

OSSEN v. SIADORIS.

P. C., Hatton, 18,210.

1895.
November 8.

Possession of false weights—Intention to use fraudulently—Testing of balance—Ceylon Penal Code, s. 259—Ordinance No. 11 of 1887.

It is not an offence under section 259 of the Penal Code as amended by Ordinance No. 11 of 1887 to possess a false weight unless such possession be with the intention to use it fraudulently.

And the mere possession of a weight which does not conform to the standard, and even the use of it, is not presumptive evidence of an intention to use it fraudulently.

A balance used for testing a weight which is alleged to be a false one should itself be tested before it is applied as a test.

THE accused was charged under section 259 of the Penal Code as amended by Ordinance No. 11 of 1887 with "having been in possession of a false weight intending that the same may be fraudulently used," and was convicted and sentenced to pay a fine of Rs. 25.

The accused appealed.

Jayewardene, for appellant: There is no evidence that the weights are false. There is nothing to show in what balance they were weighed. The difference may be due to some defect in the scales. Even assuming that the weights are false, there is nothing to show that the accused intended to use them fraudulently. It is essential that a fraudulent intention should be proved, as will appear from the express provision to that effect made by Ordinance No. 11 of 1887. The conduct of the accuseds clearly shows that they were not aware of the weights being false, and that they had no fraudulent intention.

8th November, 1895. WITHERS, J.—

The appellant has been convicted of the offence of being in possession of a false weight, to wit, a 1-lb. weight, intending that the same may be fraudulently used, against the provisions of section 259 of the Penal Code as amended by Ordinance No. 11 of 1887; and the question is whether his guilt has been proved.

The facts are briefly these. The appellant is a boutique-keeper. On the 7th of September last the appellant and other boutique-keepers were required by a sergeant of police to bring their weights and measures to the store of one Periyannen Chetty to be tested. Accused's boutique is opposite this Chetty's boutique, where the sergeant of police was seated when he gave orders to

1895. the boutique-keepers to bring their weights and measures. The
 WITHERS, J. measures not being presently in question, I confine myself to the weights.

The accused brought out of his boutique a 1-lb. weight, a $\frac{1}{2}$ -lb. weight, a $\frac{1}{4}$ -lb. weight, and smaller weights. He declared those were all he had, and it is not suggested that he had any more. The result was that the sergeant complained to the Magistrate of the accused having in his possession two false weights, viz., a 1-lb. weight and a $\frac{1}{2}$ -lb. weight (and a false measure).

The sergeant says that he tested the weights in some boutique-keeper's balance against standard weights, and that he found them both short. He does not condescend to say by how much either of appellant's weights fall short of the standard 1-lb. and $\frac{1}{2}$ -lb. weights, nor does he say whether, or how, he satisfied himself that the boutique-keeper's balance was a true one. This balance was not produced in Court. There was a balance in Court, with regard to which the Magistrate notes that the scales were perfectly fair. I assume it to be a true balance. A balance may, however, appear to be just without being so at all, and it should be tested before it is applied as a test itself.

In another note the Magistrate observes that the $\frac{1}{2}$ -lb. weight, tried in the balance in Court against a standard $\frac{1}{2}$ lb., proved to be considerably heavier; while of the 1-lb. weight he observes "it is evidently short." In another note again he writes: "The pleader for accused here points out to the Court that the false 1-lb. weight is shorter by half an ounce."

The Magistrate has not expressly found that accused's 1-lb. weight falls short of the standard 1 lb. by any particular quantity. As to the $\frac{1}{2}$ -lb. weight the Magistrate left that out in his formal charge. Why? It was as much a false weight as the other, if the balance used in Court is to be trusted; and if he intended to use it fraudulently, it was an offence on the part of accused to have it in his possession.

If he uses it knowingly in purchasing goods, it could only be with a dishonest intent. If he uses it knowingly for selling his goods, he is a superlatively honest man, but a foolish tradesman. If these weights are respectively much below and above the standard weights, it is almost incredible to suppose that the accused knows of their disparity, for much that he gains by the 1 lb. he would lose by the $\frac{1}{2}$ lb. This makes one very sceptical about the accuracy of the balance used in Court. But if the weight is under the standard, and therefore false, what is the evidence of intention to use it fraudulently? This weight bears the impression of "1 lb." on it. Did the accused know it to be

otherwise, or had he reason to suspect it? He at once brought it with his other weights to be tested. He said they were correct. Had he reason to believe they were not? Except these two the others seem to be correct. 1895.
WITNESS, J.

The mere possession of a weight not conforming to the standard, and even using it, does not necessarily imply a fraudulent intent.

I am not satisfied in the first place that this 1-lb. weight is a false one, and of intent to use it fraudulently I can find no evidence.

I therefore set aside the conviction, and acquit the accused.

