

revenue. The Court held that the *vasuli rakam* referred to the revenue assessed and not the revenue actually obtained. That construction and the *ratio decidendi* are not necessarily binding in considering the present question of the revenue remitted and therefore irrecoverable by the Inamdar. The learned Subordinate Judge has himself observed that the equities are entirely with the appellant and not with the respondents. In regard, therefore, to the refund, I am of opinion that both the lower Courts were wrong. The question is not *res judicata* and the appellant is in equity entitled to such a refund of the amount remitted. For the same reason, the decree itself being silent, there appears no sufficient reason in this view to refuse him the declaration in regard to the revenue remitted in future years.

I set aside the decree of the lower appellate Court dismissing the suit, and allow the appeal in respect of the refund of the revenue for the year 1918-19 and in respect of a declaration of the revenue remitted in future years but not in regard to the revenue suspended.

The appellant has succeeded in respect of remission but has failed in respect of suspension. Each party will pay its own costs throughout.

*Decree varied.*

J. G. R.

## CRIMINAL APPELLATE.

*Before Mr. Justice Patkar and Mr. Justice Wild.*

EMPEROR v. SANA MATHUR (ACCUSED No. 2) AND EMPEROR v. JHAVERI GOKAL (ACCUSED No. 1).\*

1929  
October 4.

*Criminal Procedure Code (Act V of 1898), section 188—Indian Penal Code (Act XLV of 1860), sections 379, 411—Offence committed outside British India—Trial in British India—Certificate of Political Agent, necessity of.*

The accused were alleged to have stolen a bullock in British India and taken it to a native state where it was sold. On the bullock being traced by the owner the accused were tried and convicted under section 379 and in the alternative

\*Criminal Appeal No. 280 of 1929 with Criminal Reference No. 52 of 1929.

1929  
RAGHO RAJJI  
v.  
GOPAL  
JANARDAN  
Madgarkar J.

1929

EMPEROR  
v.  
SANA MATHER

under section 411 of the Indian Penal Code. On appeal it was held that the offence under section 379 was not made out while with regard to the offence under section 411 of the Indian Penal Code the conviction was illegal in the absence of a certificate from the Political Agent under section 188 of the Criminal Procedure Code. On appeal by Government to the High Court:

*Held*, (1) that the offence under section 411 having been committed beyond the limits of British India no charge for an offence under that section could be inquired into in British India without a certificate from the Political Agent as laid down in section 188 of the Criminal Procedure Code:

*Sessions Judge, Tanjore v. Sundara Singh*,<sup>(1)</sup> followed.

*Emperor v. Narain*<sup>(2)</sup> and *The Assistant Sessions Judge, North Arcot v. Ramaswami Asari*,<sup>(3)</sup> explained;

(2) that sections 179 to 184 of the Criminal Procedure Code are controlled by the provisions of section 188 of that Code and the alternative jurisdiction conferred by those sections can be exercised on the production of a certificate of the Political Agent according to the special provisions of section 188 of the Criminal Procedure Code;

(3) that as the offence under section 411 of the Indian Penal Code was committed outside British India, the framing of the alternative charge under sections 379 and 411 of the Indian Penal Code would not confer jurisdiction on the Magistrate to try the charge in the absence of a certificate from the Political Agent under section 188 of the Criminal Procedure Code.

APPEAL against the order of acquittal passed by K. K. Thakore, Sessions Judge of Kaira, in Criminal Appeal No. 46 of 1929 along with Criminal Reference No. 52 of 1929.

The case for the prosecution was that in the month of March 1928 a bullock belonging to the complainant Nizamuddin Ajabdin of Bhalej was stolen at night from his field; that about two or three months after the theft the accused went with two bullocks including the complainant's stolen bullock to the village of Sabho in the Idar State where they sold the complainant's stolen bullock to Shiva who in his turn sold the bullock to Fata from whose possession it was ultimately traced and identified by the complainant as his bullock. The two accused were tried before the First Class Magistrate, Kaira, who convicted them under section 379 and in the alternative under section 411 of the Indian Penal Code. On appeal by accused No. 2, the learned Sessions

<sup>(1)</sup> (1910) 11 Cr. L. J. 306.

<sup>(2)</sup> (1919) 41 All. 452.

<sup>(3)</sup> (1914) 38 Mad. 779.

Judge held that the offence under section 379 was not made out while with regard to the offence under section 411 of the Indian Penal Code, he came to the conclusion that a certificate of the Political Agent was necessary under section 188 of the Criminal Procedure Code. He therefore acquitted accused No. 2 and made a reference to the High Court to acquit accused No. 1 on the same ground. The Government of Bombay appealed to the High Court against the order of acquittal of accused No. 2.

*P. B. Shingne*, Government Pleader, for the Crown.

*H. V. Devatia*, for the accused No. 2 (appointed in Appeal No. 280).

No appearance for the accused No. 1 (in Reference No. 52).

PATKAR, J.—In this case two accused were tried on charges under sections 379, 411 and 414 of the Indian Penal Code, before the First Class Magistrate, Kaira. The learned Magistrate held that there was no direct evidence as to the commission of the offence of theft, but relying on section 114, illustration (a), of the Indian Evidence Act, convicted the accused under section 379 and in the alternative under section 411 of the Indian Penal Code. The offence under section 414, Indian Penal Code, did not, in the opinion of the learned Magistrate, fall within his jurisdiction as the certificate from the Political Agent was not obtained.

