1865.
March 16.

REG. v. HARI'SHANKAR FAKI'RBHAT and another.

Stolen Property—Assisting in Concealing or Disposing of—Guilty Knowledge—Ind. Pen. Code, Secs. 410, 411, *and* 414.

Where persons are charged with assisting in concealing or disposing of property, which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into consideration.

THE prisoners were committed for trial by C. J. Davies, Magistrate F. P. at Súrat, charged under Sec. 879 of the Penal Code with theft, and under Sec. 414 with having voluntarily assisted in concealing or disposing of property, which they knew or had reason to believe to be stolen; and were convicted by the Court of Session of the offence specified in the second head of the charge, and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 300 each, in default thereof to suffer further rigorous imprisonment for six months.

The facts of the case, as well as the grounds of the conviction, sufficiently appear from the following extracts from the judgment recorded by C. H. Cameron, Session Judge of Súrat :—

" The accused acknowledge that they were taking away the property, and the property is properly recognised and identified. It, therefore, only remains to determine whether the accused can be fairly said to have disposed of the property, knowing or having reason to believe that it was stolen. The Court believes that the circumstances of the case preclude any other inference but that the accused knew the property was stolen. The account of the property's changing hands in the way it did at A'mrolí shows that a regularly organised system of removing goods transported by railway is in existence. At least that seems the only way of accounting for the regular process by which the bale was transferred from the railway to the river-bed under the bridge. First, Lálio, a Dhed, goes and gets a cart. He has no difficulty in getting it; but the cartman is suddenly apprehensive of

religious pollution by touching anything a Dhed has touched, and so does not drive his own cart; and as soon as the bale is discharged from the cart, goes off with it, without caring about the cart-hire, satisfied, if he is to be believed, with Lálio saying, 'as soon as the owner pays me, I will pay you.' Now the Court cannot but think that the idea of pollution has been introduced merely to account for the cartman's proceeding. He kept aloof, that his evidence, if he was called on, might not avail much, as he knew so little. Secondly, Lálio &c., having got the bale down to the river-bed under the bridge, disappear suddenly altogether. The bale is apparently left to take care of itself, and is found by a sepoy going to the bed of the river, who puts a man to watch it, and goes to report what he has found. Returning with the Police Páṭíl, he finds that some one else has come, and with a friend is taking the bale down to a boat.

"These men say that Tribhuvandás, the Station Master at A'mrolí, told them to take the bale across; but they cannot prove their assertion. * * * *

"The Court must allow that they did not actually steal the bale: the evidence of the cartman shows this; but that the accused could suppose that such an elaborate arrangement was necessary, and at night too, to remove a bale about which there was no suspicion, is not to be believed. Late at night, between 8 and 9 P.M., they were prepared with a boat, and went, leaving the boat without any one to take care of it, to the bridge over the river, and there they found a bale under it on the sand. They must have been instructed where, when, and how to find the bale; and, considering the notoriety of railway robberies, the Court has no hesitation in affirming that, to act as they did, the accused must have known, or had reason to believe, that the property was stolen. In fact, they must be connected with the gang which seems organised to conduct these robberies. The frequency of these robberies, and the difficulty of discovering the perpetrators, will be considered in adjudging sentence."

Against this conviction Haríshankar appealed, on the ground that it was contrary to law: in that (1) there was

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no evidence to show that the property the prisoner was seen in possession of was stolen property; and that (2) there was no evidence to show that he was assisting any one in concealing it; And also on the ground that the conviction was against the weight of evidence.

Nánábhái Haridás, for the prisoner Harishankar:—There is no proof that the property was stolen; and the evidence fails to show guilty knowledge. The Station Master should have been examined. Suppose the Station Master had so far forgotten himself as to remove the bale from the station to the place where the prisoners found it, that would be consistent with their innocence.

COUCH, J.:—We must look to the fact that the prisoners must have known that it was a bale of merchandise; and that they could have no reason for believing that it belonged to the Station Master.

The fact that other parties cannot be fixed with the offence of the stealing, does not exonerate the prisoners. There is no ground for reversing the conviction.

WARDEN, J., concurred.

Petition rejected.

NOTE.—Sec. 414 would seem to be intended to apply to cases where there may not be such a possession as would warrant a conviction, under Sec. 411, for dishonestly receiving or retaining stolen property. The term "stolen property," as defined by Sec. 410, includes property the possession whereof has been transferred by theft, or extortion, or robbery; and property which has been criminally misappropriated, or in respect of which criminal breach of trust has been committed;—in a word, where in the Civil Law an *actio furti* would lie, *furtum* being defined "the fraudulent dealing (*contrectatio*) with a thing itself, its use, or its possession:" *Institutes*, Lib. IV., tit. 1, § 1.—ED.