

1922.

*Present* : Schneider J.

PONNU *v.* SINNATAMBI *et al.*

333—P. C. Trincomalee, 353.

*Theft—Removal of cattle from pasture ground for enforcing money due for grazing—“ Dishonesty ”—*

The accused who were renters of a grazing ground removed some goats belonging to the complainant from whom money was due for animals tied in the pasture ground, in the mistaken belief that they had the right to do so, to enforce payment.

*Held*, that accused were not-guilty of theft.

**T**HE facts appear from the judgment.

*J. S. Jayawardene*, for the appellants.

July 14, 1922. SCHNEIDER J.—

The three accused appellants were convicted of the theft of three goats and four kids, and sentenced each to pay a fine of Rs. 15. They appeal with the leave of the Magistrate. There is no reason given why he granted leave, but it seems to me that the appellants are entitled to succeed. The evidence of the complainant is that she owed the renters, by which term I presume she means the accused, certain monies payable for grazing her cattle, and that when she had tied these animals on the grazing ground the accused came there openly and removed the animals. One of her witnesses states that one of the accused mentioned to him that he was removing the animals because the complainant had made default in payment of her rent. Accordingly, the facts put before the Magistrate in support of the prosecution fail to prove a charge of theft, because it is an essential element of the offence that the taking should be done dishonestly (section 366), “ Dishonestly, ” is defined as doing an act with the intention of causing wrongful loss to one person and wrongful gain to another. It cannot be said that the act of the accused in removing the animals was to cause wrongful loss to the complainant, because, from the facts put before the Magistrate, the inference is obvious that the removal was due to a mistaken idea of their right to enforce payment.

I would therefore set aside the conviction of all the accused, and acquit them.

*Set aside.*