Accused No. 2 appealed to the Sessions Court but accused No. 1 did not file an appeal. On the appeal of accused No. 2 the learned Sessions Judge came to the conclusion that the offence under section 379 of the Indian Penal Code was not made out as there was no direct evidence as to the commission of the offence. With regard to the offence under section 411 of the Indian Penal Code he came to the conclusion that a

1929  
 EMPEROR  
 v.  
 SARA MATHUR  
 Paikar J.

certificate of the Political Agent was necessary under section 188 of the Criminal Procedure Code. He, therefore, acquitted accused No. 2 and made a reference to this Court to acquit accused No. 1 on the same ground. The Government of Bombay have appealed against the order of acquittal of accused No. 2.

It is urged on behalf of the Crown that the lower Court erred in acquitting the accused under section 379 of the Indian Penal Code and that under section 114, illustration (a), a presumption ought to have been drawn that both the accused were either the thieves or the receivers of stolen property. There appears to be no evidence on the record that the accused committed the theft in question, and there is considerable lapse of time from the date of the offence to the date of the alleged receipt of the stolen property and its disposal by the accused in a village in the Idar State. We think, therefore, that the acquittal of the accused under section 379, Indian Penal Code, is correct.

The next question is, whether the Magistrate had jurisdiction to try the accused with regard to the offence under section 411, Indian Penal Code, without a certificate from the Political Agent of Mahi Kantha Agency under section 188 of the Criminal Procedure Code. It is conceded that the offence under section 411 was committed beyond British India. Under section 181, clause (3), of the Criminal Procedure Code, "the offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen". Illustration (b) to section 180 is to this effect:—"A charge of receiving or retaining stolen goods may be inquired

into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained". Under section 177 of the Criminal Procedure Code, "Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed". That section embodies the general rule of jurisdiction. The following sections 179 to 184 lay down the alternative jurisdiction conferred on other Courts in certain cases. Section 188 of the Criminal Procedure Code says that "When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India, . . . he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found: provided that *notwithstanding anything in any of the preceding sections of this Chapter* no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India".

In the case of *Sessions Judge, Tanjore v. Sundara Singh*,<sup>(1)</sup> where a dacoity was committed in British territory and a Native Indian British subject was found in possession of the stolen property in a Native State and a charge under section 412 of the Indian Penal Code was preferred against him, it was held that, though under section 180 of the Criminal Procedure Code the offence could be tried at the place where the property was retained or where the theft or dacoity took place, yet under section 188 of the Code a certificate of the Political Agent was necessary if the charge

1929

EMPEROR  
v.  
SANA MATHUR  
Patkar J.

<sup>(1)</sup> (1910) 11 Cr. L. J. 306.

1929  
 EMPEROR  
 v.  
 SANA MATHUR  
 Patkar J.

was to be tried in British India. In *Imperator v. Tribunal*,<sup>(1)</sup> where a charge had been framed against the accused of an offence of criminal breach of trust under section 408 of the Indian Penal Code and a complaint had been filed in British India on the assumption that the Court had jurisdiction under section 181, clause (2), of the Criminal Procedure Code, it was held that section 181, clause (2), only applied as between Courts of different local areas whose jurisdictions have been limited under section 12 of the Criminal Procedure Code and to which the Code of Criminal Procedure applied, and had no application to an offence committed in a Native State, and that the Magistrate could not take cognizance of such an offence without a certificate from the Political Agent. In the case of *The Assistant Sessions Judge, North Arcot v. Ramaswami Asari*,<sup>(2)</sup> where the accused, who was entrusted with certain jewels, pledged some of them in Bangalore contrary to the arrangement that he should return the jewels or their price at Vellore, it was held that the Vellore Court had jurisdiction to try the accused for criminal breach of trust or misappropriation without a certificate under section 188. The judgment proceeded on the ground that the fact that loss of the jewels, which was the consequence occurred to the complainant at Vellore in British India, was sufficient under section 179 to give jurisdiction to the British Indian Court to try the offence, and that section 188 of the Criminal Procedure Code did not control the operation of the previous sections 179 to 184. After the decision in *Ramaswami Asari's case*<sup>(2)</sup> the Code has been amended and section 188, proviso, says that notwithstanding anything in any of the preceding sections of this Chapter no charge with regard to an offence committed outside British India shall be

<sup>(1)</sup> (1911) 13 Cr. L. J. 530.

<sup>(2)</sup> (1914) 88 Mad. 779.

inquired into in British India without a certificate of the Political Agent. The amendment makes it clear that the Madras decision is no longer good law, and that sections 179 to 184 can have no application where the offence is committed outside British India unless a certificate of the Political Agent is obtained under section 188 of the Criminal Procedure Code. The same view appears to have been taken in *Emperor v. Narain*.<sup>(1)</sup> It would, therefore, follow that sections 179 to 184 of the Criminal Procedure Code are controlled by the provisions of section 188 of the Criminal Procedure Code and the alternative jurisdiction conferred by those sections can be exercised on the production of the certificate of the Political Agent according to the special provisions of section 188 of the Criminal Procedure Code.

It is urged on behalf of the Crown that in the present case there is an alternative charge under sections 379 and 411 of the Indian Penal Code. Section 188 refers to an offence committed without and beyond the limits of British India. It is conceded that the offence under section 411 was committed beyond the limits of British India. The framing of an alternative charge in the present case does not confer jurisdiction on the Magistrate, and, under the express terms of section 188, he cannot exercise it without a certificate from the Political Agent. We think, therefore, that the order of acquittal by the lower Court is correct.

We would, therefore, dismiss the appeal against the order of acquittal, and in the reference made by the learned Sessions Judge we would direct accused No. 1 to be acquitted and discharged. The bail bond of accused No. 1 is cancelled.

*Appeal dismissed.*

B G. R.

<sup>(1)</sup> (1919) 41 All. 452.

1929  
 EMPEROR  
 v.  
 SANA MATHUR  
 Patkar J.