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CIVIL.

13 B. 137.

for a review, or by an original suit. But sitting as Judge in the first instance I think I am precluded by authority from such a decision on account of the irregularity of his present procedure.

I must, therefore, discharge this rule. I may add, that I delayed this matter in order that notice should be given to the plaintiffs in suit No. 963-68, and that they should intervene if they wish to do so; but they have not done so. As regards the costs, the applicant must, of course, pay his own. As the application has failed, the costs of the executors on the usual scale, so far as they were necessary for the rejection, the application in its present form must be also paid by him, and he must pay Kajbai's costs of the present application of the same extent—I think one day's hearing and one affidavit each sufficiently cover these costs.

Rule discharged.

Attorneys for the plaintiff:—Messrs. *Payne, Gilbert, and Sayani.*

Attorneys for the defendants:—Messrs. *Tobin and Roughton.*

13 B. 147.

[147] APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

QUEEN-EMPRESS *v.* DAYA BHIMA AND OTHERS.*

[5th July, 1888.]

Criminal Procedure Code (Act X of 1882), s. 188—Liability of native Indian subjects for offences committed out of British India.

The accused were charged under s. 407 of the Indian Penal Code (Act XLV of 1860) with committing criminal breach of trust in respect of certain property entrusted to them as carriers. They were all native Indian subjects of Her Majesty. The offence was alleged to have been committed in Portuguese territory, and they were found in a place in British territory.

Held, that under s. 188 of the Criminal Procedure Code (Act X of 1882) the accused could be tried in the place where they were found.

[R., 24 B. 287 = 1 Bom. L.R. 678 (680); 14 Cr. L. J. 298 = 19 Ind. Cas. 954 = 6 S. L. R. 260 (264); Rat. Unr. Cr. Cas. 773 (774).]

THIS was an appeal by the Government of Bombay against an order of acquittal passed by G. Jacob, Joint Sessions Judge of Ahmedabad.

The accused were all residents of the Gogha Taluka in the Ahmedabad district. They were *khalasis* (or sailors) serving on board a native *patimari*. On 17th April, 1887, they were entrusted with 150 bales of cotton belonging to Messrs. Gaddum, Bythell & Co., for conveyance from Bhavnagar to Bombay. On the voyage they were alleged to have touched at the Portuguese Settlement at Damar, and there sold the bales of cotton and appropriated the sale proceeds to their own use. They then absconded, and were afterwards found in a place in the Ahmedabad district.

Thereupon accused Nos. 1, 2 and 3 were charged, under s. 407 of the Indian Penal Code, with committing criminal breach of trust in respect of the 150 bales of cotton, and accused Nos. 4 and 5 with abetment of the said offence.

* Criminal Appeal, No. 59 of 1888.

The Joint Sessions Judge of Ahmedabad, who tried the accused with the aid of assessors, acquitted them, on the ground that the alleged offence was committed outside British India, and that, therefore, the accused were not liable to punishment under the Indian Penal Code.

His reasons for the acquittal were stated as follows:—

[148] "The offence of criminal breach of trust is said to have been committed at *Daman, which is not in British India*. The accused, assuming the facts alleged by the prosecution to be satisfactorily established, would not, therefore, be liable to punishment under the Indian Penal Code (see ss. 1 and 2), unless by any law passed by the Governor General in Council they can be made liable under the provisions of s. 3 of the same Code. Section 188 of the Criminal Procedure Code does not appear to me to give this authority in the case of an offence committed in territory other than that of a Native Prince or State in India, and s. 186 has no application unless the offence is triable in British India.

"The Public Prosecutor relies on paragraph (g) of the schedule to The Portuguese Treaty Act, IV of 1880; but the preamble to that Act and the terms of the Act itself show clearly, in my opinion, that the words 'dealt with by the British Indian authorities' do not cover a trial by a British Indian Court for an offence committed in Portuguese territory.

"The preamble to that Act expressly refers only to the delivery up to each other of those persons who being accused or convicted of crimes committed in the Indian dominions or jurisdiction if the party should be found in the Indian dominions or jurisdiction of the other party, &c., and there is nothing in the Act itself or the schedule attached to it to indicate an intention of extending the jurisdiction of the Court of either party to offences committed in the territories of the other.

