

1969

*Present : de Kretser, J.*

T. SIVASUPRAMANIAM, Appellant, and C. P. DABARE  
(Inspector of Food and Drugs), Respondent

*S. C. 966/68—M. M. C. Maligakandu, 30994*

*Food and Drugs Act (Cap. 216)—Section 4—Sale of food not of the nature, substance or quality demanded—Quantum of evidence.*

A seller does not contravene the provisions of section 4 (1) of the Food and Drugs Act if the purchaser has notice at the time of sale that the article sold to him is not of the nature, substance and quality of the article which he demands.

<sup>1</sup> (1954) 56 N. L. R. 243 at p. 244.

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

*K. C. Kamalanathan*, for the accused-appellant.

*J. W. Subasinghe*, for the complainant-respondent.

*Cur. adv. vult.*

March 5, 1969. DE KRETZER, J.—

In this case the Municipal Magistrate (Mr. Walgampaya) convicted the accused of selling—according to his judgment—“ Butter which was not of the quality of Butter demanded by the customer to the customer's prejudice in breach of section 4 (1) and (2) of the Food and Drugs Act (Cap. 216 L. E. C.) ”. He fined him Rs. 75. The accused has appealed.

The charge as it was first framed on 14.6.67 was that he sold “ . . . . . to the prejudice of the purchaser an article of food to wit, Butter which was not of the nature of the article to wit Butter demanded by the purchaser. . . . . ” This was amended on 21.2.68 and then read “ An article of food to wit ‘ Allora Pure Creamery Buttrin ’ which was not of the nature of the article of food to wit Butter demanded by the purchaser. . . ”.

It will be observed that this amended charge does not set out that it was as Butter that “ Allora Pure Creamery Buttrin ” was sold to the customer. It was on this very point that there was a clash of evidence at the trial, for while it is common ground that Dabare did go to this shop and ask for a half pound of Butter and that accused sold to him half a pound of “ Allora Pure Creamery Buttrin ” there is dispute as to what happened between these two incidents. It is accused's version that he happened to sell the Buttrin in the following circumstances :—

“ On this day I sold ‘ Allora Buttrin ’ to the prosecution witness Dabare. He came to the shop and spoke to me. He came and asked me for Butter. I did not have Butter in my shop at the time.

Q. So what did you tell him ?

A. I told him there was no Butter.

Q. Thereafter what happened ?

A. Then he looked in the refrigerator.

Q. What was in the refrigerator ?

A. There was Allora Buttrin in it.

Q. After that what did the Inspector do ?

A. He asked me for Allora Buttrin and I then gave him a packet of Allora Buttrin.

The Inspector under XXM denies that he was told when he asked for Butter that no Butter was available and claims “ I was given this substance as Butter ”. The Magistrate says of this evidence of the

accused "That evidence is clearly unacceptable and I reject it." It is unfortunate that the Magistrate has apparently lost sight that the matter might not be as clear to others, and that the giving of reasons for a finding is for the purpose of assistance to a Court that has to review his order. Apart from this there is no analysis of the evidence, and no consideration of the case from the aspect as to whether there was prejudice caused to the purchaser by this sale. Examining the evidence on the basis of probability I am by no means satisfied that the version given by the accused is not the correct one.

In the instant case the Inspector in consequence of knowledge received from other cases, hearsay and complaints was aware that "Allora Buttrin" was not Butter so that when he bought it—quite irrespective of what accused sold it as—he was aware it was not Butter. But the test is whether the sale would have been to the prejudice of a purchaser who did not have that special knowledge, and with that end in view to consider what the position of an ordinary person purchasing would be. The long line of cases to be found in the commentary on this section of the Food and Drugs Act by Bell establishes that a purchaser cannot be prejudiced when he has notice at the time of sale that the article sold is not of the nature, substance and quality of the article he demands.

That notice can be had from information given by the seller, by the nature of the article itself, or by what passed at the time of purchase. In this instance the package had clearly marked on the label that any purchaser had necessarily to see that "Allora is better than Butter for vim, vigour and vitality", and also gave the information that it was manufactured from Pure Cow Cream, emulsified gingelly and coconut cream.

In regard to this label the Inspector was asked :

Q. So does it not make quite clear that this substance is certainly not Butter ?

A. Yes. It also claims to be better than Butter.

In my view any ordinary purchaser would know that it could not be Butter if it was set out as being "Better than Butter". I do not think that there is any ordinary person who does not know that gingelly oil and emulsified coconut are not components of Butter. It appears to me therefore that the nature of the article was sufficiently brought to the notice of the purchaser and if he thereafter chose to buy it he cannot claim to have been prejudiced. The conviction and sentence are set aside and the appeal is allowed.

*Appeal allowed.*