

Present: Porter J.

1922.

LAXANA v. MUHANDIRAMA.

330—P. C. Matale, 18,186.

Criminal breach of trust—Mere deficiency of goods entrusted to servant.

Mere deficiency in the quantity of the goods entrusted to a servant is not of itself sufficient proof of criminal breach of trust.

THE facts appear from the judgment.

H. V. Perera, for appellant.

July 18, 1922. PORTER J.—

The appellant was convicted in the Police Court at Matale on June 19, 1922, under section 391 of the Ceylon Penal Code, and sentenced to two months' rigorous imprisonment. I do not think that there is sufficient evidence on which the conviction can be upheld. The accused was a club peon, and in his position as such he was entrusted with certain empty soda water bottles. On stock being taken there was found to be a deficiency of thirty-six dozen bottles. *Koch v. Nicholas Pulla*¹ lays it down that mere deficiency in the quantity of the goods entrusted to a servant is not of itself sufficient proof of criminal breach of trust. In this case there is no other evidence. It is true that the accused alleged that he despatched two dozen of the empty bottles by rail to the soda manufacturers. He has pointed out a railway porter (one Perera), to whom he says he gave the bottles. That porter Perera has not been called, but the Station Master says that the books show that Perera was not on duty on the day on which the accused alleges he despatched the empty bottles. The accused is a young man who has been employed as peon to the club for the last two years, and has hitherto borne a good character. The evidence, to my mind, is not sufficient on which to convict. I would, therefore, allow this appeal, and quash the conviction.

Appeal allowed.

¹ (1898) 3 N. L. R. 198.