

1921.

*Present : Schneider A.J.***ABEYASURIYA v. JAYASEKERA.***158—D. C. Matara, 22,214.*

*Sale of rice over control price—Defence of the Colony Regulations, 1919—
Sale to four persons — One trial — Particulars not specified in
charge.*

The accused was charged with having sold rice over the control price. The charge did not give particulars as to the quantity sold or to whom the rice was sold. Four witnesses were called to prove that on the day in question accused sold to each of them a bag of rice for over the control price.

Held, that the conviction was bad, as the charge did not give necessary particulars, and as the accused was apparently convicted of four distinct offences.

THE facts appear from the judgment.

Keuneman, for appellant.

March 4, 1921. SCHNEIDER A.J.—

The proceedings in this case appear to have commenced with a complaint in writing signed by the complainant, who is described as Vidane Arachchi, Local Board, Matara, and signed also by the Deputy Food Controller and Assistant Government Agent, Matara, as indicating that he authorized the prosecution. Upon this complaint in writing, the Magistrate directed summons to issue against the accused. The summons was to the effect that the accused did, on January 7, 1921, at Kotuwegoda, sell rice at Rs. 18·50 per bag, in excess of the control price, namely, Rs. 17·75 per bag, and that he had thereby committed an offence punishable under regulation 1 (3) of the Defence of the Colony Regulations, 1919. When the accused appeared in obedience to the summons, the charge was read to him from the summons, and the trial proceeded. There is the evidence of four witnesses who speak to four distinct purchases by each of them on the day in question of a bag of rice for Rs. 18·50. The accused was convicted and fined Rs. 50. On appeal it was submitted that the conviction was bad for three reasons: First, because the charge did not give the particulars as to the quantity sold, and to whom sold; secondly, that the accused appears to have been convicted of four distinct offences, namely, the sale to the four witnesses; and, thirdly, that there was no legal proof of the controlled price of the rice. It seems to me that all these three objections are entitled to prevail, and that the first and second of them are fatal to the conviction. It should also be pointed out that the Magistrate had not insisted with the strict compliance of

the provision in section 148 (1) (a), which requires that in the case of a summary offence a complaint, if in writing, shall be drawn and countersigned by a pleader and signed by the complainant.

The faults which are apparent in the proceedings in this case have been considered by this Court in the case of *Inspector of Police, Ambalangoda, v. Fernando*,¹ *Duraya v. Appuhamy*,² and *Miskin v. Babun Appu*.³ I would, therefore, set aside the conviction on the ground that the charge was deficient, as not containing essential particulars, and illegal, as having included four distinct offences. I quash these proceedings and acquit the accused, but without prejudice to any proceedings which may be duly taken in respect of any offence he may have committed on the day in question in respect to the sale of rice.

Accused acquitted.

1921.

—
SCHNEIDER
A.J.
Abeyasuriya
v. Jayasekera