1897.

IN RE FAHIMU BHANJI.

Trimbak R. Kotwal for the accused.

M. V. Bhat for the municipality.

Ráo Bahádur *Vasudev J. Kirtikar*, Government Pleader, for the Crown.

PER CURIAM:—We must give the word "imported", in the rules of the Thána Municipality, its ordinary meaning. As soon, therefore, as the goods in the present case passed within the limits of the municipality, they were imported, that is, brought within those limits from a place without its boundaries. The only remedy of the applicant, if he exports them, whether that is done on the same day or at some other more distant time, is to claim a refund of the duty paid. We reject the application.

Application rejected.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1897.
July 15.

IN RE DEVIDIN DURGAPRASAD.*

Criminal Procedure Code (Act X of 1882), Secs. 517 and 523—Disposal of property produced before a Court during an inquiry—Restoration of previous possession, if no offence is committed.

Section 517 of the Code of Criminal Procedure (Act X of 1882) is the only section under which a Court can make an order for the disposal of property produced before it in the course of an inquiry or trial. And it has jurisdiction to pass the order only if the case falls within the section, that is, if it is property "regarding which an offence appears to have been committed, or which has been used for the commission of an offence." Otherwise, the only legal order which the Court can pass is one restoring the previous possession.

A Presidency Magistrate, finding the evidence not sufficient to warrant a conviction, discharged the accused but ordered the property which had been produced during the inquiry to be detained until the title of the rightful owner was proved before a Civil Court. On a subsequent day he, apparently acting under section 523 of the Code, ordered the property to be delivered to the complainant, from whose possession it had not been taken.

Held, that both the orders were *ultra vires*. The Magistrate was, therefore, directed to dispose of the property in a legal manner. If he found that the case fell within section 517, he should pass such order as he thought fit; if he found that it did not, he must restore the previous possession.

* Criminal Revision, No. 137 of 1897.

1897.

IN RE DEVIDIN DURGAPRASAD.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused was charged under sections 381 and 411 of the Indian Penal Code (Act XLV of 1860) with dishonestly receiving and retaining stolen property consisting of twenty-one currency notes of the collective value of Rs. 275 belonging to the complainant, Motichand Harakchand.

The accused was arrested by the police and the money was found in his possession. The police produced the money before the Third Presidency Magistrate (Mr. Webb) in the course of the inquiry.

The Magistrate found that there was not sufficient evidence to warrant a conviction, and discharged the accused. At the same time, he made an order for the disposal of the property produced before the Court, in the following terms:—

"From the statement made by the accused it appears that the money found is not his, and it must be detained until the title of the rightful owner is proved before a Civil Court."

This order was made on the 15th March, 1897.

The accused applied to the Magistrate to have the money returned to him, as it belonged to his master.

The Magistrate issued notice to the complainant, and after hearing both parties passed the following order on the 11th May, 1897:—

"On hearing advocates for the opponent herein, and on reading the statement of applicant Devidin Durgaprasad that the moneys were his master's and not his, and bearing in view the decision in the case of *Queen-Empress* v. *Jotiba*[1], the order of the Court is that the money, the subject of the notice, be delivered to the opponent, Motichand Harakchand."

Against this order the accused applied to the High Court under its revisional jurisdiction.

The applicant appeared in person.

M. V. Bhat for the complainant.

PER CURIAM:—We do not know under what section of the Code the Presidency Magistrate purported to act when he ordered the property to be delivered to Motichand Harakchand. He

(1) I. L. R., 8 Bom., 338.

1897.

IN RE DEVIDIN DURGAPRASAD.

cites *Queen-Empress* v. *Joti*[1], so that apparently he considered he was acting under section 523. But the property in the present case had been produced before his Court in an inquiry, so that section 517 is the only section that would apply: see *In re Ratanlal Rangildas*[2]. He had, therefore, jurisdiction only in case he found that it was property "regarding which any offence appears to have been committed, or which has been used for the commission of an offence." Whether he so found or not, is not stated in his order disposing of the case. He discharged the accused, because the evidence was not sufficient to warrant a conviction. At that time (15th March, 1897) he ordered the property to be detained until the title of the rightful owner was proved before a Civil Court. It was in modification of that order that he on the 11th May, 1897, ordered the delivery of the property to Motichand Harakchand. Both orders appear to us to be made without jurisdiction, and we reverse them, and we direct that he dispose of the property in a legal manner after giving the parties notice. If he finds that the case comes within section 517, then he can make such order as he thinks fit; if he finds that it does not, then the only legal order he can pass is to restore the previous possession.

(1) I. L. R., 8 Bom., 338. (2) I. L. R., 17 Bom., 748.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1897.
August 2.

CHUNILAL (ORIGINAL DEFENDANT), APPELLANT, *v.* BAI JETHI (ORIGINAL PLAINTIFF), RESPONDENT.*

Limitation Act (XV of 1877), Art. 132—Unpaid purchase-money—Suit to recover the money from the vendee personally and from the property sold—Personal remedy—Limitation.

Unpaid purchase-money is a charge on the property in the possession of the vendee, and a suit to enforce it against the property so charged falls under article 132 of the Limitation Act (XV of 1877). But the article does not extend the time allowed otherwise under the Act to claims to recover the money from the defaulter personally or his other property. The limitation for the personal remedy is three years under article 111.

Virchand v. *Kumaji*[1] and *Ram Din* v. *Kalka*[2] followed.

* Second Appeal, No. 285 of 1897.

(1) I. L. R., 18 Bom., 48. (2) L. R., 12 I. A., 12.