

1946

Present : Howard C.J.

KATHTHIRIARATCHI *et al.*, Appellants, and RAJASURIYA (I.P.),
Respondent.

498-499—M. C. Colombo, 14,395.

Defence (Miscellaneous) Regulation 52 (3) (b)—*Property imported by the NAAFI—No presumption that it belongs to His Majesty's Government.*

Where the accused were charged with possessing bottles of English beer, property belonging to and intended for the use of His Majesty's forces, and thereby committing an offence punishable under section 52 (3) (b) of the Defence (Miscellaneous) Regulations—

Held, that property imported by the NAAFI for the use of His Majesty's troops in Ceylon could not be regarded as the property of His Majesty's Government in the absence of evidence as to the exact relationship which existed between the NAAFI and His Majesty's Government.

A PPEALS against two convictions from the Magistrate's Court, Colombo.

H. V. Perera, K.C. (with him *D. W. Fernando*), for the accused appellants.

V. T. Thamotheram, C.C., for the Attorney-General.

June 17, 1946. HOWARD C.J.—

In this case the accused were charged with possessing 137 bottles of English beer, property belonging to and intended for the use of His Majesty's forces and thereby committing an offence punishable under section 52 (3) (b) of the Defence (Miscellaneous) Regulations. It was in evidence that the beer which was found in the accused's premises was Jeffrey's and Whitbread's beer, both of which brands were imported by the NAAFI, no doubt, for the use of His Majesty's troops in Ceylon. It had to be established first of all that the beer belonged to His Majesty's Government. There was no evidence as to the exact relationship which exists between the NAAFI and His Majesty's Government. It is a matter for doubt as to whether property which is imported by the NAAFI is property of His Majesty's Government. I am, therefore, of opinion that this point has not been established. A further objection was the fact that although the NAAFI did import these two brands of beer, yet up to July, 1944, those brands had been imported by various other Stores in this Island. In these circumstances it has not been proved beyond all reasonable doubt that this beer was not beer which might have been imported before July, 1944, by some Store in Ceylon. Having been imported, it may not possibly have found its way on to the market until a much later date.

For these reasons the appeal must be allowed and the convictions set aside.

Appeal allowed.