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NA'RA'YAN UNDIR PA'TIL v. MOTILA'L RA'MDA'S.

Assistant Judge and remand this cause for retrial on the merits; costs of both appeals and of the suit to be disposed of by him as may appear to him to be just.

We understand that Nánábhai Haridás and Larpent, J.J., have, in Special Appeal 438 of 1872 (decided 25th June 1874), *Káshinath Balal Oka* v. *Narria Jan and others*, come to a decision as to the admissibility of oral evidence notwithstanding such a condition as in the bond in this suit. *Nagar Mull* v. *Azeemoollah* (1), is to the same effect.

[APPELLATE CRIMINAL JURISDICTION.]

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REG. v. LAKHYA' GOVIND AND ANOTHER.

The Code of Criminal Procedure, Act X. of 1872, Section 67—Jurisdiction—Dacoity in the Gáyakwád's territory—Trial in British Territory.

Where dacoity was committed at Velanpor, a village in the territory of H. H. the Gáyakwád, and a part of the stolen property found where it had been concealed by the accused in British territory, it was

Held that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpor, although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might in the legal sense have coalesced with the first and principal one, so as to give jurisdiction under Section 67 of the Code of Criminal Procedure in each district into which the property was conveyed. But on a conviction of retaining stolen property the sentences awarded could, it was held, be sustained, the retaining having taken place in British Territory.

THIS was an appeal from the decision of H. F. Aston, Assistant Session Judge of Surat, confirmed by H. Birdwood, Session Judge.

The evidence showed that the appellants formed part of a gang which committed dacoity at Velanpor in the territory of H. H. the Gáyakwád. A portion of the stolen property was found concealed at the village of Sáriá, in the Chikli Taluka of the Surat District. This circumstance, the Assistant Judge supposed, gave his court jurisdiction to try the accused on the charge of dacoity, though it was committed in foreign territory. The trial accordingly went on, and the evidence having been found sufficient, resulted in the conviction on that charge of both the accused who were sentenced

(1) 1 N. W. P. H. C. Rep. 146 (1869, Part VIII.)

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to rigorous imprisonment for seven and five years, respectively. These sentences were duly confirmed by the Session Judge as required by law.

An appeal having been admitted by the High Court, it was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

There was no appearance either on behalf of the accused or of the Crown.

PER CURIAM:—We do not think the conviction of dacoity can be substained. That was a substantive offence completed as soon as perpetrated at Velanpor, although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, as they would have the same legal character, have coalesced with the first and principal one so as to give jurisdiction under Section 67 of the Code of Criminal Procedure. But we think the conviction may be altered to one of retaining stolen property known to have been obtained by dacoity (Indian Penal Code, Section 412), and the sentences upheld. The retaining is included in the more comprehensive charge viewed as an abstract accusation of an act attended with a certain intent or consciousness, and the conception of dacoity being independent of the place where it was committed suffices to cover what is embraced within it, though the latter was an act done in British territory. The retaining was in British territory; its legal character depended on circumstances the definition of which does not involve a territorial term, though on a question of the liability of any particular person under a combination of them the question of place would for jurisdictional purposes be an essential one.

We accordingly alter the conviction in the case of each prisoner to one under Section 412 of the Indian Penal Code without disturbing the sentences.

Order accordingly.