

1931

*Present : Drieberg J.*ABEYWARDENE *v.* WIJEYSEKERE.799—*M. C. Galle, 1,362.*

*Stall—Holder of a licence to sell vegetables—Right to occupy space above stall—Municipal Councils Ordinance, No. 6 of 1910. chapter 6. by-laws 5 and 11.*

The holder of a stall in the Municipal fruit Market, in terms of a licence issued under by-law 5 of the Municipal By-laws, is not entitled to use the space above the ceiling of the stall for purposes of storage.

**A** PPEAL from a conviction by the Municipal Magistrate of Galle.

*Haniffa*, for the accused, appellant.

*Abeywardene*, for the complainant, respondent.

December 4, 1931. DRIEBERG J.—

The appellant is the licensee of the stall No. 10 in the public fruit market in Galle.

Provision for the sale of fruit in public markets is contained in by-law 11 of chapter 6, which is as follows: "Spaces six feet by four in extent or of other dimensions containing not less than twenty-four square feet, properly "marked and numbered, shall be set apart in every public market for the sale of vegetables, fruits and other articles by persons paying such daily fee as the council may from time to time determine. No person shall occupy any such space without having obtained the licence required by by-law 5 of this chapter."

By-law 5 of this chapter provides that "No person shall hold or occupy a seat or stall in any of the public markets without a licence in the form B hereto annexed signed by the Secretary, or contrary to the tenor of such licence."

The licence to the appellant is in the form B and is for a period of a month, provision being made in it for further extensions of a month at a time.

The market is divided into two lengthwise with rooms on either side. Each room is separated from the room on either side and from that behind by a wall. There was at one time a wooden ceiling but this has been replaced by expanded metal. It should be noted that the space above the ceiling in each room is not confined to each room but is common to each pair of rooms, each room and the room behind it being regarded for the purpose of this description as a pair of rooms. Along the length of the whole building on both sides and affording a frontage to each room is a verandah. Between the top of the front wall of the room, above the level of the expanded metal ceiling on the verandah aspect of each room and the roof is an open space, so that it is possible from the verandah to have access to the space between the ceiling and the roof.

The appellant used this space above the ceiling for keeping his cooking utensils and bedding which he placed on the expanded metal. The Municipal Council says that this use of the ceiling is not justified by his licence and he was prosecuted under by-law 20 of chapter 6 which is as follows: "No person holding a licence for any stall or space in public markets shall use or occupy, or permit or allow any person acting on his behalf to use or occupy, and no servant of the person holding such licence shall use or occupy, any ground beyond the limits of the stall or space, rented by him". Chapter 22 of the by-laws provides a penalty for the breach of this or any other by-law.

The Municipal Magistrate convicted him and fined him Rs. 5. The main contention of the appellant is that under his licence he was entitled for the purposes of his trade to the entirety of the room, from the floor to the roof, in precisely the same manner as if the room had been let to him. But this is not so, for apart from the ordinary meaning of the word it will be seen that under rule 11 what is provided for the purposes of a vendor in a market is a "space" which is described in terms of superficial area and no one can occupy such a space without a licence under by-law 5. By-law 5 does not use the word "space" but provides for the issue of licences for a seat or stall. It follows therefore that the

licence can be for nothing more than a seat or stall in the "space" set apart for sale and this, under by-law 11, is a space containing a certain minimum number of square feet.

The ordinary meaning of the word "stall" is also against the appellant. A stall is a booth in a market and it means in some cases a table on which goods are exposed for sale; the word suggests nothing more than the space used for the purposes of sale, and I do not think it can be extended in this case to the space above the expanded metal ceiling which is not designed or intended for the storage of goods.

Mr. Haniffa contended that the conviction was bad as the written authority of the Chairman for the prosecution had not been granted. The sanction of the Chairman does not appear on the plaint to Court, but this is not necessary. Whether sanction was granted is a matter of fact. No question regarding it was raised at the trial, and this objection was not taken in the petition of appeal. I must assume in the absence of evidence to the contrary that the prosecution was properly constituted.

The appeal is dismissed.

*Appeal dismissed.*

