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ruling there had been a similar decision by a Division Bench, *Pareshmani Das* v. *Dinanath Das*(1), though the judgment was exceedingly short.

We are indebted to Mr. Kirloskar, who obligingly argued the case for the respondent who was not represented here.

We affirm the decree of the lower Court.

Decree affirmed.

(1) 1 Beng. L. R., A. C., 117.

APPELLATE CRIMINAL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

June 29.

EMPRESS *v.* MAGANLAL.*

Jurisdiction—Offence in foreign territory—Extradition—Acts XXI of 1879 *and XI of* 1872*—Native Indian subject.*

A Native Indian subject of Her Majesty committed an offence (viz., theft in a dwelling-house,) in the territory of a Native State in alliance with Her Majesty, and was discovered in the territory of another Native State in alliance with Her Majesty, and from there brought down or came of his own accord to Ahmedabad. A certificate was granted by the Political Agent that the offence ought, in his opinion, to be inquired into in British India. At Ahmedabad a preliminary inquiry was held by a Magistrate, who committed the accused for trial by the Court of Session.

Held that the Session Court at Ahmedabad was competent to try the offence committed in foreign territory as if it had been committed in the Ahmedabad District under section 9 of the Foreign Jurisdiction and Extradition Act XXI of 1879, for when the accused was brought from foreign territory to Ahmedabad he was "found" at a place in British India within the meaning of the section. The expression "was found" used in this section must be taken to mean not where a person is discovered, but where he is actually present.

THIS was an appeal against a sentence modified, under section 18 of the Code of Criminal Procedure (X of 1872), by S. H. Phillpotts, Session Judge of Ahmedabad.

The accused Maganlal was arrested without warrant by a member of the Ahmedabad District Police at the village of Kharedi, in the Native State of Sirohi, Rajputana Agency, on a

* Appeal, No. 78 of 1882.

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charge of criminal breach of trust in respect of six currency notes of Rs. 1,000 each. He was brought down to Ahmedabad in custody, and placed before a Magistrate, First Class. The Political Agent, Rajputana, under section 9 of the Foreign Jurisdiction and Extradition Act, 1879, granted a certificate for the trial of the accused in British India. Another Magistrate of the first class at Ahmedabad thereupon made a preliminary inquiry, and committed the accused to the Court of Session for trial on a charge of the theft of the six notes from the possession of one Devidatt from a house at Sambhar in the territory of the Prince of Jodhpur, who as well as the Prince of Sirohi are in alliance with Her Imperial Majesty. The trial was by Mr. Unwin, Assistant Sessions Judge. The prosecution adduced evidence to show that the accused was a native Indian subject of Her Majesty, and an inhabitant of Ahmedabad. That he stole the notes at Sambhar, and going to Bombay exchanged three of these notes there. It was contended on behalf of the accused that, though his father was an inhabitant of Ahmedabad, where he himself was born, he was a resident of the Native State of Palanpur ; that his arrest at Kharedi, in Sirohi State, was illegal ; and that the Ahmedabad Courts had no jurisdiction to try him. The Assistant Judge held that the accused was an inhabitant of Ahmedabad, and was subject to the jurisdiction of the Courts there, and finding the evidence established the charge preferred, convicted him of it, and sentenced him to undergo rigorous imprisonment for five years, and to pay a fine of Rs. 6,500, or, in default, to suffer further rigorous imprisonment for six months. He also directed that out of the fine, if paid or recovered, Rs. 6,000 should be paid to the complainant Devidatt. The sentence was passed subject to the confirmation of the Session Judge.

Before the Session Judge it was again contended, amongst other things, that the trial was without jurisdiction, and the contention was allowed. Mr. Phillpotts held that the accused was "found", not at Ahmedabad, but at Kharedi, in foreign territory, within the meaning of section 9 of Act XXI of 1879. He, however, agreed with the Assistant Judge in holding that the accused was a native Indian subject of Her Majesty, and

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finding on the evidence that the accused assisted in disposing of the stolen notes at Bombay, convicted him, under section 414, Indian Penal Code, and reduced the sentence of imprisonment to three years, leaving the rest of the sentence untouched.

The accused appealed to the High Court.

Branson, with him *Jefferson*, *Bhaishankar* and *Dinshah*, for the appellant.—The Ahmedabad Courts had no jurisdiction. There is a marked difference in the wording of the Extradition Acts of 1872 and 1879. Section 9 of Act XI of 1872 runs thus: "All British subjects, European and native, in British India may be dealt with, in respect of offences committed by them in any Native State, as if such offences had been committed in any place within British India in which any such subject may be, or may be found." In re-enacting this provision in section 9 of Act XXI of 1879 the Legislature intentionally dropped the words " may be",and retained only the words "may be found". The former expression implies presence; the latter discovery. So that, although the older Act authorized the trial of a person if he was present at a place in British India, or if he was discovered there, the more recent Act limited the authority to the latter circumstance only.

