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the purpose of obtaining the relief claimed by the plaintiff under section 90 was unnecessary and improper. An application under section 90 in the suit only was necessary.

For these reasons we allow the appeal, set aside the decree of the learned Judge of this Court and also the decree of the lower appellate Court, and restore the decree of the Court of first instance with costs in all Courts.

Appeal decreed.

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January 23.

CRIMINAL REVISION.

Before Mr. Justice Banerji and Mr. Justice Richards.

EMPEROR *v.* BALDEWA AND ANOTHER.*

Act No. XLV of 1860 (Indian Penal Code), sections 392, 411—Criminal Procedure Code, section 181—Jurisdiction—Robbery committed outside British India—Stolen property brought into British territory.

Two persons, Baldewa, who was not a British subject, and Radhua, who was, were committed to the Court of Session at Jhansi, it being alleged against them that they had committed a robbery in an adjoining Native State and had brought the stolen property into British territory. *Held*, that though neither could be tried by the Sessions Judge of Jhansi for the robbery, Baldewa because he was not a British subject, and Radhua because the certificate required by section 188 of the Code of Criminal Procedure was wanting, yet both might be tried for the offence of retaining stolen property under section 411 of the Indian Penal Code. *King-Emperor* v. *Johri* (1) distinguished. *Queen-Empress* v. *Abdul Latib* (2) followed.

IN this case two persons, Baldewa, who was not a British subject, and Radhua, who was such a subject, were committed to the Court of Session at Jhansi on a charge of robbery. It was alleged against them that they had caused hurt to one Sarupa and so driven him and his father away from a cart, which they proceeded to take away dishonestly together with the bullocks harnessed to it. This was said to have taken place on a road running through a portion of the Native State of Orchha or Tikamgarh. There was evidence on the record to show that Baldewa was arrested in possession of the cart within British territory, and apparently some evidence to a similar effect against Radhua, though in the opinion of the Sessions Judge

* Criminal Reference No. 574 of 1905.

(1) (1901) I. L. R., 23 All., 266. (2) (1885) I. L. R., 10 Bom., 186.

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this was so slight that it would not have justified the framing of a charge against him under section 411 of the Indian Penal Code. The Sessions Judge was of opinion that Baldewa could not be tried by him on a charge under section 392 of the Code because he was not a British subject and the robbery was committed outside British territory, and he could not be tried under section 411, according to the ruling of the High Court in *King-Emperor* v. *Johri* (1), because he was himself the thief. He was also of opinion that Radhua could not be tried by him because there was no certificate as required by section 188 of the Code of Criminal Procedure. The Sessions Judge accordingly submitted the record to the High Court with a recommendation that the commitment should be quashed.

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

BANERJI and RICHARDS, JJ.—This case has been reported by the Sessions Judge of Jhansi with the recommendation that the commitment of the accused, Baldewa and Radhua, to that Court on a charge of robbery be quashed.

It has been found that the place where the robbery is said to have been committed is outside British territory. The accused are alleged to have brought the stolen property into British territory and to have been in possession of it within the local limits of the jurisdiction of the Court of Session at Jhansi. One of the accused, Baldewa, is not a British subject. The other accused, Radhua, is a subject of His Majesty, but no certificate under section 188 of the Code of Criminal Procedure has been obtained in regard to him. The learned Sessions Judge is of opinion that under the circumstances neither of the accused can be tried by a court in British India for the offence of robbery.

The learned Assistant Government Advocate has addressed to us two contentions: first, that under the provisions of section 181, sub-section (3), of the Code of Criminal Procedure the accused may be tried by the Sessions Court at Jhansi, as they were possessed of the stolen property within the local limits of the jurisdiction of that Court; and, secondly, that the accused may be charged with and tried for the offence of retaining

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stolen property punishable under section 411 of the Indian Penal Code. The questions raised are not free from difficulty, and we therefore took time to consider our judgment.

We are of opinion that section 181 of the Code of Criminal Procedure does not apply to the case of an offence committed by a person who is not a British subject outside British territory. It seems to us that the section is intended to regulate the jurisdiction of Courts in British India in respect of offences committed in British India and cannot vary or abrogate the ordinary rule that no foreign subject shall be tried in British India for an offence committed outside British India. We agree with the learned Sessions Judge that the accused cannot be tried by him for the offence of robbery. It remains to c nsider whether there should be a trial for retaining stolen property under section 411. Property stolen outside British India is "stolen property" as defined by the Code, and if the evidence be true the property was "retained" in British India. It may, however, be urged on the authority of *The King-Emperor* v. *Johri* (1) (the case mentioned in the reference), that as Baldewa was the actual thief he cannot be convicted of retaining the property under section 411. We think that the facts of the present case distinguish it from the case mentioned. In our view, if the case for the prosecution is true, Baldewa first committed an offence punishable under the law of India when he retained the stolen property in British India. If the theft had been committed in British India there would have been no "retention" of stolen property within the meaning of the section. The possession of the property would have been merely a continuation of the original wrongful taking, and it would be absurd to contend that when a theft is committed the thief commits a new offence under section 411 every moment of time he continues in possession of the stolen property. In the case of *Queen-Empress* v. *Abdul Latib* (2) the facts were quite similar to those of the present case and the Court held that the accused could be convicted under section 411. We are of opinion that the learned Sessions Judge should frame a charge against both the accused under section 411 of the Indian Penal Code and try them for that offence. If at

(1) (1901) I. L. R., 23 All., 266. (2) (1885) I. L. R., 10 Bom., 186.

the trial he be of opinion upon the evidence before him that the charge has not been established against the accused or either of them, it would be his duty to acquit the accused who is found to be not guilty. At the present stage of the proceedings we cannot quash the commitment as regards either of them.

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APPELLATE CIVIL.

1906 *January* 23.

Before Mr. Justice Banerji and Mr. Justice Richards.

TULSI DAS AND ANOTHER (JUDGMENT-DEBTORS) *v.* SHEO NARAIN (DECREE-HOLDER) AND KUNJ BEHARI AND OTHERS (JUDGMENT-DEBTORS).*

Civil Procedure Code, section 265—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 107—Partition—Execution of a Civil Court decree for partition of revenue-paying property.

A decree of a Civil Court for partition is subject to the provisions of section 107 of the United Provinces Land Revenue Act and cannot be fully executed until the decree-holder's name is recorded in the revenue papers.

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

Babu *Harendra Krishna Mukerji*, for the appellants.

Babu *Durga Charan Banerji*, for the respondents.

BANERJI and RICHARDS, JJ.—This is an appeal against an order of remand under section 562 of the Code of Civil Procedure. The facts are these. The decree-holder, respondent, brought a suit for partition of a third share of certain property including shares in revenue-paying villages, and for possession of a divided one-third share. The case was compromised and in accordance with the compromise a decree for partition was made as prayed in the plaint. The decree was thus a decree for partition and for possession of the share which would be allotted to the plaintiff on partition. As regards the revenue-paying property the partition could not be effected by the Civil Court, but under the provisions of section 265 of the Code it could only be made by the Collector and according to the law for the time being in force for the partition of revenue-paying estates. The decree was accordingly sent to the Collector for

* First Appeal No. 36 of 1905, from an order of A. Sabonadiere, Esq., District Judge of Jhansi, dated the 23rd of May, 1905.