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be made to understand that in case of failure in payment of arrears of revenue they would be completely ejected from possession by Government, and would therefore be perfectly ready to admit possession by a mortgagee, which for the time being would leave them in very much the same position as before. Reckless as they are in all matters concerning debt, they may have for a time found little to object to in the possession of the village by the mortgagee. They held their fields as before and paid even less to him than they had before paid to Government. There is, however, nothing to show that they ever became fully aware of the terms of the conditional sale until the mortgagee proceeded to foreclose." On the third issue, *viz.*, "Whether any debt remained unsatisfied at the end of the year of grace," the lower appellate Court found that the debt was not satisfied at the end of that period.

On the return of these findings the High Court (STUART, C. J., and OLDFIELD, J.), accepting them and disallowing the objections taken thereto by the appellant, dismissed the appeal.

APPELLATE CRIMINAL.

1880
August 1

Before Mr. Justice Straight.

EMPRESS OF INDIA *v.* SITA RAM RAI.

Abetment of Theft—Receiving stolen property—Joint undivided Hindu family—Act XLV of 1860 (*Penal Code*), *ss.* 379, 411.

A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family property but as his own property. *Held*, that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it.

It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.

IN 1879 one Tunsi returned from Demerara to his native village in the Ballia district, after an absence of thirty years, bringing with him property, consisting chiefly of Government currency

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notes, to the value of Rs. 6,000, which he had acquired in Demerara by his labour as a coolie. His father was dead when he returned, but his mother and his two younger brothers, named respectively Dalmir and Jhingur, were alive and living together in the family-house. Tunsi and his wife, who had also returned with him, resided in the family-house with his mother and his brothers, and their wives, the whole family living in commensality. The whole family lived peacefully together until Dalmir began to annoy Tunsi with demands for his share of the property which Tunsi had brought from Demerara, insisting that, as they were a joint Hindu family, he was entitled to his share of such property. Tunsi refused to accede to these demands, and on their being persisted in he declined to eat with his brother, and eventually determined to return to Demerara. Shortly before his intended departure, in January, 1880, Dalmir in the absence of his brother Tunsi entered the house and brought out from it the box containing the property, Debi Singh and Sita Ram, the zamindars of the village, standing at the door of the house while Dalmir was bringing out the box. When it was brought out the three persons departed together with it. Sita Ram subsequently restored to Tunsi currency notes aggregating in value Rs. 1,100, and a currency note belonging to Tunsi was afterwards found in his house. Upon these facts the Sessions Judge of Ghazipur, Mr. J. W. Power, convicted Dalmir, under s. 380 of the Penal Code, of theft in a building, Debi Singh, under ss. 109 and 380 of that Code, of the abetment of that offence, and Sita Ram, under ss. 109 and 380 and s. 411 of that Code, of the abetment of that offence and of dishonestly receiving stolen property. The Sessions Judge observed in his decision with reference to Debi Singh and Sita Ram as follows :—"Debi Singh pleads not guilty to the charge. There is, I must admit, no evidence to show that he had concealed any of the stolen property, but there is abundant evidence on record to show that he stood by when the box was removed from complainant's house, and that he knew that Dalmir had stolen it, not having any right to it. He therefore abetted the offence of theft. Sita Ram also pleads not guilty to the charge, but he admits receiving the box from Dalmir, and the evidence on record shows that he was present with Debi Singh when the box was stolen; that he made

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over to Jhingur a sum of Rs. 1,100 in notes knowing them to have been stolen; that he told the police he would point out the stolen property; that a ten rupee note belonging to complainant was found in his house under very suspicious circumstances; and that several other notes were found concealed on the information of his servant Gobind. I consider, therefore, two offences have been proved against Sita Ram—first, abetment of theft, and second, concealment of stolen property."

Sita Ram Rai appealed to the High Court.

Mr. *Hill*, for the appellant, contended that, Tunsi and Dalmir being members of a joint Hindu family, the property acquired by Tunsi was jointly owned by Dahmir, and the latter committed no offence by taking it, and the appellant, therefore, committed no offence by aiding in such taking or by receiving such property. The appellant, if guilty of an offence, is guilty of theft and not of abetment of theft. The appellant has been irregularly convicted and punished for abetment of stealing and receiving the same property. He referred to *Jacobs* v. *Seward* (1); Mayne's Commentaries on the Penal Code, 10th ed., 307; *Chalakonda Alusani* v. *Chalakonda Ratnachalam* (2); *Durvasula Gangadharudu* v. *Durvasala Narasammah* (3); Russell on Crimes, 4th ed., vol. i, p. 50.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the Crown.

