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and destroy much of the value and purpose of registration so as to render advisable an alteration in the law which would make them compulsorily registrable—these, I conceive, are matters for the Legislature rather than for the Courts to consider and to decide.

Suit decreed.

J. G. R.

CRIMINAL APPELLATE.

Before Mr. Justice Fawcett and Mr. Justice Madgavkar.

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July 23.

EMPEROR *v.* ABDUL GANI BAHADURBHAI *.

Indian Evidence Act (I of 1872), sections 9, 88, 114—Theft of bills of exchange—Telegrams from Nyasaland Police to Bombay Police regarding theft—Relevance—Presumptions arising—Stolen drafts cashed in Bombay by accused—Statement by accused under section 342, Criminal Procedure Code (Act V of 1898), explaining possession of drafts—Statement may be taken into consideration along with other circumstantial evidence—Indian Penal Code (Act XLV of 1860), section 414—Liability of accused for disposing of draft—Criminal Procedure Code (Act V of 1898), section 235, Ill. (j).

On June 27, 1924, the Commissioner of Police in Bombay received telegrams from the Chief Commissioner of Police of Nyasaland informing him that four drafts in duplicate belonging to the Blantyre Branch of the Standard Bank of South Africa on their London office had been stolen and that it was feared that signatures on those drafts would be forged and their negotiation attempted in Bombay. In consequence of the information the Commissioner of Police circulated a letter to all the principal Banks in Bombay regarding the drafts.

The accused came to India from Blantyre some time in October 1924, and on November 12, 1924, presented one of the above drafts to the French Bank in Bombay, signed it in an assumed name, and received payment of its amount (£900). The accused was at the time accompanied by a clerk who passed himself off as a broker. Out of the amount thus received the accused gave Rs. 1,000 to the clerk and also gave him the next day a draft for £2,500 out of the aforesaid four drafts.

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On November 13, 1924, the accused went to the Eastern Bank at Bombay and presented for payment another draft for £2,000, and signed it in his assumed name. The Bank officials, finding that the number of the draft tallied with the number of one of the four drafts whose numbers had already been sent to them by the Commissioner of Police, communicated with the Police. The accused was thereupon arrested and the fourth draft for £1,500 was found in his possession.

The clerk on coming to know of the arrest of the accused tore up the draft which had been given to him by the accused. The Police found the proceeds of the first draft in a trunk belonging to the accused.

The accused was charged under section 414, and in the alternative under section 420 of the Indian Penal Code, in respect of the draft which had been paid, and under the same sections read with section 511 in respect of the further draft presented for payment. At the trial the accused made a statement under section 342 of the Criminal Procedure Code, that the four drafts had been given to him at Blantyre by a neighbour of his, a clerk in the Blantyre Branch of the Standard Bank of South Africa, with the request that he should cash them in Bombay in an assumed name, and that he had been promised a remuneration of Rs. 4,000 for the work :—

Held, that the telegrams received by the Bombay Police from the Nyasaland Police were admissible in evidence under section 9 of the Indian Evidence Act, being relevant to explain the conduct of the Eastern Bank officials and of the Bombay Police ; that they were not rendered inadmissible under section 88 of the Indian Evidence Act ; and that, though it was not open to the prosecution on the evidence of the telegrams alone to ask the Court to presume that they were sent by the Police of Nyasaland or that the drafts were stolen property, there was nothing in section 88 to prevent the telegrams, once admitted, being considered along with the rest of the evidence in the case.

Held, also, that the statement of the accused under section 342 of the Criminal Procedure Code could be taken into consideration as pointing to his guilt ;

Held, further, that a reasonable presumption arose and could be acted on under section 114 of the Indian Evidence Act, first, that the telegrams had emanated from the Nyasaland Police, and, secondly, that the Nyasaland Police had received information from the Standard Bank at Blantyre that the drafts were missing and that the Bank believed that they were stolen and feared that they might be forged and misused in Bombay.

Held, finally, that, though the accused had dishonestly received the stolen drafts, he could still be charged and convicted of disposing of them, under section 414 of the Indian Penal Code: See section 235, *Ill. (f)*, Criminal Procedure Code.

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Queen-Empress v. *Ala Kala*[1] and *Emperor* v. *Jethalal*[2], not followed.

Emperor v. *Budhankhan*[3], followed.

