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APPEL-
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APPELLATE CRIMINAL.

Before Mr. Justice Scott and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* SHEIK ABDOOL RAHIMAN.*

[31st August, 1889.]

Jurisdiction—High seas—Offences committed on the high seas—Law applicable to offence committed within three miles of Goa—Treaty Act IV of 1880—*Stat.* 30 *and* 31 *Vic.*, c. 124 s. 11—*Stat.* 37 *and* 38 *Vic.*, *c.* 27—*Procedure.*

The rule laid down in *Regina* v. *Elmstone* (1), to the effect that English and not Indian law is applicable to offences committed on the high seas, is altered by [228] Stat. 37 and 38 Vic., c. 27, which provides that such offences shall be tried and punished according to the local law.

The accused, who was captain of a native craft, was charged with having dishonestly sold his cargo and scuttled his ship in the course of a voyage from Aleppy to Bombay. The accused was arrested in the Ratnagiri District, and committed for trial to the Sessions Judge of Ratnagiri, who convicted him under ss. 407 and 437 of the Indian Penal Code (XLV of 1860), and sentenced him to five years' rigorous imprisonment.

In appeal the accused contended that the Sessions Judge of Ratnagiri had no jurisdiction to try the case, 1st, because, the first offence, if it took place at all, was committed within the territorial waters of Goa, and 2ndly, because the offence, if committed on the high seas, could only be tried according to the law of England and not according to the Indian Penal Code.

Held (1) that the Court at Ratnagiri had jurisdiction. If the offence were committed within three miles of Goa, the Treaty Act IV of 1880 between England and Portugal as regards the Goa territory conferred the right to try such cases in British India.

(2) If the offence were committed beyond the three-mile limit and on the high seas, the Court had jurisdiction, and the Indian Penal Code applied under the provisions of Stat. 30 and 31 Vic., c. 124, s. 11, and Stat. 37 and 38 Vic., c. 27.

[Diss., 39 C. 487=16 C.W.N. 471=13 Cr. L. J. 246=14 Ind. Cas. 598; R. 24 B. 287 (290)=1 Bom. L.R. 678; 4 Bur. L.T. 58=12 Cr. L.J. 198=10 Ind. Cas. 705=5 L.B.R. 221; Rat. Unr. Cr. Cas. 773 (774).]

THIS was an appeal from the conviction and sentence recorded by G. C. Whitworth, Sessions Judge of Ratnagiri, in *Queen-Empress* v. *Sheik Abdool Rahiman.*

The accused, who was a native of Bankot in British territory, was the captain of a native boat called the "Raghunath", of 40 tons burthen. On the 4th January, 1889, he received at Aleppy, on the Malabar Coast, a cargo consisting of 435 packages of cocoanut kernel and some coir for delivery at Bombay.

In the course of his voyage from Aleppy to Bombay he dishonestly sold the greater part of the cargo at Sukeri, close to Goa, and scuttled his ship some three miles off the coast of Goa.

The accused was arrested in the Ratnagiri District and committed for trial to the Court of Session at Ratnagiri on a charge of criminal breach of trust as a carrier, and mischief, under ss. 407 and 437 of the Indian Penal Code respectively.

The Sessions Judge of Ratnagiri differing from the assessors found the accused guilty of both the offences and sentenced him to undergo rigorous

* Criminal Appeal No. 124 of 1889.

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imprisonment for two years under [229] s. 407, and for a further period of three years under s. 437 of the Indian Penal Code.

Against this conviction and sentence the accused appealed to the High Court.

Inverarity (with him *Manekshah Jehangirshah*), for the accused.—The Sessions Judge had no jurisdiction to try the case. The accused is not a native British subject. The evidence shows that the first offence—namely, the dishonest disposal of the cargo—if it was committed at all, was committed within three miles from the coast of Goa, and we contend that s. 188 of the Criminal Procedure Code (Act X of 1882) does not apply. Even if the offences were committed on the high seas, the English law, and not the Indian law, would apply. See *Regina* v. *Elmstone* (1).

Shantaram Narayan, Government Pleader, for the Crown.

