the Act' are generally introduced into the Act only for the purpose of making them *intra vires* and not for giving the rules a retrospective effect. Secondly, the Defence of India Act declares that offences thereunder are to be tried by special

(1) (1894) A.C., 347 at p. 360.

tribunals composed of three persons and thus takes away the jurisdiction of ordinary criminal courts to try such offences. Hence the trial of the accused by a First-class Magistrate under the Criminal Procedure Code is illegal; see section 29 (1) of Criminal Procedure Code. Thirdly, sanction for this prosecution was given by a person who was Acting District Magistrate. Under the Defence of India Act the sanction could be given only by the District Magistrate and neither that Act nor the General Clauses Act defines 'District Magistrate.' Hence the sanction by an Acting District Magistrate is illegal. Sections 10 and 11 of the Criminal Procedure Code are not incorporated in the Defence of India Act. Lastly, no notice was given to the accused why sanction should not be given.

Mr. *S. Srinivasa Ayyangar*, the Hon'ble the Advocate-General (with him *E. R. Osborne*, Public Prosecutor) for the Crown—The conviction is legal. Notice to accused is not necessary under the Act. Rules when framed under a power given by a section become part of the section itself and cannot come under the terms 'the rest of the Act.' The rules have operation from the time they are framed and published and not from any later time when 'the rest of the Act' might be notified to come into operation; see *Institute of Patent Agents* v. *Lockwood*(1). Unless there is some irreconcilable conflict between the section and the rules, the rules are *intra vires*; see *Baker* v. *William*(2). The words 'as if enacted in the Act' are introduced to make the rules *intra vires* however they are made and to prevent the courts from scanning whether they are so or not. The Defence of India Act contemplates trials by special tribunals only from the time that such tribunals are constituted and notified as empowered to try offences under the Act. Until such constitution and notification, the ordinary criminal courts of the country are entitled to try the offences as 'offences under other laws within schedule II, clause (8) of the Criminal Procedure Code, and the class of courts that can try such offences can be ascertained by a reference to column 2 and column 3 of the second schedule of the Criminal Procedure Code. See sections 4 (*o*), 5 and 29 (2) of the Criminal Procedure Code. The sanction in the case was given by Mr. Reilly when he was

(1) (1894) A.C., 347 at p. 358. (2) (1898) 1 Q.B., 23 at p. 25.

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Acting District Magistrate of Madura. Such a sanction is valid; see section 17 (1) of the General Clauses Act and section 11 of the Criminal Procedure Code and sections 66 and 67 of the Madras Regulation II of 1803.

A. Subbarama Ayyar replied.

The JUDGMENT of the Court was delivered by—

NAPIER, J.

NAPIER, J.—In this petition we are asked to revise the judgment of the Sessions Judge of Madura upholding the conviction of the accused for an offence under rule 29 of the rules framed under the Defence of India Act (IV of 1915), for having dissuaded one Ramu Pillai from entering into military service. It was contended by Mr. A. Subbarama Ayyar in the course of his able argument, first, that there was no such offence in the Madras Presidency and secondly, that if it was an offence the Court of the Subdivisional Magistrate of Melur had no jurisdiction to try the charge in that (1) the ordinary courts of the country have no jurisdiction, (2) there was no previous consent of the District Magistrate as required by the Act. After hearing the Advocate-General in reply we had no doubt that the petition must be dismissed, but thought it advisable to give our reasons in a written judgment in view of the importance of the questions raised.

The first argument is based on the peculiar arrangement of the Act. Under section 1, sub-section (3) it is provided that sections 1 and 2 shall come into operation at once, and that as for the rest of the Act it shall only come into operation in any province on notification by the Governor-General in Council in the *Gazette of India*. Section 2 empowers the Governor-General in Council to make rules for various general purposes and in particular for certain specified purposes, one of which is to prevent any attempt to dissuade persons from entering into the military or police service of His Majesty (clause H). Sub-section (2) of the same section says that rules made under this section may provide that any contravention thereof should be punished with imprisonment up to a term of seven years or with fine, etc. Sub-section (3) provides that all rules made under this section shall be published in the *Gazette of India* and shall thereupon have effect as if enacted in this Act. The whole of these rules were admittedly published in the *Gazette of India*.

