

1935

Present : H. N. G. Fernando, S.P.J.

M. PAUL RAJ and another, Appellants, and D. THIRIMAVITHANA
(Inspector of Weights and Measures), Respondent

S. C. 1477-78/64—M. C. Galle, 26839

*Charge of possessing, for use in trade, weights without prescribed marks of verification—
Burden of proof—Weights and Measures Ordinance—Regulation 159.*

Where, in a prosecution for possessing, for use in trade, weights without the marks of verification prescribed by regulation 159 of the Regulations made under the Weights and Measures Ordinance, there is *prima facie* evidence that the official marks could have been obliterated owing to inefficient or unsatisfactory stamping by the authorised officer, the burden is on the complainant to lead evidence as to the official method of stamping.

APPPEAL from a judgment of the Magistrate's Court, Galle.

C. S. Barr Kumarakulasinghe, with K. Ratnesar, for Accused-Appellants.

U. O. B. Ratnayake, Crown Counsel, for Attorney-General.

April 8, 1965. H. N. G. FERNANDO, S.P.J.—

The appellants were convicted on a charge of having in their possession for use in trade, certain weights—four in number, which were found on 1st January, 1963, not to have been stamped within the preceding 12 months with the mark of verification prescribed by regulation 159 of the Regulations made under the Weights and Measures Ordinance, 1955. Apparently the method of stamping is to affix a mark on a lead filling in the bottom portion of a weight. Counsel for the appellants has pointed out that the mark of verification is prescribed and depicted in the schedule to the regulations and this was not contested by Crown Counsel.

The Inspector who stated that he found those weights unstamped has said, however, that the stamping is done by Officers of the Weights and Measures Department with a Crown and the month and the year of stamping. In this particular case the authority responsible for stamping and verification is not the Weights and Measures Department, but the Municipality of Galle and there is no evidence from any officer of the Galle Municipality as to their method of stamping. The defence, however, did produce a document, D1, which is a certificate, certified by an Inspector of Weights and Measures, certifying to the verification and stamping of a number of weights belonging to the second accused who is the proprietor of the shop in which the unstamped weights were found. Of these four weights, one of them does have, according to the Magistrate and the Inspector, the figure 61; but apparently does not have either the Crown mark or anything resembling the mark depicted in the schedule to the regulations. The fact that this one weight has what appears to be an

official stamping lends support to the position of the defence that these weights are covered by the Certificate issued in February, 1962, but that the stamping on the lead could have been obliterated between then and January, 1963.

In the absence of evidence from an officer of the Municipal Council of Galle to explain the Council's practice and to explain the absence of the prescribed mark on a weight which, prima facie, seems to have been stamped by the Municipality of Galle, the evidence does not establish with certainty that these four weights were not, in fact, stamped in February, 1962. It may well be that the mode of stamping is inefficient or unsatisfactory and that the marks can become obliterated. The appeals are allowed and sentences are set aside.

Appeal allowed.
