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QUEEN-EMPRESS v. HARI LAKSHMAN.

Dáji Abáji Khare for the applicant.—The Subordinate Judge had no power to ask questions to a witness with the object of inculpating him. The witness was not bound to answer such questions.

NA'NA'BHA'I HARIDA'S, J.—Under section 165 of the Indian Evidence Act I of 1872 the Judge may ask any question he pleases about any irrelevant fact, if he does so in order to discover or to obtain proper proof of relevant facts.

In the present case it appears, from the Subordinate Judge's own proceedings, that the question was asked, not with the object above specified, but with a view to criminal proceedings being taken against the witness. Therefore the objection taken by the witness to answer that question, which appears to be irrelevant, was a reasonable one, and he was not legally bound to answer it.

The conviction and sentence must, therefore, be reversed and the fine refunded.

Conviction reversed.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1885. *November 24.*

QUEEN-EMPRESS *v.* ABDUL LATIB VALAD ABDUL RAHIMAN.*

Jurisdiction—Jurisdiction of Courts in British India over offences committed out of British India—Rájkot—British India—Statute 21 and 22 Vic., Chap. 106—Indian Penal Code (Act XLV of 1860), Secs. 381, 410, 411.

The civil station at Rájkot is not part of British India within the meaning of Statute 21 and 22 Vic., Chap. 106.

Where the accused, a subject of a Native state, committed theft at Rájkot Civil Station, and was found in possession of the stolen property at Thána,

Held, that as the offence was not committed in British India, and as the accused was the subject of a Native state, the Sessions Court at Thána had no jurisdiction to try the accused for theft, under section 381 of the Indian Penal Code (XLV of 1860). But it was competent to try him for dishonest retention of stolen property under section 410 of the Indian Penal Code as amended by Act VIII of 1882.

THE accused was a subject of the Janjirá State. He was charged with having committed theft at Rájkot of property, con-

* Criminal Review, No. 322 of 1885.

sisting of gold and silver ornaments and cash, of the aggregate value of Rs. 1,500 belonging to Mahomed Isoof valad Shaik Ahmed while he was in his service as a private servant. The accused was found in possession of the stolen property at Thána. He was, therefore, committed for trial to the Sessions Court at Thána, and on his own confession convicted of theft under section 381 of the Indian Penal Code (XLV of 1860), and sentenced to five years' rigorous imprisonment.

The High Court, in the exercise of its revisional powers, sent for the record and proceedings in the case. There was no appearance for either party.

JARDINE, J.—In this case the learned Sessions Judge has held that he had jurisdiction to try the accused, who is an inhabitant of the Native State of Janjirá, for the offence of theft, under section 381 of the Indian Penal Code (XLV of 1860), "inasmuch as the theft took place within British territory at Rájkot, and the things stolen were possessed by the thief in a place within the limits of this (the Thána Sessions Judge's) Court's jurisdiction." On the prisoner pleading guilty to the charge under section 381, he was convicted and sentenced.

The proceedings of the Magistrate show that by Rájkot is meant the British station in Káthiáwár near the town of that name. We are not aware of any legislative recognition of the British station of Rájkot as a part of British India, nor of any judicial ruling to that effect by this Court. On the contrary the Courts of the Political Agency in Káthiáwár were, by notification 1499, dated the 17th December, 1868, Foreign Department, (published at page 1288 of the *Bombay Government Gazette* of the 31st December 1868), recognized by the Governor General in Council for the purpose of section 284 of the Code of Civil Procedure (Act VIII of 1859), which refers to Civil Courts established by the Governor General of India in Council in the territories of any foreign prince or state. Another notification of the Government of India, No. 1783 of the 23rd September, 1874, (printed in Mr. Prinsep's note to section 458 of his Code of Criminal Procedure, seventh edition) in exercise of powers conferred under the 28th Vic., Chap. 15, sec. 3,

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(which empowers the Government of India to authorise the High Courts to exercise jurisdiction in respect of Christian subjects of Her Majesty resident within the dominions of princes and states of India in alliance with Her Majesty), mentions the states of Káthiáwár as among the Native states, territories, and chiefships about which the order is passed.

The land on which the British station of Rájkot is established is the subject of an agreement between the Thákor of Rájkot and the Political Agent, dated the 25th September, 1863, printed as No. LXX in Aitchison's Treaties, Vol. 4, page 165, edition of 1876. This land is thereby assigned in perpetuity to the officers of the Government of Bombay for the purpose of assisting Government in establishing a civil station on its own ground in Rájkot, the Government allowing an annual deduction of Rs. 1,500 from the tribute payable by the Native State. Article 13 further stipulates that, if Government ever abandon the station, the land must be returned to the Rájkot State, and the deduction be thenceforward discontinued. There are other conditions about the levy of taxes, the jurisdictions, and other matters. On consideration of all the articles of this agreement, we are of opinion that it does not relate to the sovereignty of the land, although in different respects it deals with its use and confers certain powers and jurisdictions on the officers of the British Government. This power and jurisdiction exercised by the Political Agency officers are, in our opinion, such as Act XXI of 1879, the Foreign Jurisdiction and Extradition Act, applies to.

For these reasons we are of opinion that Rájkot civil station is not part of British India within the meaning of the Statute 21 and 22 Vic., Chap. 106; and that as the accused is a subject of the Janjirá State, the Sessions Court of Tháná had no jurisdiction to try him for the theft. On this ground, we reverse the conviction and sentence. Under section 410 of the Indian Penal Code (XLV of 1860), as amended by Act VIII of 1882, the definition of stolen property includes property stolen outside of British India. The accused might, therefore, have been charged with the offence punishable under section 411.

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We now order that he be retried by the Court of Session on an amended charge for the dishonest retention, the previous convictions being also set forth in the charge.

Conviction and sentence annulled, and retrial ordered on an amended charge.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

JOTIRA'M MA'NIRA'M, APPLICANT, *v.* DEVBA' ISHWARA'PA', OPPONENT.*

1885. *December* 3.

Conciliation-agreement, notice of, to parties thereto—Service of such notice through a Subordinate Judge—Dekkhan Agriculturists' Relief Act XVII of 1879, *Sec.* 49, *rule framed under—Ultra vires—Procedure.*

The rule(1), that a notice to parties to a conciliation-agreement should be served through a Subordinate Judge, framed by the Local Government under section 49 of the Dekkhan Agriculturists' Relief Act XVII of 1879, and published at page 682, Part I, of the *Bombay Government Gazette*, is not *ultra vires*, and a notice so served was *held* to be a good notice.

THIS was a reference by Dr. A. D. Pollen, Special Judge under Act XVII of 1879.

In this case notice to show cause why the conciliation-agreement should not be filed, was drawn up by a conciliator, signed, and sent to the Court to be served upon the parties to the said agreement. The serving officer returned it served upon the parties, accompanied by his affidavit to that effect. The Subordinate Judge of Bársi refused to file the agreement on the ground that notice had not been legally served upon the parties as contemplated in section 44 of Act XVII of 1879.

* Civil Reference, No. 39 of 1885.

(1) The rule runs as follows:—"The delivery of the written notice referred to in section 44 of the Act shall be effected through the Subordinate Judge, to whom it should be sent for service by the conciliator at the same time that he forwards the agreement. The Subordinate Judge, immediately on receipt of the agreement and of the written notice, shall cause the latter to be duly served on the party named therein, and the date of such service shall be endorsed by the Subordinate Judge upon the agreement."