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That being so, it is unnecessary to go into the larger question whether section 116 is sufficiently stringent in its terms to bar the interference of the Courts of Justice in cases in which the Municipal Commissioners may have exceeded their powers under the Act or acted illegally or without jurisdiction. The appeal is dismissed with costs.

Appeal dismissed.

T. A. P.

APPELLATE CRIMINAL.

Before Mr. Justice Trevelyan and Mr. Justice Rampini.

1893 *Nov.* 22.

ISHAN CHANDRA CHANDRA AND TWO OTHERS *v.* QUEEN-EMPRESS.*

Stolen property—Dishonestly retaining stolen property—Penal Code, s. 411—Legal presumptions—Accomplice—Informer cognizant of offence—Omitting to disclose commission of offence.

Where a document, purporting to be a Collectorate notice forming part of a record and found by the Court to be genuine, was discovered to be in the possession of persons charged with retaining stolen property, it was held that, in a matter of this kind, it was right to raise legal presumptions arising out of the ordinary course of business and to dispense with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be convicted of receiving stolen property, knowing it to be stolen, it must be shown that property has been stolen, *held*, that the disappearance of the document from the record, *plus* the substitution of an imitation of it in its place, showed that it must have been taken with a dishonest object.

Where an informer was, upon his own statement, cognizant of the commission of an offence, and omitted to disclose it for six days, the Court was not prepared to say that he was an accomplice; but held that his testimony was not such as to justify a conviction except where it was corroborated.

IN this case four persons, including the three appellants, were charged at the Midnapore Sessions with the following offences under the Penal Code, *viz.*:—Ishan Chandra Chandra and Koilash Chandra Maiti, the first two accused, under sections 466, 474,

* Criminal Appeal No. 866 of 1893 against the order of J. Pratt, Esq., Sessions Judge of Midnapore, dated the 10th October 1893.

and 193 in respect of a document purporting to be a Collectorate notice, marked as exhibit L, and alleged to be forged, and under section 411 in respect of a similar document, marked as exhibit A, and alleged to be genuine. They were also charged under section 473 in respect of two chalk seals having no connection with either of the above documents, and this charge was subsequently struck out by the Sessions Judge. The third appellant, Boikanta Nath Das, was charged under sections 466, 471 and 193 in respect of exhibit L, and under section 380 coupled with section 109 in respect of exhibit A.

The fourth accused, who was charged under section 466 coupled with section 109, section 471 coupled with section 109, section 193, and section 380, was acquitted of all the charges.

The Sessions Judge, agreeing with the assessors, convicted Ishan Chandra Chandra and Koilash Chandra Maiti under section 411 of the Penal Code for having retained the notice exhibit A (which was alleged to be stolen from the Collector's record-room), knowing, or having reason to believe, that the same was stolen, and sentenced each of them to three years' rigorous imprisonment, and Koilash Chandra Maiti further to a fine of Rs. 300, or, in default, to rigorous imprisonment for a further term of six months. The Judge also, concurring with the assessors, convicted Koilash Chandra Maiti and Boikanta Nath Das under section 474, Penal Code, for having in their possession the document exhibit L knowing the same to be forged and intending that the same should be fraudulently or dishonestly used as genuine, and sentenced Koilash Chandra Maiti to one year's rigorous imprisonment and Boikanta Nath Das to three years' rigorous imprisonment and to a fine of Rs. 300, or, in default, to rigorous imprisonment for a further term of six months.

The Court, further concurring with the assessors, found the first three accused not guilty of the remaining charges, and the fourth accused not guilty of any of the charges, and discharged him.

The facts sought to be established by the evidence for the prosecution, and which were set forth at length in the judgment of the Sessions Judge, were that a civil suit had been instituted against the father of the second accused and the third accused,

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by one Rajnarain Maiti in conjunction with two others, the daughters of one Kristo Priya, their deceased mother; that the suit was for recovery of certain property alleged to have belonged to the deceased Kristo Priya, and of which the father of the second accused had taken wrongful possession; that one of the pleas raised in the written statement in that suit of the accused was that the suit was barred by limitation by reason of its having been brought more than twelve years after the death of the said Kristo Priya; that with the object of fabricating documentary evidence to support this plea, exhibit L had been forged and placed on the record of a land registration case through the intervention of the fourth accused, a mohurrir in the collectorate; that exhibit A was the genuine notice for which exhibit L had been substituted, and that it had been previously stolen from the record through the same agency. The facts which were undisputed were that exhibit A was found in a box in the house of Ishan, the first accused, in which Koilash, the second accused, was also residing; that Boikanto, the third accused, had applied for and obtained a certified copy of exhibit L from the Collectorate; and that exhibit L contained a statement to the effect that Kristo Priya was dead at the time of the service of the notice, that is, more than 12 years before the institution of the suit abovementioned.

