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DEBENDRO KUMAR BUNDOPADHYA v. BHUPENDRO NARAIN DUTT.

NORRIS, J.—If the plaintiff's plaint or application is to be construed in accordance with the terms of the judgment of the Chief Justice, I agree in holding that it is not one that comes within the scope of section 158 of the Bengal Tenancy Act.

What is the true construction of the plaint or application was, I think, a question for the determination of the Division Bench, and I express no opinion upon the point.

*Appeal decreed.*

A. A. C.

## CRIMINAL REFERENCE.

*Before Mr. Justice Norris and Mr. Justice Beverley.*

1891
*Nov.* 12.

QUEEN-EMPRESS *v.* BABURAM KANSARI, ACCUSED.*

*Theft—Habitually receiving stolen property—Evidence to justify conviction—Penal Code, s.* 413.

A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under section 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates.

THE accused was charged with habitually receiving property which he knew or had reason to believe to be stolen property, an offence punishable under section 413 of the Penal Code. He was tried on this charge by the Sessions Judge of Nadia and a jury, and the trial resulted in the jury unanimously acquitting him, with which verdict the Sessions Judge disagreed.

The case came before the High Court on a reference by the Sessions Judge under the provisions of section 307 of the Criminal Procedure Code.

The facts of the case, so far as are material for the purposes of this report, were as follows:—The stolen property found in the possession of the accused was alleged to be the result of some nine separate thefts extending over a period of two years, but there was

* Criminal Reference No. 17 of 1891, made by G. K. Deb, Esq., Officiating Sessions Judge of Nadia, dated the 2nd of October 1891.

no evidence to show as to when the accused became possessed of any of the various articles, or that they were received by him on different occasions. The articles consisted of metal utensils, most of which the owners purported to identify, and in some of the cases the articles were alleged to have been stolen within two months of the date on which they were found with the accused, and in one instance the theft took place only two days prior to their recovery.

The Sessions Judge considered the identity of the property had been amply proved by the respective owners, and that the circumstances of the case justified a presumption being made under section 114 of the Evidence Act that the accused knew the articles were stolen and was bound to account for his possession of them which he had not done; and further, that under the provisions of section 14 of the Evidence Act, an inference could be drawn against the accused, and that the jury should have at least convicted under section 411 of the Penal Code, if not under section 413.

It appeared that no charge had been framed against the accused under section 411.

At the hearing of the reference

Babu *Ram Churn Mitter* appeared for the Crown.

Mr. *H. E. Mendies* for the accused.

The judgment of the High Court (NORRIS and BEVERLEY, JJ.) was as follows:—

In this case we think that the prisoner must be acquitted and discharged. He was tried upon a charge framed under section 413 of the Indian Penal Code of habitually dealing in stolen goods, and has been unanimously acquitted by the jury.

The very essence of that offence, as was pointed out by the learned Judges who set aside the former conviction of the prisoner, he having been previously tried and convicted, and directed him to be re-tried, is the habitual, that is to say, constant, receipt of or dealing in goods which the prisoner knew or had reason to believe were stolen.

There is no evidence on the record to show that the goods which are alleged to have been stolen, assuming them to have been stolen, and assuming that their identity has been satisfactorily established, were received on different occasions. There is some evidence

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indeed, namely, the prisoner's own admission, to show that the goods were received from various persons. And not only is there no evidence on the record to show that the goods were received on different dates, but the Sub-Inspector of Police distinctly says in his evidence: "I could find no evidence as to when the accused became possessed of each of the stolen utensils."

We do not think that a man can be said to be habitually receiving stolen goods who may receive the proceeds of a dozen different robberies from a dozen different thieves on the same day, but in addition to the receipt from different persons there must be a receipt on different occasions and on different dates.

The prisoner was not charged, as he ought to have been, under section 411, and the jury could not have convicted him under that section. It is very much to be regretted that he was not charged under section 411. It seems to be a considerable oversight on the part of the Officiating Sessions Judge not to have framed a charge under section 411. But in the result the only course we can take is to confirm the verdict of the jury and to acquit the prisoner, and considering that he has been in peril twice upon this charge, we do not think there is any necessity for directing a re-trial.

*Prisoner acquitted.*

H. T. H.

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## ORIGINAL CIVIL.

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*Before Mr. Justice Trevelyan.*

1892
*March* 14.

### IN THE MATTER OF MUTTY LALL GHOSE.

*Specific Relief Act (I of 1877), s. 45—Election law—Municipal election—Bengal Act II of 1888, ss. 14, 24, 31—Joint-family representative for voting purposes—Franchise.*

Section 31 of Bengal Act II of 1888 does not impose on the Chairman of the Municipality the duty of exercising any judicial discretion or taking any judicial action with regard to the list of candidates prepared under that section.