1940

Present : **Moseley J.**

PERERA *v.* NADAR.

852—M. C. Galle, 2,010.

Weights and Measures Ordinance—Charge of using false weights—Evidence for prosecution—No evidence by Examiner of Weights and Measures—Ordinance No. 8 of 1876, s. 16 (Cap. 127).

Where a person is charged with using false weights the Court should be satisfied by evidence that the impeached weights were tested by comparison with standard weights and found wanting.

A charge of using false weights is not bad merely because it rests on the evidence of a person not authorized under the Ordinance to examine weights and measures.

Wickremasinghe v. Ferdinandus (*5 Balasingham's Notes of Cases, p. 17*) followed.

APPEAL from a conviction by the Magistrate of Galle.

Pandita Gunewardene, for accused, appellant.

Nihal Gunesekera, C.C., for complainant, respondent.

Cur. adv. vult.

February 20, 1940. MOSELEY J.—

The appellant was charged under section 16 of Chapter 127 of the Laws of Ceylon (Weights and Measures Ordinance) with having in his possession and using two unstamped weights, namely, one "1 lb. weight" less in weight than the standard weight by ½ oz. and one "2 oz. weight" less in

weight than the standard weight by the weight of a 10-cent coin. He was convicted and fined Rs. 10, in default one week's simple imprisonment.

It is not an offence against any provision of the Ordinance, as far as I am aware, to "have in possession" such weights. It may be that the words crept into the charge as an embellishment of the somewhat bald charge of "using". It must be assumed therefore that the accused was convicted of using the weights. The learned Magistrate in his judgment was unable to hold that the weights were not stamped; that element of the charge was accordingly eliminated.

The facts shortly are these: The shop of the accused was entered by a police constable to whom it had been reported that some trouble had occurred. He took the parties and the impugned weights to the police station. The weights were then taken to the Kachcheri where they were compared by the Mudaliyar with the copies of the standard weights preserved in the Kachcheri in accordance with the provisions of section 3 (*d*) of the Ordinance. The Mudaliyar gave evidence that the accused's weights respectively were short to the extent set out in the charge.

The facts are not disputed and at the trial the accused confined his defence to the contention that neither the constable nor the Mudaliyar, upon whose evidence the case for the prosecution rests, was an "authorized person". By that, I take it, was meant that neither was an Examiner of Weights and Measures appointed under the provisions of section 10 of the Ordinance.

On appeal the argument of Counsel was confined to this point.

Sections 12 and 14 of the Ordinance impose certain duties upon examiners, one of which is periodically to enter shops in their area, examine all weights, and seize such as are not according to standard and produce them at the trial of the offender. These, no doubt, are the circumstances contemplated in section 16 which defines the offence of a person in whose shop is found any weight not in conformity with standard.

Counsel for the appellant referred me to the case of *Altendorf v. Kaduruwel Chetty*[1], in which the opinion was expressed that the finding contemplated by the Ordinance was the "finding by a person authorized to search for false weights, and not a mere finding by some other individual". A practical reason for this is not hard to find as it would be obviously inconvenient, to put it mildly, if any member of the public were at liberty to enter a shop with a view to initiating proceedings of this nature and to giving evidence as to the inaccuracy of the weights.

The case of *Sub-Inspector of Police, Moratuwa v. Naina Mohamed*[2] was also cited. The headnotes to this case would seem to be somewhat misleading inasmuch as the two distinct offences of "selling" and "finding" are confused. This authority, however, goes no further than to affirm the proposition that when a person is prosecuted on a charge that false weights have been found in his shop there must be proof that the impugned weight was found by a person authorized under the Ordinance.

The charge in this case, when the meaningless portion referring to possession is eliminated, is that of user. It seems to me that a charge for

[1] *5 S. C. C. 201.*

[2] *29 N. L. R. 351.*

using false weights would be difficult of proof if the person who suspected that he was being defrauded had to await the intervention of an examiner duly appointed under the Ordinance. The examiner, upon being informed, would visit the shop but it would be impossible to prove that any weights that he found on the premises had in fact been used. Only a conviction on a charge that false weights were found could result.

In the present case the attention of a police constable was attracted by the dispute between trader and customer. He took the impugned weights to the Mudaliyar at the Kachcheri where the standard weights are preserved. The Mudaliyar compared the impugned weights with the standard and found the former wanting. Later he gave evidence to that effect.

In *Wickramasinghe v. Ferdinandus* [1], de Sampayo J. expressed the opinion that the Court should be satisfied by evidence laid before it that any impeached weights were tested by comparison with standards. In the present case the evidence of the Mudaliyar was not challenged. Only his status was queried. It seems to me that it was for the Court to say whether or not it was satisfied that the weights were false, and, as far as I can see, there was no reason why it should not have been so satisfied.

There is, however, no evidence that the 2 oz. weight was used and the conviction must in that respect be modified. I therefore affirm the conviction and the sentence on the charge of using a 1 lb. weight not in conformity with the standard weight.

The appeal is dismissed.

Affirmed.