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JULY 18.

REVISIONAL CRIMINAL.

CRIMINAL
REVISION.*Before Mr. Justice Scott and Mr. Justice Jardine.*

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QUEEN EMPRESS *v.* BYRAMJI KHARSEDJI.* [18th July, 1889.]*Bombay Abkari Act (V of 1878), ss. 43 (1), 47, 53—Possession of liquor not satisfactorily accounted for—Presumption arising from such possession.*

The accused had in his possession a quantity of toddy in excess of that permitted by law. He was unable to account satisfactorily for the possession of the [94] excess quantity. He was, therefore, prosecuted under ss. 43 and 47 (2) of the Bombay Abkari Act (V of 1878), and convicted under both sections.

Held, that the conviction under s. 43 was bad. In the absence of any evidence to show that the accused had manufactured the toddy, or been in possession of a still, or had transported toddy from one place to another, no presumption could be drawn, under s. 53 (3), of any offence described in s. 48. The only presumption arising from possession not properly accounted for was that the possession was illegal, and the accused could only be convicted under s. 47 of the Act.

THIS was an application under s. 435 of the Code of Criminal Procedure (Act X of 1882),

The accused was found in possession of 44 bottles of country liquor exceeding in strength the liquor usually sold in the district. The maximum quantity of liquor which a person is permitted to have in his possession under the Bombay Abkari Act (V of 1878) is one gallon or four bottles. The accused was unable to account satisfactorily for the possession of the excess liquor. He was, therefore, prosecuted under ss. 43 and 47 of the Abkari Act, convicted under both the sections, and sentenced to six months' rigorous imprisonment and a fine of Rs. 200.

* Criminal Review No. 156 of 1889.

(1) Section 43 of Bombay Act V of 1878 provides as follows:—"Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license, permit, or pass obtained under this Act,

"(a) imports or exports liquor or any intoxicating drug into or out of any part of the Presidency of Bombay, or

"(b) transports or removes liquor, or any intoxicating drug from one place to another, or

"(c) manufactures liquor or any intoxicating drug, or

"(d) draws toddy from any tree, or

"(e) constructs or works any distillery or brewery, or

"(f) uses, keeps or has in his possession any material, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor or any intoxicating drug, or

"(g) sells liquor or any intoxicating drug,

shall be punished for each such offence with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months or with both."

(2) Section 47 is as follows:—"Whoever, except under the authority of some license, permit, pass or special order obtained under this Act, has in his possession within any local area or place to which the provision of s. 17 has been applied, any larger quantity of country-liquor or any intoxicating drug that may legally be sold by retail under the provision of the said section, shall be punished with fine which may extend to two hundred rupees."

(3) Section 53 provides as follows:—"In prosecutions under s. 43 or s. 47, it shall be presumed, until the contrary is proved, that the accused person has committed an offence under those sections in respect of any liquor or intoxicating drug, or any still, utensil, implement, or apparatus whatsoever for the manufacture of liquor or intoxicating drug or any such materials as are ordinarily used in the manufacture of liquor or intoxicating drugs, for the possession of which he is unable to account satisfactorily;..."

[95] On appeal the convictions were upheld, but the term of imprisonment was reduced to three months.

The accused, therefore, applied to the High Court under its revisional jurisdiction.

Jardine (with *Manekshah Jahangirshah*), for the accused.

Shantaram Narayan, Government Pleader for, the Crown.

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JUDGMENT.