THIS was an appeal by the Government of Bombay, under section 417 of the Criminal Procedure Code, against an order of acquittal passed by H. P. Dastur, Acting Third Presidency Magistrate of Bombay.

The facts of the case appear sufficiently set out in the judgments.

S. S. Patkar, Government Pleader, for the Crown.

G. N. Thakor, with *M. M. Kotasthane* and *P. N. Vijayakar*, for the accused.

MADGAVKAR, J. :—This is an appeal by the Government of Bombay from an acquittal by the Third Presidency Magistrate of the accused Abdul Gani Bahadurbhai *alias* Karim Kassam.

The accused is a Mahomedan in Kathiawar and has been doing business as a baker at Blantyre in Africa. He returned to India about the end of October 1924. On November 12, 1924, accompanied by the witness Vanichand, a clerk in a Vilophone office, he presented at the French Bank in Bombay and obtained payment of a bill of exchange No. 3281 (Exhibit A), dated June 10, 1924, from the Blantyre Branch of the Standard Bank of South Africa on their London office for £900. The next day he presented and attempted to obtain payment at the Eastern Bank of Bombay of a similar Bill No. 3293 (Exhibit E) from the same Branch in South Africa on their London office for £2,000. The Bombay Police had, however, on June 27, and July 5, received two telegrams purporting to emanate from the Chief Commissioner of Police, Nyasaland, informing the Commissioner of Police, Bombay, that four blank drafts Nos. 3281, 3285, 3289 and 3293 in duplicate belonging to

(1) (1891) Ratanlal's Unrep. Crim. Cas., p. 553. (2) (1905) 29 Bom. 449 at p. 465.
(3) (1912) 14 Bom. L. R. 893.

Blantyre Branch of the Standard Bank on their London office had been stolen and it was feared that signatures would be forged and negotiation attempted in Bombay. The Commissioner of Police, Bombay, circulated information of this letter to the Banks in Bombay, among them the Eastern Bank; and the clerk Amritrao of the Eastern Bank, on presentation by the accused of the bill No. 3293, asked him to wait and informed his superiors. They communicated with the Police, the latter appeared and arrested the accused. The third draft No. 3285 for £1,500 (Exhibit G) was found on him. The last draft No. 3289 (Exhibit E) for £2,500 was, the accused admits, given by him together with a sum of Rs. 1,000 to Vanichand referred to above. Vanichand, on hearing of the accused's arrest, tore up the draft. The pieces (Exhibit E) were secured by the Police.

Apart from the telegrams, which the learned Magistrate held to be inadmissible, no evidence was adduced from Africa. The other evidence consisted of what transpired in Bombay as to which there was little or no dispute and of the accused's statement and explanation, that he had received all four drafts at Blantyre from one DeSouza, a clerk in the Standard Bank and a neighbour of his, for negotiation in Bombay.

The learned Magistrate, in view of the Full Bench decision in *Empress* v. *S. Moorga Chetty*[1], was doubtful as to his jurisdiction. But he framed two charges against the accused, one under section 414, or in the alternative under section 420 as to the first draft which had been honoured, and another under the same sections read with section 511, in respect of the second draft, presented but not paid.

On a consideration of the evidence, however, it appeared to the learned Magistrate that no false

[1] (1881) 5 Bom. 338.

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representation was proved to support either charges under section 420, Indian Penal Code, and that on the charges under section 414, there were grave reasons for suspicion, but in the absence of evidence from Africa, that the accused's guilt was not proved. On the other hand, he ordered that the moneys realised by the first accused should be returned to the Bank on the ground that the draft must have come into DeSouza's hands by theft or some offence.

It is not clear how the learned Magistrate could on the main charges hold that the drafts were not proved to be stolen but as regards the return of the money that they were so proved.

It is argued for the Government that the evidence on record sufficed to prove both that the drafts were stolen property and the accused's guilty knowledge and intention under section 414, Indian Penal Code; and on the charge of misrepresentation, it is argued that presentation was a misrepresentation that he was a holder in due course.

For the accused it is contended that there was no evidence that the drafts were stolen and that not only were the accused's guilty knowledge and intention not proved but his conduct and statement throughout were straightforward. Reliance is placed on the dictum of this Court in cases such as *Queen-Empress* v. *Alu Kala*[1] and *Emperor* v. *Jethalal*[2], that section 414, Indian Penal Code, applies only where there is no possession of the stolen property.

