

not be properly tried, in the form in which he brought it. He sought to redeem a one anna eight pies share, and so suing, he was bound to bring all the other persons interested in the equity of redemption before the Court. As owner of a two-pies share, which by consent of all interested had become an estate wholly separated from the other parts of the original aggregate, he would have been bound to set forth the transactions on which this right rested, but his claim was really to redeem all that remained of the estate in the mortgagee's possession. In such a suit he was bound to make all his co-owners of the equity of redemption co-plaintiffs or defendants—*Norender Náráin Sing v. Dwárka Lál Mundar*^{(1) (2)}. Without their presence the suit could not be properly disposed of, and the excuse, that the defendant mortgagee did not take objection at the right time, has, under such circumstances, no validity.

We must reverse the decrees of the Courts below, and remand the cause for re-trial after the plaintiff has added the names as parties of the persons concerned according to the nature of the share and the right on which he intends to rely. Costs to follow the final decision.

Decrees reversed and case remanded.

(1) I. L. R., 3 Calc., 397.

(2) 3 Bea., 355.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nanábhái Haridás.

QUEEN EMPRESS *v.* TRIBHOVAN MA'NEKCHAND AND OTHERS.*

Criminal Procedure Code (Act X of 1882), Secs. 517 and 523—Evidence of ownership—Evidence Act, I of 1872, Sec. 25—Confession made to police officer, admissibility of, for other purposes than as a confession.

Statements made to the police by accused persons as to the ownership of property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an inquiry held by the Magistrate under section 523 of the Criminal Procedure Code (X of 1882.)

* Criminal Reference, No. 121 of 1884.

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An order, after trial, made by a Criminal Court for the restoration of property under section 517 of the Criminal Procedure Code (Act X of 1882) is conclusive as to the immediate right to possession; where an order has to be made under section 523, the Magistrate may in the inquiry proceed on such evidence as is available and make an order for handing the property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion.

The High Court declined to interfere with an order, made by a Magistrate under section 523 of the Criminal Procedure Code, for the delivery of property, where the Magistrate made such order upon the mere evidence of a confession of the accused to the police that the property was stolen from the adjudged owner.

THIS was a reference under section 438 of the Criminal Procedure Code (Act X of 1882), by E. M. H. Fulton, Acting Sessions Judge at Surat.

The reference for purposes of report was as follows:—

“Some time ago ornaments worth about Rs. 4,000 were stolen from one Bálubháí Manekchand. For a considerable period nothing was discovered, but finally three persons were arrested, viz., Tribhovan Mánekchand, brother of Bálubháí, Hargovan Pranu, and Nagindás Kasindás. They were all three convicted of dishonestly receiving stolen property; but, on appeal to Mr. Macpherson, Tribhovan Mánekchand and Hargovan were acquitted.

“2. It is not disputed that Tribhovan Mánekchand had possession of a certain ornament, called a *jatini kanthi*, which he got melted down by a Soni into a gold bar. This bar Tribhovan Mánekchand got one Tribhovan Kasidás to pawn on his behalf to Purshottam Raghunáth, in whose possession it was found by the police.

“3. A sum of Rs. 278-8 was found in the possession of Hargovan Pranu, who is alleged to have stated in the presence of the police that the money was acquired by pawning certain ornaments stolen from Bálubháí to Nagindás. Nagindás was convicted of the receipt of these ornaments, and his conviction was upheld on appeal.

“4. When convicting Tribhovan Mánekchand and Hargovan the Magistrate ordered the gold bar found with Purshottam and Rs. 278-8 found with Hargovan to be handed over to the complainant Bálubháí. In deciding the appeals the Sessions Judge, however, made no order as to their disposal.

"5. On this the Magistrate issued proclamations under section 523, and after six months took the evidence adduced by the various parties concerned, and on the 30th June passed an order handing over the money and the gold bar to Bálubháí. He appears, however, to have stayed execution of his own order until the disposal of the petitions of Hargovan and Purshottam on the subject.

"6. After examining the proceedings, I find that there is no evidence that Bálubháí was the owner of the property, except the statements made by Hargovan and Tribhovan Mánekchand before the police. The Magistrate thinks that the whole of these statements are admissible in evidence in these proceedings, but I am unable to agree with him. Keshavlál deposes that Hargovan told the *pancháit* and police that he had acquired Rs. 278-8 by pawning to Nagindás certain ornaments stolen from Bálubháí. To prove this whole statement against Hargovan in any proceeding whatever seems to me to be contrary to the provisions of section 25 and section 26 of the Evidence Act. Doubtless under section 27, Hargovan's statement, that he pawned ornaments to Nagindás, is admissible, inasmuch as the ornaments were found in consequence of this statement, but this does not prove that they belonged to Bálubháí, or that they were stolen, or that Hargovan received Rs. 278-8 for them.