Branson, for the complainant.—The accused himself admits that he is native of Bankot, a village in British territory, and it is perfectly clear from the evidence that both offences were committed on the high seas beyond the three-mile limit. If so, they may be tried and punished according to the local law—Starling's Indian Criminal Law, pp. 17-20 (4th Edition). The ruling in *Regina* v. *Elmstone* (1) is now altered by Stat. 37 and 38 Vic., c. 27. Refers to *Bapu Daldi* v. *The Queen* (2); *Queen-Empress* v. *Barton* (3). Assuming that the offences were committed within the territorial waters of Goa, the Sessions Court had jurisdiction under s. 188 of the Criminal Procedure Code—*Queen-Empress* v. *Daya Bhima* (4); *Empress of India* v. *Sarmukh Singh* (5); *Regina* v. *Kastya Rama* (6). These cases show that the Indian Penal Code applies.

JUDGMENT.

SCOTT, J.—This case, fortunately for the commerce of Bombay, is one of a very unusual character. The accused, captain of a native craft of 44 tons burthen, called the "Raghunath" is charged with having dishonestly sold his cargo and scuttled his ship in the course of a voyage from Aleppy to Bombay last [230] December. The Court below differing from the assessors found him guilty of both charges. He now appeals to the High Court on two grounds. First, he says the Court at Ratnagiri had no jurisdiction to try the case. Secondly, he says he is not guilty on the facts.

On the point of jurisdiction it was argued that the accused was not a native British subject, and that the first offence, if it took place at all, took place within the territorial waters of Goa, and that the offences, if committed on the high seas, could only be tried according to the law of England. But it is quite clear, on the accused's own statement, that he is a native British subject. "I am," he says, "an inhabitant of Bankot." It appears probable from the evidence that both offences, if committed at all, were committed on the high seas beyond the territorial limit of three miles from shore. Even if the first offence were committed within the three miles' limit, the Treaty Act IV of 1880 between England and Portugal as regards the Goa territory confers the right to try such cases in British India; and as there is no British Political Agent in Goa, no preliminary sanction was required under s. 188 of the Code of Criminal Procedure.

(1) 7 B.H.C.R. C.C. 89. (2) 5 M. 23. (3) 16 C. 238.
(4) 13 B. 147. (5) 2 A. 218. (6) 8 B.H.C.R. C.C. 63.

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Then comes the question, whether the Courts of India have jurisdiction and whether the Indian Penal Code applies to offences committed on the high seas. The Stat. 30 and 31 Vic., c. 124, s. 11, which applies to India, says that offences on the high seas must be "tried and determined" as if committed on the high seas, and 37 and 38 Vic., c. 27, says that the punishment must also be according to the local law. The question is argued with force and clearness by Mr. Starling in his work on Indian Criminal Law, pp. 13—20 (4th ed.*) He points out that the Rule in *Regina* v. *Elmstone* (1), to the effect that English, not Indian law is applicable to offences committed on the high seas and tried in India, is altered by Stat. 37 and 38 Vic., c. 27. All disability is now removed since the passing of the two Acts cited. The preliminary objection as to jurisdiction therefore fails.

