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every order in a suit or execution proceeding dismissing an application under section 103 which is open to appeal under section 588. The only order under section 103 from which an appeal is allowed by section 588 is, as said above, an order rejecting an application to set aside the dismissal of a suit. The order complained of in this case is not an order rejecting an application to have the dismissal of a suit set aside. No appeal therefore lies from that order. In the case of an application under section 311 of the Code of Civil Procedure dismissed for default of appearance and sought to be restored by an application under section 103 it was held by the Calcutta High Court in *Jung Bahadur v. Mahadeo Prosad* (1), following *Ningappa v. Gangawa* (2) and *Raja v. Strinivasa* (3), that no appeal lies. The principle laid down in these cases applies equally to the present case, and I must hold that no appeal lies. I accordingly allow the preliminary objection and dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1907
May 29.

Before Mr. Justice Dillon.

EMPEROR v. BUDH LAL.*

Act No. XLV of 1860 (Indian Penal Code), section 411—Possession of stolen property—Joint Hindu family—Liability of head of the family or managing member.

Stolen property consisting of a considerable quantity of cloth weighing about five maunds were discovered on search by the police in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father, son and grandson. The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family. *Held* that under the above circumstances the conviction of the managing member of the family under section 411 of the Indian Penal Code was a proper conviction. *Queen-Empress v. Sangam Lal* (4) referred to.

THE facts of this case are as follows:—

Three bales of cotton cloth had been consigned by a firm in Cawnpore to a shopkeeper at Jalaun, of which only two arrived

* Criminal Revision No. 215 of 1907.

(1) (1903) I. L. R., 31 Cal., 207.

(3) (1888) I. L. R., 11 Mad., 319.

(2) (1885) I. L. R., 10 Bom., 433.

(4) (1893) I. L. R., 15 All., 129.

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at their destination. It was alleged by the prosecution that the missing bale was stolen while in transit from Orai to Jalaun on some date between the 14th and 29th December 1906. Acting upon information received a Police Sub-Inspector made a search in the house at Jalaun occupied by one Budh Lal, his father and his son. While proceeding with the search the Sub-Inspector asked to be allowed to go into a room, which was locked, and which had not been entered. He was informed that that room contained only some wood, grain and other property of an ordinary nature. Thereupon the Sub-Inspector demanded the key, and was told that it could not be found. Upon the Sub-Inspector's saying that he would have to break open the door with the assistance of a blacksmith, the key was brought by Budh Lal. When the door was opened the greater part of the contents of the missing bale, namely, some 97 pieces of cloth, about Rs. 285 in value, were found. Budh Lal, his father and his son were put upon their trial before a Deputy Magistrate of Jalaun with the result that only Budh Lal was convicted. He was sentenced to 18 months' rigorous imprisonment and a fine of Rs. 500. Budh Lal appealed to the Sessions Judge of Jhansi, by whom his appeal was dismissed. He thereupon applied in revision to the High Court.

Mr. C. Ross Alston, for the applicant.

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

DILLON, J.—This is an application for revision of an order of a Deputy Magistrate of Jalaun convicting the petitioner, one Budh Lal, under section 411 of the Indian Penal Code and sentencing him to 18 months' rigorous imprisonment and a fine of Rs. 500. The facts out of which this conviction has arisen are briefly these:—Three bales of cotton cloth had been consigned by a firm in Cawnpore to a shopkeeper at Jalaun, of which only two arrived at their destination. Goods consigned to Jalaun are conveyed on bullock carts starting from the railway station at Orai, and the case for the prosecution is that the missing bale was stolen while in transit from Orai to Jalaun on some date between the 14th and 29th December last. Acting upon information received the Police Sub-Inspector made a search in the house at