There are two peculiarities in this case. There is no direct evidence as to the stolen nature of the drafts, the difficulty being due to the distance between Bombay and Africa; and the difficulty was common to both sides. The prosecution apparently made no inquiry,

[1] (1891) Ratanlal's Unrep. Crim. Cas., p. 553. [2] (1905) 29 Bom. 449 at p. 463.

and at all events produced no evidence from Africa. Nor could the accused examine DeSouza or other witnesses. His application for commission being issued to Africa was clearly outside the authority of the Court under section 503 of the Code of Criminal Procedure as it is now framed. The second peculiarity is that, unlike most cases under section 414, Indian Penal Code, the property alleged to be stolen consists not of ornaments or similar valuables or cattle but of bills of exchange.

These peculiarities, however, leave the duty of the Court unaffected. It is reduced, in fact, to a case of circumstantial evidence, not only on the question of the accused's guilty knowledge and intention but also on the question whether the drafts are proved to be stolen property within the meaning of section 410, Indian Penal Code. The method of arriving at an answer, as in other cases of circumstantial evidence, is, I conceive, the same. Upon the facts admitted or proved the prosecution must show that these two propositions, viz., that they were stolen property and that the accused had guilty knowledge, are the only propositions which are consistent with the rest of the evidence. If, on the other hand, the accused can put forward any alternative hypothesis reasonably possible or even moderately probable, the accused is entitled to the benefit of the doubt and the case against him must fail.

The telegrams (Exhibit X) were held to be inadmissible by the learned Magistrate, presumably because of the absence of evidence from Africa. But they are relevant to explain the conduct of the witness Amritrao, the clerk of the Eastern Bank, and of the Bombay Police and are, therefore, admissible and are not rendered inadmissible by section 88 of the Indian Evidence Act,

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on which reliance is placed for the accused. That section merely embodies the fact that a telegraph office makes no inquiries and is in no way responsible for the identity of the sender of a message, much less for the truth of its contents. It is not open to the prosecution on the single evidence of the telegrams to ask the Court to presume that they were sent by the Police of Nyasaland or that the drafts were stolen property. But there is nothing in the section to prevent the telegrams, once admitted, from being considered along with the rest of the evidence on the questions stated above.

In regard to the accused's statement under section 342, Criminal Procedure Code, it can, and, in cases of circumstantial evidence, must be taken into consideration. It may, in the circumstances of the present case of inability to procure evidence from Africa, even be accepted as to the circumstances under which the accused came into possession of the drafts. On these premises I proceed to enter on a consideration of the proper inferences from the facts admitted or proved including this statement.

As for the telegrams, it appears that when the first telegram was received on June 27, the Bombay Police inquired from the Nyasaland Police from whom it purported to come, and received a reply by a second telegram on July 5. It is not alleged for the accused that there was any person in Africa, who had an interest in June in sending false information in code in the name of the Nyasaland Police as regards the blank draft forms to the Bombay Police. On the contrary, the second telegram was an answer to the telegram addressed to the Chief Commissioner of Police of Nyasaland. It is, in my opinion, a reasonable presumption under section 114 of the Indian Evidence Act,

firstly that the telegram (Exhibit X) has emanated, as it purports, from the Nyasaland Police, and, secondly, that the Nyasaland Police received information from the Standard Bank of Blantyre that these drafts were missing and that the Bank believed that they were stolen and feared that they might be forged and misused in Bombay.

[After holding on the evidence that there could be no other reasonable inference than that the accused knew that the drafts had been stolen the learned Judge proceeded :—]

As regards jurisdiction, the Full Bench ruling and view in *Empress* v. *S. Moorga Chetty*[1] have been modified by the subsequent amendment of section 410, Indian Penal Code, by the words inserted in the section by section 9 of Act VIII of 1882 ; and undoubtedly the Court had jurisdiction in the case.

On the legal question as to section 414, Indian Penal Code, the case of *Queen-Empress* v. *Alu Kala*[2] has been cited. In that case it appears that the person who dishonestly received or retained the stolen bullocks with guilty knowledge was also held to have disposed of them but in one and the same transaction ; and this Court held that the separate and consecutive sentences passed under sections 411 and 414 could not stand, confirmed the sentence under section 411, Indian Penal Code, and set aside the other. It was certainly observed in that case in the short judgment that "section 414, Indian Penal Code, applies only where there has been no actual receipt" and this observation has been referred to with approval by Batty J. in *Emperor* v. *Jethalal*[3]. It does not appear, however, that illustration (*j*) to section 235 of the Code of Criminal

[1] (1881) 5 Bom. 338. [2] (1891) Ratanlal's Unrep. Crim. Cas., p. 553.
[3] (1905) 29 Bom. 449 at p. 463.

