CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1895. February 21.

QUEEN-EMPRESS v. DHANJIBHAI EDULJI.*

Police Act (XIII of 1856), Sec. 35, Cl. 1—Fraudulent possession of property—Property reasonably suspected of being stolen—Duty of the prosecution to prove to the satisfaction of the Court that there exist reasonable grounds of suspicion—Onus probandi.

A person cannot be called on to account for his possession of property under section 35, clause (1) of the Police Act, XIII of 1856, unless there is evidence which satisfies, not the police officer, but the Court, after judicial consideration, that such property "may be reasonably suspected of being stolen or fraudulently obtained."

THIS was an application under section 435 of the Code of Criminal Procedure (Act X of 1882) for the exercise of the High Court's criminal revisional jurisdiction.

The accused was a carpenter employed by merchants in the Prince's Dock to open cases of liquor.

He was charged under section 35 of Act XIII of 1856[1] with having in his possession certain articles (*viz.* two bottles of beer, some rectified spirit, three glass tumblers, and a quantity of figs and walnuts) reasonably suspected of being stolen or fraudulently obtained, and failing to account satisfactorily how he came by the same.

The accused was tried summarily on the above charge: the only evidence tendered for the prosecution was that of the shed supervisor in the Prince's and Victoria Docks, who said that, in consequence of certain information he had received, he called the police, who examined the accused's box, and found the above articles of which the accused could not give any satisfactory account.

The Chief Presidency Magistrate convicted the accused and sentenced him to one month's rigorous imprisonment.

* Criminal Revision, No. 25 of 1895.

(1) Section 35, cl. (1), Act XIII of 1856, provides as follows:—"Whoever has in his possession, orconveys in any manner, any thing which may be *reasonably* suspected of being stolen or fraudulently obtained, shall, if he fails to account satisfactorily how he came by the same, be liable to a penalty not exceeding Rs. 100, or to imprisonment, with or without hard labour, for any term not exceeding 3 months."

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Against this conviction and sentence the accused applied to the High Court under its revisional jurisdiction.

Macpherson (with him *J. D. Neemuckválla*) for the accused:—Section 35, clause 1 of Act XIII of 1856 is based on 2 and 3 Vic., c. 71, sec. 24. It is copied word for word from the English Act, as appears from the Proceedings of the Legislative Council of India, Vol. 2, p. 258. As to the construction of this clause, I have not been able to find any reported decision either under the Indian Act or under the English Statute. The meaning of the clause appears to be that the accused cannot be called upon to account for the property in his possession until the prosecution prove to the satisfaction of the Court that there are reasonable grounds for suspecting that the property is stolen, or fraudulently obtained. There is no such proof offered in the present case. The conviction is, therefore, bad.

There was no appearance for the Crown.

JARDINE, J.:—An important question of construction arises in this case as to the meaning of section 35, clause 1 of Act XIII of 1856, which is as follows:—"Whoever has in his possession, or conveys in any manner, anything which may be reasonably suspected of being stolen or fraudulently obtained, shall, if he fails to account satisfactorily how he came by the same, be liable to a penalty not exceeding one hundred rupees or to imprisonment, with or without hard labour, for any term not exceeding three months." These words are taken from 2 and 3 Vic., c. 71, section 24, as appears from comparison and from the discussion in the Legislative Council of India. The assiduity of Mr. Macpherson, who appears for the accused, has failed to discover any case dealing with the construction of the clause either in the Indian Act or the Act of Parliament, or of the similar clause in the English Statute about naval stores. We have, therefore, to construe the words by principle without the help of direct authority. It being a penal enactment which shifts the burden of proof of innocence at a certain point on to the accused, it has to be construed strictly. We are of opinion that, before the accused can be called on to account for the property, there must be evidence amounting to proof to the satisfaction, not of the

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police officer or witness, but of the Court, that the accused possessed or conveyed a thing of which this may be predicated—we mean after judicial consideration by the Court—*viz.*, that the thing "may be reasonably suspected of being stolen or fraudulently obtained." This phrase is used as an adjective; and unless it applies, accused ought not to be called upon to account nor to be convicted. The phrase is different to that used about the information on which the police may under section 93 proceed to search—"reasonable cause for suspecting, &c." The words in both sections imply reasonable grounds for suspecting that there has been a theft or fraud.

In the present case no evidence was given that any theft of articles of the sort found with the accused had taken place at the docks; nor that the accused had been seen under any circumstances of suspicion near the place where the merchants keep such things; or had concealed the things found with him, or that they were articles of a sort so unique or strange or precious as might raise reasonable suspicion of his honesty. We are of opinion that the case of *Reg.* v. *Spencer*[1], though more apposite to the words of section 95, is in accordance with our view. There the words in 25 and 26 Vic., c. 114, sec. 2, "good cause to suspect" used as regards the powers of the police to search poachers are interpreted. Baron Martin said: "Good cause to suspect means a reasonable ground of suspicion upon which a reasonable man may act." That case makes it doubtful whether in the one now before us the police were justified in making the search. The ground of suspicion is not disclosed in the evidence.

The Court, therefore, sets aside the conviction and sentence.

(1) 3 F. and F., 857.