

Present: Lyall Grant J.

1929

DANIEL v. SANDRIS APPU

584—P. C. Badulla, 4,012.

False weights and measures—Authority of Police Sergeant—Power to search premises—Ordinance No. 14 of 1878, s. 7.

A Police Sergeant has power to enter any place without a warrant for the purpose of inspecting or searching weights or measures or instruments for weighing and to initiate a prosecution under section 7 of Ordinance No. 14 of 1878.

A PPEAL from an acquittal by the Police Magistrate of Badulla.

J. E. M. Obeysekera, C.C., for complainant, appellant.

October 4, 1929: LYALL GRANT J.—

In this case the accused was charged with having in his possession weights, which, when tested, were found to be in excess by a certain amount, and also with having in his possession at the same time and place certain unstamped weights, and with thereby having committed an offence punishable under section 7 of Ordinance No. 4 of 1919.

When the case was called, objection was taken that by section 6 of Ordinance No. 14 of 1878 entrance must be made by an Examiner of Weights and Measures duly sworn or affirmed, that this had not been done in this case, and that the whole procedure *ab initio* was irregular. The entrance and search was made by Police Sergeant Daniel, who appears as complainant in the case. In the Police Court it was argued for the complainant that he was acting by virtue of section 51 of Ordinance No. 16 of 1865. The Magistrate, however, held that that section cannot over-ride the express provisions of the special Ordinance No. 14 of 1878 promulgated subsequently. He upheld the objection and acquitted the accused. He also ordered the destruction of the productions in the case.

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It does not appear to have been brought to the notice of the learned Magistrate that section 119 of the Criminal Procedure Code of 1898 empowers any Peace Officer, not below the rank of Sergeant, to enter any place without a warrant for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such a place any weights, measures, or instruments for weighing which are false. By section 3 of the same Ordinance "Peace Officer" includes a Police Officer.

It is clear that the decision of the Magistrate is based on a misunderstanding of the law, and that on this ground it must be set aside. The charge, however, it must be observed is not in order inasmuch as it charges the accused with having certain illegal weights in his possession. Section 7 of Ordinance No. 14 of 1878 penalizes a person either using or in whose store, shop, &c., shall be found any weight or measure, &c., not in conformity with the standard. It is obvious that the charge must be amended so as to bring it into conformity with the section, and incidentally I would point out that the incorrect section has been quoted in the charge. In view of the judgment of my brother Schneider in the case of *Sub-Inspector of Police, Moratuwa v. Naina Mohamed*,¹ it would also seem advisable that the charge should set out that the complainant was authorized to search and to seize the weights in question.

The order of acquittal will be set aside and the case returned for the accused to be tried upon an amended charge. Incidentally I should like to draw the Magistrate's attention to the fact that he has no power to order the destruction of productions until the appealable time has elapsed. (Criminal Procedure Code, s. 413 (3).) Such premature destruction may have serious consequences.

Set aside.

