1896.
August 17.

GUNASEKERA *v.* THEGIS *et al.*

P. C., Galle, 21,235.

Recent possession of stolen property—Inference from such possession where the theft had been committed in the course of house-breaking.

Where the doors of a school-house were found to have been forced open and a table and a chair removed, *semble*, *per* WITHERS, J., that if an inference was to be drawn from the fact of possession of the stolen chair, it is that the possessor stole it in the commission of house-breaking.

THE facts of the case appear in the judgment.

Bawa, for appellant.

17th August, 1896. WITHERS, J.—

In my opinion this conviction cannot be sustained. It is very doubtful whether the Magistrate had any jurisdiction to try this case at all. It appears that on or about the 22nd February, after the Wesleyan Mission school-house had been locked up by the schoolmaster, one of the doors was forced open and a table and a chair removed. The chair was found in the house of a man named Thegis on the 20th June following.

This man Thegis accounted for the possession of the chair by saying that Allis, the appellant, brought the chair to his house. Allis was then summoned before the Court, and without at first being charged with any specific offence, the plaint which charged

Thegis with being concerned in the theft of this chair was explained to him, and he was told that it was said that he had either sold or pawned this chair with first accused or his wife, which alternative statements he denied. This being done the original trial against Thegis was continued. After hearing the evidence of the schoolmaster, Mr. Gunasekara, Arnolis Kumarasinghe, the Police Officer of Kadurupa, Jayanhamy, the wife of Thegis, and her mother Adanghami, and Nadoris, the Police Officer of Busse, the first accused was acquitted, the Magistrate being of opinion that all the circumstances tended to show that he was in innocent possession of the stolen chair.

Then for the first time the charge of simple theft of a chair worth Re. 1·25 was framed against the appellant Allis, and he claimed to be tried. His trial consisted of calling upon him and his witnesses for the defence.

This was not a regular proceeding, but Allis appears to have been defended by a proctor.

Thegis gave no sworn evidence as to how the chair got into his house. His wife, Jayanhamy, deposed that second accused brought the chair with two other chairs to her husband's house about two months before the last Sinhalese new year. She lent him, she says, Re. 1·50 and took the chairs in pawn. This was close upon midday, when her husband was away at a plumbago mine. Two months before the Sinhalese new year would be about the 11th or 12th of February, and that would be before the mission house was broken into. Thegis's mother-in-law, Adanghami, confirms his wife's account of the circumstances under which the three chairs were brought by Allis to their house. She says that happened three or four months ago. She was examined on the 30th July, and that would bring the theft to about the end of April.

It must be remembered that these are witnesses interested to maintain the interest of a person first charged with the offence, and who had the character of having been convicted some three or four times of offences. Allis, the appellant, if the evidence for the prosecution is to be trusted, is a man who owns a large and well-furnished house. His parents died owning property, and he has borne a good character hitherto. He has gone into the witness box and sworn that he had nothing to do with this chair at all, and that Thegis has involved him in this difficulty because of his enmity towards him.

The fact of this ill-feeling is attested to by a witness for the prosecution. From the fact of his having brought this chair with two other chairs to the first-accused's house the offence of theft has been presumed against him.

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I think it would be extremely dangerous to convict a man on such evidence, and if an inference is to be drawn from the fact of his having a stolen mission chair in his possession, in this case he stole it in the commission of house-breaking, an offence which the Magistrate was not competent to try. Hence I express my doubt as to whether the Magistrate had jurisdiction to try this case without the consent of the accused.

Treating it as one which he could try, I think the appellant should have the benefit of the doubt, assuming that his pawning of the chair with the two others justified a verdict of guilty.

Set aside and accused acquitted.