

1904
September 8.

ATTYGALLE v. MOHIDEEN MADAR.

P. C., Colombo, 88,251.

Ordinance No. 8 of 1893—Meaning of "pawnbroker"—Boutique-keeper taking pawns as security for goods sold.

To constitute one a pawnbroker under Ordinance No. 8 of 1893 it is *inter alia* necessary that the security of the pawn should be in respect of actual money paid by him to the pawnor; and so a boutique-keeper who without having obtained a license under that Ordinance takes pawns from his customers as securities for goods sold by him to them cannot be convicted under the Ordinance of having acted as a pawnbroker without a license.

THE accused in this case was a boutique-keeper, who used to sell to his poorer customers, goods on credit and take articles of dress and jewellery from them as security for the payment of the debt. He was charged under section 24 of Ordinance No. 8 of 1893 with acting as a pawnbroker without a licence.

The police magistrate found as follows:—

"The accused is a boutique-keeper, and his defence is that he has not lent actual money on the pledges seized and produced by the police, but that he has supplied provisions on them, the pledges being afterwards redeemed on money; or, rather, that was the intention with regard to the particular pledges seized in his possession.

"I cannot hold it proved on the evidence of one witness that actual money was lent. Of all the persons whose pledges the police seized, only one is prepared to say this, and I think it is true that accused supplied provisions on these pledges. But this does not seem to me a good defence. The essence of pawnbroking is the taking of a pledge, and whether money or its equivalents as provisions is lent seems to me to matter nothing."

Being convicted, the accused appealed.

The case came up for argument before Wendt, J., on 5th September, 1904.

Bawa, for appellant.—The appellant received pledges only to accommodate his customers, and not as a business. The Pawnbrokers' Ordinance clearly states that money should be borrowed on the pledges. Therefore the giving of provisions takes the case out of the Ordinance. Counsel referred to sections 3, 8, and schedule II. of the Pawnbrokers's Ordinance, and to 35 and 36 Vict., c. 93.

Rāmandhan, S. G., *contra*.

Cur. adv. vult.

8th September, 1904. WENDT, J.—

The appellant has been convicted of acting as a pawnbroker without having first obtained a licence, in breach of section 24 of

Ordinance No. 8 of 1893. He keeps a "rice boutique," i.e., as I understand it, a boutique in which he sells raw rice, dry fish, condiments, &c. From customers unable to pay for their purchases in cash he took pledges of goods, such as articles of clothing and jewellery, and these the pledgers were afterwards permitted to redeem.

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The question is whether in so doing the appellant "acted as a pawnbroker" within the meaning of section 24 of the Pawnbrokers' Ordinance of 1893. The Magistrate held that he did, because "the essence of pawnbroking is the taking of a pledge, and whether money or its equivalent in provisions is lent on the pledge seems to matter nothing."

"Pawnbroker" is defined as "including" every person who carries on the business of taking goods in pawn. This form of definition implies that, in addition to its ordinary meaning, the term includes every person, &c. Now the accused cannot, I think, be said to have "carried on the business of taking goods in pawn." He carried on the business of a boutique-keeper, and to accommodate his customers who were not able to pay in cash for their purchases gave them credit, taking security by means of pledges. He does not come within the ordinary meaning of the term "pawnbroker," which is usually understood to describe a person who lends money on the security of a pledge. Nor does he come within the category specified in section 3, of a person who keeps a shop for the sale of goods and who receives or takes in goods and pays or advances or lends thereon any sum of money. The various sections of the Ordinance support the contention that actual money of the pawnee must be paid to the pawnor. Sections 3 and 4 speak of the sum lent; section 8 and the schedule II. prescribe a scale of profit regulated by the amount of the "loan" in money; sections 10, 11, and 12 speak of a pledge pawned for five rupees or less or more. Had it been intended to bring a person like the accused within the Ordinance, it would have been easy to add to section 3 words including those who sell goods and take a pawn as security for the price. But while that section provides for the purchase or receipt of goods and the transfer of money thereon upon the understanding that they might afterwards be redeemed, nothing is said as to the absolute sale of goods and the giving of credit for the price. No decision under the English Pawnbrokers' Act, 1872, on which our Ordinance is modelled, has been cited to show the appellant's guilt.

I think appellant is not shown to have "acted as a pawnbroker," and I therefore set aside the conviction and acquit him.