1921.

Present : Schneider A.J.

THE KING *v.* ABDUL CADER.

106—D. C. (Crim.), Puttalam, 326.

Dishonest retention of stolen property—Innocent receipt in the first instance not necessary to maintain charge.

The offence of dishonest retention of stolen property does not necessarily imply an innocent receipt in the first instance.

THE facts appear from the judgment.

Elliott, K.C. (with him *R. C. Fonseka*), for accused, appellant.

M. W. H. de Silva, Acting C.C., for Crown.

July 12, 1921. SCHNEIDER A.J.—

The accused appeals from a conviction under section 394 of the Penal Code of having dishonestly retained a certain quantity of stolen copra. Two points were pressed in appeal: First, it was contended that the conviction of having dishonestly retained cannot stand, as the evidence, if accepted, proves that the accused was aware from the very start that the copra was stolen ; that dishonest retention implies innocent receipt in the first instance, and that the accused had not been called upon to meet such a charge. This point is now well-settled law. In *Branthia v. Kaliamuttu*,[1] in which most of the older decisions were cited and considered, it was held that the offence of dishonest retention of stolen property does not necessarily imply an innocent receipt in the first instance. In the case of *Coore v. Allis Appu*,[2] Moncreiff J. said that evidence establishing a charge of dishonest receiving may be used to show dishonest retention, although there was no charge of receiving. I would, therefore, hold that the first point fails. The next point was that the burden was on the prosecution to prove the commission of the offence. The case of *Perera v. Marthelis Appu*[3] was cited. In my opinion the charge has been proved. The copra in question was removed in a cart which the accused had sent in charge of a servant of his to remove the copra. The copra was unloaded at the accused's boutique. The accused was there and took charge of the copra. One bag was actually taken inside the boutique.

Appeal dismissed.

[1] *(1915) 1 C. W. R. 230.* [2] *(1904) 7 N. L. R. 327.*
[3] *(1919) 21 N. L. R. 312.*