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DHUNJISHA NUSSERWÁNJI v. A. B. FFORDE.

in Surat. I must hold the first issue in the negative and in favour of the defendant; and taking no evidence on the remaining issues dismiss the plaintiff's suit with costs.

Attorneys for the plaintiff:—Messrs. *Ardesar, Hormasji and Dinshá.*

Attorney for the defendant:—Mr. *T. H. Pearse.*

APPELLATE CRIMINAL.

Before Mr. Justice West and Mr Justice Birdwood.

QUEEN-EMPRESS *v.* SITA'RA'M VITHAL.*

1887. *March* 24.

Criminal Procedure Code (Act X of 1882), Sec. 162—Statement taken down by a police officer under Section 162—Evidence—Evidence Act (I of 1872), Secs. 155 and 159.

A statement reduced to writing by a police officer under section 162 of the Code of Criminal Procedure (Act X of 1882) cannot be used as evidence for the accused. But though it is not evidence, the police officer, to whom it was made, may use it to refresh his memory under section 159 of the Evidence Act (I of 1872), and may be cross-examined upon it by the party against whom the testimony aided by it is given.

The person making the statement may also be questioned about it; and, with a view to impeach his credit, the police officer, or any other person in whose hearing the statement was made, can be examined on the point under section 155 of the Evidence Act.

Reg. v. *Uttamchand*(1) followed.

THE accused, Sitárám Vithal, and nine other persons were charged before the Assistant Sessions Judge of Ratnágiri with the offences of dacoity and of dishonestly retaining property stolen in the commission of dacoity. Sitárám was convicted of the aforesaid offences, and sentenced to undergo five years' rigorous imprisonment for the first offence, and two years' rigorous imprisonment for the second; the punishments were to commence one after the expiration of the other. The Sessions Judge confirmed these sentences.

The accused Sitárám appealed to the High Court. One of the questions raised on behalf of the accused, both at the original

* Criminal Appeal, No. 235 of 1886.

(1) 11 Bom. H. C. Rep., 120.

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trial and in appeal, was, whether statements taken down in writing by a police officer under section 162 of the Code of Criminal Procedure (Act X of 1882) could be used as evidence in favour of the accused. On this point the Assistant Sessions Judge expressed his opinion as follows:—

"In section 119 of the Criminal Procedure Code of 1872 such statement could 'not be treated as part of the record, or used as evidence'. From section 162 of the Act of 1882 these words are omitted, and for them is substituted 'or be used as evidence against the accused.' Under the old law, the inadmissibility of these statements was clear, and all the cases quoted by the pleaders refer to the Code of 1872. It is obvious that these statements cannot now be used *against* the accused; but can they, as is now sought, be used as evidence for them? In the absence of any authority, I hesitate to decide that the existing law has introduced so great a change, and I refuse to admit these statements as evidence in the accused's favour."

Dáji Abáji Khare for the accused.

Hon. Ráv Sáheb *V. N. Mandlik* for the Crown.

PER CURIAM:—With reference to the question of law discussed by the Assistant Sessions Judge at the commencement of the careful and able judgment recorded by him in this case, we observe that from the mere saving clause in section 162 of the Criminal Procedure Code (Act X of 1882) on behalf of accused persons, the general principle cannot be inferred, that a statement made by any person to a police officer under that section may be used as evidence for an accused person, though it cannot be used against him.

A saving clause cannot properly be looked at for the purpose of extending an enactment, nor can it give a new or different effect to the previous sections of the enactment: see *Mayor, &c., of Manchester* v. *Lyons*[1]. A statement reduced to writing by a police officer under section 162 cannot have the effect of a deposition; but though it is not evidence, the police officer, to whom it was made, may use it to refresh his memory under section 159

(1) L. R., 22 Ch. Div., 287, 304.

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of the Evidence Act, and may be cross-examined upon it by the counsel against whose cause the testimony aided by it has been given; and, as ruled by this Court in *Reg.* v. *Uttamchand*(1), the person making the statement may properly be questioned about it; and, with a view to impeach his credit, the police officer himself, or any other person in whose hearing the statement was made, can be examined on the point under section 155 of the Evidence Act. [After discussing the evidence in the case, the Court dismissed the appeal.]

(1) 11 Bom. H. C. Rep., 120.

APPELLATE CRIMINAL.

Before Mr. Justice West and Mr. Justice Birdwood.

QUEEN-EMPRESS *v.* ISMA'L VALAD FATARU.*

1887. *April* 5.

Sanction—Criminal Procedure Code (Act X of 1882*), Sec.* 195*—Police officer acting under Section* 161*—Prosecution for giving false evidence to a police officer—Statement taken down under Section* 161*—Evidence.*

A statement taken down in the course of a police investigation by a police constable under section 161 of the Criminal Procedure Code (Act X of 1882) is not evidence at any stage of a judicial proceeding.

A police constable taking down a statement under section 161 of the Criminal Procedure Code is not a judge, nor is the place where he officiates a Court. His sanction is, therefore, not necessary, under section 195 of the Criminal Procedure Code, to a prosecution for a false statement made to him, whether the charge be framed singly or alternatively.

THIS was an appeal by Government against the order of acquittal made by G. MacCorkell, Acting Sessions Judge of Khándesh.

During a police investigation the accused Ismál valad Fataru made certain statements to the chief constable, which he afterwards withdrew at the trial before the First Class Magistrate. He was, therefore, charged, in the alternative, with having given false evidence either before the police officer under section 161 of the Criminal Procedure Code (Act X of 1882), or subsequently before the trying Magistrate, when he denied and contradicted

* Criminal Appeal, No. 21 of 1887.