

1968

*Present : H. N. G. Fernando, C.J.*

M. M. JALALDEEN, Appellant, *and* P. A. S. JAYAWARDANE  
(Food and Price Control Inspector), Respondent

*S. C. 1163/67—M. C. Kegalle, 68375*

*Control of Prices Act—Charge of selling 14 oz. tin of Farm Brand Condensed Milk at excessive price—Proof of weight of tin unnecessary—Burden of proof—Evidence Ordinance, s. 114.*

A Price Control Order fixed the maximum retail price of a 14 oz. tin of condensed milk. If a tin is sold bearing a label which specifies the weight of the contents as 14 oz., the prosecution need not, in the case of an alleged contravention of the Price Order, adduce proof of the actual weight of the contents of the tin. The statement as to weight on the label constitutes an admission as to weight by the seller.

*Piyadasa v. Jayatileke* (70 N. L. R. 475) not followed.

**A**PPEAL from a judgment of the Magistrate's Court, Kegalle.

*Colvin R. de Silva*, with *P. D. W. de Silva* and *I. S. de Silva*, for the Accused-Appellant.

*L. D. Guruswamy*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

April 22, 1968. H. N. G. FERNANDO, C.J.—

The charge in this case, of which the appellant was convicted, was that he sold a 14 oz. tin of Farm Brand Condensed Milk for Re. 1, a price in excess of the maximum retail price of 90 cents for the said tin fixed by a Price Control Order published in Gazette No. 14,752/2 of June 9, 1967. I would ordinarily have dismissed the appeal without stating reasons, but for the statement of Counsel that the point of law which Counsel raised has been recently upheld by this Court in S.C. 1132/67 (S.C. Minutes of 31st March, 1968<sup>1</sup>). The point, briefly stated, is that there was no evidence tendered by the prosecution to prove that the tin of milk sold by the appellant contained 14 oz. of condensed milk, and that in the absence of such evidence the appellant could not have been lawfully convicted of the offence charged. It is necessary first to refer to the relevant part of the Order alleged to have been contravened in this case :—

“By virtue of the powers vested in the Controller of Prices (Food) by section 4 of the Control of Prices Act (Chapter 173) I, Pinnaduwege Arthur Silva, Controller of Prices (Food), do by this Order—

- (i) fix with immediate effect the prices specified in Columns 2 and 3 of the Schedule hereto to be the maximum retail prices per tin (or bottle) respectively, above which the brand of milk food specified in the corresponding entry in Column 1 of the Schedule shall not be sold within the Island of Ceylon ;
- (ii) direct that for the purpose of this Order—
  - (a) any sale of any quantity of an article specified in Column 1 of the Schedule for the purposes of resale or any sale of an article specified in Column 1 of the Schedule in a quantity of one dozen tins (or bottles) or more at a time shall be deemed to be a sale by wholesale ;
  - (b) any sale of any quantity of an article specified in Column 1 of the Schedule less than one dozen tins (or bottles) at a time for the purpose of consumption or use shall be deemed to be a sale by retail ; ”

<sup>1</sup> (1968) 70 N. L. R. 475.

The Schedule to the Order contains a list of milk foods, and of the corresponding wholesale prices and retail prices fixed by the Order, and a part of the Schedule is here re-produced :—

“ SCHEDULE

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Description</i>	<i>Maximum wholesale price per dozen tins (or bottles)</i>	<i>Maximum retail price per tin (or bottle)</i>
	<i>Rs. c.</i>	<i>Rs. c.</i>
Condensed Milk :		
Milk Maid Condensed Milk .. 14 oz. tin	11 35..	1 0
Tea Pot Condensed Milk .. 14 oz. tin	10 85..	0 95
Red Ruby Condensed Milk .. 14 oz. tin	10 35..	0 90
Ideal Evaporated Milk .. 14½ oz. tin	11 75..	1 05
Farm Brand Condensed Milk .. 14 oz. tin	10 20..	0 90 ”

The Order fixes, in respect of each brand of milk, a wholesale price, and a retail price ; and we are here concerned only with the fixation of retail prices. Paragraph (i) of the Order fixes the prices specified in column 3 of the Schedule as the maximum retail prices per tin for the different brands of condensed milk specified in column 1, and paragraph (ii) (b) of the Order provides that the sale of any quantity of an article specified in Column 1 of the Schedule less than one dozen tins. . . . . shall be deemed to be a sale by retail.

