## APPELLATE CRIMINAL.

*Before Mr. Justice Gledhill.*

F. M. JONES AND ONE (APPELLANT)

*v.*

THE KING (RESPONDENT).*

1947

*Sept. 27.*

*Penal Code, s. 414—Application of the doctrine of* ejusdem generis *rule.*

*Held :* That ingredients of an offence under s. 414 of Penal Code are "concealing" or "disposing of" or "making away with" properties which the offender knows or has reason to believe to be stolen. It is not one of the ingredients of the offence that the person who deals with stolen property should deal in such a way that it becomes impossible to identify it or use it as evidence.

*Amar Nath* v. *Emperor*, 36 Cr.L.J. 1459; *Nga Yan* v. *Emperor*, (1910—13) 1 U.B.R. 8, dissented from.

The rule of *ejusdem generis* has no application in the interpretation of s. 414 of Penal Code. That rule applies when the words of general meaning are followed by words of more particular meaning. Here concealing, disposing of or making away with cannot constitute a genus. Disposing may be a genus of which "concealing" forms a species, but "concealing" is not a species of "making away with."

*Thein Moung* for the appellant.

GLEDHILL, J.—The appellant was tried jointly with one Mohamed Ebrahim, who was convicted under section 408, Penal Code, on his plea of guilty, of criminal breach of trust of a Dodge Tipper belonging to the Army. The appellant was convicted under section 414, Penal Code, of voluntarily assisting in disposing of the vehicle, knowing it to be stolen property.

Mohamed Ebrahim was a driver in the employ of the Nizami Corporation which had a contract with the Army. To enable the Corporation to perform its contract, several motor vehicles, including the Dodge

* Criminal Appeal No. 1710 of 1947 being appeal from the order of Western Subdivisional Magistrate, Rangoon, dated the 23rd August 1947, passed in Criminal Regular Trial No. 178 of 1947.

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Tipper, were lent by the Army to the Corporation. One day, either at the end of December 1946 or beginning of January 1947, the tipper was sent out in charge of Mohamed Ebrahim, and was not returned.

On the 3rd January the appellant sold the vehicle to a Mr. Trutwein of Yenangyaung for Rs. 2,500, and it was eventually recovered from him.

The appellant deposed that Mohamed Ebrahim was brought to him by Maung Kauk (P.W. 3), and introduced as a person in a position to sell a dodge truck, and two days later Mohamed Ebrahim delivered it, the price agreed upon being Rs. 1,500. According to the manager of the Nizami Corporation (P.W. 5) the truck was worth Rs. 5,000.

The appellant admitted that he made no enquiries about Mohamed Ebrahim's position in life, and he did not ask him to produce any documents of title or even ask him where he got it from.

Maung Kauk's evidence is in many respects suspicious, but his evidence that he suspected the truck was stolen, because Mohamed Ebrahim was a mere driver, and in no position to purchase a truck, is obviously true.

Trutwein (P.W. 2) says he agreed to purchase the truck for Rs. 2,500, and the truck was at the appellant's house. It had then no military or civil number. He had it painted before he took it to Yenangyaung. The appellant was at the time of the crime a foreman in the Road Transport Board.

There are other facts indicating the nature of the transaction, but I feel I have said enough to show that everyone concerned in the transaction must have known the truck was stolen property.

U Thein Moung's main point in argument was that, admitting the facts, the appellant has not committed the offence punishable under section 414 of the Penal Code.

He relies on *Amar Nath* v. *Emperor* (1) and *Nga Yan* v. *King-Emperor* (2).

The former dealt with the case of a person spending money which he knew to have been embezzled by another. It was held that the *ejusdem generis* rule must be applied to the words " concealing or disposing of or making away with the property " in section 414 of the Penal Code, and it was said that the section was clearly intended to penalize persons who deal with stolen property in such a way that it becomes impossible to identify it or use it as evidence.

In the latter case, the question was whether the person (not the thief) who restored stolen property to the owner was liable to conviction under section 414. It was held he was not. Here again, the *ejusdem generis* rule was applied and it was held that the section referred to assistance given to a thief to enable him to conceal the stolen property or to convert it to his own use.

For reasons which I hope to make clear, with respect, I differ from both these dicta as to the scope of the section. With respect, I agree that the person who restores stolen property is not punishable under section 414.

The *ejusdem generis* rule is applicable when words of more general meaning follow words of more particular meaning.

Primarily, every word in a statute is to be given its full meaning, as understood in the Courts, but, subject to the condition that the Courts are not at liberty to impose upon the words limitations not called for by the sense, objects, or mischief of the enactment, where particular words are followed by a general word, the general word is presumed to be restricted to the same

(1) 36 Cr.L.J. 1459. (2) (1910—13) 1 U.B.R. 8.

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genus as the other words. Thus to repeat an example quoted in *Nga Yan*'s case (1) where a statute provided for a rate on the owners of " houses, buildings, and property other than land " in excess of that imposed on land, it was held that " property other than land " must be restricted to property of the same genus as houses and buildings, and would not include a railway or canal.

Now, in considering this question it is necessary to remember that the object of the Act was to provide a " general penal code ", *i.e.* to provide a punishment for all generally known and recognized crimes. It was intended to punish, not only those who committed the well known crimes such as theft, but also those who were so connected with the principal as to come within the categories described in English common law as accessories, before and after the fact.

A professional thief, of necessity needs a person, sometimes described as a " fence ", to dispose of his ill-gotten gains, and I cannot think it likely that it was intended to save him from punishment. Usually his activities would be punishable under section 411 of the Code, but the " fence " might arrange for the disposal of stolen property for a thief to a 3rd person without ever having possession of the property. I cannot believe it was ever intended that such an act was to go unpunished.

If the *eiusdem generis* rule is to be applied to the words " concealing, or disposing of, or making away with property ", it must first be shown that the words *concealing*, *disposing of*, and *making away with* can constitute a genus.

It seems to me that the interpretation of these words in *Amar Nath*'s case (2) as meaning dealing with

(1) (1910—13) 1 U.B.R. 8. (2) 36 Cr.L.J. 1459.

stolen property in such a way as to make it impossible to identify it cannot be correct, because this puts a narrower meaning on the words when combined than is contained in the first word, which should be the most particular if the rule is applicable, and which by itself would connote concealment for any purpose, not merely concealment to avoid the property being identified.

"Disposing of" may be a genus of which "concealing" forms a species, but "concealing" is not a species of the genus "making away with", and "making away with", which comes last is surely a species of "disposing of." When a more particular word follows a general word, surely the *ejusdem generis* rule can have no application.

In my opinion, then, each of the expressions "concealing", "disposing of", and "making away with" must be given its full meaning, and I think the acts of the appellant set out above amount to assisting in the disposing of, and making away with the stolen truck.

I have been asked to reduce the sentence. The appellant received a sentence of one year's rigorous imprisonment, the same as Mohamed Ebrahim received, and I cannot think it too much. The appellant is an Anglo-Indian of 45, in such a position, and possessed of such knowledge, as to make his conduct particularly blameworthy.

The appeal is dismissed.