

## REVISIONAL CRIMINAL.

*Before Mr. Justice Bajpai.*

EMPEROR v. RAM NARESH RAI AND OTHERS.\*

*Indian Penal Code, section 215—Cattle strayed, but not alleged or proved to have been stolen or misappropriated—Person taking money for tracing and restoring cattle—Whether guilty of offence.*

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Where it was proved that the accused demanded and obtained from the complainant Rs. 50 and restored to him two bullocks which had strayed, but the prosecution did not prove that the bullocks had been lost by the commission of an offence and that the accused was endeavouring to screen the offender from justice and not using all means in his power to cause the offender to be apprehended, it was *held* that the accused could not be convicted of an offence under section 215 of the Indian Penal Code.

Where bullocks had, admittedly, simply strayed away from the owner, it was not fair to presume, in the absence of any evidence, that later on somebody finding the bullocks committed an act of criminal misappropriation in respect of them.

Mr. Kumuda Prasad, for the applicants.

The Assistant Government Advocate (Dr. M. Wali-ullah), for the Crown.

BAJPAI, J. :—The three applicants before me have been convicted of an offence under section 215 of the Indian Penal Code. It appears that on the night of the 23rd of April the complainant Hari Ram lost two of his bullocks, and, therefore, on the 24th of April, 1930, he informed the police in the following terms: "On Wednesday in the evening my four oxen were fed and then tied to pegs. When everybody was asleep, two of them began to fight with one another and broke the tying strings and strayed away." It is clear, therefore, that when the bullocks were lost to the complainant, they were lost not by reason of the commission of any offence but by sheer accident. About six days later, on the 1st of May, there was a transaction between the complainant and the accused by which the

\* Criminal Revision No. 132 of 1931, from an order of P. J. I. A., Sessions Judge of Ghazipur, dated the 19th of December, 1930.

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accused took Rs. 50 and restored the bullocks to the complainant. I must accept the finding of the court below that the money was demanded and received by the accused, but that alone is not sufficient to bring the conduct of the accused within the purview of section 215 of the Indian Penal Code. On behalf of the applicants the case of *Hemraj v. Emperor* (1) and the case of *Emperor v. Mangu* (2) have been cited. The Assistant Government Advocate has cited the case of *Emperor v. Mukhtara* (3). This last case is distinguishable, because in that case there was a finding that the bullocks had been stolen. In the case before me there is no evidence that the bullocks were stolen. Indeed the first information report would go to show that the bullocks had simply strayed away, and it is not fair to presume that later on somebody finding the bullocks committed an act of criminal misappropriation, in the absence of any evidence on that point. There is also no evidence and no finding in this case that the accused knew the offender, and, therefore, it is obvious that he cannot be said to have failed in his efforts to cause the offender to be apprehended and convicted of an offence which he might have committed. Where the accused merely undertakes the endeavour to trace out and restore the lost property on payment of some remuneration, then upon this circumstance alone the accused cannot be said to be guilty of an offence under section 215 of the Indian Penal Code, unless over and above that the prosecution proves that the property has been lost by the commission of an offence and that the accused is endeavouring to screen the offender from justice and is not using all means in his power to cause the offender to be apprehended and convicted of the offence which he has committed. I am, therefore, of the opinion that the conviction of the applicants is illegal.

I, therefore, set aside the conviction and sentence and direct that the fine or any portion of it, if paid, be refunded. The bail bonds should be discharged.

(1) (1910) 6 Indian Cases, 250.

(2) (1927) I.L.R., 50 All., 233.

(3) (1924) I.L.R., 16 All., 915.