

1877

 RAMANAND
 v.
 BANK OF
 BENGAL.

54, or this section." It would thus appear that the preliminary objection taken at the hearing of this appeal was well-founded. The respondent's counsel in support of his objection referred to two Calcutta cases respectively (1). But to my mind, the law is too clear to admit of any doubt on the subject, and it is quite unnecessary to refer to any other rulings. The objection is therefore allowed, and the appeal is dismissed with costs.

OLDFIELD, J.—I concur in the proposed order.

Appeal dismissed.

JURISDICTION AS COURT OF REVISION.

 1877
 April 23.

Before Mr. Justice Spankie.

THE EMPRESS OF INDIA v. RAMESHAR RAI.

Act XLV of 1860 (Indian Penal Code), ss. 192, 193 and 414—Fabricating false evidence—Voluntarily assisting in concealing stolen property—Act X of 1872 (Criminal Procedure Code), s. 297—Separate offences.

Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender, held that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Indian Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Indian Penal Code.

Mr. A. E. C. Casey, Assistant Magistrate of the first class, stationed at Gházipur, convicted a zamindar, Rameshar Rai, of having employed one Mussammat Bhagi Bindin to secrete stolen railway pins in the godown and fields of Rameshar Rai's enemy, Sedari, for the purpose of implicating the said Sedari as the thief.

The Assistant Magistrate convicted Rameshar Rai of fabricating false evidence for the purpose of being used in a stage of a judicial proceeding, and under s. 193, Indian Penal Code, sentenced Rameshar Rai to two years' rigorous imprisonment and to pay a fine of Rs. 50, or in default to be further rigorously imprisoned for six months, and on the same facts the Assistant Magistrate found Rameshar Rai guilty of the additional offence of voluntarily assisting in concealing stolen property, and sentenced him under s. 414,

(1) Petition of Pearee Lal Sahoo, 7 W. R. 130; 17 W. R. 512.

1877

EMPERESS OF
INDIA
v.
RAMESHAR
RAI.

Indian Penal Code, to a further term of two years' rigorous imprisonment and to pay a fine of Rs. 50, or in default to be rigorously imprisoned for an additional term of six months, the second sentence to commence on expiration of the first.

Rameshar Rai's appeal to the Judge of Gházipur having been dismissed on the merits, the prisoner applied to the High Court under s. 297 of the Code of Criminal Procedure to revise the above sentences on the ground that on the facts found but one offence had been committed, and that the conviction of the prisoner for separate offences under ss. 193 and 414 of the Indian Penal Code was illegal.

Mr. *Colvin* for the petitioner.

The Court (SPANKIE, J.) delivered the following judgment:—

It is admitted that the pins were stolen property. It was brought home to the prisoner Rameshar Rai that he had voluntarily assisted in concealing, or disposing of, or making away with this property, which he knew, or had reason to believe, to be stolen property, and he was punished for this offence. He also is found to have concealed the property in the field of one Sedari an enemy of his own, with a view that it might be found in his (Sedari's) house and field, and that he might be apprehended and charged with the theft. There is also a strong presumption that he instigated one Bhagi to conceal pins in Sedari's house. It is argued that if the disposal of the property was committed with the object of placing it, or causing it to be placed, in Sedari's field to bring him into trouble, one offence only and not two distinct offences were committed. But I cannot accept this view of the case. It may be that the Magistrate was of opinion that there was not sufficient evidence to show that the offence fell under s. 411, *viz.*, that there was a dishonest receiving of stolen property within the meaning of the word "dishonesty"* as defined in the Penal Code. He therefore applied s. 414. In the commission of an offence under this section, it is sufficient that the accused be proved to have voluntarily assisted in concealing, disposing of, or making away with property which he knew or had reason to believe, was stolen property. The fact that he did so,

* "Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly."

1877

EMPEROR OF
INDIA
v.
RAMENSHAR
KAR.

convicts him of an offence against property under chapter xvii of the Penal Code. He may then, or at the time, have entertained the idea that by placing it where he did, he would cause evidence to be found whereby he hoped that Sedari might be convicted of the theft of the property so concealed by him. But he nevertheless committed an offence under s. 414 of the Code against the property. Also he fulfilled the condition of the offence as defined in that section. It did not matter where he concealed it. He should not have concealed it at all, or caused it to be concealed voluntarily, either in Sadari's house or land, or elsewhere, if he knew or had reason to believe that it was stolen property.

In concealing it as he did in Sedari's field, with the intention found by the Magistrate, the prisoner committed another and distinct offence against public justice under chapter xi of the Penal Code, as he intentionally fabricated false evidence to be used in a judicial proceeding. He was punished under s. 193. The offence possibly was one more nearly coming under s. 195 of the Penal Code. There could be no doubt that in hiding the pins in Sedari's field intending that they might be found and that the circumstance of their being found in Sedari's field might appear in a judicial proceeding, and that this circumstance might lead the Magistrate to believe that he, Sedari, had been connected with the theft, under s. 192 would be and is fabricating false evidence, and is a distinct offence from the offence of voluntarily assisting in disposing of the stolen property. I see no reason to interfere, and dismiss the petition.

Petition dismissed.

FULL BENCH.

1877

April 12.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oulfield.

BADRI PRASAD (PLAINTIFF) v. MUHAMMAD YUSUF AND ANOTHER
(DEPENDANTS).*

Adjudication of right—Binding on parties to proceedings—Act VIII of 1859, s. 245—Claimant—Conclusive order—Defendant in possession—Limitation—Objector—Suit to establish right—Title.

* Special Appeal, No. 423 of 1876, from a decree of H. M. Chase, Esq., Judge of Aligarh, dated the 8th March 1876, reversing a decree of Munshi Kishen Dyal, Munsif of Aligarh, dated the 22nd June 1875.