

COORE v. ALLIS APPU.

1904.

February 29

P. C., Colombo, 85,056.

Dishonest retention of stolen property—Stolen bicycle found seven months afterwards in accused's house—Evidence of dishonest receiving, to show dishonesty in retention—Penal Code, s. 394.

Where a bicycle, stolen seven months previous to the prosecution, was found in the bedroom of B, who, having no means of livelihood, lived with and was supported by A, his father, and B was unable to prove his statement that he had purchased it from C,—

*Held, per MONCREIFF, J.,—*that a charge of dishonestly retaining property knowing the same to be stolen does not negative dishonest receiving, and that evidence which would establish a charge of dishonest receipt may, although no charge of dishonest receiving is preferred, be used to show the dishonesty of the retention.

Mahamadu v. Bandirala, 3 N. L. R. 267, questioned.

AN appeal against a conviction for dishonestly retaining a bicycle stolen from one Mr. Dix, knowing the same to be stolen. Each of the two accused was sentenced to one year's rigorous imprisonment under section 394 of the Penal Code.

Mr. Dix left it outside the Public Hall in Slave Island, Colombo, on 4th July, 1903, where he had gone to witness an entertainment. It was found some seven months afterwards, on 3rd February, 1904, by the police in the first accused's house, in the bedroom of his son, the second accused, who having no means of livelihood was supported by his father, a seller of milk.

The Police Magistrate (Mr. W. E. Thorpe), after reviewing the evidence led, said: "It is quite probable that the second accused actually stole the bicycle, but recent possession cannot be proved; and as both say that it was bought, I am willing to believe they did pay money for it, but I cannot believe either was not well aware that he was buying stolen property." The Magistrate found both the accused guilty of dishonestly retaining the bicycle, knowing it to be stolen.

The first accused only (father of the second accused) appealed.

Dornhorst, K.C., for appellant.

Rāmanāthan, K.C., for respondent.

Cur. adv. vult.

29th February, 1904. MONCREIFF, J.—

A bicycle belonging to Mr. Dix was stolen about the 2nd or 3rd July, 1903. At their trial on the 6th of February, 1904, the first accused said that his son, the second accused, got money from him seven or eight months ago to buy that bicycle; and the second

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accused said that he bought the bicycle eight months ago from a man whom he called Pedrik Dance, but who, I think, had no existence. The possession, therefore, began about the date of the theft, as is proved by Pedrik Jansz, who is possibly the Pedrik Dance put forward by the second accused as the seller, and who said that he knew that the latter had had the bicycle six or seven months, but denied having sold it to him.

For some reason, which I do not understand, the accused were not charged with dishonestly receiving but with dishonestly retaining the bicycle, knowing or having reason to believe that it was stolen, and the Magistrate curiously observes that recent possession could not be proved. He also says—what I cannot agree with—that “as both say it was bought, I am willing to believe that they did pay money for it.” Then he adds that the accused (who bought—if they did buy—the bicycle immediately after the theft) must have been well aware that they were buying stolen property. I have no doubt they were. Their Counsel cited *Mahamadu v. Bandirala* (3 N. L. R. 267) for the purpose of showing that Withers, J., considered that a charge of retaining negatived dishonest receiving, and affirmed an honest receipt. That cannot be so. The charge of retaining simply means that the accused are not charged with receiving; and in my opinion evidence which would establish a charge of dishonest receiving may, although no charge of dishonest receiving is preferred, be used to show the dishonesty of the retention. The conviction and sentences are affirmed.