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Procedure was brought to the notice of the Court in either case. That illustration runs as follows :—

"Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code."

Taking the sections themselves and Chapter XVII, Indian Penal Code, in which they stand, it would appear that sections 378 to 409, Indian Penal Code, deal with various criminal methods by which the property may be dishonestly taken from the possession of the lawful owner, that is, theft, extortion, robbery and dacoity, criminal misappropriation of property and criminal breach of trust. The next portion of the Chapter deals with subsequent criminal acts with stolen property as defined in section 410. Stolen property when it passes may be first received, retained and then finally concealed or disposed of ; and it is with offences in this chronological sequence that sections 411 to 414 in my opinion deal. When receipt or retention, not necessarily for disposal, is dishonest, section 411 is the appropriate section. If, on the other hand, dishonest receipt or retention cannot be proved but only dishonest concealment or disposal, section 414 is more appropriate. Thus in the case of *Emperor* v. *Budhankhan*[1] certain gold bangles, the ownership of which was not known and could not be traced, were found and concealed on the Railway line, in a place only known to the accused Pathan. It was held that he himself had concealed it. The Sessions Judge thought that the verdict of "guilty" of the Jury was erroneous and referred the case, feeling doubtful as to the lack of legal proof that the property was stolen. As was pointed out by Batchelor J., in a case under section 414, Indian Penal Code, the ownership of the property need not be traced. It was

[1] (1912) 14 Bom. L. R. 893.

sufficient if it was proved that the property was stolen. It was held to be stolen property in that case, because it was such that it could not honestly be in the possession of a wandering Pathan. With this view of the law I agree.

Applying the law to the present case, though there is no direct evidence before us as to the actual theft of these drafts, for the reasons stated above, no reasonable doubt is left in my mind, firstly, that they were stolen and, secondly, that, when the accused negotiated the first draft and attempted to negotiate the second draft, he had reason to believe they were stolen property. I would, therefore, allow the appeal, set aside the order of acquittal and convict the accused on the first charge under section 414 and on the second charge under sections 414 and 511, Indian Penal Code.

In this view it is not necessary to express any opinion on the alternative charges under section 420. But I agree upon the whole with the learned Magistrate that no definite false representation by the accused is proved.

FAWCETT, J. :—I agree generally with the reasonings of my learned brother and his exhaustive judgment leaves little for me to add. On the legal question that was raised as to the applicability of section 414, Indian Penal Code, to this case I think that illustration (*j*) to section 235, Criminal Procedure Code, supplies a conclusive answer to the contention that a person who has dishonestly received stolen property cannot possibly be charged and convicted of voluntarily concealing or disposing of that property. The illustration is one where A and B both receive property knowing it to be stolen property, and then go and conceal it. The illustration says as plainly as possible that both of them may be separately charged with and convicted of offences under sections 411 and 414. This is an

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illustration to the general principle embodied in sub-section (2) of section 235 that, if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. Therefore the remarks that have been made in some cases that a person, who might be charged under section 411, cannot be charged and convicted under section 414 are not, in my opinion, binding upon us, and must be rejected so far as they are in conflict with this particular illustration. In the present case the proper charge against the accused, in my opinion, is clearly one under section 414, because the particular act which led to his arrest and trial was the disposal of one draft and the attempted disposal of another; and the evidence that was adduced by the prosecution related to such particular act or acts and to the subsequent conduct of the accused and Vanichand, who accompanied him to negotiate the first draft. The accused might possibly have been charged and even convicted under section 411. For although it was contended on his behalf that the Court would have no jurisdiction on a charge under section 411, I fail to see how that contention can possibly prevail against the clear wording of section 4, Indian Penal Code, and section 180 of the Criminal Procedure Code, especially having regard to the illustration (*b*) to section 180 and the new sub-section (*3*) of section 181. He could, at any rate, it seems to me, have been convicted of retaining stolen property, assuming of course that the ingredients of the offence are proved and also assuming that he was born in British India and domiciled there, his parents being similarly British Indians. But this point was not fully argued and it is unnecessary to decide it. Section 414 no doubt requires that the

accused should have assisted some one else in the disposal of the property and does not cover a case where a person receives and then disposes of stolen property entirely on his own account. But in the present case the accused himself asserts that the clerk DeSouza made a proposal to him to help in the disposal of these drafts and he fell in with that proposal and so committed the acts which are the subject of the prosecution. Therefore it seems to me on the facts alleged and held proved the accused clearly voluntarily assisted in disposing of these drafts.

