

1901.

VISHWANATH  
v.  
VASUDEV.

*Balaji A. Bhagavat* for respondent 10 (defendant 12).

JENKINS, C.J. :—The question for our consideration is whether the lower appellate Court was entitled to vary the decree of the first Court and reduce the one-third share in a kulkarni vatan awarded to the present appellants by that decree to a one-sixth share. The appeal to the lower appellate Court was presented beyond time, but of the several appellants one only, (defendant 14,) applied to have the delay excused. This he did on grounds personal to himself, and the result was that the appeal of all the appealing defendants was admitted and the decree of the first Court was varied in the way indicated. In this variation defendant No. 14 had no interest, and as the case clearly does not fall within section 544 of the Code of Civil Procedure, the District Judge erred in disturbing the shares in the kulkarni vatan, for there was no ground on which the delay of the appellants, defendants 1 to 6 (who alone were concerned in this question), could be excused.

The decree of the lower appellate Court must therefore be reversed except as to costs and that of the Subordinate Judge restored: the appellants' costs of this appeal to be borne by respondents 1 and 3.

*Decree reversed.*

## CRIMINAL REVISION.

*Before Mr. Justice Candy and Mr. Justice Chandavarkar.*

*IN RE MATHUR LALBHAI.\**

1901.

June 10.

*Criminal Procedure Code (Act V of 1898), sec. 517—Disposal of stolen property on conviction of the thief—Babashahi coin—Legal tender—Customary coin.*

A witness for the prosecution in a case of theft produced a sum of money in Babashahi (Baroda) coin (part of the stolen property) which the accused had paid to him in satisfaction of a debt. The accused was convicted, and at the close of the trial the Court, under section 517 of the Criminal Procedure Code

\* Criminal application of revision No. 41 of 1901.

(Act V of 1898), ordered the money to be restored to the complainant from whom it had been stolen.

1901.

*Held*, that the order was right. The stolen coins were not current coin of the realm and was neither by Statute nor by the law of merchants in British India a legal tender. The property in them did not therefore pass by mere delivery, but remained in the complainant.

IN RE  
MATHUR  
LALBHAI.

*Collector of Salem*<sup>(1)</sup> and *Empress v. Joggessur Mochi*<sup>(2)</sup> distinguished.

THIS was an application for revision under section 520 of the Code of Criminal Procedure (Act V of 1898).

The applicant was a witness for the prosecution in the case of *Queen-Empress v. Parbhudas Javerdas*, tried by the Additional Session Judge at Ahmedabad. The accused in that case had stolen a large sum of money from the complainant consisting of Babashai (Baroda) coin and had used it in paying his creditors, of whom the applicant was one.

At the trial the applicant produced a sum of Rs. 2,555 in Babashai (Baroda) coin which the accused had paid him.

The accused was convicted, and at the close of the trial the Judge ordered the stolen money which had been produced by the witnesses to be restored to the complainant from whom it had been stolen. He said :

A difficulty has been suggested as to the disposal of the money contained in the bag, Exhibit N-1. All of it, it will be noted, was money recovered from the creditors of the accused. My finding amounts to holding that it formed part of the proceeds of theft. There is not, it is true, and there cannot be, evidence that it was the identical money stolen and distributed by the accused. But under the terms of the explanation to the amended section 517, Criminal Procedure Code, it seems to me that the Court is empowered to order its restoration to the complainant.

The property, including the sum of money produced by the applicant, was accordingly handed over to the complainant.

The applicant applied to the High Court under section 520 of the Criminal Procedure Code (Act V of 1898) to set aside the order passed by the Sessions Judge for the restoration of the property to the complainant and praying that the Rs. 2,555 might be returned to him.

(1) (1873) 7 Mad H. C. Rep. 233.

(2) (1878) 3 Cal. 379.

1901.

IN RE  
MATHUR  
LALBHAI.

Notices were issued to the District Magistrate and the complainant calling upon them to show cause against the application.

Ráo Bahádur *Vásudeo J. Kirtikar*, Government Pleader, for the Crown, showed cause:—The money produced before the Court is found to be the identical money stolen by the accused. The lower Court had therefore jurisdiction to deal with the property.

*R. V. Desai* for the complainant showed cause:—The order of the lower Court is right. The complainant from whom the coins were stolen is still the owner and is entitled to them. The fact that they were paid over by the thief to the applicant does not make the applicant the owner. The cases of *Collector of Salem*<sup>(1)</sup> and *Empress v. Joggessur Mochi*<sup>(2)</sup> do not apply. These were cases in which stolen currency notes were paid away by the thief. Currency notes are legal tender and must be accepted as payment by the payee and the property in them passes by mere delivery. But Babashai (Baroda) coins are not legal tender, and therefore the property in them did not pass by mere delivery.

