1943 *Present:* **Moseley A.C.J.**

UMMAR, Appellant, *and* RAMBUKWELLA, Respondent.

*956—M. C. Colombo, 1,601.*

*Control of Prices—Sale of mutton with suet—Control of Prices Ordinance, No. 39 of 1939.*

A trader was charged with selling one and a half pounds of mutton, including ¼ lb. of offal (*viz.*, suet). The maximum price fixed for mutton without bones was 75 cents per pound and the price charged by the trader for the quantity sold was Re. 1.13.

*Held*, that the accused had not offended against the Ordinance.

Suet is either mutton or offal. If it be mutton no offence has been committed. If it be offal, the price of offal has not been controlled.

[1] *41 N. L. R. 423.*

APPEAL from a conviction by the Magistrate of Colombo.

*S. Saravanamuttu* (with him *A. Seyed Ahamed*), for the accused, appellant.

*A. C. Alles, C.C.*, for the complainant, respondent.

*Cur. adv. vult.*

January 28, 1943. MOSELEY A.C.J.—

The appellant was charged (1) with selling "one and a half pounds of mutton including ¼ pound of offal (to wit, suet)" in contravention of an order dated September 26, 1942, made under the Control of Prices Ordinance (No. 39 of 1939), and (2) with failing to give a receipt in contravention of the said Order. He was convicted on each charge but appeals against the conviction and sentence on the first charge only.

In order to understand the charge, which appears to have been framed with very little thought, it is necessary to state shortly the facts. The customer sent his driver to the appellant's stall to purchase one and a half pounds of mutton, the maximum price of which, without bones, is fixed by the Order in question at 75 cents per pound. According to the driver appellant served him with a piece of meat, which is admittedly mutton and subsequently was found to weigh about one and quarter pounds, to which appellant added another piece which is admittedly suet and weighed quarter pound. For this the purchaser paid Rs. 1.13, which sum is in accordance with the order, assuming the whole to be mutton. The purchaser objected, but the appellant appears to have stood his ground and, moreover, refused to give a receipt. It appears to have been contended on behalf of the accused before the learned Magistrate, as indeed it was before me, that suet is not offal and that it was a part of the meat. This point does not seem to have been directly decided by the Magistrate beyond his bare observation that "suet can only be used for frying. It cannot be eaten." I am not aware upon what evidence that conclusion was reached nor do I think that the matter is really relevant. The Order which forms the basis for this prosecution fixes the price of mutton, without bones, at 75 cents per pound. Mutton is defined in the Order as meaning the flesh of a sheep or goat and excludes all forms of offal and imported meat. I suppose it cannot be doubted but that the exclusion of "imported meat" from the definition of mutton is for the reason that imported meat is more expensive than local meat. In the same way, although there is no evidence on the point, I take it one may use one's common knowledge that some forms of offal, *e.g.*, kidneys, are more expensive than their equivalent weight in mutton. It seems to me, therefore, that the mention of "offal" in the definition of mutton is made not with the intention of excluding offal from the meaning of mutton but with the intention of eliminating from the offal of the sheep or goat the restriction on price which is placed upon other portions of the carcase. I cannot find that any restriction has elsewhere been placed upon the price of such offal.

In order that this prosecution should succeed it would be necessary to prove that the price of the particular form of offal sold (if indeed suet

may properly be termed offal) was controlled and that the controlled price was lower than the controlled price of mutton. In that case it would be clear that a price greater than the controlled price had been charged for the one and quarter pound of mutton supplied. There was brought to my notice the judgment of de Kretser J. in *S. C. No. 835/M. C. Colombo No. 451* (*S. C. Minutes of Dec. 16.1942*) which seems at first glance to be on all fours with the present case. In that case, however, the "make-weight" which was thrown in was not only not desired by the customer but was not fit for human consumption. It can, therefore, be said to have had no value at all. Suet, on the other hand, if again one may use one's common knowledge, has a value which as far as this case is concerned has not been ascertained. The two cases are, therefore, in my view clearly distinguishable.

The case may be shortly put thus :—Suet is either mutton or offal. If it be mutton, clearly no offence has been committed. If it be offal, the price of offal is not controlled. Again, therefore, no offence has been committed. In the present case it is true that the customer got something which he did not desire and had not asked for. It was in his power to have returned the suet to the vendor and demanded a return of the cash paid for it. If the vendor had declined to comply with that demand this prosecution might have succeeded. In any case the customer would have had his civil remedy.

I cannot find that the appellant has committed any offence of which he might be convicted upon the charge as framed or even if it were amended to meet the circumstances of the case. I have come to this conclusion regretfully as I think there is no doubt that the appellant's intention was to evade the spirit of the law. An order no doubt could be framed so as to counter such evasive tactics, but in a case of this kind where the guilty person merits heavy punishment it is not only desirable but necessary that the Legislature should make clear its intention.

I allow the appeal and set aside the conviction and sentence.

*Set aside.*