

REVISIONAL CRIMINAL.

*Before Mr. Justice Nánábhái Haridás and Sir William Wedderburn, Bart.,
Justice.*

QUEEN-EMPRESS *v.* HARI LAKSHMAN.*

*Evidence—Witness—Act I of 1872, Sec. 165—Indian Penal Code (Act XLV of 1860),
Sec. 179.*

1885.
October 14.

Under section 165 of the Indian Evidence Act I of 1872, a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts; but if he asks questions with a view to criminal proceedings being taken against the witness, the witness is not bound to answer them, and cannot be punished for not answering them, under section 179 of the Indian Penal Code (Act XLV of 1860).

THIS was an application to the High Court for the exercise of its powers of revision under section 439 of the Code of Criminal Procedure (Act X of 1882).

The applicant, Hari Lakshman Adhikári, was convicted by Ráv Sáheb Sakhárám Moreshwar Chitale, Subordinate Judge of Mahád, of an offence under section 179 of the Indian Penal Code (XLV of 1860), and sentenced, under section 480 of the Code of Criminal Procedure (X of 1882), to pay a fine of Rs. 40, and, in default, to suffer one month's simple imprisonment.

Hari Lakshman, having obtained a decree against Náráyan Mahádu and others, applied to the Subordinate Judge for execution. The judgment-debtor contended that they had satisfied the decree, and produced a receipt purporting to have been passed by Hari Lakshman. The Subordinate Judge thereupon asked Hari Lakshman whether the receipt was in his hand-writing; but, although warned against the consequences of refusal, he declined to answer the question, saying that the question could not be asked, and that he was not bound to answer it. The Subordinate Judge thereupon tried and sentenced him as above stated.

On appeal to the Sessions Judge of Thána, the conviction and sentence were confirmed.

*Criminal Application, No, 293 of 1885.

1885.

QUEEN-
EMPRESS
v.
HARI
LAKSHMAN.

Dáji Abáji Khare for the applicant.—The Subordinate Judge had no power to ask questions to a witness with the object of inculpating him. The witness was not bound to answer such questions.

NA'NA'BHA'I HARIDA'S, J.—Under section 165 of the Indian Evidence Act I of 1872 the Judge may ask any question he pleases about any irrelevant fact, if he does so in order to discover or to obtain proper proof of relevant facts.

In the present case it appears, from the Subordinate Judge's own proceedings, that the question was asked, not with the object above specified, but with a view to criminal proceedings being taken against the witness. Therefore the objection taken by the witness to answer that question, which appears to be irrelevant, was a reasonable one, and he was not legally bound to answer it.

The conviction and sentence must, therefore, be reversed and the fine refunded.

Conviction reversed.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1885.
November 24.

QUEEN-EMPRESS v. ABDUL LATIB VALAD ABDUL RAHIMAN.*

Jurisdiction—Jurisdiction of Courts in British India over offences committed out of British India—Rájkot—British India—Statute 21 and 22 Vic., Chap. 106—Indian Penal Code (Act XLV of 1860), Secs. 381, 410, 411.

The civil station at Rájkot is not part of British India within the meaning of Statute 21 and 22 Vic., Chap. 106.

Where the accused, a subject of a Native state, committed theft at Rájkot Civil Station, and was found in possession of the stolen property at Thána,

Held, that as the offence was not committed in British India, and as the accused was the subject of a Native state, the Sessions Court at Thána had no jurisdiction to try the accused for theft, under section 381 of the Indian Penal Code (XLV of 1860). But it was competent to try him for dishonest retention of stolen property under section 410 of the Indian Penal Code as amended by Act VIII of 1882.

THE accused was a subject of the Janjirá State. He was charged with having committed theft at Rájkot of property, con-

* Criminal Review, No. 322 of 1885.