Against the conviction and sentence an appeal was preferred to the High Court by the first three accused.

Mr. *J. T. Woodroffe* (with him Mr. *W. R. Donogh* for the first two appellants).

Mr. *P. L. Roy* and Babu *Girish Chunder Chowdhry* for the third appellant.

The Deputy Legal Remembrancer (Mr. *Kilby*) for the Crown.

Mr. *Woodroffe.*—The evidence adduced to establish the genuineness of exhibit A is wholly insufficient. There are no less than ninety-six signatures endorsed on the document, and out of these ninety-six persons only two have been called to prove the genuineness of their signatures, and of these two one is the plaintiff in the civil suit, and therefore a deeply interested witness,

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and the other is a dependant of his. Such evidence cannot be relied on. But, assuming that exhibit A is genuine, there is no evidence at all that it ever was on the record. Even assuming it was a document which ought to have been on the record, there is no evidence that it was stolen. In order to establish a charge under section 411 of the Penal Code it must first be established that the property was stolen, and secondly that the prisoners retained it dishonestly, knowing or having reason to believe it to be stolen, and this must be proved as satisfactorily as if the person charged with theft were on his trial: see *Queen-Empress* v. *Burke* (1), *Queen-Empress* v. *Balya Somya* (2), also Mayne's Commentary on the Penal Code under section 411. In this case the only person who was charged with the theft of the document has been unanimously acquitted by the Sessions Judge and the assessors: see also *Queen* v. *Bajo Huri* (3) and *In the matter of the petition of Yar Ali* (4). If this document was ever on the record there is no evidence to show when it left the record. It might have been ten years ago; so there could be no presumption of guilt arising from recent possession, even assuming it to be stolen: see *Ina Sheikh* v. *Queen Empress* (5). It has further been held that in such a case there must be some proof that some other person than the accused had possession of the property before him. See *Ishan Muchi* v. *Queen-Empress* (6) and Russell on Crimes, Vol. 2, p. 483. Moreover, the possession of one accused would not constitute possession by all: see *Empress* v. *Malhari* (7). In order to establish a conviction under section 474 of the Penal Code, it must be proved in the first place that the document is a forged one, and secondly, that the defendants knew it to be forged: see *Queen-Empress* v. *Abaji Ram Chandra* (8). Here the evidence that exhibit L was forged is wholly insufficient, but assuming it to be forged there is no evidence to show that the prisoners knew it to be so.

The case rests mainly on the testimony of an informer, who, upon his own statement, was an accomplice. He admits that

(1) I. L. R., 6 All., 224.
(2) I. L. R., 15 Bom., 369.
(3) 19 W. R. Cr., 37.
(4) 13 W. R. Cr., 70.
(5) I. L. R., 11 Calc., 160.
(6) I. L. R., 15 Calc., 511.
(7) I. L. R., 6 Bom., 731.
(8) I. L. R., 16 Bom., 165.

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after becoming cognizant of the crime he kept quiet about it for six days. He took no steps to prevent it, but assisted the others in instructing their pleader in the preparation of the written statement in the civil suit. He also admits having remarked that the forgery had been so well executed that detection was impossible. Such a person is an accomplice, and according to the usual rule his evidence should not be accepted except where corroborated in material particulars: see *Queen-Empress* v. *O'Hara* (1). Or at least his evidence must be regarded as no better than that of an accomplice: see *Queen* v. *Chando Chandalinee* (2). Both the assessors have stated it as their opinion that this informer's evidence "may be accepted only so far as it is corroborated by independent and unquestionable evidence," and the Sessions Judge concurs in their opinion, though he avoids calling him an accomplice. Further, the corroboration must be such as to fix the defendants individually with guilt, and there is no such corroboration to be found in the evidence: see *Reg.* v. *Farler* (3), and *Queen* v. *Mohesh Biswas* (4).

