

1923.

*Present : Jayewardene A.J.*THE KING *v.* LEON *et al.*

58—D. C. (Crim.) Kalutara 4,245.

*Theft—Removal of bull for temporary use—Dishonestly.*

The accused took a bull belonging to complainant, used it in a cart belonging to first accused to go to another village, but they intended to return the bull, and had no intention of depriving the owner of it permanently.

*Held*, that accused had committed theft.

THE facts are fully set out in the judgment.

*Soertsz* (with him *Sri Nissanka*), for first accused, appellant.

*J. S. Jayewardene*, for second accused, appellant.

*Brito Muttunayagam C.C.*, for complainant, respondent.

August 21 1923. JAYEWARDENE A.J.—

In this case the accused have been convicted of the theft of a bull under sections 367 and 368 of the Penal Code. I have no doubt that the accused removed the bull in question and used it in first accused's hackery, knowing very well that it did not belong to the second accused. I have, however, come to the conclusion that they took the bull to go to Mahebellana on a visit to the second accused's sister and that they intended to return the bull, and had no intention of depriving the owner of it permanently. I am compelled to adopt this view as a result of the learned District Judge's acceptance of the evidence of all the witnesses for the Crown, among whom were one Don Bastian Kanangara and his carter Juanis who was arrested along with these accused, but was later released. Kanangara who seems to be a man of respectability says that the accused on their return from Mahebellana in a hackery to which the stolen bull was tied asked him for a bull in exchange, saying that the bull they were using would not go on. They said the bull belonged to Aron Mahatmaya, a brother of the second accused, and the man who owned the garden where the bull in question was tethered. With some reluctance he consented to give one of his bulls, but sent his carter, Juanis, to drive it, as his bull was not a quiet one. Kanangara asked the accused to tie their bull to the fence. The two accused were well known to Kanangara. The accused started back for home in the hackery, Juanis driving Kanangara's bull, and left their bull tied to the fence in Kanangara's

garden. At Pallimankada the party was arrested by the police. In view of this evidence, it seems to me impossible to hold that the accused intended to steal the animal and deprive the owner of it permanently. Their conduct in going to Kanangara who knew them, their statements to him, and their leaving the stolen bull at Kanangara's, go to show that they were not acting as thieves. But, under our law, it is not necessary to constitute the offence of theft that the accused should have the intention of permanently depriving the owner of his property (*Ponnusamy v. Muttu Velu*<sup>1</sup>). Temporary deprivation, if dishonest, is sufficient. In this case the accused acted "dishonestly" according to the definition of the term "dishonestly" in the Penal Code, for they removed and retained the animal wrongfully, although it may be for a temporary purpose.

In the circumstances the convictions are right, but I do not think that this is a case in which a sentence of imprisonment should be imposed. I sentence each of the accused to pay a fine of Rs. 25, or in default to undergo two weeks' rigorous imprisonment. With these alterations the convictions are affirmed.

*Varied.*

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JAYEWAR-  
DENE A.J.

*The King  
v. Leon*

