1884

AHMEDBHOY HUBIBHOY v. VULLEEBHOY CASSUMBHOY.

would be exercising a wise discretion in adding the applicant as a party defendant to the suit. The rule, therefore, must be made absolute on the applicant's consenting to be bound by all the previous proceedings in this suit in Court and in chambers and by any order the Court may make in future as to the costs of these previous proceedings.

Rule made absolute.

Attorneys for the applicant.—Messrs. *Payne, Gilbert and Sayáni.*

Attorneys for the plaintiff.—Messrs. *Jefferson, Bháishanker and Dínshá.*

Attorneys for the defendants.—Messrs. *Tobin and Roughton* and Messrs. *Ardesir and Hormasji.*

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

February 31.

QUEEN EMPRESS *v.* JOTI RA'JNA'K AND OTHERS.*

The Code of Criminal Procedure Act X of 1882, *Sec.* 523—*The Code of Criminal Procedure,* 1872, *Secs.* 415 *and* 416—*Delivery of property seized or stolen—Inquiry into ownership.*

The provisions of section 523 of the new Code of Criminal Procedure Act X of 1882, are wider than the corresponding provisions of the Code of 1872 (secs. 415 and 416), and they enable the Magistrate to inquire into the ownership of property seized by the police, and deliver it to the person entitled to it, instead of to the person from whom it is taken.

In re Annápurnábái (1) distinguished.

THIS was a reference by J. King, Magistrate of the district of Sátára, under section 438 of the Code of Criminal Procedure. He stated the case as follows:—

"Joti Rájnák and six others were accused before the Third Class Magistrate of Pátan of having committed theft by having cut and removed from the forest of Chafal, an alienated village, teakwood worth Rs. 25 without the consent of the owner. The

* Criminal Reference, No. 9 of 1884.

(1) I. L. R., 1 Bom., 630.

Magistrate, after going through the papers of the police investigation, came to the conclusion that the accused committed no offence, as they had removed the wood under the misapprehension that the land, in which the trees stood, belonged to them, and that there was no *mala fides* in their act. But, feeling doubtful as to what order he should pass for the disposal of property, *viz.*, the wood, he made a reference to Mr. Alcock, Magistrate (First Class) in charge of the Pátan Táluka. The latter officer directed that it should be restored to the complainant, as he is the *inámdár* of the village, and has, by the terms of his *sanad*, proprietary right over water, grass, wood, &c. The accused, feeling aggrieved at the order, petitioned the District Magistrate for its reconsideration. The District Magistrate, having called for the papers, found that the Magistrate (First Class) had, in making the above order, lost sight of the principle laid down by the High Court in the case of *In re Annápurnábái*[1], that when an accused is discharged or acquitted, the property in dispute should be restored to the possession of the person from whom it was taken. On this principle the property should be restored to the accused without going into the question of its ownership. If the High Court concurs with this view, the order of the Magistrate (First Class) is erroneous."

There was no appearance in the High Court on behalf of the accused persons or the Crown.

The judgment of the Court was delivered by

WEST, J.—The Court sees no reason to interfere. Section 523 of the new Code of Criminal Procedure, 1882, allows a Magistrate to order delivery of the property to the person entitled to possession, who in this case would be the owner,—that is, the *inámdár*. The enactment is wider than sections 415 and 416 of the Code of 1872[2] on which the case of *Annápurnábái* is based, and covers such a case as the present.

Record and proceedings returned.

(1) I. L. R., 1 Bom., 630.

(2) See now Sections 517 and 518 of Act X of 1882.