The judgment of the Court (Scott and Jardine, JJ.), was delivered by SCOTT, J.—In this case the accused was proved to have forty-four bottles of country liquor in his possession of a strength much exceeding that which is sold in the district. He was charged under ss. 43 and 47 of the Abkari Act, found guilty, and sentenced, under them, to six months' rigorous imprisonment and a fine of Rs. 200. The six months' imprisonment was reduced to three by the appellate Judge, but otherwise the conviction under both sections was sustained. It was held that the presumption raised by s. 53 of the Act brought the case under s. 43 as well as under s. 47, and that the accused had committed an offence under both sections in respect of this liquor, "the possession of which he was unable to account for satisfactorily." This is not, in our opinion, the meaning of s. 53. The presumption there intended to be drawn by law is the presumption of an offence under either s. 43 or s. 47 or both according to the facts of each particular case. This section establishes an exception to the general principle that proof of a criminal intention is essential to constitute a breach of criminal law. Mere possession without affirmative proof that it was wrongful would not have been enough if s. 53 had not been enacted. That section is worded as follows:—"In prosecutions under s. 43 or s. 47, it shall be presumed, until the contrary is proved, that the accused person has committed an offence under those sections in respect of any liquor or intoxicating drug, or any still, utensil, implement or apparatus whatsoever for the manufacture of liquor or intoxicating drugs, or any such materials as are ordinarily used in the manufacture of liquor or of any intoxicating drug, for the possession of which he is unable to account satisfactorily." The Courts below have [96] read this section as if the words "has committed an offence under those sections" had been "has committed an offence under both those sections." In the absence of that word the presumption drawn from possession must be held to bring each case under that section which properly applies to the special facts. Here possession alone is proved, and none of the additional facts which are enumerated in s. 43. If the facts had shown that the accused had manufactured toddy, or been in possession of a still, or had transported toddy from one place to another, then the Magistrate would have rightly presumed such manufacture or transport illegal, and the case would have come under s. 43. But here the sole fact is that the accused was in possession of the liquor, without being able to account for its possession, and the sole presumption that arises from that fact under s. 53 is that the possession, not properly accounted for, is illegal. This, however, constitutes an offence under s. 47 only. The other reading of s. 53, bringing s. 43 into the case, would involve a double presumption, first that as he was in possession of the liquor, he must have either manufactured or transported it, and, secondly, that as he had manufactured or transported it he must be presumed to have done so illegally, if he could not explain its possession. This reading is a straining of a penal statute, contrary to the principle that penal laws

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must be construed strictly and in favour of the liberty, and rights of the subject. To make s. 43 applicable, there ought to have been, beyond the possession, some affirmative evidence in the case of the facts necessary to constitute an offence under that section. We, therefore, held the accused was only properly convicted of the minor offence. The sentence of imprisonment, which he has partly suffered, would not have been inflicted under s. 47, and that which remains must be remitted. The conviction under s. 43 must be reversed, and in consideration of the term of imprisonment already suffered, one-half of the fine must be remitted.

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[97] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

NATHJI MULESHVAR AND OTHERS (*Original Defendants*),
Appellants v. LALBHAI RAVIDAT (Original Plaintiff),
Respondent.

LALBHAI RAVIDAT (*Original Plaintiff*), *Appellant v. NATHJI*
*MULESHVAR AND OTHERS (Original Defendants), Respondents.**
[18th July, 1889].

Defamation—Libel in judicial proceedings—Privilege—Liability to damages by civil action for such defamation.

No action for slander lies for any statement in the pleadings or during the conduct of a suit against a party or witness in it.

The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one M., in which the plaintiff was described by the defendants as a person "whose occupation it was to obtain his living by getting up such fraudulent actions," and that he was induced to make a false claim by the plaintiff. The application appeared to have been made with the object of having other persons made parties to that suit.

Held, that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they had presented in that suit.

Seaman v. Netherclift (1) and *Baboo Ganesh v. Mugneeram Chowdhry* (2) referred to and followed.

[*Diss.*, 23 C. 867; 3 L.B.R. 265; N.F. 5 C.W.N. 293; R., 17 B. 573; 19 B. 340; 19 B. 717 (729); 17 C.L.J. 105=17 C.W.N. 554=18 Ind. Cas. 737; 13 Cr.L.J. 275=14 Ind. Cas. 659=23 M.L.J. 39=11 M.L.T. 416=(1912) M.W.N. 476.]

CROSS second appeals against a decision of G. Jacob, Joint Judge of Ahmedabad, reversing the decree of Rav Saheb Ranchhodlal K. Desai, Subordinate Judge of Umreth.

This action arose out of the following circumstances:—

One Mulji Gangadat brought suit No. 472 of 1885 for the recovery of certain property against the defendants and others in the Court of the Subordinate Judge of Umreth. During the pendency of that suit the defendants put in an application on the 25th March, 1885, the contents of which were as follows:—

"Shelat Lalbhai Ravidat (plaintiff), whose occupation is to earn his livelihood by getting up such fraudulent actions with a selfish motive, and

* Cross Second Appeals Nos. 603 and 726 of 1887.

(1) L. R. 1 C. P. D. 545.

(2) 11 B. L. R. (P. C.) 321 (328).