

[IN REVISION.]

1934

Present: **Drieberg J.**

SHAND *v.* ATHUKORALE.

D. C. (Crim.) Colombo, 10,871.

Criminal Procedure—Order for disposal—Conviction for criminal breach of trust—Sale of Goods Ordinance, s. 23 (2)—Criminal Procedure Code, s. 413.

A District Judge has no power to order goods in respect of which criminal breach of trust has been committed to be restored to the owner.

A PPEAL from an order of the District Judge of Colombo.

H. V. Perera, for petitioner.

Bartholomeusz. for respondent.

Pulie, C.C., for the Attorney-General.

October 30, 1934. DRIEBERG J.—

At the conclusion of the trial the learned District Judge made an order under section 413 of the Criminal Procedure Code that 3,351 lb. of rubber then in the possession of the petitioner Edward Shand, the Manager of Hull, Blyth & Company Limited, be delivered to the respondent. The petitioner asks that this order be dealt with in revision and set aside.

The facts, so far as they are necessary for the purpose of this application, are as follows:—The respondent on November 30, 1933, gave 3,360 lb. of rubber to the accused Richard, a carter, to be delivered to the Goodyear Rubber Company. Hull, Blyth & Company bought on November 30, 1933, 3,351 lb. of rubber from Gomes & Company, licensed rubber dealers. Eight of these sheets were examined and two were identified by the respondent as his. These were marked P 7 in the Police Court and were among the productions entered on the indictment. The learned District Judge convicted the accused of criminal breach of trust and made the order I have set out.

Mr. H. V. Perera contended that the order is wrong for two reasons. First, that the rubber, except the two sheets marked P 7, was not produced before the District Court and therefore that Court could not make an order under section 413 for its disposal. This is not free from difficulty, for it might be said that the two sheets in Court were produced as samples of the bulk and much may depend on the directions given by the Police Court regarding the rubber. It is not necessary, however, to consider this for even if the 3,351 lb. of rubber be regarded as produce before the District Court it was not open to the Court to make the order. This is the second ground of objection. The learned District Judge stated as his reason for the order that no title could pass to stolen goods. He had, no doubt, in mind section 23 (1) of the Sale of Goods Ordinance which provides that where goods have been stolen and the offender is prosecuted to conviction, property in the goods vests in the person who was the owner notwithstanding any intermediate dealing with them; but sub-section (2) of the same section says that where goods have been obtained by fraud or other wrongful means not amounting to theft, the property shall not revert in the person who was the owner by reason only of the conviction of the offender. Here the accused was convicted not of theft but of criminal breach of trust; the case, therefore, falls within sub-section (2) of section 23 and the order is for that reason wrong.

It was sought to justify the order on the ground that section 393 of the Penal Code defines stolen property as including property in respect of which criminal breach of trust has been committed. I need not deal with this point which is covered by authority, see *Police Inspector v. Albert Silva*¹ where Sampayo J. pointed out that the definition there was for the special purposes of the connected sections dealing with the receipt and disposal of goods obtained by acts of crime of several kinds, all such goods being called stolen property. In the same case Sampayo J. pointed out that the definition in section 393 of stolen property did not affect the distinction drawn in section 23 of the Sale of Goods Ordinance between property lost by theft and that lost by fraud and other unlawful means not amounting to theft.

I set aside the order requiring the petitioner to deliver the rubber to the respondent.

Set aside.

¹ (1916) 3 C. W. R. 313.