

1945

Present: Wijewardene J.

SELVARAJAH, Appellant, and INSPECTOR OF POLICE, JAFFNA.
Respondent.

800—*M. C. Mallakam, 28,519.*

Defence (Miscellaneous) Regulations—Charge of entering Ceylon without permit—Regulation 23A (1) (a)—Absence of Governor's Order—No offence disclosed.

Where the charge against the accused was that he entered or attempted to enter Ceylon from a place outside Ceylon without the authority of a written permit, in contravention of section 23A, (1) (a) of the Defence (Miscellaneous) Regulations—

Held, that the charge against the accused did not disclose an offence as no reference was made in the proceedings to any Order of the Governor made under Regulations 23A (1).

A PPEAL against a conviction by the Magistrate of Mallakam.

S. Nadesan for the accused, appellant.

T. K. Curtis, C.C., for the Crown.

September 5, 1945. WIJEYWARDENE J.—

The charge against the accused was that he " did at two miles from the coast of Kankasanturai within the territorial waters . . . in contravention of section 23A (1) (a) of the Defence (Miscellaneous)

Regulations published in the *Government Gazette* No. 9,160 enter Ceylon by sea in a vallum from a place outside Ceylon without the authority of a written permit and thereby committed an offence punishable under section 23A (3) (c) of the Defence (Miscellaneous) Regulations or, in the alternative, did attempt to enter Ceylon by sea in a vallum from a place outside Ceylon without the authority of a written permit in contravention of section 54 (1) of the Defence (Miscellaneous) Regulations and thereby committed an offence under section 52 of the Defence (Miscellaneous) Regulations ”.

The accused who was undefended pleaded, “ I am guilty to the charge of landing without a permit ”. The Magistrate, thereupon, convicted the accused and sentenced him to one month’s rigorous imprisonment.

The charge framed against the accused does not disclose an offence. The Regulation 23A (1) of the Defence (Miscellaneous) Regulations is merely a regulation which empowers the Governor to make an Order prohibiting, *inter alia*, a person from entering Ceylon from any place outside Ceylon except under the authority of a written permit. Regulation 23A (3) prescribes the penalties for acts committed in contravention of such an Order. Regulation 54 (1) defines an “ offence against a regulation ” to include an attempt to commit such an offence. None of these Regulations make it an offence to enter Ceylon or to attempt to enter Ceylon by sea in a vallum without a permit. No reference has been made in the proceedings in the lower Court to any Order made under Regulation 23A. The Crown Counsel stated that he was unable to support the conviction and added that, in fact, the Governor had made no such Order applicable to the facts of the present case.

I set aside the conviction and acquit the accused.

Conviction set aside.