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Jalaun occupied by the petitioner, his father and his son. While proceeding with the search the Sub-Inspector asked to be allowed to go into a room, which was locked, and which had not been entered. He was informed that that room contained only some wood and grain, etc. Thereupon the Sub-Inspector demanded the key, and was told that it could not be found. Upon the Sub-Inspector's saying that he would have to break open the door with the assistance of a blacksmith, the key was brought by Budh Lal, petitioner. When the door was opened the greater part of the contents of the missing bale, namely, some 97 pieces of cloth, about Rs. 285 in value, were found. Budh Lal and his father and his son were put upon their trial before the Magistrate, with the result that only Budh Lal was convicted. The only defence put forward in the Court below was that the goods had been placed where they were found in order to get the accused into trouble; but this defence is negatived by the fact that the room in which the property was discovered was built of masonry and was locked and intact. The only argument which has been addressed to me in revision is that the mere fact that the petitioner was the managing member of the family ought not to have led the Courts below to the conclusion at which they have arrived. I should have been quite prepared to accept this contention if that were the only ground upon which this conviction was based. But the other facts of the case, namely, the size of the missing bale, its weight, 5 maunds, the fact that it could not have been got into the house surreptitiously, that the room in which it was found was locked, and that the key was produced by the petitioner, were also taken into consideration, and it is upon them, as well as on the fact that the petitioner is the managing member of the family that the conviction is based. The question whether a person accused of an offence under section 411 of the Indian Penal Code had guilty knowledge is a question of fact, and in this case it has been held to be proved that the petitioner, Budh Lal, had such knowledge. The finding by the Magistrate on this point is clear and unmistakeable. That of the lower appellate Court, though not quite so clear, is, as I understand it, to the same effect. I may say that had I been trying this case as an appeal I should have arrived at the same conclusion.

Knowledge of the presence in the house of the stolen property having been established against Budh Lal, he must, as the house-master, be presumed to have been in possession of it. *Queen-Empress v. Sangam Lal* (1) is an authority for this proposition.

The learned counsel for the petitioner has addressed me on the question of sentence. This is no doubt a very serious offence, and it is aggravated by the fact that Budh Lal is in affluent circumstances, and apparently doing a good business, but I take into consideration the fact that a sentence of imprisonment will mean a great deal more to a man in his position than to the ordinary criminal. Under the circumstances I think a sentence of one year would meet the ends of justice. I accordingly alter the sentence from one of 18 months to one of one year's rigorous imprisonment. The conviction stands. Subject to this modification the appeal is dismissed.

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APPELLATE CIVIL.

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May 30.

Before Mr Justice Griffin.

BIHARI AND ANOTHER (PLAINTIFFS) v. SHEOBALAK (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act) section 199—Suit for ejectment in Revenue Court—Omission on part of defendant to plead title in himself—Res judicata.

In a suit for ejectment under Act No. II of 1901 the defendants did not plead their own title to the plot in suit, and in fact did not oppose the suit for ejectment. *Held* that a subsequent suit brought in a Civil Court by the then defendants for proprietary possession of the same plot was barred by the principle of *res judicata*. *Rani Kishori v. Raja Ram* (2), *Ashraf-un-nissa v. Ali Ahmad* (3) and *Inayat Ali Khan v. Murad Ali Khan* (4) distinguished. *Salig Dube v. Dooki Dube* (5) and *Beni Pande v. Raja Kausal Kishore Prasad Mal Bahadur* (6) referred to. *Gokul Mandar v. Pudmanund Singh* (7) discussed.

THIS was a suit for proprietary possession of a plot of land.

The plaintiffs alleged that they and the defendant were members of one family; that on a partition the plot in question had

* Second Appeal No. 369 of 1906, from a decree of Babu Bepin Behari Mukerji, Judge of the Court of Small Causes, Cawnpore, with powers of the Subordinate Judge, dated the 12th of February 1906, reversing a decree of Babu Birj Behari Lal, Munsif of Akbarpur, dated the 12th of June 1905.

(1) (1893) I. L. R., 15 All., 129,
at p. 131.

(2) Weekly Notes, 1904, p. 109.

(3) Weekly Notes, 1904, p. 141.

(4) (1905) I. L. R., 27 All., 569.

(5) Weekly Notes, 1907, p. 1.

(6) (1907) I. L. R., 29 All., 160.

(7) (1902) I. L. R., 29 Calc., 707.