There is thus no reference in the body of the Order to the *quantity* of condensed milk sold in any case, and the Order fixes retail prices only for *tins* of milk. The description of the “ controlled ” tins is contained in Column 1 of the Schedule, the appropriate description for present purposes being the last in the part of the Schedule which has been re-produced above, namely “ *Farm Brand Condensed Milk 14 oz. tin* ”, and the retail price fixed in Column 3 for such a tin is 90 cents.

Legal considerations apart, what then was the intention of the Controller of Prices when he made the Order, and what should and did a retailer and members of the public understand by this Order ? Common sense can furnish only one answer, namely that 90 cents is the maximum price for a 14 oz. tin of Farm Brand Condensed Milk. Thus the “ Controlled article ” for present purposes is simply the *14 oz. tin of Farm Brand Condensed Milk*.

The Schedule to this Price Control Order specifies 16 brands of Condensed Milk, and refers in all cases but one to 14 oz. tins. On any common sense view, why did the Controller in 15 of the 16 cases refer to 14 oz. tins ? Was it because the Controller knew that each and every tin available for sale in Ceylon had been actually weighed by some appropriate authority and found to contain 14 oz. ? Was it because every retailer of condensed milk is supposed to weigh each tin before

he exposes it for sale, and because he was to be free to sell a tin *at any price* if he found on weighing that in fact the tin contained, not exactly 14 oz. of condensed milk, but something less or something more than 14 oz. ? Or was it because all 15 brands of condensed milk are in fact marketed in tins bearing labels stating that the nett weight of the contents, or the gross weight of the tin is 14 oz. ? It seems to me that common sense affords only the answer that the Controller, the dealer and the public must know that the Order fixed prices for tins labelled *14 oz. tins*.

The judgment in the recent case proceeds on the basis that the statement in the label of a tin, as to the weight of the contents, is hearsay, and therefore is not evidence of the actual weight. If that be so, then the statements on the label "Farm Brand", and "Condensed Milk", are equally hearsay, and there is thus no proof either that the accused sold Condensed Milk or that what he sold was the brand referred to in the Schedule to the Price Order as "Farm Brand". Accordingly a prosecution cannot succeed unless there is other evidence to prove (a) that the tin contained condensed milk, (b) that it is of the Farm Brand and (c) that the contents weigh 14 oz. I myself cannot think of any means by which there can be proof that milk is of a particular brand; for all we know, the composition of different brands may be identical.

It is perfectly clear in my opinion that the Order was intended to apply to the sale of tins identifiable by the labels which they bear, and that references in the Order to the three matters mentioned at (a), (b) and (c) above were intended to distinguish, through the labelling, the different varieties of condensed milk ordinarily on sale. Particularly with regard to weight, it is absurd to suppose that the Controller of Prices knew the actual weight of all tins exposed for sale, or that he expected a dealer to know for himself the weight of every tin he sells. As to the actual weight of the contents of a tin, there are three possibilities :—

- (1) that the weight is 14 oz. ;
- (2) that the weight is less than 14 oz. ;
- (3) that the weight is more than 14 oz.

In the case (1), there is a clear contravention if the tin is sold at more than the Controlled price. In the case (2), the Order surely intended this to be a contravention : if the tin contains less than 14 oz., the sale of the tin at a price higher than the controlled price is a more serious contravention than is the first case. The third possibility, that the tin might contain *more than 14 oz.*, is contrary to common sense. The presumption in Section 114 of the Evidence Ordinance, as to "the existence of any fact which the Court thinks likely to have happened, regard being had to the common course of human conduct . . . . and public and private business", must be applied in this context. I myself have never enjoyed the pleasant surprise of finding that the quantity of any article sold in a tin or bottle or packet is greater than the quantity

stated in the label. It would be absurd to suppose that manufacturers of condensed milk adopt any uncommon course of conduct or business practice, and that they understate in their labels the weight of milk which they sell. The only result, therefore, which actual weighing in these cases could achieve is to establish, either that the contents weigh 14 oz. or that they weigh less than 14 oz. But each such result would mean that the seller contravened the Order. That being so, any actual weighing would serve no purpose.

I hold also that when a retailer sells an article bearing a label which specifies the quantity of its contents, e.g., "14 oz. condensed milk", " $\frac{1}{2}$  lb. butter" or "20 cigarettes", he adopts the specification in the label, and admits by his conduct that the weight or number stated on the label is the weight or number of that which he sells. That admission is prima facie evidence of the weight or number of the contents without further proof. If it is the seller's case that the weight or number was in fact different, the burden lies on him to prove the actual weight or number of the contents.

For these reasons, I must express firm disagreement with the judgment to which I have referred. The appeal is dismissed.

*Appeal dismissed.*