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MAGANLAL
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DOBHI MULJI.

the description of a "person whose immoveable property has been sold under this chapter," notwithstanding his private sale. Moreover, it is to be noticed that "when an attachment has been made . . . any private alienation of the property attached . . . shall be void against all claims enforceable under the attachment."

For these reasons we think we can interfere and ought to make the rule absolute with costs in both the Courts on the opponents.

Rule made absolute.

CRIMINAL REFERENCE.

Before Mr. Justice Candy and Mr. Justice Fulton.

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April 1.

KING-EMPEROR v. THE CHIEF OFFICER OF THE
S.S. "MUSHTARI."*

*Jurisdiction—High seas—Offence committed on the high seas—Procedure—
Penal Code (Act XLV of 1860)—37 and 38 Vict., chapter 27, section 3.*

A Presidency Magistrate has authority to charge, convict and sentence under the Indian Penal Code (Act XLV of 1860) a person who has committed an offence in a British ship during her voyage on the high seas. The law applicable both as regards procedure and punishment is the Indian law.

REFERENCE by Khán Bahádur P. H. Dastur, Third Presidency Magistrate, Bombay. The reference was as follows:

"I have the honour to refer for the opinion of the High Court the following question of law which has arisen in a case now pending in this Court.

"Has the Presidency Magistrate, Bombay, authority to convict a person for an offence under the Indian Penal Code, the said offence having been committed in a British ship during her voyage on the high seas?"

The facts of the case briefly are as follow:

"The chief officer of the S.S. 'Mushtari,' a ship belonging to the Bombay and Persian Steam Navigation Company, Limited, is charged with criminal breach of trust as a servant (under

* Criminal Reference No. 16 of 1901.

section 408 of the Indian Penal Code) in that he received passage money from a pilgrim during the ship's voyage between Bandar Abbas and Bushire. The ship is proved to be a British ship, and by the combined effect of Acts 12 and 13 Victoria, chapter 96, and 23 and 24 Victoria, chapter 88, any Magistrate in British India has power to try the chief officer for an offence committed on the high seas ; the only proviso being that the person convicted shall be liable to the same penalty as is provided for by the law of England.

" Now my difficulty in the present case is whether I should record a conviction under section 408 of the Indian Penal Code against the chief officer, and then pass a sentence provided for by the law of England for embezzlement, or whether I should frame a distinct charge under the English law and impose the penalty also prescribed therein.

" On a careful perusal of section 1 of 12 and 13 Victoria, chapter 96, it appears that the local Courts have jurisdiction and authority not only to inquire into and try offences committed on the high seas, but also to determine and adjudge them as if committed within the local jurisdiction of the said Courts. If so, the whole of the procedure to be adopted should be Indian and not English, and the framing of the charge being only a matter of procedure, the charge in the present case ought, in my opinion, to define the offence as mentioned in section 408 of the Indian Penal Code. The proviso (section 2), it is true, imposes a different penalty, but that is *after the person's conviction*, and there is a long gap between the framing of the charge and the conviction, and I do not therefore understand how section 2 could re-act on section 1 and modify the express provision made therein for the trial and determination of such offences. This point has, no doubt, been decided in *The Queen v. Thompson*,⁽¹⁾ where it was held that the charge to be framed should be under the English law ; but the reasons given in that case appear to me to be inconsistent with the wording of section 1, and I have therefore some hesitation in adopting the view therein expressed. In *Reg. v. Elmstone*⁽²⁾ this point has not been specifically dealt with, though it is true it is said there that the substantive law ought in such

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(1) (1867) 1 B. L. Reng. 1 (Cr.)

(2) (1870) Bom. H. C. R. 89.

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cases to be English and not Indian; whilst in *Reg. v. Kastya Rama*⁽¹⁾ the offence was not committed on the high seas but within three miles of the shores of British India, and therefore the question about the nature of the charge to be framed did not arise. I beg, however, to draw the attention of their Lordships to the remarks made by West, J., in that case, which seem partially to support the view I have already expressed in this reference."

The reference was heard by a Division Bench (Candy and Fulton, JJ.)

Scott (Acting Advocate General) with *Messrs. Crawford and Co.* for complainant (the Bombay and Persian Steam Navigation Company), referred to Stat. 12 and 13 Vict. c. 96, section 1; 23 and 24 Vict. c. 88, section 1; 54 and 55 Vict. c. 67; 37 and 38 Vict. c. 27, section 3; Merchant Shipping Act of 1894, section 686; *Reg. v. Elmstone*⁽²⁾ and *Reg. v. Kastya Rama*.⁽³⁾

There was no appearance for the accused.

FULTON, J.:—The reply to the question put by the Third Presidency Magistrate is contained in section 3 of 37 and 38 Vict. c. 27.

His jurisdiction to try the offence is conferred by section 1 of 12 and 13 Vict. c. 96, declared applicable to India by section 1 of 23 and 24 Vict. c. 88, as well as by section 686 of the Merchant Shipping Act of 1894.

The question of procedure and punishment is determined by the first mentioned section of 37 and 38 Vict. c. 27. Section 2 of 12 and 13 Vict. c. 96 has been repealed by 54 and 55 Vict. c. 67.

Our answer is that the Presidency Magistrate, Bombay, has authority to convict a person for an offence under the Indian Penal Code, the said offence having been committed in a British ship during her voyage on the high seas. The charge should be framed in reference to the Indian Penal Code, and in case of conviction the punishment should be awarded under that Code.

Answer accordingly.

(1) (1871) 8 Bom. H. C. R. 63.

(2) (1870) 7 Bom. H. C. R. 89.

(3) (1871) 8 Bom. H. C. R. 63.