[KEMBALL, J.—The two expressions would seem to have the same meaning and the Legislature dropped one of them to avoid tautology]. Grammatically the expressions bear a different meaning, although it must be admitted that the construction suggested by the Court has been placed in England in the case of *Queen* v. *Lopes* (1). The conviction there was, no doubt, on an Act similarly worded; but here the Legislature purposely changed the language of the Act. Then, we submit, it is not proved that accused is a native Indian subject. The evidence is defective on that point, and is insufficient to establish the guilt of the accused. The mere fact that he was born in Ahmedabad, is not sufficient to make him such. He has been carrying on trade in Palanpur, a foreign State.

Nanabhai Haridas, Government Pleader, for the Crown, was called upon to reply on certain points in the evidence.

(1) 27 L.J. 48.

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KEMBALL, J.—The appellant in this case was tried before the Assistant Session Judge of Ahmedabad and convicted on a charge of theft in a dwelling-house situated in Rajputana and was sentenced to five years' rigorous imprisonment and a fine of Rs. 6,500, or, in default, six months' further rigorous imprisonment. On the proceedings going up for confirmation of the sentence, the Session Judge held that the prisoner could not be tried for an offence committed in foreign territory, because he was found, not in Ahmedabad, but in the Sirohi Territory, whence he was brought by certain police officers to Ahmedabad; but he altered the conviction to one of aiding in the disposal of stolen property, knowing it to be stolen, and he altered the sentence to one of three (3) years' rigorous imprisonment, leaving the sentence of fine and alternative imprisonment untouched.

In the course of argument the question of the jurisdiction of the Assistant Session Judge to try the appellant for an offence committed in foreign territory has been again raised both on the above ground and on the ground that he, the appellant, was not a native Indian subject of Her Majesty.

With regard to the first question, we are unable to concur in the view taken by the Session Judge.

Mr. Branson at once very candidly and properly admitted that there was an English case, *Queen*, v. *Lopes*, directly opposed to the Judge's decision, but he contended that the cases were distinguishable; he based his contention on the circumstance that in the Extradition Act XXI of 1879, section 9, the words "may be or", which appeared in the corresponding section of Act XI of 1872 before the words "may be found" had been omitted, and argued from the omission the intention of the Legislature to limit the jurisdiction with the view to prevent illegal arrests. But, booking to the purpose of these Acts and to the fact that the words "may be", "may be found" really mean one and the same thing, we think the alteration in the more recent Act was merely to avoid redundancy, and the expression "found" used in it must be taken to mean, not where a person is discovered, but where he is actually present.

With regard to the second objection, it has been contended that the *onus* was on the Crown to show that the appellant was

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a subject of Her Majesty, and that no evidence had been offered on the point. But, in the first place, when called upon to plead to the charge, the appellant took no objection to the jurisdiction, the question having been raised for him for the first time in arguing the case; and, secondly, assuming that the question had been properly raised, we think, looking to the evidence that Ahmedabad was the home of his parents, that he himself was born and educated there, and that he only went 1½ years ago to Kharedi in Rajputana for purpose of trade, living, during that time, sometimes in Ahmedabad and sometimes in Kharedi; that there was a legal presumption in favour of appellant being a native Indian subject of Her Majesty, and, therefore, amenable to the jurisdiction of the Court of Ahmedabad where he was found.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

July 4.

RA'MCHANDRA GANESH, APPLICANT, *v.* DEVBA AND OTHERS, OPPONENTS.*

Limitation—Part payment—Execution sale—Act XV *of* 1877, *section* 20.

A sum realized by an execution sale cannot be considered part payment within the meaning of section 20 of the Limitation Act XV of 1877, so as to give a new period of limitation.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction against the decree made by A. M. Cantem, Subordinate Judge of the First Class at Belgaum.

The suit was brought in 1880 on a registered bond bearing date the 27th of June, 1861, to recover a money claim of Rs. 232-4-0. The principal debt was secured on service land, it being agreed that the debtors were to retain possession of the said land, and to pay the rent annually to the creditor in lieu of interest. But the creditor, being unable either to obtain punctual payment of the rent, or to get possession of the land, instituted the present proceedings for the recovery of the principal money

* Application, No. 142 of 1881, under Extraordinary Jurisdiction.