STRAIGHT, J.—The appellant, Sita Ram Rai, was tried by the Sessions Judge of Ghazipur, in conjunction with two persons named Dalmir and Debi Singh, upon a charge of abetment of stealing certain valuable securities in cash in the dwelling-house of one Tunsi, a brother of the accused Dalmir, and also for receiving the said property. Dalmir was convicted of the stealing, and Debi Singh and the appellant of abetting him; a further conviction being recorded against the latter under s. 411 of the Penal Code. The points taken by the learned counsel for the appellant are, first, that, Tunsi and Dalmir being members of a joint undivided

(1) L. R., 4 C. P., 328. (2) 2 Mad. H. C. R., 56.
(3) 7 Mad. H. C. R., 47.

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Hindu family, Dalmir was a joint owner of the notes and cash taken by him, and therefore cannot be convicted of stealing; secondly, that it is irregular to convict a person and punish him for abetment of stealing and for receiving the same property. The first of these objections appears to have no force. It is not necessary for me now to determine the point; but I am by no means prepared to say that, under certain circumstances and facts, it might not be competent to charge one member of an undivided Hindu family with theft or criminal misappropriation of family property; but the consideration of this question does not arise in the present case in which, whatever may be the presumption as to Tunsi and Dalmir being members of a joint Hindu family, the evidence entirely negatives any such presumption. It is clear to my mind that Tunsi altogether separated himself when he went to Demerara thirty years ago, and that he had no intention, when he returned to India early in 1879, to appropriate his savings as a common fund for the purposes of his family. His whole conduct shows that he treated the notes and money as his own, and in no way contemplated giving his relations a common interest with himself in them. I do not agree with Mr. Hill that the presumption of law is to the contrary. The Madras cases quoted by him no doubt go a long way in favour of his contention, but the soundness of their authority is by no means unquestioned, and I confess, with the greatest respect for the Court that decided them, I should hesitate before implicitly following them. In the present case it may further be remarked that Tunsi does not appear to have been provided with any exceptional advantages of education or maintenance from joint family funds, and his self-acquisitions by manual labour as a coolie cannot be credited to any special outlay made from them on his behalf. In my opinion, therefore, the notes and cash taken were the sole property of Tunsi, and Dalmir has rightly been convicted under s. 380 of the Penal Code. I also think that the appellant Sita Ram Rai and Debi Singh would have been more properly convicted of stealing than of abetment, for the evidence clearly shows them to have been principals to and participators in the dishonest removal of the property from the dwelling-house of Tunsi by Dalmir. I accordingly direct that the record be amended, and that the convictions of Sita Ram Rai and Debi Singh be entered

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as under s 380 of the Penal Code. The second objection urged by Mr. Hill has force, and I accordingly quash the conviction and sentence upon Sita Ram Rai under s. 411 of the Penal Code. The sentence passed by the Sessions Judge for the offence of abetment will stand against him as for the substantive offence under s. 380.

APPELLATE CIVIL.

1880
August 17.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

AHSAN KHAN (JUDGMENT-DEBTOR) *v.* GANGA RAM (DECREE-HOLDER) AND MUZZAFFAR ALI KHAN (AUCTION-PURCHASER) *

Application to set aside sale in execution of decree—Absence of judgment-debtor from British India—Limitation—Act XV of 1877 (Limitation Act), s. 13, sch. ii. No. 166—Act X of 1877 (Civil Procedure Code), s. 311.

The provisions of s. 13 of Act XV of 1877 are not applicable to proceedings in the execution of a decree.

THE judgment-debtor in this case was a soldier in Her Majesty's Indian Army, and at the time that certain immoveable property belonging to him was sold in the execution of the decree, that is to say, on the 20th November, 1879, was on foreign service with his regiment. On the 13th March, 1880, the judgment-debtor applied to the Court executing the decree, under s. 311 of Act X of 1877, to set aside the sale on the ground, amongst others, of irregularity in its publication by reason of which the property had been sold for an inadequate price. The Court rejected the application on the ground that, with reference to Act XV of 1877, sch. ii, No. 166, it was barred by limitation, holding that the provisions of s. 13 of that Act did not apply to proceedings in the execution of a decree. It also rejected the application on its merits.

The judgment-debtor appealed to the High Court.

Babu *Beni Prasad*, for the appellant.

Pandit *Ajudhia Nath*, for the respondent.

* First Appeal, No. 86 of 1880, from an order of Maulvi Amir-ul-lah Khan, Munsif of Shâhjahânpur, dated the 19th March, 1880.