

evidence to convict him, and that the evidence of his (prisoner's) wife, who only deposed to the receipt by him of the property of which the murdered woman had been plundered, could not by law be used against him.

1868.
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v.
BYHA' SUBJIM
et al.

The case against the third prisoner entirely broke down.

The Session Judge convicted Byhá, and sentenced him to death, and acquitted the two others, but at the same time forwarded Pushiá to the Magistrate, stating, "though acquitted, however, he is not discharged, for the finding of the jewels is a fact so connecting him with the crime, that the Court considers that, after due inquiry, he should be bound over in ample security for future good conduct."

The case came before the High Court (present ERSKINE, NEWTON, and WESTROPP, JJ.) in due course, and the following order was passed:—

The Court confirms the sentence of death passed on the prisoner Byhá. The Session Judge, having recorded a judgment of acquittal in the case of the accused Pushiá, should have ordered his discharge. He might, if he thought it necessary, have brought to the notice of the Magistrate his (the Judge's) opinion that security for Pushiá's good behaviour should be taken.

Inform the Session Judge also that, under Sec. 195 (of the Code of Criminal Procedure), he is bound to take a note of each witness's deposition as the examination proceeds, and that this is not complied with by a mere statement that a witness deposes as the last.

REG. V. GAPA'U KOM KUSA'JI.

Nov. 13.

Receipt—Refusal to give Stamped Receipt—False Charge.

The refusal to give a stamped receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamped receipt is not an indictable offence.

THIS case was decided by G. M. Macpherson, F. P. Magistrate at Ahmednagar. The charge against the prisoner was, that she, "with intent to injure Ratanchand Márvádi, made a false charge against him of refusing

1863.
REG.
v.
GAPPA'U
KOM
KUSA'JI.

to give her a receipt on stamped paper for money paid to him by her, knowing that there was no just or lawful ground for such charge: Sec. 211 of the Indian Penal Code."

The trying Magistrate convicted the accused, and sentenced her to pay a fine, commutable, in default of payment, to a fixed term of imprisonment under the section quoted.

On a review of the case, the High Court (present ERSKINE, NEWTON, and WESTROPP, JJ.) made the following order:—

The Court reverses the conviction and sentence, as it does not appear that the accused made a false charge of anything that was an offence at law.

Conviction reversed.

Nov. 13.

REG. V. ANA'JI valad GOVINDRA'M.

Mortgaging Property previously mortgaged—Officer—Hindús, Religious Law of, Reg. XIV. of 1827, Sec. 1., Cl. 1, Art. 7.

Reg. XIV. of 1827, Sec. 1., Cl. 1, Art. 7, * and the Religious Law of Hindús, are not applicable to the case of a party charged with mortgaging his house a second time previously to redeeming the same from a prior mortgagee.

THIS case was heard and decided in the first instance by Vishnu Purshotam, a Subordinate Magistrate of the First Class at Ahmednagar.

The accused was charged, under the 7th Art. of Cl. 1, Sec. 1., Reg. XIV. of 1827, with committing an offence declared penal by his religious law, and subversive of public morality, in that he mortgaged to a Márvádi for Rupees 47-8-0 a house which he had previously mortgaged to another, the claims of the prior mortgagee not having been satisfied at the date of the second mortgage.

The trying Magistrate found the facts proved as charged. He considered that they would constitute the offence of cheating, under Sec. 415 of the Penal Code, but that as the alleged offence was committed in the year 1861, before the Penal Code came into operation, Reg. XIV. of 1827 applied, and the Hindú Law Officer having declared the act charged to be penal, resembling "theft" under the

* Repealed by Act XVII. of 1862.