

person having a better title." Musammat Jan Bibi not being a person evicted, and the plaintiff, as prior simple mortgagee having only a right to sell the property for the recovery of his mortgage dues, not being a person having a better title, section 51 of the Transfer of Property Act does not in terms apply, but the rule of equity upon which section 51 is based may very well be extended to the case of Musammat Jan Bibi and upon that basis the decree of the court below may very well be affirmed.

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Sen, J.

In view of all the circumstances of the case the learned Judge was justified in ordering the plaintiff to pay the cost of the improvements as a condition precedent to bringing the mortgaged property to sale. I would, therefore, dismiss this appeal with costs.

WEIR, J :—I agree.

Weir, J.

BY THE COURT :—The appeal is dismissed with costs.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Dalal.*

EMPEROR v. MANNI LAL AWASTHI.\*

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August, 17.

*Criminal Procedure Code, section 110(c)—Harbouring "thieves"—"Thieves" does not include dacoits—Indian Penal Code, section 216A.*

The provisions of section 110(c) of the Code of Criminal Procedure relating to harbouring of thieves are not to be applied to harbouring of dacoits, which is intended to be dealt with under the substantive provision of section 216A of the Indian Penal Code.

THE facts of the case, material for the purpose of this report, were briefly as follows :—One Manni Lal Awasthi was bound over by the Joint Magistrate of

\*Criminal Revision No. 437 of 1928, from an order of L. S. White, Sessions Judge of Cawnpore, dated the 3rd of April, 1928.

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Cawnpore under section 110 of the Code of Criminal Procedure on several counts. On appeal the Sessions Judge examined the facts and came to the conclusion that ultimately the case against Manni Lal must rest solely on the fact of harbouring dacoits. The Judge was, at the same time, of opinion that Manni Lal was not proved to be a receiver of stolen property. Manni Lal applied in revision to the High Court.

Babu *Sailanath Mukerji*, for the applicant.

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

DALAL, J. :—[After setting out the facts the judgement continued.]

Under section 110, the harbouring of dacoits is not given as one of the reasons for calling upon a man to give security for good behaviour. What is stated in clause (c) of section 110 is that the accused is alleged habitually to protect or harbour thieves. The Judge's opinion was that a thief would include a dacoit, because a dacoit is, after all, a thief who commits theft with violence. At the same time, with his predominant sense of refinement, the Judge exempted from this class a robber who commits robbery through extortion. So, according to him the word "thief" would include a dacoit or a robber of one hue, while it would not include a dacoit or a robber of another hue. These distinctions without a difference have to be indulged in when more is sought to be read into a statute than exists on the face of it. His argument as to stolen property being applicable to property whose possession is obtained by dacoity is difficult to understand. Stolen property is specifically defined in section 410 as property, possession whereof has been transferred by crimes other than dacoity, and the possession of such property is punishable under section 411 of the Indian Penal Code. When property, possession

whereof has been transferred by the commission of dacoity is contemplated, there is a distinct section 412. There, only the words "stolen property" as defined in section 410 are not used, but further explanation is given that the possession must be of such property as the possessor thereof knew or had reason to believe to have been transferred by the commission of dacoity. This differentiation between sections 411 and 412 works in a way just the opposite to the argument advanced by the Judge. It indicates that when only the words "stolen property" are used, they do not mean property transferred by the commission of a dacoity.

It is always interesting to discover how legislation as to particular sections of a certain Code came into effect, in order to understand the meaning thereof. Dacoity is a very serious crime and therefore the attempt to commit it, even the preparation to commit it and being a member of a gang of dacoits, are all separately made punishable under different sections of the Indian Penal Code. At the time of the framing of the Code it was overlooked that dacoits might be helped by men honest to the outside world, so well expressed in the vernacular as "*safed posh*," who though not joining the dacoits or belonging to their gang in the sense of actively participating in the crime, gave shelter to them at the time when they needed it to escape pursuit. For that reason, in 1894 a penalty was provided for harbouring robbers or dacoits. This was done by the enactment of section 216A of the Indian Penal Code by section 8 of Act No. III of 1894. When the Criminal Procedure Code was enacted in 1898, the previous Code was of Act No. X of 1882. In the corresponding section 110 of this Act no provision was made for calling upon a man who made a habit of harbouring to enter into security. At that time, in 1898, penalty for the harbouring of

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robbers and dacoits was provided for a few years previously, and there remained provision to be made to make it dangerous to harbour thieves. There was a substantive offence in 1898 of harbouring only robbers or dacoits, because possibly it was not thought right to make it an offence to harbour a thief,—a theft has not such notoriety as robbery or dacoity which on its occurrence would be widely known and every honest man would be warned against giving shelter to persons taking part therein. The same notoriety would not attach to a theft as to a dacoity and therefore it was presumably considered unfair to make the harbouring of a thief an offence. At the same time, if a man made a habit of harbouring thieves, it would be possible to presume that he did so with full knowledge of the habits of life of his friends and visitors. So provision was made in section 110 when it was amended by Act No. V of 1898 to bring within its scope a man who made a habit of harbouring thieves. A consideration of these different stages of legislation leaves no doubt in my mind that the legislature did not desire that the provisions of section 110 should be applied to a harbouring of dacoits, the intention being that such a man should be dealt with under the substantive provision of the Indian Penal Code, i.e. section 216A.

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I allow the application. The bonds and securities taken from Manni Lal shall be discharged.