1886.

QUEEN-EMPRESS v. PIR MAHOMED.

the assessors found that the accused had knowingly given false evidence. The statements made by him were deliberate and malicious perversions of the truth. It would be dangerous to regard such conduct as in any sense compatible with an honest discharge of duty. The only grounds on which a lenient sentence was permissible were that the conviction carried with it the professional ruin of the accused, including the loss of his pension, and that he had, till the time of his conviction, borne a good character in the Police Department for many years. After giving due consideration to these circumstances, we are unable to concur with the Sessions Judge that sentences of simple imprisonment only were adequate.

Nor do we think that the Sessions Judge could legally pass concurrent sentences for the offences, under sections 211 and 193 of the Indian Penal Code (XLV of 1860), of which the accused was convicted. The case does not fall under section 71 of the Indian Penal Code (XLV of 1860): see *Queen* v. *Abdool Azeez*[1]. Under section 35 of the Criminal Procedure Code (X of 1882) consecutive sentences should have been passed, as the accused was convicted of two distinct offences within the meaning of that section.

We alter the sentences of simple imprisonment, recorded by the Sessions Judge, to sentences of rigorous imprisonment, and direct that they commence "the one after the expiration of the other." The result will be that the accused will now undergo a further period of rigorious imprisonment for three months.

Sentences enhanced.

(1) 7 Calc. W. R. Cr. Rul., 59.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1885. *December* 17.

QUEEN-EMPRESS *v.* GANPAT TÁPIDÁS.*

The Indian Penal Code (Act XLV of 1860), *Sec.* 409—*Criminal breach of trust by a public servant.*

Where the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple allowances, and did not at once pay over the same to the persons entitled to receive them, as he was

* No. 176 of 1885.

bound to do, but it appeared that such persons were willing to trust him, and had actually passed receipts which the accused forwarded to the revenue authorities,

Held, that the accused fulfilled the trust reposed in him by Government, and that his mere retention of the money for a time, in the absence of any evidence of dishonesty, did not amount to criminal breach of trust within the meaning of section 409 of the Indian Penal Code (XLV of 1860).

THIS was an appeal from a sentence passed on the accused by E. Hosking, Sessions Judge, Khándesh, who convicted him of criminal breach of trust as a public servant in respect of two small sums of money, and sentenced him to six months' simple imprisonment.

The facts of the case sufficiently appear from the judgment of the High Court.

Pándurang Balibhadra, Acting Government Pleader, for the Crown.

There was no appearance for the accused.

[BIRDWOOD, J.:—We do not think that the conviction in this case can be sustained. There is nothing to show that the accused converted the money to his own use.]

Pándurang Balibhadra:—It was his duty to pay over the sums at once to those who were entitled to receive them. But he retained them in his own pocket for some time.

[JARDINE, J.:—That was because the payees were willing to trust him.

So far as Government were concerned, he took receipts from them and forwarded them to the revenue authorities. In this way he fulfilled the trust reposed in him.]

JARDINE, J.:—The appellant has been convicted on two charges, under section 409 of the Indian Penal Code (XLV of 1860), of criminal breach of trust of small sums of money which it was his duty as *pátel* to pay over as temple allowances. It is proved that he took formal receipts from the two persons to whom these payments were to be made, and forwarded these receipts to the revenue authorities in due course. So far as the evidence enables us to judge, the appellant in this manner fulfilled the trust

1886.

QUEEN-EMPRESS v. GANPAT TÁPIDÁS.

reposed in him by Government, and we are of opinion the charges cannot be sustained.

It is true that he did not at once pay the money to the two persons entitled to receive it. The reason of this was, however, that they were willing to trust him. Sheikh Lal deposes that he thought the appellant would eventually pay him the money, which amounted to only a rupee and a half. Sitárám, who was entitled to receive Rs. 2-8-0, deposed as follows :—"I was in the temple when I signed the receipt. Accused said he would pay the money in eight days or so. After signing the receipt I went away on tour, and did not return to Dharangaum till *Ashvin*." In another part of the deposition he stated that he did not think accused would cheat him. Neither of these men preferred any criminal complaint, and there is no evidence that he ever repudiated these inconsiderable debts, or did anything to justify a charge of cheating or other dishonest act.

On these grounds we reverse the conviction and sentence, and direct that the appellant be set at liberty.

Conviction and sentence reversed.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1885. *December* 6.

QUEEN-EMPRESS *v.* MANGAL TEKCHAND.

Jurisdiction—Perim (island of) a part of British India—Law in force at Perim—Aden, jurisdiction of Court of Political Resident at—Perim included in Sessions Division and District of Aden—Act II of 1864, *Sec.* 29—*Appeal from sentence of Political Resident at Aden to High Court of Bombay in criminal case arising at Perim.*

Held, that the island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat. 21 and 22 Vic., cap. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September, 1858.

The Indian Penal Code (XLV of 1860) and the Code of Criminal Procedure (X of 1882) extend in their entirety to the whole of British India, and, therefore, to the island of Perim.