

Present : The Hon. Sir Joseph T. Hutchinson, Chief Justice.

1909.
February 22.

THE KING v. PULLE.

D. C. (Criminal), Colombo, 2,173.

Criminal breach of trust—Failure to account—Insufficiency—Misappropriation of a large sum made up of small sums—Separate charges—Ceylon Penal Code, s. 398.

In a charge of criminal breach of trust it is not enough for the prosecution merely to prove that the accused has not accounted for all the money that he has received and for which he was bound to account, for there may be other explanation of the deficiency besides dishonesty; the prosecution must prove circumstances from which dishonesty can be inferred.

Where the sum in respect of which a charge of misappropriation is laid is made up of several small sums received at different times, it is not necessary to make a separate charge in respect of each of the smaller sums.

A PPEAL by the accused from a conviction by the District Judge (H. A. Loos, Esq.) on a charge of criminal breach of trust as Treasurer of the Provident Fund of the Government Printing Office. The facts material to the report appear in the judgment.

Tambiah, for the accused, appellant.

Walter Pereira, K.C., S.-G., for the Crown.

Cur. adv. vult.

February 22, 1909. HUTCHINSON C.J.—

The appellant was convicted of criminal breach of trust in respect of a sum of Rs. 702 entrusted to him in the capacity of Treasurer of the Provident Fund of the Government Printing Office. He received on various dates during the year ending June 30, 1906, a number of sums amounting to Rs. 10,960·47, all of which it was his duty as Treasurer to pay into the Mercantile Bank to the credit of the Fund. He paid in only Rs. 10,257·53 in that year, the balance Rs. 702·85 is the sum in respect of which he was charged.

The matter for the court to decide was whether he had committed criminal breach of trust in respect of that Rs. 702, or whether it was merely a case of civil liability; whether he had dishonestly misappropriated it or converted it to his own use, or dishonestly used or disposed of it in violation of the contract which he had made touching the discharge of his trust.

His explanation of the deficiency was that he lent the money to various members of the Fund, in accordance with an old-established and recognized practice. There is no adequate evidence of such a

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practice ; and he has not given the names of the persons to whom he lent the Rs. 702 or any part of it ; and there is no evidence beyond his own statement in proof of the loans. The suggestion that the documentary evidence—the ledger which he had kept and the I. O. U.'s and notes which he had received from the borrowers—which would have proved the loans have been destroyed or suppressed by the prosecution has, as far as I can judge, no foundation. In my opinion the evidence proves that he dishonestly misappropriated the Rs. 702.

His counsel contends that this is only a case of a general deficiency creating a civil and not a criminal liability. The reported cases of charges of “ embezzlement ” and of “ criminal breach of trust ” show that it is not enough for the prosecution merely to prove that the servant who is charged has not accounted for all the money that he has received and for which he was bound to account, for there may be other explanation of the deficiency besides dishonesty, and the prosecution must prove circumstances from which dishonesty can be inferred. Such a circumstance is, in the present case, an explanation given by the accused, which would apparently have been easily capable of proof, but which is not proved, and which the court believes not to be true. But the cases do not decide that, where the charge is of misappropriation of a sum which is made up of several small sums received at different times, it is necessary to make a separate charge in respect of each of the smaller sums. That would often be impossible. You might be able to show that the servant had received on your account a hundred separate rupees from so many separate sources, and that he had dishonestly misappropriated half of them ; but if it was necessary to show that he had misappropriated any particular rupee, it could not be done, for it would always be possible that that rupee was one of the fifty for which he had duly accounted. I decided the same point last November in 142, D. C., Kandy (Criminal) 1899.¹

The appeal is dismissed.

Appeal dismissed.

¹ S. C. Min. November 13, 1908.