

1900
July 6.

PODI SINHO v. MEYA.

P. C., Colombo, 65,222.

Criminal Procedure Code, s. 413—Disposal of property stolen—"Conclusion" of inquiry—Acquittal of accused—Restoration of stolen property.

The acquittal of an accused charged with theft before all the witnesses for the prosecution have been examined "concludes" a trial or inquiry under section 413 of the Criminal Procedure Code.

After the trial or inquiry is so concluded a Police Magistrate may order the stolen property to be delivered to complainant as the rightful owner.

Silva v. Rajelis (1 C. L. R. 39) followed.

THE accused was charged with the theft of a bull. The complainant deposed that he had hired the bull to one Pitche eleven months ago; that on the 6th June, when he asked Pitche for the hire, Pitche informed him that the bull was dead; that on the 18th June he found the accused in possession of the animal, and trying to sell it.

The accused said he bought the bull from the complainant, which the latter denied.

Thereupon the Police Magistrate acquitted the accused, but ordered the bull to be delivered to the complainant.

The accused appealed against this order of delivery.

H. Jayawardana, for accused, appellant.—The order complained of could be made only under section 413 of the Criminal Procedure Code, but here the trial was not concluded. [BONSER, C.J.—How can a trial be better concluded than by acquitting the accused?] But the Magistrate made the order without examining witnesses, and the order of delivery to a person other than the accused is wrong.

H. J. C. Pereira, for respondent.—*Silva v. Rajelis (1 C. L. R. 39)* is on all fours with the present case.

6th July, 1900. BONSER, C.J.—

This is an appeal from an order made by the Police Magistrate for the delivery of a bull to the complainant. The complainant charged the appellant with stealing his bull. It appears that the complainant had hired out this bull to a third person, who paid him hire for it. Shortly before the case the complainant, on asking for the hire of the bull, was told by the hirer that the bull was dead. The bull was, however, not dead, for it was discovered by the complainant in the possession of the appellant, and hence this proceeding. The appellant stated that he had bought the

bull from the hirer. The Magistrate, believing his statement, acquitted him, and made the order complained of.

It was argued that the Magistrate had no jurisdiction to make this order, because section 413 of the Criminal Procedure Code, under which the order was made, says that it is to be made in a case when an inquiry or trial in any Criminal Court is concluded; but here, the counsel for the appellant urged, the trial was not concluded, because the accused was acquitted after the complainant and one witness only had been examined for the prosecution, although the complainant had half a dozen more witnesses whom he might have called. I must say that I cannot appreciate this objection. If a trial is not concluded when the accused is acquitted, I am at a loss to understand when it is concluded.

Then it was urged that no offence appears to have been committed with regard to this bull, because the accused was acquitted. But I have been referred to a case which is on all fours with the present one, decided by my predecessor in this chair, *Silva v. Rajelis* (1 C. L. R. 39). That case concludes the present appeal, which must be and is now dismissed.

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