On the merits I agree with my learned brother that the circumstantial evidence *plus* the statement of the accused under section 342, Criminal Procedure Code, afford no other reasonable hypothesis, than that he had a guilty knowledge, or at any rate felt convinced in his own mind, that these drafts had been stolen, so that he had reason to believe they were stolen, following the ruling in *Empress* v. *Rango Timaji*[1]. In regard to the accused's own statement some remarks were made that the Court should not use it to fill up any gap in the prosecution case. There are no doubt cases in which that is a proper remark to make, but the present, in my opinion, clearly is not one of them. The Code itself says in sub-section (*3*) of section 342 that his statement can be "taken into consideration". That is a phrase that is also used in section 30 of the Indian Evidence Act in regard to the confession of a co-accused, and it has been held in *Queen-Empress* v. *Khandia bin Fandu*[2], and various other cases, that the Court may take the confession into consideration in order to determine whether the issue of guilt is proved or not, and to that extent it becomes practically on the same footing as other evidence, although technically it is not evidence in the case according to the definition

[1] (1880) 6 Bom. 402. [2] (1890) 15 Bom. 66.

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contained in the Indian Evidence Act, inasmuch as it is not made on oath. In the present case the inference of guilt arising against the accused from his own conduct and the inference arising that the property was stolen from Vanichand's conduct in tearing up the draft that accused had given to him (Exhibit E) did throw an onus on the accused to explain how it was that he came to dispose of the drafts. His explanation, I agree with my learned brother, should be taken as it stands, because the accused had no opportunity of adducing evidence in support of it; and taking it in that way, it clearly is a part of the material on which the Court has to decide the issue of the accused's guilt or otherwise.

On the other hand in regard to the telegrams, I think the learned Magistrate has not given due weight to them. He has in fact excluded them as inadmissible. The fact however that these telegrams were sent is clearly relevant and admissible under section 9 of the Indian Evidence Act, and I agree with my learned brother that the circumstances referred to by him raise a presumption under section 114 of the Indian Evidence Act that the main telegram of June 26 emanated from the Nyasaland Police. That telegram is not of course evidence that the drafts had actually been stolen; but it gave information to the Bombay Police, which at any rate afforded a ground for a reasonable suspicion that these particular drafts were stolen property, and the Police therefore had authority to arrest the accused, when he was found in possession of one of these drafts, under section 33, clause (*d*), of the Bombay City Police Act, IV of 1902. The telegram explains how it was that they came to arrest the accused, and this case is not therefore on the same footing as it would have been if there were nothing to attach suspicion to the accused's possession of the drafts. The drafts are alleged by the Nyasaland Police to have been stolen, and that is a

circumstance which has to be taken into consideration as a part of the evidence in this case. If any evidence had been adduced by some officer of the Standard Bank in Africa regarding the alleged theft, then of course this would have been a simple case. The only difficulty that arises is due to the absence of such evidence, but it does not necessitate the accused's acquittal. I agree with my learned brother that the Court is entitled to consider whether the evidence coupled with the accused's own statement does not circumstantially prove the accused's guilt. As long ago as 1865 this Court in *Reg* v. *Harishankar Fakirbhat* [1], refused to interfere in a similar case where the evidence was purely circumstantial. In that case it was argued that there was no proof that the property was stolen and that the evidence failed to show guilty knowledge. It was held that the persons concerned must have known or have had reason to believe that the property was stolen and that the mere fact that the prosecution could not definitely establish from whom it had been stolen did not prevent the accused's conviction. A reference may also be made to Wills on Circumstantial Evidence, 6th Edition, p. 95, which cites cases where a similar course has been followed to meet a difficulty in establishing the identity of stolen property. We are therefore not in any way setting up a new principle or departing from established law. I feel no reasonable doubt whatever as to the guilt of the accused in this case. I therefore agree in convicting him on both the charges that relate to section 414.

Order set aside and sentence passed.

R. R.

[1] (1865) 2 Bom. H. C. 130.