

1925.

*Present* : Jayewardene A.J.

SIRIWARDENE *v.* DIONIS.

16—*P. C. Tangalla, 15,228.*

*Receiving stolen property—Recent possession—Theft of cattle—Evidence Ordinance, s. 114.*

Possession of cattle eight months after theft is not too long an interval to exclude the presumption of guilt arising under section 114 of the Evidence Ordinance.

“What is or is not recent possession depends largely on the nature of the stolen property.”

*The King v. Fernando*<sup>1</sup> followed.

**A** PPEAL from a conviction by the Police Magistrate of Tangalla. The facts appear from the judgment.

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

February 2, 1925. JAYEWARDENE A.J.—

In this case it has been satisfactorily proved that the two she-buffaloes, the accused was charged with dishonestly retaining, were stolen from the complainant's possession in March, 1924, and that they were found in the possession of the accused in November of the same year, that is, eight months after the theft. There is no

<sup>1</sup> (1905), 2 *Bal.* 46.

direct proof that the accused had anything to do with the theft of the animals. His conviction is based on the presumption arising from the possession of the animals "soon after the theft" and his inability to satisfactorily account for his possession of them. It is contended that possession of cattle eight months after the theft is not "soon after" within the meaning of section 114 of the Evidence Ordinance, and counsel for the appellant relies on the cases of *Pabilis v. Goonatilleke*<sup>1</sup> and *Perera v. Ranhamy*.<sup>2</sup> In the first case it was held that where the evidence showed that two buffaloes had been lost, one three years and the other eight months before the theft, no inference could be drawn from their possession so long after they had been lost by their owners, and Moncrieff A.C.J. in his judgment said :—

"According to our own law, it is necessary that the possession should be soon after the theft, in order that the presumption raised by the fact of possession may be justified. Periods of three years and of eight months are, in my opinion, too long to justify the conviction, which is set aside."

In the second case it was held, following the previous case, that possession of an animal two years after its loss was not such recent possession as to give rise to an inference that the persons in whose possession it was found knew or had reason to believe it to be stolen.

On the same lines is the case of *Perera v. Pemyanis*,<sup>3</sup> where Middleton J. held that possession of cattle twelve months after an alleged theft was not "soon after" within the meaning of section 14 of the Evidence Ordinance, and that no presumption of theft could be inferred. In this case the learned Judge was not inclined to follow the opinion expressed by Wendt J., in two cases, 712—*P. C. Colombo*, 77,519,<sup>4</sup> and *The King v. Fernando (supra)* in which he had held that periods of twelve months and four months might be considered to be "soon after" in cases of theft of cattle. But in my opinion, Wendt J., in *The King v. Fernando (supra)* has correctly stated the circumstances to be taken into account in considering whether the interval of time between the theft and the discovery of the animals in the possession of an accused is "soon after the theft" or not. In that case the accused was found in possession of stolen cattle four months after the theft, and the trial Judge had acquitted him as he held that the possession was not "recent" or "soon after the theft." In the course of a judgment setting aside the acquittal the learned Judge said :—

"He holds that the accused has failed to account for his possession of the stolen animals. He has, however, acquitted him on the charge of theft on the ground that such possession was not "recent" or "soon after the theft" in the words of section 114 of the Evidence Ordinance. What is or is not

<sup>1</sup> (1900) 3 Br. 138.

<sup>2</sup> (1916) 2 C. W. R. 201.

<sup>3</sup> (1907) 1 Leader L. R. 54.

<sup>4</sup> S. C. M. of February 10, 1903.

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recent possession depends largely on the nature of the stolen property. If it be property that passes readily and usually from hand to hand, such as a book, a comparatively short interval may render it unreasonable to require the possessor to account for his possession. But cattle are not of that description; they cannot be transferred by mere delivery, and the law requires that their sale and purchase shall in every case be vouched by written instruments. There is, therefore (as I had occasion to point out in P. C. Colombo, 77,519, on February 10, 1903), nothing unreasonable in requiring the possessor of stolen cattle to account for their possession after a comparatively long interval from the theft. The period of four months in this case is by no means an extravagant interval, and as the accused has failed to satisfy the Court as to the *bona fides* of his acquisition of the animals, he is liable to be convicted of the theft."

My own opinion is in entire accord with these views, and I hold that a period of eight months is not too long an interval after the theft to render section 114 (a) inapplicable to cases of cattle thefts.

I hold, therefore, that the accused was rightly called upon to account for his possession of the animals. He gave no evidence, but in a statement to the Court made, when asked to plead to the charge, he stated that he had purchased the animals from a man who had recently died. No satisfactory explanation was offered for his failure to obtain vouchers from his vendor, for these animals were purchased, according to the evidence, several months before they were found in his possession. The witnesses he called failed to give him any assistance.

The conviction, in my opinion, is right, and the appeal must be dismissed.

*Appeal dismissed.*

