# PARBHU (f/n DAYA) *v.* THE POLICE

[Appellate Jurisdiction (Vaughan, C.J.) July 21st, 1950]

*Receiving stolen property—whether magistrate who tried the thief should try the receiver.*

The appellant was convicted by the 1st Class Magistrate's Court at Suva of the offence of receiving property knowing it to have been stolen, contrary to section 335 (1) of the Penal Code.

Immediately prior to the trial of the appellant the Court had convicted a Fijian of the offence of larceny of the property which the appellant was charged with receiving.

On appeal against conviction.

**HELD.**—In the circumstances the Magistrate should not have tried both the thief and the receiver.

Cases referred to:—

*R. v. Sanders* 25 *T.L.R.* 156.
*R. v. Tibbits* [1902] 1 K.B. 77.

*Sir Henry Scott, K.C.,* H. M. Scott with him, for the appellant.

*B. A. Doyle,* Solicitor-General, for the respondent.

**VAUGHAN, C.J.**—It appears that immediately prior to the trial of the appellant, Parbhu, the learned Magistrate had disposed of the case *Police v. Emori and Tukana* in which he convicted Tukana of the larceny of the property which is the subject of the case before me, and Emori of receiving that property. In that case the appellant Parbhu was neither accused nor was he a witness. When the trial of the appellant on a charge of receiving this property was opened, Mr. Maurice Scott formally asked that the case should be taken by another Magistrate. In refusing this request the Magistrate stated, in the course of a note on the record, "I have found in the last case that the defendant Emori sold the goods in question to Parbhu. . . . I do not consider the defendant (Parbhu) will suffer any disadvantage by my hearing the case." In this matter the learned Magistrate very seriously misdirected himself. The receiving of the stolen property by the accused was a fact in issue in the trial before him—the onus was upon the prosecution to rebut the presumption of innocence and prove to the Magistrate's satisfaction beyond reasonable doubt that the accused received the property in question. The learned Magistrate, however, began the trial of the accused before him on a charge of receiving stolen property, having already decided on evidence given in another case, of the nature and value of which this court is in complete ignorance, that the accused had in fact received the stolen property from Emori. It was impossible, therefore, for the Magistrate to consider with an open mind the accused's defence which was that he did not in fact receive the property but that it was placed where it was found by someone else without his knowledge. On this ground alone the conviction of the appellant by the learned Magistrate in the circumstances set out constituted a grave miscarriage of justice.

It was on this same fact in issue before the Magistrate that evidence was wrongfully admitted. That evidence consisted of hearsay of the most objectionable and least satisfactory kind, namely statements alleged to have been made by Emori to the police to the effect that he, Emori, had sold the stolen property to the appellant, Parbhu. The proposition that this was in no sense admissable as evidence against Parbhu is so elementary that it only requires to be stated. There was no other evidence on the record that the appellant, Parbhu, had bought the property from Emori. Emori, himself, in his evidence on oath denied it, and he was not asked a single question by the prosecution to suggest that his evidence was false. The only effect that the introduction of this evidence can have had on the learned Magistrate was to have confirmed him in his opinion, already formed, that the appellant, Parbhu, had received the stolen property from Emori. The introduction of this evidence by the prosecution was improper in the extreme.

I may sum up what I have said by observing that in two respects a fundamental principle of the administration of justice has been violated. *Lord Alverstone,* then *Lord Chief Justice of England,* in the case of *R. v. Tibbits* [1902] 1 K.B. 77, made the following observation : " A person accused of a crime in this country can properly be convicted in a court of justice only upon evidence which is legally admissible and which is adduced at the trial in legal form and shape."

To avoid any possible misconstruction of what I have said on the subject of evidence, I wish to add that I do not accept the proposition that the mere reception of inadmissible evidence is necessarily fatal to a conviction: the decision in *R. v. Sanders* 25 T.L.R. 156, which supports this contention, cannot, in view of the provisions of section 4 of the Criminal Appeal Act, 1907, which is reproduced in section 352 of the Fiji Criminal Procedure Code, be regarded as a statement of the law on the subject as it exists at the present time.

Conviction quashed.