

1948

*Present: Moseley S.P.J.*

WELIPENNA POLICE *v.* PINESSA.

332—*M. C. Kalutara, 18,467.*

*Criminal Procedure—Evidence in rebuttal—No provision in Code.*

There is no provision in the Criminal Procedure Code for calling evidence in rebuttal in the Magistrate's Court.

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

*R. L. Pereira, K.C.* (with him *S. W. Jayasuriya*), for the accused, appellant.

*G. P. A. Silva, C.C.*, for complainant, respondent.

July 9, 1943. MOSELEY J.

The appellant was convicted of robbery of a buffalo and was sentenced to two months' rigorous imprisonment. The appellant gave evidence in the course of which a statement was put to him which was alleged to have been made by him to constable K. G. Perera. The appellant denied that this statement had been correctly recorded. At the close of the case for the defence, Counsel for the prosecution moved to call constable Perera in rebuttal. Counsel for the defence did not object to this course and the constable was accordingly called and he produced the statement which he swore to be correctly recorded.

So far as I can discover there is no provision for the calling of evidence in rebuttal in the Magistrate's Court. The procedure was therefore irregular and it is impossible to say to what extent the mind of the learned Magistrate may have been influenced by having before him two contradictory statements made by the appellant.

I, therefore, allow the appeal and quash the conviction and sentence. There will be a new trial before another Magistrate.

*Conviction quashed.*

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