1863.

DHONDU' JAGANNA'TH v. NA'RA'YAN RA'MCHANDRA et al.

which contained the promise to allow interest upon the consolidated balance was not stamped, and could not, under Reg. XVIII., Sec. 10, be received as evidence for that purpose, but as a *sámádaskat*, or simple admission of the balance then due, it was receivable, although not stamped; and the Judge was in error in having declined to receive it for that purpose.

No costs, as prior decisions of this court had been in the respondent's favour.

Decree amended.

Crown Cases.

Sept. 30.

REG. v. VAKHATCHAND and another.

Opium—Keeping Smuggled Opium—Quantity—Reg. XXI. of 1827, Sec. 4.

Where more than one person is convicted, under Sec. 4 of Reg. XXI. of 1827 (*a*), of keeping smuggled opium, each of the convicts is liable to the whole penalty therein imposed, viz., the forfeiture of double the value of the opium, and double the amount of the duty leviable thereon.

The decision of the late Sadr Foujdári Adálat reported in Vol. III. of Morris's S. F. A. Reports, p. 673, overruled.

IN this case the accused were charged with having, on the 10th day of April 1863, kept and concealed at their house in Súrat 32¾ Bengáli seers of smuggled opium, and with having thereby committed an offence punishable under Sec. 4 of Reg. XXI. of 1827.

The case was tried by R. H. Pinhey, Sessions Judge of Súrat, on the 10th of July 1863, with the aid of assessors. The case for the prosecution rested on the evidence of two members of the Súrat police, and a peon employed in the service of the B. B. and C. I. Railway, who proceeded on suspicion to the house occupied by the appellants, and seized them while actually engaged in unpacking the smuggled opium forming the subject of the charge. The statements of the appellants before the committing Magistrate, in which they admitted the seizure of the opium in the house occupied by them jointly, were likewise in evidence.

(*a*) Sec. 4 :—"In case any person or persons shall knowingly harbour or keep or conceal, or shall permit to be harboured or kept or concealed, any smuggled opium, whether or not he or she or they have property or interest therein, such person or persons shall for each such act forfeit double the value of such opium, to be ascertained on its sale by auction, as prescribed in Section 6, clause 5, and double the amount of duty leviable on it, which forfeitures shall be enforced in the mode prescribed in Section 7."

For the defence it was contended that there was no prosecution by the Collector, as required by Sec. 7 of the Regulation (*b*).

The Sessions Judge convicted the appellants, observing in his finding that with respect to the technical objection raised by them, that the prosecution had not been instituted by the Collector of Customs, it was quite clear, from a comparison of the two clauses comprising Sec. 7 of Reg. XXI. of 1827, that although a prosecution in an opium case must be instituted by the Commissioner of Customs, who now represents the Collector of Customs in Bombay within the limits of the High Court's original jurisdiction, no such prosecution by authority was necessary without those limits. The Session Judge sentenced the appellants, under Sec. 4 of Reg. XXI. of 1827, to pay a forfeit of Rs. 2,377-4-10 each, being the aggregate of double the value of the opium, as ascertained by public sale, and double the amount of duty leviable thereon, commutable in default of payment in the case of each of them to imprisonment for one year, under Sec. 7 of the same enactment.

Against this conviction and sentence they preferred an appeal to the High Court.

The appeal was argued before NEWTON, WESTROPP, and ERSKINE, JJ., on the 18th of September 1863.

Dhirajlál Mathurádás, for the appellants, contended that the Sessions Judge was in error in holding that it was not necessary for the Commissioner of Customs to prosecute in cases of this nature without the limits of the High Court's original jurisdiction. That the evidence for the prosecution was untrustworthy, and insufficient to support the charge. That the entire of the forfeiture had been adjudged against each of the prisoners—a sentence not warranted by the Regulations, and opposed to the Sadr Foujdári Adálat's ruling in *The Queen* v. *Rajgur and another*, reported in Morris's Foujdári Reports, Vol. III., p. 673, in which only one forfei-

(*b*) Sec. 7 :—"*First*—The penalty for abetting the smuggling of opium, as described in Sec. 4 of this Regulation, shall be enforced by information before the Zillah Magistrate or Criminal Judge, according to the General Code, if the act were committed within the jurisdiction of any Zillah Court, and the period of imprisonment assignable in commutation of the forfeiture shall not exceed two years.

"*Second*—But if the act were committed within the jurisdiction of His Majesty's Supreme Court of Judicature, the case shall, on prosecution by the Collector of the customs on opium, be tried, and if the offence be proved the forfeiture shall be levied, or a suitable punishment in commutation thereof shall be awarded by the Court of Petty Sessions, unless the amount of the forfeiture should exceed 500 Bombay Rupees, when the case will be tried and determined by the said Supreme Court."

1863.

REG. v. VAKHATCHAND et al.

ture was adjudged and apportioned out among the prisoners.

The papers and proceedings having been called for, the case was heard on the 23rd of September 1863, when the Court overruled the first and second objections made to the conviction, but reserved the question as to the amount of the fine for consideration.

NEWTON, J., now delivered the decision of the Court on the point reserved, September 23rd. The Judges who had heard the argument had fully considered the point reserved, and had also consulted Sausse, C. J., Forbes, J., and Tucker, J. All were unanimous in holding that the ruling of the late Sadr Foujdári Adálat, relied on by the pleader for the convicts, could not be upheld, and that, under Sec. 4 of Reg. XXI. of 1827, each of the convicts was liable to pay a forfeit of double the value of the smuggled opium, and double the amount of the duty leviable thereon. The appeal was accordingly dismissed, and the conviction and sentence were affirmed.

Conviction and sentence affirmed.

Sept. 15.

Special Appeal No. 105 *of* 1863.

RAGHIA', an infant, by his guardian and mother, THAKI, widow of RA'VNIA' .....*Appellant.*

DHARMA' JHATU .....*Respondent.*

Bond—Post-stamped Bond—Representatives of Grantor of Bond—Third Parties—Reg. XVIII. of 1827, *Secs.* 13 *and* 14.

A bond or other writing stamped after the death of the grantor is valid against his heirs. The personal representatives or other persons claiming as heirs or kindred of a deceased grantor stand, as regards Secs. 13 and 14 of Reg. XVIII. of 1827 (*a*), in the same position as the deceased grantor would, and are not third parties within the meaning of Sec. 14.

The previous decisions of the late Sadr Court to the contrary overruled.

THE respondent, Dharmá, plaintiff below, sued to recover possession of a strip of land situated at a place called Aori, in the Thánà District, claiming under a sale to him

(*a*) Sec. 13:—"*First*—A person possessing a bond or other writing requiring to be written upon a stamp, but which is written either on paper or other material not stamped, or on a stamp of a value below what is required, may procure such bond or writing to be duly stamped, by presenting it to any collector of land revenue with the price of the proper stamp, and a penalty to Government equal to twenty times such price."

Sec. 14:—"*First*—A bond or other writing stamped after its original date, if executed within the Zillahs subordinate to the Presidency of Bombay, shall, so far as it is affected by the stamp, become valid against the grantor from its original date; but, as to the rights of third parties the date of its being stamped shall be held to be its real date."