The *Deputy Legal Remembrancer* (Mr. *Kilby*) for the Crown:—A person in order to be an accomplice must have taken part in the offence. He must aid and abet within the meaning of section 107 of the Penal Code, and not merely take no steps to prevent the offence. The complainant here was not aiding, but frustrating. A man cannot be both aiding and plotting against. See Forster's Crown Cases, page 350, section 5, where "accomplice" is defined. Mere silence would not render a man an accomplice. This is clear from the judgment in *Queen-Empress* v. *O'Hara* (1) at page 665 of the report. The finding of exhibit A in Ishan's box is the strongest corroboration of his evidence. Ishan was Koilash's servant, and a servant's possession is a master's possession. [TREVELYAN, J.—If the peon Darastulla had been examined he could have clinched the matter. He could have said how he served Kristo Priya. Both exhibits A and L state that a separate return was filed by the peon. That is not produced.] Darastulla could have had no memory as to an event which took

(1) I. L. R., 17 Calc., 642.
(2) 24 W. R. Cr., 55.
(3) 8 C. and P., 106.
(4) 19 W. R. Cr., 16.

place twelve years ago. It is impossible to have evidence to show that exhibit A was on the record. Assuming exhibit A to be genuine, it must have been on the record. A must have been removed and copied and L substituted for it, because L is found on the record afterwards. A was useless to anybody's case, while there was reason to forge L, but none to forge A. It is not to be supposed therefore that A is forged.

Then as to A being stolen, direct evidence of theft is impossible. No one could be honestly in possession of it. The *onus* is upon the accused to account for possession. See Roscoe's Digest of the Law of Evidence in Criminal Cases, 10th ed., p. 19, as to presumption of guilt arising from possession of stolen property. It is incumbent on the accused to show that he came by the document honestly. The decision in *Ishan Muchi* v. *Queen-Empress* (1) conflicts with the Evidence Act, section 114, illustration (*a*).

Mr. *Woodroffe* was heard in reply.

The judgment of the Court (TREVELYAN and RAMPINI, JJ.) was as follows:—

It is unnecessary for us to enter into the details of the history of this case. The judgment of the learned Sessions Judge has accurately narrated the circumstances which led to the present enquiry. There can be no doubt but that one of the most skilful and impudent forgeries ever committed has been perpetrated. It is for us to ascertain whether on the evidence any offence has been brought home to the present accused.

The questions argued before us, and those which we have to determine, are as follows:—1. Is exhibit A a genuine document? 2. Is exhibit L a forgery? 3. If A is genuine, was it ever on the collectorate record referred to in this case? 4. If A is genuine, and was on such collectorate record, was it stolen therefrom?

5. Have the accused or any of them committed any offence in respect of these documents?

The learned Sessions Judge and the assessors have come to the conclusion that exhibit A is a genuine document. Much argument

(1) I. L. R., 15 Calc., 511.

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on this subject has been addressed to us. Mr. Woodroffe for the appellant has relied upon the inability of Shama Churn Maiti, the Naib Nazir of the Midnapore Collectorate, to determine whether the writing purporting to be his on A or that on L is his writing.

If a forgery be a good one, an exact copy be made of handwriting, it is impossible for any one to swear from the handwriting as to whether a document is genuine. This question must be determined from evidence and circumstances.

As Shama Churn Maiti proves, and as there can be no doubt, one of these documents is a forgery, if they are not both forgeries. Shama Churn's handwriting is the same in both. He can detect no difference. It is very improbable that both A and L are forgeries. There must have been in the ordinary course a genuine "*Gach*" summons filed, and the service recorded on it.

There is direct evidence as to the genuineness of A. Nityanand Maiti distinctly swears to A being the notice served upon him, and to L not having been served upon him. This witness is quite independent of the prosecution. If anything, his interest would be to shield the accused, as he is a near relation of one of them (Koilash), and lives in the same homestead with him. Doubt is sought to be thrown on his testimony in this respect by his evidence as to other handwriting. On examination, we do not think there is anything in the cross-examination of this witness as to handwriting which detracts from the value of his testimony as to his own writing; besides it is clear from this witness' evidence that Kristo Priya died at the time alleged by the prosecution. This witness lived in the same homestead with her, was present at her death, and was present at her cremation. Throughout the case there is no real suggestion that she died at any other time. This witness is apparently ignorant as to the dates of the deaths of some others of his relations, but it does not appear that he was living with them or was present at their death. Again there is no doubt whatever but that A was found in Ishan's box. That is not disputed before us. It is preposterous to suppose that it was put there by Rajnarain, or by any person interested with him or on his behalf.

It would not have been the interest of any one except the plaintiffs in the suit to forge A. It was a document which

not only would not support the defendants' case, but might be used against them, as it would distinctly show that their allegations as to the death of Kristo Priya was false. These considerations, we think, strongly support the direct evidence, even if they would not be sufficient without it. Mr. Price's name and the Collectorate seal would be evidence of the genuineness of the document if they stood by themselves, but those are both to be found on L. Whether viewed as a question of the competition for genuineness between A and L, or on the evidence applicable to A only, we think that the Court below was right in holding that A is a genuine document. It follows that L is a forgery.

