

sion ought not to be disturbed upon the first ground taken in the petition of appeal.

On the question of fact, I think that a strong *prima facie* case was made out before the District Judge, and that the order made by him in the case is supported on the evidence.

I concur in dismissing the appeal.

Appeal dismissed.

1880

IN THE
MATTER OF
THE
PETITION OF
SHEETANATH
MOOKERJEE.

APPELLATE CRIMINAL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Maclean.

THE EMPRESS *v.* SUNKER GOPE.*

1880
Sept. 17.

Criminal Procedure Code (Act X of 1872), s. 66—Dishonestly retaining in British Territory property stolen beyond British Territory.

A Nepalese subject, having stolen cattle in Nepal, brought them into British territory, where he was arrested and sentenced to one year's rigorous imprisonment. *Held*, that he could not be tried for the theft itself, but that he might be convicted of dishonestly retaining the stolen property.

Reg. v. Lakhya Govind (1) followed.

REFERENCE to the High Court under s. 296 of the Criminal Procedure Code.

A Nepalese subject had stolen two head of cattle from the homesteads of two separate individuals in Nepal, and had brought the cattle with him into British territory, where he was arrested and sentenced by the Officiating Joint Magistrate of Mohubarri to one year's rigorous imprisonment under s. 411 of the Penal Code.

The Officiating Magistrate of Durbhangah was of opinion that the case was not cognizable in British territory, and referred the matter to the High Court.

No one appeared on the reference.

* Criminal Reference, No. 1324 of 1880, from F. H. Barrow, Esq., Officiating Magistrate of Durbhangah, dated the 31st August 1880.

1880

EMPRESS
v.
SUNKER
GOPE.

The opinion of the High Court (GARTH, C. J., and MACLEAN, J.) was as follows:—

GARTH, C. J.—We are of opinion that the conviction of Shunker Gope, for an offence under s. 411 of the Penal Code, is legal, and that we should not interfere. Shunker Gope confessed to having stolen cattle in the kingdom of Nepal, and he was found in possession of them in British territory. Section 66 of the Criminal Procedure Code, illustration (b), lays down, that “a charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen or in any district in which any of them were at any time dishonestly received or retained.” Now the theft having occurred beyond British territory, the prisoner could not be tried for that offence in our Courts, see *Reg. v. Adivigadu* (1), but the present case seems to be very similar to one reported in the Indian Law Reports, *Reg. v. Lakhya Govind* (2); and therefore we think that the conviction may be sustained.

It is unnecessary for us to say anything on the question of extradition; that matter will be dealt with by the local authorities under the orders of Government.

Conviction upheld.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Maclean.

1880

Oct. 7.

IN THE MATTER OF MUTTY LALL GHOSE AND OTHERS.*

Criminal Procedure Code (Act X of 1872), ss. 471, 467, 193—Institution of Criminal Prosecution, pending Appeal in Civil Court.

If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such person under s. 471 of the Criminal Procedure Code without any further enquiry than that which he has already held in his own Court.

* Criminal Motion, No. 19 of 1880, against the order of J. P. Grant, Esq., District Judge of Hooghly, dated the 5th August 1880.

(1) I. L. R., 1 Mad., 171.

(2) I. L. R., 1 Bom., 50.