1933.

RAMROOP MAHTON v. MANO MIAN.

For these reasons I am of opinion that the order of the learned magistrate cannot stand and must be set aside and the case sent back to him for re-consideration if he is still of opinion that there is a likelihood of a breach of the peace.

COURTNEY TERRELL, C.J.—I agree.

KULWANT SAHAY, J.

Rule made absolute.

REVISIONAL CRIMINAL.

Before Courtney Terrell, C. J., and Kulwant Sahay, J.

1933.

November, 14.

RAMNATH RAI

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 233, 234 and 235—"transaction", meaning of—several articles stolen on different dates—no evidence of separate acts of reception—retention of each article, whether part of a single transaction—single trial, whether bad.

If a quantity of stolen property is found in the possession of an individual in circumstances which lead to the conclusion that he was retaining the whole of such property knowing it to have been stolen, there cannot be separate trials in respect of separate portions of the stolen property.

It does not follow from the mere fact that the several articles were stolen on different dates and there is no evidence of separate acts of reception, that the retention of each article on a given date is not a part of a single "transaction".

The word "transaction" in its context in section 235, Code of Criminal Procedure, 1898, has a wider significance for which a synonym may be found in the word "affair".

Therefore, the simultaneous possession of a number of bullocks at a mela and the offer of them for sale is one "transaction" and any number of separately stolen bullocks may be the subject of a single trial.

* Criminal Revision no. 428 of 1933, against an order of R. C. Chaudhuri, Esq., Sessions Judge of Shahabad, dated the 2nd August, 1933, upholding an order of M. M. Philip, Esq., I.C.S., Subdivisional Magistrate of Sassaram, dated the 30th June, 1933.

1933.

RAMNATH RAI v. KING-EMPEROR.

King-Emperor v. *Bishun Singh*(1) and *Emperor* v. *Sheo Charan*(2), followed.

Ram Sarup Benia v. *Emperor*(3), dissented from.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C. J.

Manohar Lal, for the petitioners.

Assistant Government Advocate, for the Crown.

COURTNEY TERRELL, C. J.—This is a petition for the revision of the judgment of a court of session rejecting an appeal from a magistrate who had convicted the petitioners Ramnath Rai and Kalpu Rai under section 411 of the Indian Penal Code for retaining four bullocks knowing them to have been stolen. No evidence could be adduced of the date when the bullocks or any one of them came into the possession of the petitioners but it was proved that one was the property of a certain person, two others were the property of another person and the fourth was the property of a third. The owners resided in different districts and had reported the bullocks as missing on different dates. The petitioners claimed the bullocks as their own. The facts are clear. The petitioners knew that the bullocks had been stolen and were endeavouring to sell them at the mela where they were apprehended on the 31st May this year. The only point for consideration is the objection by the petitioners that the retention of each bullock was a separate offence and that there should have been a separate trial in respect of each or, as an alternative, that under section 233 of the Code of Criminal Procedure separate charges should have been preferred and under section 234 the number of offences with which the accused were charged should have been limited to three only.

(1) (1924) I. L. R. 3 Pat. 503.
(2) (1923) I. L. R. 45 All. 485.
(3) (1905) 9 Cal. W. N. 1027.

In support of this contention Mr. Manohar Lal cited the decision in *Ram Sarup Benia* v. *The Emperor*(1). In that case the three accused were charged with receiving or retaining eight sets of cooking utensils stolen from different persons at different times and on a second count with aiding or abetting each other in retaining such property. It was argued that the first and second counts were illegal. There was no evidence of separate receiving and the court overruled the contention of the Advocate-General that in the matter of retaining there was only one offence although there may have been separate offences of receiving. The Judges held that the distinction was not of importance but held that there was a separate offence in respect of each of the articles alleged to have been dishonestly retained but that if it had been shewn that the dishonest retention of all the articles was so connected as to form one transaction more than three of such offences could have been charged and tried in one trial. They held that " The mere fact that all the articles had been dishonestly retained on the day they were discovered with the accused does not constitute a simple offence or establish that several offences were committed in one and the same transaction." An examination of the facts compels me to disagree with the conclusion quoted above for the police had received information to the effect that the accused were dealers in stolen property, and their establishments were searched on a certain day and six cartloads of utensils were found all of which had been stolen. I should have thought that this fact was enough to constitute a single offence of retaining and there was no necessity as was held by the Judges that a series of offences limited to three should have been charged.

It has been held in a series of cases that if a quantity of stolen property is found in the possession of an individual in circumstances which lead to the

(1) (1905) 9 Cal. W. N. 1027.

1933.

RAMNATH RAI v. KING-EMPEROR.

COURTNEY TERRELL, C. J.

conclusion that he was retaining the whole of such property knowing it to have been stolen there cannot be separate trials in respect of separate portions of the stolen property. This view of the law was taken in *Emperor* v. *Sheo Charan*(1) after a review of the earlier authorities. If, however, the articles were proved to have been received on different dates it would justify separate charges limited to three in respect of each act of reception. And by this Court in *King-Emperor* v. *Bishun Singh*(2) it has been held that it does not follow from the mere fact that the several articles were stolen on different dates and that there is no evidence of separate acts of reception, that the retention of each article on a given date is not a part of a single "transaction." It has been argued that the word "transaction" inasmuch as it implies the notion of an active step cannot apply to cases of retention in which the essence of the offence is the existence of a state of mind. It is perfectly true that considered in the light of derivation merely, the etymological significance involves activity, but in its context in section 235 it has a wider significance for which a synonym may be found in the word "affair". If a man is found in concealed possession of a diamond necklace of which each individual diamond has been the subject of a separate theft and he knows that the diamonds have been stolen his dishonest possession of the necklace is one "transaction" in the sense that that word is used in section 235. Similarly the simultaneous possession of a number of bullocks at a mela and the offer of them for sale is one "transaction" and any number of separately stolen bullocks may be the subject of a single trial. In my opinion there is no substance in the point and I would dismiss this petition.

KULWANT SAHAY, J.—I agree.

Rule discharged.

(1) (1923) I. L. R. 45 All. 485.
(2) (1924) I. L. R. 3 Pat. 503.