It is argued before us that the words 'enacted in this Act' must be read to mean that the rules become an additional section to the Act and that as only sections 1 and 2 come into operation at once, the rules being treated as the rest of the Act, can only come into operation after notification as provided in section 1, sub-section (3). This argument will of course reduce the Act to an absurdity. The scheme of the Act is to provide for the creation of rules and offences to apply at once to the whole of India and also to create in certain special conditions tribunals for the purpose of ousting the jurisdiction of the ordinary criminal courts in any province or part thereof to which the Governor-General by notification has made the remaining provisions of the Act applicable. To give effect to the contention would be to render the whole Act nugatory in spite of section 1, sub-section (3), which provides that sections 1 and 2 shall come into operation at once. It is of course our duty to construe an Act in such a manner as to give effect to its provisions if it is possible to do so, and this can be done by reading the rules, as part of the section under which they are framed and not as part of the rest of the Act. It is quite clear that where section 1, sub-section (3) was speaking of the rest of the Act coming into operation, it was referring to the subsequent sections and not to the rules which are to be framed under section 2 and to have effect as if enacted in this Act.

An argument was addressed on the construction of section 22 of the General Clauses Act (X of 1897) which provides that where by any Act which is not to come into force immediately on the passing thereof, a power is conferred to make rules, such rules shall not take effect till the commencement of the Act: and it was sought to introduce into this section words which would make it read 'where by any Act part of which is not to come into force immediately on the passing thereof, a power is conferred to make any rules, etc., such rules shall not take effect until the whole of the Act shall come into force.' It is not permissible to make any such addition to the section which would have the effect of negativing the purpose of the section which is simply to provide power to make the rules although the Act has not come into force, but to reserve their application. In addition to this there is the direct authority of the House of Lords against the contention. It is to be found in the case of

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Institute of Patent Agents v. *Lockwood*(1). In that case Lord HERSCHELL clearly laid down that where the section gives power to make rules, the rules are to be read as part of the section, his language being (page 358)

"every rule which is *intra vires* at all events . . . . is to be read into the section and have just the same effect as if it had been contained in the Act itself;"

For these reasons we are satisfied that the rules came into force directly they were published in the *Gazette* and therefore that the offence is created.

The argument that such offence can only be tried by a special tribunal fails entirely unless it is shown that sub-sections (3) to (11) have been applied to the Madras Presidency. As it has been conceded that they have not been so applied, and the whole of the first argument has been based on that assumption, there is no foundation for this contention. We prefer therefore to leave the consideration of the effect of sections 3 and 4 of the Act until such a time as these sections are so applied, or to the Courts of the provinces where they are in force. Section 4, clause (*o*) of the Criminal Procedure Code defines offence as 'any act or omission made punishable by any law for the time being in force' and section 29 provides that any offence under any other law which means any law other than the Indian Penal Code shall, when no Court is mentioned in this behalf in such law, be tried by the High Court or by any Court constituted under this Code by which such offence is shown in the eighth column, second schedule, to be triable. Sections 3 to 11 of the Special Act not being in force in this Presidency, there is no Court mentioned in this behalf. The second schedule provides under the heading 'Offences against other laws' for the trial of an offence punishable as this is by a Court of Session, Presidency Magistrate or a Magistrate of the first class. There can therefore be no doubt that the trying Court had jurisdiction, if the case was put before it in a proper manner.

The point is taken, however, that there was no previous consent by a District Magistrate as required by rule 30. It was somewhat faintly argued that as neither the Defence of India Act nor the General Clauses Act define the words 'District

(1) (1894) A.C., 347 at p. 360.

Magistrate,' there was nothing to show what was meant by those words. We are clear however that where the procedure for the trial of an offence is that under the Criminal Procedure Code, we must look to the provisions of that Code for the meaning of the words used. District Magistrates were created by the Code of Criminal Procedure, and section 10 of the Code provides that in every district outside the Presidency town the local Government shall appoint a Magistrate of the first-class who shall be called the District Magistrate. The point really pressed on us was that Mr. Reilly who gave the consent was not the actual District Magistrate. It appears however from the *Gazette of the Government of Madras* of 25th April 1916 that he was appointed to act as District Magistrate from the 1st June 1916. Then section 17, clause (1) of the General Clauses Act provides that in any Act it shall be sufficient for the purpose of indicating the application of the law to every person for the time being executing the functions of an office to mention the official title of the officer at present executing the functions. The result of this provision is that the words of rule 20 of the Defence of India Act must be read as if they contained after the words 'District Magistrate' the words 'Acting District Magistrate or Magistrate executing the functions of a District Magistrate.' There can be no doubt therefore that Mr. Reilly was competent as Acting District Magistrate to give the consent, and this point therefore fails. In the result, the petition is dismissed.

N.R.