*L. A. Shah* for the applicant:—Assuming that the money produced is part of the stolen property, the applicant became the owner on his accepting it from the accused in satisfaction of his debt. The ownership in cash is transferred by mere delivery, even if it be stolen property. We rely upon *Collector of Salem*<sup>(3)</sup> and *Empress v. Joggessur Mochi*<sup>(4)</sup>. These cases no doubt deal with the case of a currency note; but the *ratio decidendi* applies to the present case. The amended section 517 does not empower the Court to deal with such property.

CHANDAVARKAR, J. :—This is an application by Mathur Lalubhai asking us to revise the order passed by the Additional Sessions Judge of Ahmedabad on the conviction of the accused in Sessions case No. 218 of 1900, directing, under section 517 of the Criminal Procedure Code, that the amount of Rs. 2,355 in Babashai

(1) (1873) 7 Mad. H. C. 233.

(2) (1878) 3 Cal. 370.

(3) (1873) 7 Mad. H. C. 233.

(4) (1878) 3 Cal. 370.

1901.

IN RE  
MATHUR  
LALBHAI.

(Baroda) coin produced by the applicant before the Police and brought into Court subsequently as part of the stolen property in that case, should be returned to its original owner, from whom it had been stolen.

It is contended before us in support of the application, on the authority of the cases of *Collector of Salem*<sup>(1)</sup> and *Empress v. Joggessur Mochi*<sup>(2)</sup> that the property in dispute, which consists of *Babashai* rupees, being money, the title to it passed to the applicant by mere delivery as soon as he received it *bona fide* in satisfaction of a legal debt due to him. Those rulings have been followed by the Panjab Chief Court in two cases—*Kanshi Ram v. Secretary of State for India*<sup>(3)</sup>; *Mathra Dass v. Ramanand*,<sup>(4)</sup> and must be accepted as good law. But the principle of the rulings in question is that a currency note, like money which is current coin of the realm, is a *legal tender*, and a person receiving it acquires a perfectly valid title to it. But money, to come within the rule, should be *current coin*. “There are no doubt cases in which money cannot be recovered by the rightful owner from a person who has obtained possession of it. This is one of the incidents attaching to a payment of current coin” (Per Cave, J. in *Ex parte Wolverhampton Banking Co. In re Campbell*<sup>(5)</sup>). That rule, however, cannot apply where the money passing from one hand into another is not current coin of the realm and is neither by statute nor by the law of merchants in British India shown to be a legal tender or, (to use the language of the Editors of Smith’s Leading Cases in their notes to *Miller v. Race*), “accustomably transferable in the country in the same manner as *cash*.” In the language of Fry, L.J., in *Picker v. London and County Banking Co.*,<sup>(6)</sup> a question such as the one which arises in this case must be determined with reference to the law and custom prevailing where it arises, for, if it were otherwise, “if it were proved that cowrees are part of the currency of Africa, they must be treated as money in this country, though there were no custom here to treat them as money.”

(1) (1873) 7 Mad. H. C. 233.

(2) (1878) 3 Cal. 379.

(3) (1890) 25 P. R. No. 83, p. 259.

(4) (1878) 13 P. R. No. 73, p. 235.

(5) (1884) 14 Q. B. D. 32 at p. 36.

(6) (1887) 18 Q. B. D. 515, p. 520.

1901.

*IN RE*  
MATHUR  
LALBHAI.

We must look to the law and custom of British India to determine the question. That law does not make *Babashai* coin a legal tender, and therefore the title to it cannot pass by mere delivery. As to custom, there is no suggestion or proof of it in this proceeding. If there is any custom, it may be set up, if the parties choose, in a civil proceeding. But on the present application we do not think we can interfere with the discretion exercised by the Sessions Judge under section 517 of the Criminal Procedure Code. We reject the application.

*Application rejected.*

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Chandavarkar.*

1901.

June 14.

NATIONAL BANK OF INDIA, LIMITED, PLAINTIFF, *v.* SALEH  
MAHAMED BALAXA, DEFENDANT.\*

*Letter of credit—Bill of exchange—Meaning of the word “honoured” in reference to a bill of exchange—Right of acceptor of bill to shipping documents.*

It is in accordance with ordinary mercantile usage for a party presenting a bill for acceptance to deliver to the acceptor at the time of acceptance the shipping documents relating to the goods in respect of which the bill is drawn.

The primary purpose of a letter of credit is to secure an obligation to accept the bills or drafts drawn under it. An acceptance of itself imposes an obligation to pay.

Where a letter of credit stipulates for security, the purpose is to obtain that security at acceptance, for it is then that the acceptor's liability on the draft arises.

A letter of credit addressed by the firm of S. R. & Co. to the defendant stated that his drafts to the extent of £4,000 would be “duly honoured by us against delivery of shipping documents and invoices.” A bill was drawn by the defendant upon the firm against this credit and was sold and handed over by him to the Bank, together with shipping documents relating to a consignment of goods made by him in respect of which the bill was drawn. The Bank presented the bill to S. R. & Co., by whom it was duly accepted, and the Bank thereupon handed over the shipping documents to S. R. & Co. When the bill

\* Civil Reference No. 2 of 1901.