

1942

*Present : de Kretser J.*

MARIKAR, Appellant, and MIRIHANA POLICE, Respondent.

401—*M. C. Colombo, 37,685.**Defence (Coin and Currency) Regulations—Refusal to accept damaged notes—  
Regulation 3 (c)—Penal Code, s. 72.*

Where a trader is charged under regulation 3 (c) of the Defence (Coin and Currency) Regulations with "refusing to accept in payment of a debt or otherwise any coin or note" and where it is established that he refused to accept notes on the ground that they were damaged and not good money,—

*Held*, that the accused had not offended against the provisions of the Regulation.

**A** PPEAL from a conviction by the Magistrate of Colombo.

*R. G. C. Pereira* for appellant.

*H. W. R. Weerasooriya, C.C.*, for respondent.

June 23, 1942. DE KRETZER J.

The Magistrate accepted the case for the prosecution and, despite some difficulty in following his reasons for rejecting the defence, I think he was right in accepting the facts given by the prosecution. These facts are that the accused is a very small trader; that he was quite willing to sell two tins of cigarettes for Re. 1.87; that he always accepts currency notes and displays no tendency to hoard silver coins; that he might have refused to sell at all since cigarettes are not "controlled"; that he was given as part of the payment three notes of 25 cents each and refused

<sup>1</sup> 40 N. L. R. 481.

<sup>2</sup> 13 N. L. R. 97.

to accept two of them as they were damaged ; that no immediate protest was made nor was he requested to sell only one tin; that the sale was one for cash and so was not complete.

He was fined Rs. 100, the Magistrate indulging in some general remarks, quite proper and creditable in themselves but having no application to the facts of the present case.

It is common knowledge that not only traders but ordinary folk fight shy of damaged notes ; there is an idea that they are no longer legal tender. The Magistrate refers to some clerk in the Kachcheri who refused to accept such notes when remitted by the Court.

The regulation penalises a person who refuses to accept a note in payment of a debt or otherwise. The first question is whether there was a debt. There was none as the sale was not on credit. What would be the case if the customer tendered counterfeit coins or notes ? Clearly the seller could refuse to sell. What if he refused to accept any notes and insisted on being paid in coin ? That would be the kind of thing the regulation was aimed at. Here he would not be refusing to sell but refusing to sell except for coin. "Otherwise" would cover such a case. If then damaged notes were in fact legal tender, it would cover the present case. But if the trader acted honestly in refusing to accept the notes because he considered them not good money, as this trader clearly did, then section 72 of the Penal Code applies and he has committed no offence.

In my opinion the accused is entitled to be acquitted on this ground alone.

I quite realize how dishonest traders might exploit this finding but each case must depend on its own facts and the Legislature is always available.

*Set aside.*

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