

## REVISIONAL CRIMINAL.

*Before Mr. Justice Banerji.*

EMPEROR v. GUNNA AND OTHERS.\*

1926  
May, 27.

Act No. XLV of 1860 (Indian Penal Code), sections 2 and 411—*Jurisdiction—Subject of native state retaining stolen property within that state.*

A subject of a native state, who is guilty of retaining stolen property within the native state, is not liable to be punished under the Indian Penal Code. *Queen-Empress v. Kirpal Singh* (1), followed.

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

Mr. A. Sanyal, for the applicants.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

BANERJI, J. :—This is a revision by Gunna and three others. Gunna has been convicted of an offence punishable under section 411 of the Indian Penal Code, in that he, on the 13th of July, 1925, at village Kunwara dishonestly retained three bullocks belonging to Phuley of village Birjwari, district Muttra, knowing or having reason to believe the same to be stolen property. Petitioners Nos. 2, 3 and 4 have been convicted under section 380 of the Indian Penal Code for stealing the three bullocks from the house of Phuley. I will dispose of the case of these three first. [The judgement then stated certain facts and proceeded :—] I am unable to say that the finding of the courts below with regard to these persons is wrong. I dismiss their application.

The case against Gunna is that he was found in possession of these three bullocks by Sub-Inspector

\* Criminal Revision No. 274 of 1926 from an order of Kashi Prasad, Sessions Judge of Muttra, dated the 13th of April, 1925.

(1) (1887) I.L.R., 9 All., 528.

1926

EMPEROR  
v.  
GUNNA.

Gyan Chand of thana Kama, Bharatpur state, in village Kunwara. There is nothing on the record to show that Gunna is a subject of His Majesty the King; on the contrary, the evidence points to the fact that he is a subject of the Bharatpur state. The retention of stolen property at Bharatpur is the charge against him. In view of the ruling reported in *Queen-Empress v. Kirpal Singh* (1), and by reason of section 2 of the Indian Penal Code, I am of opinion that a subject of a native state, who is guilty of retaining stolen property within the native state, is not liable to be punished under the Indian Penal Code. There is no suggestion that he received the stolen animals anywhere within British India. On the contrary, the evidence of the witnesses from Bharatpur proves that the bullocks were brought by Dhundi, Jugla and Dham to his house at Kunwara.

Mr. *Sanyal* wished to argue the point that the joint trial of Gunna and the other petitioners was illegal; but I cannot allow him to raise a point which was never raised in either of the courts below and which does not appear to me to have any substance.

Under these circumstances, I set aside the conviction of Gunna under section 411 of the Indian Penal Code.

*Conviction set aside.*