1947 *Present :* **Nagalingam A. J.**

CROOS *et al.*, Appellants, *and* SELVADURAI (Forest Officer), Respondent.

101-102 ; 103-109 ; 110—M. C. Chilaw, 30,326 ; 30,327 ; 30,878.

Forest Ordinance—Prosecution under—Acquittal of accused—Jurisdiction of Court to confiscate timber seized.

Where, in a prosecution under the Forest Ordinance, the accused is acquitted, any timber seized in the possession of the accused cannot be ordered to be delivered to the complainant.

APPEALS against certain orders of the Magistrate of Chilaw.

A. H. C. de Silva, for the accused, appellants.

J. G. T. Weeraratne, C.C., for the Attorney-General.

Cur adv. vult.

April 1, 1947. NAGALINGAM A.J.—

The several appeals in these three cases deal with the same question of law and I shall consolidate them for the purpose of my judgment. The appeals are from the orders of the Magistrate of Chilaw directing that certain timber seized in the possession of the appellants should be delivered to the complainant. The appellants were charged with having committed

[1] *(1942) 44 N. L. R. 58.* [2] *(1944) 45 N. L. R. 479.*

offences under the Forest Ordinance and they were acquitted on points of law raised on their behalf. After the appealable period was over the appellants applied to the learned Magistrate for an order directing the delivery to them of timber which had been seized in connection with the accusation against them of having committed the offences of which they had been acquitted. The learned Magistrate made order refusing their application holding that the interests of justice demanded that the timber should be delivered to the complainant.

On appeal it has been contended that the learned Magistrate had no jurisdiction to make the orders he did and the case of *Eyers v. Muthukumaru et al.*[1] was cited in support. The judgment in this case was delivered by Wood Renton C.J. who has exhaustively examined all the relevant sections and dealt with all the points that have been urged by learned Crown Counsel in his endeavour to uphold the order of the learned Magistrate. This case is a much stronger one than the present inasmuch as the accused there made admissions of having felled Crown timber and there was evidence to show that they were prepared to pay compensation to the Crown but notwithstanding this very strong circumstance the learned Chief Justice held that on a true view of the relevant provisions of the Forest Ordinance in view of the acquittal no order for delivery of property to the Crown could have been made. In regard to the cases before me, in one there is evidence of an express claim made by the accused to the timber seized and in the other two the utmost that can be said is that there is no evidence of an assertion of claim made by the accused in those cases although there is no admission by them that the timber seized belonged to the Crown.

Following the case cited I would allow the appeals and direct that the timber seized in each of these cases be delivered over to the respective accused persons.

Appeals allowed.

[1] *(1917) 1 C.W.R. 332.*