1941 *Present :* **Soertsz J.**

SABARATNAM *v.* PETER.

IN THE MATTER OF A CASE STATED UNDER SECTION 353 OF THE CRIMINAL PROCEDURE CODE

M. C. Mannar, No. 7 (Madhu Camp).

Autrefois convict—*Conviction under ss. 2 and 3 of the Lost Property Ordinance—Charge against accused of theft of same property—Accused not entitled to raise plea.*

Where the accused who had been charged and convicted under sections 2 and 3 of the Lost Property Ordinance was charged with theft of the same property or in the alternative with retaining that property knowing or having reason to believe that it was stolen property,—

Held, that he was not entitled to raise the plea of *autrefois convict*.

THIS was a case stated for the opinion of the Supreme Court under section 353 of the Criminal Procedure Code.

H. W. R. Weerasooriya, C.C., as *amicus curiae*.

Cur. adv. vult.

August 8, 1941. SOERTSZ J.—

This is a case stated under section 353 of the Criminal Procedure Code for the consideration by this Court of the question of law whether an accused person who had been charged and convicted of an offence under sections 2 and 3 of the Lost Property Ordinance (Cap. 63) can successfully set up that conviction by way of a plea of *autrefois convict* when he is charged with theft of the same property or, in the alternative, with retaining that property knowing or having reason to believe that it is stolen property.

The material facts are these :—The accused was found in possession of a part of a gold chain in suspicious circumstances. At that time there was nothing to show that it was stolen property, and the accused was charged, apparently in view of some statement made by him, with retaining lost property. He pleaded guilty and was fined one rupee. That was on June 23, 1941. Later, it came to the notice of the authorities that a woman named Masillamany had been robbed of a part of her gold chain in Madhu Camp on the night of June 20, 1941. The robber was not identified. On June 26, 1941, this woman was produced before the Magistrate by the District Revenue Officer and she made her complaint. The case was put off for further inquiry on July 4, but on June 27 the accused was produced before the Magistrate. Further evidence was recorded, and the accused was charged with robbery in respect of this chain or, in the alternative, with retaining it knowing or having reason to believe that it was stolen. After trial, the Magistrate convicted the accused on the alternative charge, and on a previous conviction being proved against him, sentenced him to a term of three months' rigorous imprisonment, and stated the case now before me.

I have no doubt whatever that this conviction is good. Section 330 (1) of the Criminal Procedure Code enacts that—

> "A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for *the same offence* nor *on the same facts* for any other offence for which a different charge from the one made against him might have been made—under section 181 or for which he might have been convicted under section 182."

In this case, the accused is not charged with the same offence of which he had been convicted and the first part of section 330 has, therefore, no application. In regard to the second part, the accused is not being charged on *the same facts* with the present offences. He is being charged with these offences on facts which came to light after his earlier conviction. "Facts" must mean "matters within one's knowledge. In the Evidence Act, 'fact' is said to mean and include (*a*) anything, state of things or relation of things capable of being perceived by the senses; (b) any mental condition of *which any* person is concious".

At the time of the earlier charge and conviction the prosecuting officer was not conscious of any robbery or theft that had been committed in respect of this chain, and there were no reasonable grounds upon which he could have acted under section 181 and have framed charges of theft

or retaining stolen property. Nor was this a case in which on the evidence before him the Magistrate in the earlier case could have said in terms of section 182 that offences such as he was here charged with had been committed. The observation of Garvin J. in *Weerasinghe v. Wijeysinghe* [1] throws some light on this matter.

Crown Counsel invited my attention to the fact that a confession alleged to have been made by the accused to a Ratemahatmaya was proved in this case. The Magistrate admitted this evidence on the ground that although this Ratemahatmaya was an inquirer into crimes he did not exercise power within the area in which he happened to be when the confession was made. This, I fear, is too nice a distinction. But, quite apart from this confession, there is the presumption under section 114 (*a*) of the Evidence Act as well as other evidence on which I think, the conviction is justified.

The conviction and sentence, therefore, stand.

Affirmed.