

servant were charged with an offence under section 273 of the Indian Penal Code, but the latter only was convicted. He was fined Rs. 25, and applied in revision to the Additional Sessions Judge of Aligarh, who being of opinion that, on the facts disclosed, the applicant could not rightly be convicted under section 273, referred the case to the High Court under section 438 of the Code of Criminal Procedure with the recommendation that the conviction and sentence should be set aside.

BANERJI, J.—The Deputy Magistrate who convicted the accused in this case clearly misconceived the scope of section 273 of the Indian Penal Code. What is punishable under that section is the sale or offer or exposure for sale of noxious articles *as food or drink* and not the mere sale or offer or exposure for sale of noxious articles. In this case the accused did not sell any article *as food or drink*. He sold to a trader in grain a grain pit containing some 350 maunds of grain, a portion of which was found to be in a state unfit for human consumption. As the sale was for purposes of trade and not as food, no offence under section 273 was committed. Acceding, therefore, to the recommendation of the learned Sessions Judge, I set aside the conviction and sentence, and, acquitting Salig Ram of the offence of which he was convicted, direct that the fine, if paid, be refunded.

1906

 EMPEROR
 v.
 SALIG RAM.

Before Mr. Justice Banerji.

EMPEROR v. MIAN JAN.*

Criminal Procedure Code, section 403—Charge of an offence under section 414 of the Indian Penal Code—Previous conviction under section 411 in respect of other property stolen at the same time and from the same person.

Held, that where a person had been convicted under section 411 of the Indian Penal Code in respect of certain property stolen on a particular occasion from a particular person, he could not subsequently be tried for an offence under section 414 of the Code in respect of other property stolen on the same occasion from the same person. *Queen-Empress v. Makhan* (1) referred to.

THIS was a reference made under section 438 of the Code of Criminal Procedure by the Sessions Judge of Moradabad

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* Criminal Reference No. 707 of 1905.

(1) (1898) I. L. R., 15 All., 317.

1906

EMPEROR
v.
MIAN JAN.

asking that the committal of one Mian Jan to his Court might be quashed. The circumstances giving rise to the reference are thus stated in the order of the Sessions Judge:—

“It appears from the committal order in this case that Mian Jan has been committed to this Court for trial on a charge under section 414 of the Indian Penal Code. The charge-sheet sets out that on or about the 9th of October 1905 he ‘voluntarily assisted in concealing the stolen property of Ram Sarup, which he knew to be stolen, by making it over to Inayat.’ This man has already been tried by this Court and convicted on the 1st of December, 1905, on a charge of having on or about the 9th of October, been dishonestly in possession of property belonging to the said Ram Sarup, knowing it to have been stolen. The charge now preferred against the accused relates to different property, but the property to which both charges relate was all stolen at the same time from Ram Sarup, and it is not suggested by the prosecution that the property was received at different times.

“The offence of voluntarily assisting in concealing is not distinct from the offence of dishonestly receiving, and the charge now preferred cannot be held to be distinct from the charge on which the accused has been already convicted. It seems to me, therefore, that the committal of Mian Jan on the charge under section 414, I. P. C., is illegal, as, under section 403, C. P. C., he is not liable to be tried for that offence.”

On this reference the following order was passed:—

BANERJI, J.—Having regard to the fact that it is not the case of the prosecution that the property which forms the subject-matter of the prosecution in this case and the property in respect of the possession of which the accused has already been convicted were received at different times, it cannot be said that two separate offences have been committed. The principle of the ruling in *Queen-Emperor v. Mahkan* (1) seems to be applicable to this case. The commitment, therefore, is illegal. I accordingly set aside the order of commitment and all proceedings against Mian Jan under section 414 of the Indian Penal Code.

(1893) I. L. R., 15 All., 317.