"7. Then, as regards the gold bar pawned to Purshottam, it is clear, that, even if a confession made to the police is admissible in such a proceeding as this, no statement made by Hargovan can be proved against Purshottam. It is mere hearsay. As regards Tribhovan Mánekchand's statements, if they can be used as admissions against Purshottam (which I think is doubtful) they are not of any value, as he never admitted, even before the police, that the "*jalini kanthi*" was Bálubháí's. He always maintained that it was his own.

"8. Under these circumstances, as there is, in my opinion, no legal evidence that either the money or the gold bar belonged to Bálubháí, I think the Magistrate's order should be set aside, and that an order should be passed, directing the property to be returned to the persons in whose possession it was found. The

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Magistrate's order is absolutely inconsistent with the acquittals of Tribhovan and Hargovan by this Court, and can only be sustained if it can be held that irregular proof of ownership is admissible under section 523 of the Criminal Procedure Code (Act X of 1882)."

Nagindás Tulsidás for Purshottam Raghunáth and Hargovan Pranu.—The order founded on the statements made to the police officers was wrong. The statements were of the nature of confessions, and, as such, those statements could not be made use of against the accused. The order of the Magistrate for the restoration of property, being made after acquittal, was wrong.

Goculdás Kahándás for Bálubháí.—The inquiry, though one in a Criminal Court, should be regarded as that of a Civil Court, and the confessions were receivable in evidence. Under the provisions of the Evidence Act such evidence is admissible. Section 25 does not exclude it. The Evidence Act distinguishes between confessions and admissions. The person who made the confession has ceased to be an accused person, and the admission is no longer a confession. It is simply an admission, and can be used as such.

WEST, J.—“Confession” in section 25 of the Indian Evidence Act I of 1872 means, as in section 24, a “confession made by an accused person”, which it is proposed to prove against him to establish an offence. For such a purpose a confession might be inadmissible which yet for other purposes would be admissible as an admission under section 18 against the person who made it (section 21) in his character of one setting up an interest in property, the object of litigation or judicial inquiry and disposal.

Where there has been a trial and an order by the trying Court under section 517 of the Criminal Procedure Code (Act X of 1882) that concludes the immediate right to possession. Where, as in this case, an order has to be made under section 523, the Magistrate may in the inquiry proceed on such evidence as is available, and make an order for handing property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for a conversion. It does not seem

necessary, therefore, for this Court to interfere: see *Bullock v. Dunlap* ⁽¹⁾, in which the accused had been acquitted, yet failed in his suit against the police officer, retaining a ring pending the Magistrate's disposal of his application for instruction as to disposal of it under Stat. 2 and 3 Vic., cap. 71, sec. 29. Reference may be made also to *Dover v. Child* ⁽²⁾.

These cases show that the Magistrate may make an order on such evidence as is available, which order is good as to the delivery and possession, without depriving the real owner of any action that he may have for the assertion of his right in the Civil Court. In the Code of Criminal Procedure the provisions in this respect are less explicit than in the English Statutes, but the principle recognized is the same, and leads to similar consequences.

⁽¹⁾ L. R., 2 Ex. Div., 43.

⁽²⁾ L. R., 1 Ex. Div., 172.

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Scott,

QUEEN EMPRESS v. GANGA'RA'M SANTRA'M.*

Theft—Indian Penal Code (Act XLV of 1860), Sec. 378—Removal of property against wish of ostensible purchaser thereof—Apparent title or colour of right to property.

To constitute theft it is sufficient if property is removed, against his wish, from the custody of a person who has an apparent title, or even a colour of right, to such property.

Cape v. Scott ⁽¹⁾ followed.

THIS was a reference, under section 438 of the Criminal Procedure Code (Act X of 1852), by E. Hosking, Esquire, Sessions Judge of Khándesh at Dhulia.

The reference was stated as follows:—

“Gangarám Santrám, (the accused), a blacksmith, owed complainant Girju Rs. 60, and during Gangarám's absence his wife Dhondi on the 21st July, 1884, sold, by Gangarám's direction, his

*Criminal Reference, No. 133 of 1884.

⁽¹⁾ L. R., 9 Q. B., 269, at p. 277.

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