[231] We now come to the appeal on the facts. The cargo of the "Raghunath" consisted of 435 packages of dried cocoanut kernel and a quantity of coir. The accused is charged with dishonestly disposing of the greater portion of these kernels by sale at Goa, partly to Ibrahim, master of a vessel called the "Eshwanti," and partly to Ahmed, the master of the "Salamati". The main evidence with regard to those two illegal sales was given by the crews of the three vessels. They knew they were participating in crime, and their evidence must be received with caution, and requires corroboration as coming from accomplices. The story they now tell does not, in the case of the crews of the "Raghunath" and "Eshwanti", agree with the first statement they made. They supported the accused in his story that the ship had gone down at sea. But before the Magistrate all three crews told the same story, that the kernels were transferred to the "Eshwanti" and "Salamati" at night off Goa after the "Raghunath" had stayed some days near Goa with the other two ships. It is almost impossible to obtain, in such a case as the present, any eye-witness evidence that is not tainted. The corroboration has to be found in circumstances. As regards the alleged wreck, Mr. Payne, the Coast Guard Inspector, says he was at sea near the spot the following night, and there was not bad weather; only during the day there had been a strong wind as usual at that time of the year. He also says the *pagar* on which the men escaped could not have lived in a sea sufficient to wreck the ship. He saw bales floating, which was likely, as the prosecution says the bales were not all sold. But the accused said the ship went down with all cargo, and they waited two hours on the chance of cargo floating, but none floated. The accused when he got ashore, did not ask for assistance to find her cargo, and none of the men asked to search for any of their things at Harnai or at Bankot; he offered the head constable 25 or 30 rupees to let all the men go home at once. The defence rely on the shipping documents of the "Eshwanti" and the "Salamati." Both ships had their papers for Bankot, and yet one landed its cargo at Chiplun, the other at Malvan. In the one set there is an alteration made from 400 to 200 bales. In the other case the amount is 600 bales, whereas the ship brought less than 300 bales. The discrepancy was explained by an alleged [232] jettison in consequence of the ship going on a rock. But when the ship first arrived, they did not state that there had been a jettison or a grounding or any injury, and no cargo floated to shore, as it would have done. Ahmed, who might have appeared and explained all these facts, has absconded, and Ibrahim has died. The witness Bahirrao, who says

* Pp. 13—17 (5th ed.).

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he opened and dried and put on board 60,000 nuts in three days, was not confirmed by any other witness, and is not trustworthy himself as to this his main allegation. The Judge, though he doubts the evidence of the "Raghunath's" crew, speaks favourably of the demeanour of the other crews. Relying on them and finding corroboration in the circumstances, he held the charge proved. The story of the alleged wreck is almost incredible; and similar vessels, which started at the same time from Aleppy, arrived safely at Bombay. The evidence of the story of the defence as regards what passed at Goa is not supported, as it might have been, by ample evidence.

On the whole we agree with the Judge in his view of the case and confirm the conviction and sentence.

Conviction and sentence upheld.

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APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

SAVITRI (*Original Defendant No.* 3), *Appellant v.* RAMJI (*Original Plaintiff*), *Respondent.** [4th September, 1889.]

Remand order—Objections to its validity taken in appeal against final decree—Omission to appeal from the order—Civil Procedure Code (Act XIV of 1882), *ss.* 588, 590—*Practice.*

A party aggrieved by an interlocutory order of remand may object to its validity in his appeal against the final decree, though he might have appealed against the order under s. 588 of the Civil Procedure Code (Act XIV of 1882), and has not done so.

[**F.**, 23 C. 335; 28 C. 324=5 C.W.N. 509; 32 P.L.R. 1906; **Appr.**, 34 M. 228=20 M. L.J. 805=8 M.L.T. 72=6 Ind.Cas. 239=(1910) M.W.N. 226; U.B.R. (1892—1896) 525; **R.**, 14 A. 348; 24 C. 725 (740); 18 M. 421; 12 C.P.L.R. 119 (123); 5 Ind. Cas. 764=7 M.L.T. 93; 14 Ind. Cas. 673=8 N.L.R. 42; 9 O.C. 80; 71 P. R. 1907=37 P.L.R. 1908.]

SECOND appeal from the decision of Khan Bahadur M. N. Nanavati, First Class Subordinate Judge of Poona, A. P., in appeal No. 140 of 1886.

The plaintiff sued to recover possession of certain fields, alleging that they had been mortgaged to him with possession by [233] defendant No. 1, and that he had been dispossessed by the defendants Nos. 2 and 3.

The Subordinate Judge, who heard the case in the first instance, held the mortgage not proved, and, therefore, rejected the plaintiff's claim.

On appeal the District Court reversed the decree and remanded the case for a decision on the merits.

Thereupon the Subordinate Judge, to whom the case was referred, found, on the evidence already recorded, that the mortgage was proved, and decided in plaintiff's favour.

This decision was confirmed, on appeal, by the District Court.

The defendant No. 3 alone appealed to the High Court.

Ghanasham Nilkant, for appellant.—The order of remand was illegal. It is opposed to the provisions of s. 562 of the Code of Civil Procedure.

* Second Appeal No. 203 of 1888.