The next question is whether A was ever on the Collectorate record. We think that the determination of the question as to the genuineness of A practically determines this question also.

It does not follow by any means that any one could speak to a document like this having been on the record. In the ordinary course it would be on the record. The case would not be determined unless it had been filed, and on the document itself appear endorsements which could only have been made on its being brought back to the nazir after service. This would show that it must have been on the record.

Again the fact that we find the forged document exhibit L on the record, would lead one to suppose that it had been substituted for the genuine document. In a matter of this kind it is right to raise legal presumptions arising out of the ordinary course of business. Apart from any such presumption, the fact that it came back to the nazir's office is apparent from the endorsement. It appears to have issued from the Collectorate, and to have gone back there.

The next question is whether A was stolen from the Collectorate. It is difficult to imagine how it can have legitimately found its way from the Collectorate records into Ishan's box, *i.e.* into the box of a person whose employer was interested in suppressing it. It has been argued, and rightly so, that before a man can be convicted of receiving property knowing it to be stolen, it must be shown that property has been stolen. The disappearance of the document from the record plus the

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substitution of an imitation of it in its place, shows that it must have been taken with a dishonest object, and shows this as conclusively as can be.

The remaining question is the most important one. We agree with the learned Sessions Judge in thinking that it would be unsafe to act in this case on the unsupported evidence of Gooroo Pershad. We are not prepared to say that he was an accomplice. He may have been one, but it would be impossible to say in this case that he helped in the commission of the offence. He was undoubtedly cognizant of it, and omitted to disclose it for six days. From any point of view, we do not think that his testimony is such as to justify a conviction, except where he is corroborated. There is no doubt that he is most amply corroborated with regard to Ishan. The fact that exhibit A was found in Ishan's box is a very strong circumstance against him. He has never attempted to explain this.

It is said that it is not shown that he acted dishonestly. Here a document having an important bearing on the case of his employer in the civil suit is found in his box after having been stolen from the record room of the Collectorate; it is difficult to conceive how his intention can have been otherwise than dishonest.

Besides, there arises the ordinary presumption as to property recently stolen. Having regard to the substitution of L, which can only have been effected for the purpose of making evidence in the suit, it is a legitimate inference that the substitution was made after the service of the summons in the suit. As the suit was filed on the 20th of April, and A was found with Ishan on the 9th of July, A may be said to have been recently stolen at the time it was found.

The case as against the others is different. Girish Chandra Mitter, whose evidence is unimpeached, proves that Koilash and Boikanta Nath with Ishan and Gooroo Pershad gave instructions for the written statement.

Boikanta and Ishan first gave him instructions, and as to this he is positive. The written statement contains the untrue statement to support which L was substituted for A. Soon after the day on which Gooroo Pershad says that Boikanta took away the

notice, *i.e.* L, we find Boikanta Nath making an application for a copy of L. He and Koilash take this copy to the pleader, and Boikanta reads it out to the pleader. Boikanta before the Magistrate says that he got the copy at the instance of Gooroo Pershad, and that Gooroo Pershad paid the costs. This is absurd, and is inconsistent with his showing it to the pleader.

Koilash declined to say anything to the Magistrate as to the documents. We think that the action of Koilash and Boikanta Nath with regard to the written statement and the procuring of the copy of L makes it clear that they were cognizant of the substitution of L for A, and corroborates the story told by Gooroo Pershad as to the parts taken by these persons in the perpetration of the crime.

So far as Koilash is concerned, there is also the fact that he was Ishan's employer and must have known what was going on. This by itself would be worth little, but taken with regard to the other circumstance, it may well be considered.

We dismiss the appeals of all the accused.

J. V. W. *Appeals dismissed.*

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

GANGA CHARAN SINGH (PETITIONER) *v.* QUEEN-EMPRESS (OPPOSITE PARTY).*

1893 *Dec.* 21.

Escape from lawful custody—Penal Code (Act XLV of 1860), *s.* 224.

An offence was committed in 1866. In 1893 a person of the same name as the offender was arrested, tried, and acquitted. Whilst under arrest the accused escaped from custody. *Held* that he was not liable to conviction under s. 224 of the Penal Code. An escape from custody when such detention is not for an offence is not punishable under that section.

THE facts of this case were as follows:—

An offence was committed in 1866 by one Ganga Charan Singh, and a warrant was issued for his arrest. The offender, however,

* Criminal Revision, No. 694 of 1893, against the order passed by S. J. Douglas, Sessions Judge of Tipperah, dated the 10th of October 1893, affirming the order passed by Babu Khetro Gopal Roy, Deputy Magistrate of Comilla, dated the 16th September 1893.