1895

HUSAINI BEGAM v. HUSAINI BEGAM.

Nilmoni Singh v. *Ram Bundhoo Roy* (1) that, subject to the appeal given by s. 39 of Act No. X of 1870, the decision of the Judge under that section is final and cannot be questioned by a suit, and that the proviso to s. 40 only applies to the cases of persons whose rights have not been determined under the earlier clauses of the Act, such as minors or persons under disability who did not appear at the inquiry as to the amount to be awarded as compensation. This is a further reason, if further reason were required, why we should interpret s. 39 as giving a right of appeal in such a case as this, and our opinion is that the appeal in this case lay. With this answer to the question submitted to the Full Bench the appeal will go back for disposal to the Bench which referred the case.

APPELLATE CRIMINAL.

1895
May 31.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.

QUEEN-EMPRESS *versus* GOBINDA AND ANOTHER.*

Act No. XLV of 1860 (*Indian Penal Code*), *s.* 411—*Evidence—Pointing out stolen property concealed in a place not under the accused's control.*

Where the sole evidence against a person charged with an offence under s. 411 of the Indian Penal Code consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person; *held* that this was not in itself sufficient evidence to support a conviction under the abovementioned section.

THIS case was referred to a Division Bench by Aikman, J., for the reasons expressed in the following order :—

"I refer this appeal for hearing to a Division Bench. The conviction of the appellant is based merely on evidence that he pointed out a spot in a field, not his own, where certain stolen property was found, and dug up the property therefrom. The conviction could not, according to the ruling of Tyrrell, J., in the case of *Empress* v. *Kinhar* (*Weekly Notes*, 1881, p. 94), and the ruling of Duthoit, J., in an unreported case, *Empress* v. *Binda* (Criminal Appeal No. 742, decided on the 12th of January, 1885), be supported on the evidence. But it appears to me that the rule laid down in the cases just referred to is somewhat too broadly stated. I

(1) L. R., 8 I. A., 90.

think it right that the point, which is an important one, should be considered by two Judges and order accordingly."

The Government Pleader (Munshi *Ram Prasad*), for the Crown.

EDGE, C. J., and BANERJI, J.—Some articles were stolen on the 23rd of December, 1894. Some of these were found in the house of Dhankua and some in his field. He gave no reasonable explanation how he came to be in possession of the articles found in his house. He was rightly convicted under s. 411 of the Indian Penal Code, and we dismiss his appeal.

Gobinda his been convicted of an offence made punishable under s. 411 of the Indian Penal Code. He pointed out a place in the field of another man in which some of the stolen articles were found. There is no other evidence against him. The mere fact that a person points out a place where stolen property is concealed, if that place is not in his own house or in his own field, but is in the field of another man, is not sufficient, in our opinion, to entitle the Court to find that the person who pointed out the stolen article had received it, or retained it, knowing it to be stolen. There must, to support a conviction in such a case, be some evidence which suggests that the accused himself concealed the article in the place where it was found. It is not sufficient for a conviction that the accused pointed out the stolen article, if it is left doubtful whether the accused or some other person concealed the stolen article, or that the accused obtained in some other way information that the stolen property was in the place where it was found. In Gobinda's case we allow his appeal, and, setting aside his conviction and sentence, we acquit him of the charge of which he has been convicted and direct that he be at once released.