1895

THE COLLECTOR OF MUZAFFARNAGAR v. HUSAINI BEGAM.

construed to mean at any time from the commencement of the suit until its final determination on appeal, if there is an appeal. A reference to section 582 seems to make it obvious that a suit under section 372 does not, in that section, and as it stands alone, include an appeal, as it is by section 582 that a Court is entitled to read the word "suit," where it appears in chapter XXI as an appeal. Further it is only in proceedings arising out of the death, marriage or insolvency of parties that section 582 enables a Court in an appeal to read the word "suit" where it occurs in chapter XXI as an appeal. The devolution of interest in the present case did not arise on a death, or on a marriage or an insolvency.

Whether section 372 applies or not, Kishori Lal, who is the only person apparently at present interested in maintaining the decree, objects to being now made a party to this appeal. As the assignee of Husaini Begam, he would be entitled to support the decree in her name, but as he objects to being brought upon the record now, we dismiss his application. The appeal will now be heard.

REVISIONAL CRIMINAL.

1895
November 16.

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

QUEEN-EMPRESS *v.* AGHA MUHAMMAD YUSUF.

Act No. XLV of 1860 (Indian Penal Code), section 379—Theft—Removal by creditor of debtor's property with a view to obtaining payment of his debt.

Held that the removal by a creditor against the will of his debtor of property belonging to such debtor with the view of compelling such debtor to discharge his debt amounts to theft within the meaning of section 379 of the Indian Penal Code. *Queen-Empress* v. *Sumeshar Rai* (1) referred to. *Prosonno Kumar Patra* v. *Udoy Sant* (2) dissented from.

THIS was a reference made by the District Magistrate of Fatehpur under section 438 of the Code of Criminal Procedure under the following circumstances:—

One Agha Muhammad Yusuf was charged before a Deputy Magistrate with theft in having taken away four bullocks, a cart and some other property from the possession of one Ram Adhin,

(1) Weekly Notes, 1888, p. 97. (2) I. L. R., 22 Calc., 669.

the complainant. It was found by the Deputy Magistrate that Ram Adhin was indebted to some extent to Muhammad Yusuf, and that the latter, in the absence of Ram Adhin, forcibly removed the property in question from the house of Ram Adhin with the intention of thereby compelling Ram Adhin to discharge his debt. It was argued before the Deputy Magistrate on the strength of the case of *Prosonno Kumar Patra* v. *Udoy Sant* (2) that the offence of theft within the meaning of section 379 of the Indian Penal Code was not constituted by the acts of the accused. The Deputy Magistrate, however, adverting to section 379, clauses (*j*) and (*l*) of the Indian Penal Code, and disagreeing with the ruling above referred to, convicted the accused of the offence of theft and sentenced him to a fine of Rs. 40, or in default to one month's rigorous imprisonment.

The case, being brought to the notice of the District Magistrate, was made the subject of a reference to the High Court as above stated.

The Public Prosecutor (Mr. *A. H. S. Reid*) for the Crown.

EDGE, C. J., and BURKITT, J.—This case has been referred to us by the Magistrate of the district of Fatehpur, owing to the decision in *Prosonno Kumar Patra* v. *Udoy Sant* (2). The facts of the present case are that one Ram Adhin was in debt to the accused. The accused proceeded to compel liquidation of the debt by taking away from Ram Adhin's house in his absence, and without Ram Adhin's consent, a cart and four bullocks belonging to Ram Adhin. He intended to hold them apparently until the debt was paid, as it was not proved or suggested that the accused intended permanently to deprive Ram Adhin of the property. This case is governed by the same principle as that of the *Queen-Empress* v. *Sumeshar Rai* (1). In our opinion the accused was properly convicted of theft. We are unable to agree with the decision of the High Court of Calcutta to which we have referred. We prefer to abide by the view of the law which has been accepted in these Provinces and which we think is correct.

We see no reason for interfering. The record will be returned.

(2) I. L. R., 22 Calc., 669. (1) Weekly Notes, 1888, p. 96.