

1943

Present : Wijeyewardene J.

MOHAMED, Appellant, and NUWARA ELIYA
POLICE, Respondent.

188-189—M. C. Nuwara Eliya, 6,102.

Control of Prices Regulation 6—Charge of refusal to sell beef—reserved for regular customers—Valid defence—Control of Prices Ordinance, s. 4 (3).

Where the first accused who was a salesman and the second accused, the manager of a firm which ran a meat stall, were charged with refusing to sell beef in contravention of the Control of Prices regulation 6 and where the defence of the accused was that the beef found in the stall was required to be supplied to registered customers,—

Held, that the plea was a valid defence to the charge.

Held, further, that the second accused was not liable in the absence of proof that the employer of the first accused was out of the Island.

A PPEAL from a conviction of the Magistrate of Nuwara Eliya.

E. F. N. Gratiaen for accused, appellant.

G. E. Chitty, C.C., for Crown, respondent.

Cur. adv. vult.

April 16, 1943. WIJEYWARDENE J.—

The first accused is a salesman and the second accused, the Manager, of the firm of Abram Saibo & Co., who run a meat stall at Nuwara Eliya. On October 15, 1952, one Mr. M. P. Gunawardene, a District Inspector of the Telegraph Department went to the meat stall and asked for 7 pounds of beef. He made a tender of Rs. 2.45 which was the value of the beef at the maximum retail price ruling on that day. Though there was a large quantity of beef in the stall, the first accused said in Tamil "No beef, cannot give". Mr. Gunawardene complained to the Police and the Police constable who went to the stall immediately afterwards found there 977 pounds of beef. The first accused told the constable when he was weighing the beef that all that quantity of beef had been set apart to meet "the orders of regular customers which had to be executed". The constable was shown the lists of customers whose orders amounted to 886½ lb. for October 15 and 319 pounds for October 16. The constable has stated in his evidence that he "verified and found the orders to be correct". The evidence led in the case shows that, in the absence of very special circumstances, cattle were slaughtered in Nuwara Eliya only on Mondays and Thursdays and that therefore Abram Saibo & Co. had to reserve a part of the beef received on October 15, to meet the orders for October 16 which was a Friday. It may be added that Mr. Gunawardene who has had considerable trouble in obtaining his supply of beef in October and November got himself registered as a regular customer of Abram Saibo & Co. towards the end of November and has experienced no difficulty after that in getting his "regular orders" executed.

On the above facts the accused were charged with having refused to sell 7 pounds of beef to Mr. Gunawardene on October 15, 1942, and thereby committed an offence in contravention of section 6 of the Control of Prices Regulations made by the Minister for Labour, Industry and Commerce under section 4 (3) of the Control of Prices Ordinance and published in the *Government Gazette* No. 8,501 of September 11, 1939.

The accused pleaded that there was no beef available for sale to Mr. Gunawardene as the beef then found in the stall had to be supplied to certain registered customers. There is no doubt as to the truth of the facts on which that defence is based. So far as the first accused is concerned the only question I have to decide is whether this plea affords a valid legal defence to the charge against him.

Sub-section 1 of Regulation 6 mentioned in the charge read with section 5 of the Control of Prices Ordinance makes it an offence for a trader to refuse or fail to supply an article the maximum price of which has been fixed, to a person who makes a demand for it and tenders payment at such maximum price. But the Regulation proceeds to state in sub-section 2 that in a prosecution for such an offence "it shall be a sufficient defence to prove that on the occasion in question the accused . . . had not a sufficient quantity in his custody or under his control to supply the quantity demanded". As the beef found in the stall had to be supplied on the orders received by Abram Saibo & Co. before Mr. Gunawardene made his demand, I do not think it could be said that Abram Saibo & Co. had on that day and beef in their custody or under their control for executing the order for 7 lb. I hold that the words "custody" and "control" are used to signify such a possession of an article as will enable the person in custody or control to dispose of it without infringing the rights of third parties or committing a breach of contract. The conviction of the accused cannot therefore be sustained.

I may add that in any event the conviction of the second accused cannot stand as there is no evidence to show that the employer of the first accused was out of the Island at the time of the alleged offence. Regulation 8 of the Defence (Control of Prices) (Supplementary Provisions) Regulations to which my attention was drawn by Mr. Chitty sets out the position clearly as follows:—

"Where any person, who be employed by any other person (hereinafter referred to as "the employer") to sell articles in the course of any business carried on by the employer at any premises, is, by reason of anything done or omitted to be done at those premises convicted of the offence of contravening any provision of any order, then the employer or *when the employer is out of the Island*, the person for the time being acting as Manager or having control of the business shall also be guilty of that offence, unless he proves

I allow the appeal and acquit the accused.

Set aside.