

Present: Schneider J.

SUB-INSPECTOR OF POLICE, MORATUWA *v.*
NAINA MOHAMED.

500—*P. C. Panadure, 10,805.*

*False weights—Selling goods in shop—Finding by authorized person—
Ordinance No. 14 of 1878, s. 7.*

To sustain the conviction of a person for selling goods by weight in a shop where a false or unequal balance is found under section 7 of the Weights and Measures Ordinance there must be proof that the balance was found by a person authorized under the Ordinance.

*Altendorf v. Kaduruwel Chetty*¹ followed.

A PPEAL from a conviction by the Police Magistrate of Panadure.

L. A. Rajapakse, for appellant.

September 21, 1927. SCHNEIDER J.—

This appeal is by the 2nd accused, who was tried jointly with the 1st accused. The appellant was charged and convicted of "that there was in the shop of the 2nd accused a false balance," and of having committed an offence punishable under section 7 of the Ordinance No. 14 of 1878. The language of the charge, and of the judgment, is inappropriate and does not disclose an offence under the Ordinance in question. This Ordinance amended "The Weights and Measures Ordinance, 1876." The section in question was repealed in 1883, replaced by a new section in 1914,² which in turn was repealed and replaced by the present section in 1919.³ The part of that section material to the present case is the following: "Any person selling by weight goods in whose shop or stall shall be found any false or unequal balance shall be guilty of an offence." I quote that part of the section as that is the only part which is appropriate to the facts relied on by the prosecution. It was proved that the appellant-accused ran four stalls for the sale of meat by weight. In one of them the other accused, who was convicted but has not appealed, had used a false balance which registered a weight short by 7 lb. in every 28 lb., or 25 per cent. Persons defrauded complained to the Police, and detection followed when a sale took place in the presence of a Police Constable. The prosecution was instituted by a Sub-Inspector of Police. The Magistrate says in his

¹ 5 S. C. C. 201.

² Ordinance No. 9 of 1914.

³ Ordinance No. 4 of 1919.

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judgment simply that the false balance was "found" in the boutique of the appellant. But there is no evidence that it was "found" within the meaning of the Ordinance. That word "found" was in the original section 7 in the same context as it is to be found in the section as it stands to-day. This Court held that the word implies that the finding must be by an authorized person. Who are authorized persons are indicated in section 7 of the principal Ordinance.¹ See The Anonymous Case reported in *2 Supreme Court Circular 180, Herft v. Iradu*,² and *Altendorf v. Kaduruvel*.³ No such person found the false balance in question. The importance of inserting that the finding should be by such a person is apparent when it is considered that the testing and proof of a false weight, measure, or balance requires some technical knowledge of standards.

The conviction must be set aside as the charge, and the evidence, disclose no offence under the Ordinance.

I set aside the conviction and acquit the accused.

Set aside.

¹ Ordinance No. 8 of 1876.

² (1879) 2 S. C. C. 186.

³ 5 S. C. C. 201.