"The decision (*Bapu Daldi v. The Queen* (1)) is also in point. There is no evidence to show or reason to suppose that the property was misappropriated at any place other than Daman, where the property was discovered.

"As this charge is tried by the jurors only as assessors, it is unnecessary to bring the matter before them for a verdict of acquittal.

"The Court under s. 289 records a verdict of acquittal in favour of accused Nos. 1 to 3 upon the charge under s. 407, [149] accused Nos. 4 and 5 upon the charge under ss. 109 and 407 of the Indian Penal Code, and directs that they be discharged."

Against this order of acquittal the Government of Bombay appealed to the High Court.

Rav Saheb V. N. Mandlik, Government Pleader, for the Crown.—The lower Court had jurisdiction to try the accused. Section 188 of the Criminal Procedure Code governs the present case. The accused are natives of Gogha, a place within British territory; and though the offence was committed outside British India, the accused being found in the Ahmedabad district could properly be tried there.

There was no appearance for the accused.

JUDGMENT.

PER CURIAM:—As the accused are native Indian subjects of Her Majesty charged with committing offences under s. 407 and ss. 407 and 109 of the Indian Penal Code at a place beyond the limits of British India,

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1888 they may, under the provisions of the s. 188, Criminal Procedure Code, be dealt with in respect of such offences as if they had been committed at any place within British India at which the accused may be found. In the present case the accused were found at a place in the Ahmedabad district. They can, therefore, be tried in that district: See *Empress v. Maganlal* (1). The proviso to s. 188 has no application to the present case, as there is no Political Agent in the Portuguese territories of Daman, where the offences charged against the accused are said to have been committed. The Court, therefore, reverses the Joint Sessions Judge's order of acquittal, and directs that the accused be tried by the Court of Sessions at Ahmedabad, to which they have been duly committed.

Order reversed.

13 B. 150.

[150] APPELLATE CIVIL,

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Nanabhai Haridas.*

KHUBCHAND (*Original Plaintiff*), *Appellant v. BERAM AND OTHERS*
(*Original Defendants*), *Respondents*.* [10th July, 1888.]

Bond—Money borrowed for immoral purposes—Naikins or dancing girls of Nasik.

The father of *naikins*, (dancing girls) in Nasik by two bonds mortgaged certain property as security for money lent to him by the plaintiff. The bonds stated that the object of the loan was to enable the mortgagor to get his daughters taught singing and for household expenses. In a suit brought by the plaintiff upon the bonds it was contended that they were void on the ground that the loan was for an immoral purpose. The District Judge was of opinion that the object of teaching the girls to sing was to make them more attractive as prostitutes, and, therefore, to further an immoral purpose, which could not be separated from the legal part of the purpose for which the loan was contracted. He accordingly held that the bonds were void, and could not be enforced. On appeal.

Held, that the bonds were not void, inasmuch as, amongst the community of *naikins*, singing was not necessarily acquired by the woman with a view of practising prostitution. It was a distinct mode of obtaining a livelihood not necessarily connected with prostitution, although it might be true, as a fact, that most of those who sing lead a loose life. The District Judge, therefore, went too far in concluding that the singing was necessarily intended, to the knowledge of the plaintiff, to increase the attractiveness of the mortgagor's daughters as prostitutes.

THIS was a second appeal from a decision of M. B. Baker, District Judge of Nasik reversing the decree of the Subordinate Judge at the same place.

A *naikin*, (dancing girl), named Latiba died at Nasik, possessed of some immoveable property, leaving her surviving two illegitimate children, namely, a son named Beram and a daughter Mushaf, who inherited her property and lived in union. By two bonds, purported to have been executed by him as manager of the family, Beram mortgaged the dwelling-house to the plaintiff Khubchand. The bonds set forth that the money was borrowed for the purpose of enabling Beram to get his daughters taught singing and to meet household expenses. Beram died without paying the mortgage-debt.

* Second Appeal, No. 507 of 1885.

(1) 6 B. 622.