

## APPELLATE CRIMINAL.

1880

December 21.*Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.*EMPRESS *v.* RANGO TIMAJI.\**The Indian Penal Code, Section 414—Voluntarily assisting in the disposal of stolen property—"Believe"—"Suspect".*

The word "believe" in section 414 of the Indian Penal Code is much stronger than the word "suspect", and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property, with which he was dealing, was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired.

THIS was a criminal application under the extraordinary jurisdiction of the High Court.

On the 4th August, 1880, the accused was convicted by C. Wiltshire, First Class Magistrate of Dharwar, of the offence of having voluntarily assisted in the disposal of stolen property under section 414 of the Indian Penal Code, and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 100, or, in default, to suffer imprisonment for six months more.

On the 12th October, 1878, a bullock was sold by one Rango and purchased by Basalingapa, on the guarantee of the accused that it was the property of Rango. It was in evidence that the bullock belonged to one Maharudrapa, and that it had been stolen from him. In his examination before the Magistrate the accused stated that he knew Rango who had left his village some time ago during the famine and gone to some other place to earn his livelihood; that Rango had told him (the accused) that he (Rango) had purchased the bullock for Rs. 16. From that statement of the accused the Magistrate came to the conclusion that the accused knew, or had reason to believe, the bullock to be stolen property, inasmuch as he knew Rango to be so poor that the latter was obliged to leave his village in order to earn the means of his livelihood in some other place. The Magistrate, accordingly, convicted the accused of the offence charged. On

\*Criminal Application, No. 195 of 1880, under extraordinary jurisdiction.

appeal, the conviction and sentence were upheld by the Sessions Judge (A. C. Watt) of Dharwar on the 4th September, 1880.

The accused thereupon made an application to the High Court for the exercise of its extraordinary jurisdiction.

The High Court (Melvill and West, JJ.,) sent for the record and proceedings of the case.

On the receipt of the record and papers, the application was heard by Melvill and Nanabhai Haridas, JJ.

*Manekshah Jehangirshah* for the accused.—There is no evidence in the case to show that the accused knew or had reason to believe that the bullock was stolen property. There were no circumstances connected with the sale of the bullock which would induce any reasonable man to believe that it had been stolen. The lower Courts were wrong in inferring, from the acquaintance of the accused with Rango and his statement in his examination, any knowledge or belief on the part of the accused that the bullock was stolen property. The facts proved in the case do not constitute the offence of which the accused has been held guilty.

The Hon. Rao Saheb *V. N. Mandlik* (Acting Government Pleader) appeared on behalf of the Crown.

The following is the judgment of the Court delivered by

MELVILL, J.—It lay upon the prosecution in this case to prove that the accused person knew or had reason to believe that the bullock was stolen property. It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. The word "believe" in section 414, Indian Penal Code, is a very much stronger word than "suspect", and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. The only circumstance alleged in the present case is that Rango, whose honesty the accused guaranteed, had left his village during the famine to earn livelihood elsewhere. The Court find it impossible to hold that it is a legal inference from this single circumstance that the accused had reason to believe, or, in other words, that he had

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sufficient reason to feel convinced, that Rango could not, during so long an interval, have acquired 'sufficient' means to purchase a bullock of the value of Rs. 16.

On the ground, therefore, that there is no evidence on which a conviction could legally be based, the Court reverse the conviction and sentence, and order the fine, if paid, to be refunded.

*Conviction and sentence reversed.*

## APPELLATE CIVIL.

### FULL BENCH.

*Before Mr. Justice Melvill, Mr. Justice West, and Mr. Justice Pinhey.*

MULCHAND KUBERJ (ORIGINAL DEFENDANT), APPELLANT, v. LALLU  
 TRIKAM (ORIGINAL DEFENDANT), RESPONDENT.\*

1882  
 March 9.

*Mortgage—Purchase of equity of redemption by first mortgagee—Priority—  
 Notice—Merger.*

On the 20th of August, 1870, M, the owner of a house in Gujarat, mortgaged it to the defendant's father with possession. On the 2nd of December, 1871, he made a *san*-mortgage of the same house to the plaintiff. On the 20th of April, 1872, M sold the equity of redemption to the defendant's father, who became the purchaser without cancelling his first mortgage. The plaintiff subsequently sued M to enforce his *san*-mortgage, and, obtaining a decree, placed an attachment on the house, which attachment, however, was removed on the application of the defendant's father. The plaintiff now sued to establish his right to levy the amount due on his *san*-mortgage. He claimed priority to the defendant on the authority of *Toulmin v. Steere*(1) where it was held that a purchaser of the equity of redemption could not set up a prior mortgage of his own against subsequent incumbrances of which he had notice.

*Held* that the intention of the defendant's father when purchasing the equity of redemption having been to retain the benefit of all his rights, his son the defendant might properly require the redemption of his first mortgage as the condition of the plaintiff's enforcing the decree upon his mortgage against the property.

A mortgagee purchasing the equity of redemption may indicate his intention to keep his charge upon the property alive otherwise than by express words.

*Per West, J.*—The successive charges created by the owner of an estate may be regarded as fractions of the ownership, which embraces the aggregate of advan-

\* Special Appeal, No. 412 of 1876.

(1) 3 Mer. 210.

(2) 11 Bom. H. C. Rep. 41.