

of another, and upon whom vests the obligation and duty to pay to such other the amount of money so received. Such person may acquit himself of it in one of two ways: either by paying the actual money received, or by paying an equivalent sum of money to such person. In the present case the findings are that no doubt the defendant collected and received profits on the plaintiff's behalf, but nevertheless that the expenses in regard to the collection of those profits were far in excess of the amount of profits so collected. Upon that finding I think the plaintiff's claim is sufficiently answered; and having regard to the rule of law laid down by the learned Chief Justice in the order of remand, we must accept the findings, and upon these findings the plaintiff's suit failed and the appeal must succeed, and, the decision of the lower Court being reversed, the plaintiff's suit in regard to those profits will stand dismissed with costs in all the Courts.

*Appeal allowed.*

## APPELLATE CRIMINAL.

*Before Sir John Edge, Kt., Chief Justice and Mr. Justice Brodhurst.*

QUEEN-EMPRESS *v.* KIRPAL SINGH AND OTHERS.

*Jurisdiction—Criminal Procedure Code, s. 180—Dacoity committed in British territory—Dishonest receipt of stolen property in foreign territory.*

Certain persons, who were not proved to be British subjects, were found in possession, in a native State, of property the subject of a dacoity committed in British India. They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted of offences punishable under s. 412 of the Penal Code.

*Held* that no offence was proved to have been committed within the jurisdiction of a British Court.

In this case three persons, Kirpal Singh, Kehri Singh and Harbhan, were tried before the Commissioner of Jhānsi upon charges under s. 396 of the Penal Code (dacoity with murder) and s. 412 (dishonestly receiving property stolen in the commission of dacoity). A fourth person, Zahir Singh, was tried at the same time for abetment of the offence punishable under s. 396.

The dacoity in which the prisoners were alleged to have taken part was committed on the 16th April, 1887, at Maheshpura, a

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village in the Jalaun district, on the border of the State of Gwalior. The house of Ramdin, a *bania* of that village, was broken into at night by a large band of robbers, who carried off property said to be worth Rs. 900, and who inflicted injuries upon a chowkidar named Bhagwan, injuries from which he soon afterwards died. It was proved that the robbers crossed the river which divided the British territory and the Gwalior State. The police were sent into the Gwalior State, and ultimately found there, concealed in different places, property which had evidently been stolen from the house of Ramdin during the dacoity. Part of this property was produced by the prisoner Kirpal Singh, and part was found, at his suggestion, at the houses of the prisoners Kehri Singh and Harbhan. The accused and the stolen property were left for a time in the custody of the Gwalior police, who subsequently sent them to the Jalaun district for trial. It did not appear whether they were British subjects or subjects of the State of Gwalior.

The Commissioner of Jhānsi was of opinion that the evidence adduced to prove that the accused, Kirpal Singh, Kehri Singh and Harbhan, took part in the dacoity was "absolutely worthless." He was also of opinion, however, that they were clearly guilty of dishonestly receiving property stolen in the commission of the dacoity. Upon the question of his jurisdiction to try them upon a charge of this offence, he observed:—"Under s. 180 of the Criminal Procedure Code, I hold that, having been made over to this Court for trial, they are as amenable to my jurisdiction upon the one charge as upon the other." He accordingly convicted them of the offence punishable by s. 412 of the Penal Code, and, "in view of the aggravated nature of the dacoity, the frequency with which this crime is committed on the border of the Jalaun district, and the strong presumption that the accused were concerned in the dacoity itself," sentenced them to transportation for life. He acquitted Zahir Singh upon the charge of abetment of the dacoity with murder.

The accused, Kirpal Singh, Kehri Singh, and Harbhan, appealed to the High Court.

The two former were not represented by counsel or pleader.

Mr. *J. D. Gordon*, for the appellants Harbhan.

The *Public Prosecutor* (Mr. *C. H. Hill*), for the Crown.

EDGE, C. J.—In this case the three prisoners were arrested in the State of Gwalior on a charge of dacoity, and were transferred to these Provinces to be tried for an offence under s. 396 of the Indian Penal Code. At the trial they were acquitted of the offence under s. 396 of the Indian Penal Code, but were convicted on a charge under s. 412. There was no evidence that they had dishonestly or otherwise received or retained in British India any stolen property whatever. The evidence was that they were found in possession in Gwalior of property the subject of a dacoity in British India. There is no evidence that they were British subjects. Under these circumstances Mr. Gordon, who appears for the appellant Harbhan, contends that no offence was proved to have been committed within the jurisdiction of the Court. In my judgment this contention is well founded, and, this being a question as to jurisdiction, I think we are bound to give the other appellants the benefit of the point raised for one of them. I am of opinion that these appeals should be allowed, the convictions quashed, and the prisoners discharged.

BRODHURST, J.—I concur.

*Convictions quashed.*

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## EXTRAORDINARY ORIGINAL CRIMINAL.

*Before Mr. Justice Straight.*

QUEEN-EMPRESS v. GORDON.

*Charge—Addition of charge at trial—Altering charge.—Criminal Procedure Code, s. 227.*

*Held* that on a trial upon charges under ss. 467 and 471 of the Penal Code, the Court had power, under s. 227 of the Criminal Procedure Code, to add a charge under s. 193 of the Penal Code, upon which the prisoner had not been committed for trial. *Queen-Empress v. Appa Subhana Menre* (1) dissented from.

The prisoner in this case, who was a European British subject, was tried at the Criminal Sessions of the High Court before Straight, J., and a jury. He was committed for trial by the Assistant Commissioner of Jabalpur upon charges of offences punishable under ss. 467 and 471 of the Penal Code. It appeared that he had acted as the agent of his mother-in-law, Mrs. E. Watts,

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