1957 *Present:* **T. S. Fernando, J.**

G. RETTIAR and others, Appellants, *and* T. PACKIAM and another Respondents

S. C. 741-745, with Application 169—M. C. Jaffna, 5,862

Criminal Procedure Code—Section 413—"Produced before the court"—Order for, disposal of property regarding which an offence appears to have been committed.

At a non-summary inquiry into charges of house-breaking and theft, it was shown that some of the stolen jewellery belonging to the 1st and 2nd claimants had been melted down by two persons, to whom the burglar had given them, into bars of gold and sold to the 3rd to the 7th claimants. The bars of gold were in the custody of court and had been itemised in a list attached to the report to court. During the non-summary inquiry the accused burglar died and the question of his committal for trial did not therefore arise. Thereafter the claims made by the 3rd to the 7th claimants were rejected and the gold was ordered to be handed over to the 1st and 2nd claimants.

Held, that the bars of gold had been produced before the court within the meaning of section 413 of the Criminal Procedure Code and that the Magistrate's order in favour of the 1st and 2nd claimants should be upheld.

[1] *(1946) 33 C. L. W. 46.* [2] *(1950) 42 C. L. W. 69.*

APPEALS, with application in revision, from an order of the Magistrate's Court, Jaffna.

C. Ranganathan, for the 3rd to 7th claimants-appellants.

M. M. Kumarakulasingham, for the 1st and 2nd claimants-respondents.

A. E. Keuneman, Crown Counsel, as *amicus curiae*, on notice issued by the Court.

Cur. adv. vult.

July 2, 1957. T. S. FERNANDO, J.—

These appeals have been preferred by five claimants to certain bars of gold said to have been produced in the Magistrate's Court of Jaffna in connection with a non-summary inquiry into charges of house-breaking and theft laid against two persons, Mailvaganam and Thiagarajah. The claims made by the appellants have been rejected and the gold ordered to be handed over to two other claimants said to be the owners of the jewellery which had been melted down to bars of gold. It is conceded by learned counsel for the appellants that his clients have no right of appeal and he invites me to deal with the order made by the learned Magistrate by way of revision. Separate applications in revision have been filed by the appellants, and Fernando J. who allowed notice to issue also invited the assistance of Crown Counsel as 'amicus curiae'. When the matter was argued before me I therefore had the assistance of Mr. Keuneman, Crown Counsel, in addition to Counsel on behalf of the contending claimants.

Learned counsel for the appellants urged that the Magistrate's order in favour of the 1st and 2nd claimants should be set aside for the following reasons :—

(1) The bars of gold were not *produced* before the court within the meaning of section 413 of the Criminal Procedure Code.

(2) There was no evidence before the Court to establish that any offence appeared to have been committed regarding *these* bars of gold.

For the purpose of deciding the applications in revision it is necessary briefly to set out the facts so far as they are relevant to the question before this Court.

The house of the 1st and 2nd claimants had been burgled on the night of May 16th 1955 and a large quantity of gold jewellery and a fairly large sum in cash were stolen. It is not disputed that the burglars were Mailvaganam and Thiagarajah. The Police arrested Mailvaganam who admitted his guilt and stated that some of the jewellery was buried in the compound of his mistress's house while the other jewellery had

been given to one Retnam and one Sittampalam to be melted down and sold. Jewellery was found buried in the compound of the house of Mailvaganam's mistress and Retnam and Sittampalam both admitted in evidence during the non-summary inquiry that they had received various articles of jewellery which they had melted down and sold to the 3rd to the 7th claimants who are the present appellants. The Police questioned the appellants without any delay, recorded their statements and took over from them the bars of gold which are the subject of the claims.

No question arises in this Court regarding the articles of jewellery which were said to have been produced in the Magistrate's Court. They appear to have been identified by the 1st and 2nd claimants, and the 3rd to the 7th claimants are not interested in them.

During the non-summary inquiry Mailvaganam died and the question of his committal for trial did not therefore arise. Upon his death the Magistrate discontinued proceedings in this case, and the other accused, Thiagarajah, was charged in fresh proceedings and convicted. It is not clear what course these fresh proceedings took, but apparently the question of producing the bars of gold before court did not arise in the case against Thiagarajah.

In regard to the first point urged by counsel for the appellants, it is necessary to say that the learned Magistrate has in a considered order found that the bars of gold were produced before the Court. Mr. Renganathan argues that " produced " in section 413 of the Criminal Procedure Code must mean produced in evidence, and points to the fact that the bars of gold in question (*a*) have not been allotted identifying numbers as is usual when any productions are offered in evidence in court and (*b*) have not been even referred to in the evidence of any Police Officer. It must be remembered that the stage of the Police evidence had not been reached when Mailvaganam died, but the bars of gold had been itemised in a list attached to the report to court. The learned Magistrate states he is satisfied upon the evidence of the Inspector of Police that these bars of gold were actually in the custody of the court and therefore " before court ". In the state of the facts in this case I am not prepared to disturb the finding reached in the court below; and would like to observe in passing that an interpretation that " produced " in court in section 413 means produced in evidence may lead to rather unexpected results in the not uncommon case where an accused pleads guilty to a charge of theft before any evidence is taken and the Police seek an order of the court regarding the disposal of the stolen property.

In regard to the second point, Mr. Renganathan contends that there is no identity established between the jewellery Retnam and Sittampalam received from Mailvaganam and melted down and the bars of gold taken over by the Police from the appellants. He concedes that the statements made to the Police by Mailvaganam can be utilised in evidence in this proceeding, but argues that identity could have been established only by the evidence of Retnam and Sittampalam to the effect that the jewellery given to them by Mailvaganam was melted down by them and the gold

so produced was the gold they sold to the appellants. He contends that the statements of Retnam and Sittampalam referred to by the Inspector of Police in evidence at the claim inquiry constituted only hearsay evidence. This contention overlooks the circumstance that both Retnam and Sittampalam had given evidence at the abortive non-summary inquiry on the same lines as their statements to the Police referred to in the evidence of the Inspector of Police. The appellants did not elect to give any evidence at the inquiry. This omission by the appellants to show to the court in what mannar they came by the bars of gold and the circumstance that Retnam and Sittampalam are themselves not jewellers but only workmen under jewellers have impressed the learned Magistrate when he reached the conclusion that these bars of gold were produced by melting down the stolen jewellery. The second point raised by counsel must also be decided against the appellants.

In the result the appeals are rejected and the applications in revision dismissed.

Appeals rejected.
Applications dismissed.