

1898.

September 23.

## KOCH v. NICHOLAS PULLE.

P. C., Puttalam, 5,095.

*Criminal breach of trust—Penal Code, s. 389—Master and servant—Deficiency in quantity of goods entrusted to servant—Evidence in proof of criminal breach of trust.*

Mere deficiency in the quantity of goods entrusted to a servant is not of itself sufficient proof of criminal breach of trust. It must be shown that the accused disposed of the property in some other way than that in which he was bound to apply it, and that in so disposing of it he did so dishonestly.

THE accused was a servant of the Local Board of Puttalam, and as such he was entrusted with 700 small tin plates for the purpose of attaching them to carts, &c., for which licenses had been taken out. At the end of the year he was not called on to account for the unused plates. In the beginning of 1898 he was entrusted with 700 more plates. On the 15th June, 1898, there was a verification, and after crediting him with the same number of plates as the number of licenses issued in 1897 and 1898, there was found to be a deficiency of 95 plates, for which he was held responsible by the Police Magistrate and charged with criminal breach of trust.

On appeal against a conviction,

*H. Jayawardena* appeared for him.

23rd September, 1898. LAWRIE, J.

It is, I think, well fixed law that proof of deficiency in the quantity of goods or in the amount of money entrusted to a servant is not in itself sufficient proof of criminal breach of trust. Take the case of a librarian entrusted with books, or a shop man entrusted with large quantities of many varieties of goods, or of a domestic servant entrusted with household plates, knives, and forks, &c. It is not sufficient to prove that at the beginning of service there was a certain number of books or goods or household articles, and at the end there was a smaller number. It is necessary to prove some facts from which the jury or the judge can safely draw the inference that the deficiency is due to criminal breach of trust.

The deficiency of money is a case in which the inference of dishonest appropriation can most easily be drawn, for it is the duty of a servant entrusted with money to keep it in his purse or under lock and key. With regard to the deficiency of money, the law under our Penal Code has authoritatively been laid down by Mr. Justice WITHERS in *Buchanan v. Conrad* (1 S. C. R. 338).

But with regard to deficiency in the quantity of goods which cannot reasonably be expected to be kept in the personal possession of the servant, the inference of criminal breach of trust is not so easily drawn. To repeat the words of Starling (*p. 184*): "It must be shown by the prosecution that the defendant disposed of the property in some other way than that in which he was bound to apply it, and in so disposing of it in breach of the trust did so dishonestly."

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In all cases under this section the explanation by the servant is an important part of the evidence before the jury or the Court. Does the explanation satisfy the Court that there has been no dishonesty, no criminal breach of trust, or does it contain admission or statements from which either the guilt of the accused is proved or guilt may reasonably be presumed? I say nothing about what inference may be drawn if the accused gives no explanation, for here the accused has made the following statement:—"As soon as the year is finished the unused tin plates are thrown out with refuse paper and other rubbish on the Kachcheri premises. I put successive numbers from the commencement to the end of 1897, and I threw out the balance unused. From the commencement of January to the date of the verification I affixed forty tin plates to licensed carts out of the supply of plates given to me for 1898. I found this out in the register 181—220. I also issued two tin plates to coaches licensed for 1898."

Of this, the Magistrate says: "This is incredible and preposterous, as he should have kept the blank ones for stamping licenses to be issued in 1898 for the period July 1, 1897, to June 30, 1898."

In my opinion the explanation given by the accused is not satisfactory, but I do not see why I should disbelieve it. Certainly, I am unable to treat it as an admission of guilt or an admission of facts from which guilt can reasonably be inferred.

These tin plates, unlike money or goods, were worthless for any other purpose than to affix to carts.

The Magistrate, from his recollection of other cases in his Court, says there had been dishonest proceedings connected with the issues of cart licenses in Püttalam, but no evidence has been adduced in this case to show that it is probable that the accused used any of the tin plates dishonestly.

If it had not been for this passage in the judgment I would not have understood why the accused was prosecuted, but the Magistrate supplies the reason; and it seems to me that there is no more than a suspicion against the accused, and after careful consideration I set aside the conviction and acquit him.