

1945

Present: **Wijewardene J.**

MARTIN SILVA, Appellant, and INSPECTOR OF POLICE,
GAMPOLA, Respondent.

442—*M. C. Gampola, 9,260.*

*Price list—Failure to exhibit—Liability of holder of stall—Defence Regulations
Rule 5—Control of Prices Ordinance.*

The holder of a stall in the public market and not a salesman is liable for failure to exhibit a price list as required by Rule 5 (Defence Regulations), which reads as follows:—

“ Any trader, who sells any article of the description and grade at any premises occupied by him shall exhibit in a conspicuous position at those premises a notice on which there shall be set out the maximum price fixed by this Order.”

A PPEAL against a conviction by the Magistrate of Gampola.

J. E. M. Obeyesekere (with him *Vernon Wijetunge*) for the accused, appellant.

T. K. Curtis, C.C., for the complainant, respondent.

Cur. adv. vult.

May 30, 1945. WIJEYWARDENE J.—

The appellant and another were charged with the sale of five pounds of sweet potatoes at a price in excess of the maximum price fixed by an Order made under the Defence Regulations. There was a second charge against the appellant alone for failing to exhibit a price list as required

¹ (1942) 28 C. A. R. 171.

by Rule 5 of the Order in *Gazette* No. 9,158 of August 16, 1943. That Rule reads—

“ Any trader who sells any article of the description and grade mentioned in the Schedules hereto at any premises occupied by him shall exhibit in a conspicuous position at those premises a notice on which there shall be set out the maximum prices fixed by this Order ”

The Magistrate convicted the appellant on both the charges and acquitted the other accused.

The evidence accepted by the Magistrate establishes the guilt of the appellant on the first charge and I, therefore, affirm his conviction and sentence on that charge.

On the second charge the appellant has led the evidence of an Officer of the Urban Council, Gampola. His evidence shows beyond doubt that the holder of the stall No. 7 of the Gampola Public Market where the appellant sold the potatoes in question was one A. P. Gunapala and that the appellant and two others were the registered salesmen for that stall. That evidence stands unaffected by the evidence given by the prosecution witnesses. Could then the appellant who is only a salesman be punished for a breach of Rule 5? I think that question should be answered in the negative. Rule 5 requires only a “ trader who sells ” a controlled article to exhibit a price list and differs in that respect from Rule 6 which refers to “ every person who sells ” a controlled article and imposes on every such person a liability to give a receipt to the purchaser. If “ trader ” in Rule 5 was meant to include a “ salesman ” there is no reason why the draftsman of the Rules should have refrained from using in Rule 5 in place of “ trader ” the words “ every person ” he used in Rule 6.

I set aside the conviction of the appellant on the second charge.

Conviction set aside on second charge.
