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23 and 40 of the Act would (it may be supposed) have used the term "liable *upon conviction*" instead of the single word "liable" in other sections of the Act, and would not have left room for the suggestion (which, however absurd in itself, is logically sustainable, if there is anything in the argument drawn from incongruity of expressions) that offences other than those mentioned in Section 23 are punishable without any conviction at all. The difference between the words "liable to be imprisoned" in Section 32 and "liable to imprisonment" in the other sections of the Act, however trivial that difference may be, indicates that Section 32 was drafted by a different hand from that to which we are indebted for the other portions of the statute.

For these reasons we think that we ought not to attach much weight to the only argument which is adverse to the natural construction of Section 32, viz., the argument drawn from the use of a different phraseology, to express the same thing, in other sections of the Act. On the other hand we feel bound to construe a penal statute, when its language is ambiguous, in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. Our answer to the question referred to us will, therefore, be that a sentence of fine only, or of imprisonment only, under Clause 6, Section 32 of Act XXXI. of 1860, is a legal sentence.

[APPELLATE CRIMINAL JURISDICTION.]

1876.
August 24.

REG. *v.* GAJI KOM RA'NU.

Criminal Procedure Code (Act X. of 1872), Sections 197, 472, and 473—Contempt of Court—False evidence—Commitment—Sentence.

Giving false evidence is "an offence committed in contempt of the authority" of a Court within the meaning of Section 473, of Act X. of 1872. *Reg.* v. *Navranbeg* (10 Bom. H. C. Rep. 73) and the ruling in 7 Mad. H. C. Rep., Appx. XVII., followed. *Queen* v. *Kultaran Singh*, I. L. R., 1 All. 129 and *Queen* v. *Jagut Mull*, *ibid*, 162, dissented from (1).

(1) See also the case of *Sufatoolah* (22 W. R. Cr. 49) in which the Calcutta High Court took the opposite view to that taken in the present case.

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Where the accused was by a Magistrate, First Class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or Joint Sessions Judge,

Held that the commitment could not be quashed, there being no error in law, and the case must, therefore, be transferred for trial to another Court of Session.

In such a case as the above the better course would be for the Magistrate to try the case himself, and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence.

THE accused Gaji Kom Ránu was charged with having given false evidence in a judicial proceeding before A. Bosanquet, Session Judge of Ahmednagar. The preliminary enquiry was made by T. S. Hamilton, Magistrate, First Class, who committed her for trial before the same Sessions Judge. Mr. Bosanquet, therefore, submitted the case for the orders of the High Court, as he had no jurisdiction to try it under Section 473 of the Criminal Procedure Code, the offence having been committed in his own Court.

The reference was considered by MELVILL and NA'NA'BHA'I HARIDA'S, JJ., on the 24th August 1876, and the following was the judgment of the Court, delivered by

MELVILL, J. :—The Sessions Judge of Ahmednagar being debarred by Section 473 of the Code of Criminal Procedure from trying an offence committed in contempt of his own authority, the case of the *Queen* v. *Gaji*, wife of Ránu, is, under the provisions of Section 64 of the Code, ordered to be transferred for trial to the Sessions Court of Poona.

If it were not for the peculiar wording of Section 473 of the Code of Criminal Procedure, we should have hesitated to accept the broad proposition laid down in *The Queen* v. *Navranbeg* (1) that the offence of giving false evidence is to be regarded as a contempt of Court. But (notwithstanding some rulings of the Allahabad Court to the contrary)(2) we agree with the Madras High Court(3), that the Legislature has, by most inapt words, extended

(1) 10 Bom. H. C. Rep. 73.

(2) *Queen* v. *Kultaran Singh, I. L. R.*, 1 All. 129 and *Queen* v. *Jugat Mull, ibid* 162.

(3) See Proceedings, 24th March 1873, 7 Mad. H. C. Rep., Appx. XVII.

the prohibition contained in Section 473 to the offence of giving false evidence, and that consequently a Sessions Judge cannot try any person for such an offence committed before himself.

It follows that, in cases like the present, in which a Magistrate commits a person for trial before the Sessions Court for the offence of giving false evidence before the Sessions Judge, the case cannot be tried by the Sessions Court, unless there be an Assistant Sessions Judge or a Joint Sessions Judge to whom the case can be referred. In Ahmednagar there is no such officer. The commitment cannot be quashed, as there is no error in law (Criminal Procedure Code, Section 197). The only remedy, therefore, is to order the transfer of the case for trial to another Court of Session.

It is obvious that such a proceeding involves much inconvenience and hardship to witnesses. It would be better that, in all such cases arising in districts in which there is no Assistant or Joint Sessions Judge, the Magistrate should try the case himself, and that, if the sentence which the Magistrate is competent to pass is insufficient, the Sessions Judge should refer the case to the High Court for enhancement of sentence.

It is to be hoped that the attention of the Legislature will be directed to the defect in the law which creates this difficulty, and which appears to have been the result of an oversight. When Section 172 of Act XXV. of 1861 was reproduced *verbatim* in Section 472 of the Code of Criminal Procedure, it was, no doubt, the intention of the Legislature that the new section should have the same effect as the old, and that a Court of Session should be able to charge a person for giving false evidence before itself. But this intention has been defeated by the change which has been made in the Schedule of the Code, rendering the offence of giving false evidence triable by a Magistrate of the First Class, and no longer "by the Court of Session exclusively."

Note.—It was held in *Reg.* v. *Gulábdás* (11 Bom. H. C. Rep. 98) that an offence committed in contempt of the Session Judge's authority was cognizable by the Assistant Sessions Judge.