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MUHAMMAD SADIQ v. LAUTE RAM.

in section 113. Whether, before the completion of partition, he can have it determined by the institution of a suit in the Civil Court, is a question which it is not necessary to decide in this case. But it is clear that the proper time for raising a question of title is before the completion of the partition proceedings. If a party does not avail himself of the opportunity which he has before the completion of partition to have his title determined, it seems that the Legislature by enacting section 241*(f)* intended that he should be debarred from raising afterwards any question which would have the effect of disturbing the partition to which he was a party, and I cannot concur with the rulings in which a contrary view was held. For the above reasons I agree in the order proposed by the learned Chief Justice.

AIKMAN, J.—I also agree with the order proposed by the learned Chief Justice, and I entirely concur in all that he has said. It appears to me that the intention of the Legislature was that all questions of title should be decided before the work of partition was actually entered upon. I have long doubted the propriety of the decision in the case *Muhammad Abdul Karim* v. *Muhammad Shadi Khan* (1) and I am glad it is now authoritatively overruled.

Appeal decreed.

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April 12.

REVISIONAL CRIMINAL.

Before Mr. Justice Blair.

KING-EMPEROR *v.* ALI HUSAIN AND ANOTHER.*

Act—1860—*XLV (Indian Penal Code), section* 380—*Theft from a railway van—Property found in an adjoining van, in which four railway coolies were travelling—Evidence.*

On suspicion of theft of certain articles from a running goods train, a van on the train, in which four railway coolies were travelling, was searched. The property missed was not found, but, hidden under a heap of clothing belonging to the four coolies, were discovered 10 *thans* of cloth, which on investigation were ascertained to have been abstracted from the next van. *Held* that none of the four coolies travelling in the van where the 10 *thans*

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* Criminal Revision No. 167 of 1901.

(1) (1887) I. L. R., 9 All., 429.

of stolen cloth were found could be convicted of the theft of the cloth in the absence of evidence to connect one or more of them individually with the possession of the cloth.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. *W. Wallach* (for whom Mr. *R. K. Sorabji*) for the applicants.

The Assistant Government Advocate (Mr. *W. K. Porter*) for the Crown.

BLAIR, J.—This is a petition in revision. Ali Husain and Hakim-ullah have been tried by the Joint Magistrate of Bareilly for an offence under section 380 of the Indian Penal Code, convicted, and sentenced each of them to two years' rigorous imprisonment. On appeal the Sessions Judge upheld the convictions and sentences. The petition is based on the allegations that the offence committed, being committed, if at all, in the van of a goods train, does not fall within the purview of section 380, and that there was no evidence on the record that the accused were guilty of theft. The severity of the sentence is also impugned. I am of opinion that the goods van in which the goods were carried was a place used for the custody of property, and none the less so because it was used also for the transport of property. The other question is a more serious one. So far as one can understand the scanty evidence, the applicants and two other persons *(palladars)* were travelling for the purpose of doing service to the company as goods porters or otherwise. They were allowed to travel in the break van, from which it is possible that a person accustomed to trains should have had access through a man-hole to the goods stolen, and afterwards found in the break van. That the goods were so found, I have no doubt, nor that they were covered up and concealed by the scanty garments, such as persons of this class would carry as clothes in the month of October. There is evidence that, upon some totally different articles being missed from the train, some person or persons in charge of the train proposed to search the four coolies. They declined to be searched. What was said to them precisely and what was their reply we are left to guess. We do not even know whether the speech in which the request was made was addressed to any particular one or more of them, nor do we know whether the refusal was made

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by one or more of them. It is also said by one witness that the man confessed. One of them used words which have been interpreted as a confession. We know not but that some expressions may have been used by one or two of the other coolies, and then by a natural effort of imagination or inference have been imputed to the applicants. In all these cases there is a danger in such general expressions, which ought always to be reduced as far as possible to particularity by the presiding Magistrate or Judge. Such a descriptive statement as that a man confessed ought to have been followed by asking what were the words used upon which such construction was placed. When those goods had been found, expressions may have been used which, though not intended to amount to a confession, may well have been so interpreted by an official of the company. I am left therefore in doubt as to the precise part taken at the time prior to, at and after the discovery of the cloth by either of the applicants or by the other two *palladars*. The question as to who it was that did or said—whatever was said—or done, is of grave importance in the face of certain evidence on the record. It has been said or suggested that these men performed the duty of goods porters. It is also proved that in more than one place along the railway line parcels of goods from the package of *thans* of cloth were taken out and delivered at different stations. Presumably they were so taken out and delivered at stations by one or more of the *palladars* under the direction of some higher official. We have no evidence as to which of them were so employed. It would manifestly be not only possible, but easy for the men remaining behind to remove some of those *thans* of cloth in the absence of the others, and to cover them up with the clothes of all of them. However, it does not seem to have been proved that the absentees, whichever they were, knew that these bundles of cloth, which might have been brought in their absence, were there, and if they knew it, that in itself is not sufficient evidence of theft or possession by them. No doubt the circumstances are such as to raise the gravest suspicion against these men. But there is in my opinion, no evidence sufficient to base the convictions upon. The petition is allowed and the convictions and sentences are set aside.