APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS *v.* BA'LYA SOMYA AND ANOTHER.* 1890. October 9.

Indian Penal Code (Act XLV of 1860), Sec. 411—Retaining stolen property—Charge to the jury—Misdirection.

The accused were charged with retaining stolen property under section 411 of the Indian Penal Code (Act XLV of 1860). The Sessions Judge in his charge to the jury merely directed them to find whether the property was stolen, and whether it was retained by the accused.

Held, that the charge was defective and amounted to a misdirection. The Sessions Judge should have directed the jury to find (1) whether the property was stolen, (2) whether it was dishonestly retained, and (3) whether the accused knew or had reason to believe the same to be stolen property. Unless these questions were found by the jury in the affirmative the accused could not legally be convicted of an offence under section 411 of the Indian Penal Code.

APPEALS from the convictions and sentences recorded by C. E. G. Crawford, Sessions Judge of Thána, in the case of *Queen-Empress* v. *Bálya Somya and Bendya Hiprya*.

The accused were charged with dishonestly retaining stolen property under section 411 of the Indian Penal Code.

The Sessions Judge in his charge to the jury made the following observations:—

"You have to decide whether the property before the Court was stolen, and whether it was retained by the accused.

"The witnesses Govinda and the head constable speak to the theft and to the finding of the property in the possession of Bendya (No. 1), and of the persons with whom both the accused placed it. They are corroborated by Dharma and Málu, two of these persons, the third being unable to come here on account of extreme old age. Govinda is also corroborated in identifying the property as his by his cousin Náráyan.

"It is for you to say whether you believe these witnesses whom accused have not attempted to cross-examine or contradict, or the story of the accused which they have not attempted to prove."

* Criminal Appeals Nos. 311 and 319 of 1890.

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The jury found both the accused guilty of the offence charged.

The Sessions Judge, agreeing with the verdict of the jury, convicted the accused under section 411 of the Indian Penal Code and sentenced Bendya to transportation for seven years and Bálya to rigorous imprisonment for three years.

Against these convictions and sentences the accused appealed to the High Court.

There was no appearance for the accused or for the Crown.

PER CURIAM:—The Sessions Judge has misdirected the jury by telling them that it was only necessary for them to decide whether the property was stolen, and whether it was retained by the accused. He should have summed up all the evidence in the case, and directed the jury that before they could find the accused guilty of an offence under section 411 of the Indian Penal Code it was necessary for them to find in the affirmative (1) that the property was stolen, (2) that it was dishonestly retained, and (3) that the accused knew or had reason to believe the same to be stolen property. We reverse the conviction and sentence, and direct the accused to be retried.

Conviction and sentence reversed.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1890.
December 3.

PA'TLOJI BIN BHIWÁJI, (ORIGINAL DEFENDANT), APPELLANT, *v.* GANU BIN RAMJI AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Mortgage—Redemption on payment within six months—Non-payment, effect of—Foreclosure—Decree—Final decree—Execution—Time allowed for redemption, computation of—Appeal—Withdrawal of appeal—Effect of—Civil Procedure Code (Act XIV of 1882), Sec. 373—Limitation—Practice—Procedure.

The plaintiffs obtained a decree on the 12th November, 1886, allowing them to redeem on payment of Rs. 168-8-0 within six months. In default of payment within the prescribed time they were to stand for ever foreclosed. Against this decree the defendant appealed to the High Court. On the 10th September, 1888, the High Court passed an order allowing the defendant to withdraw the appeal.

* Second Appeal, No. 979 of 1889.