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carelessness or suspicion might not amount to criminal knowledge though the question might be one of degree. But in the present case the accused admits a dishonest mind. He says: "I did not know that the notes were stolen: I thought they were forged." There is nothing in the notes themselves to suggest that they were forged. We are of opinion that the evidence, including the statements of the appellant himself and the letter which he placed in his sister's custody, afford ample warrant for the finding that he knew or in fact believed that the notes had been stolen.

For the reasons given, this appeal must be dismissed. The appellant, if on bail, must surrender and undergo the remainder of his sentence.

E. H. M. *Appeal dismissed.*

CRIMINAL REVISION.

Before Richardson and Beachcroft JJ.

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Nov. 28.

MANHARI CHOWDHURI

v.

EMPEROR.*

Autrefois Acquit—Trial for theft and receiving stolen property charged in the alternative—Acquittal by the High Court—Subsequent trial under s. 54A of the Calcutta Police Act (Beng. IV of 1866) relating to the same act or series of acts—Act or possession punishable under s. 54A whether an offence—Criminal Procedure Code (Act V of 1898), ss. 4 (1) (o), 236, 237 and 403 (1).

Under s. 403 (1) of the Criminal Procedure Code an acquittal of offences under s. 380 and s. 411 of the Penal Code, charged in the alternative, bars a subsequent trial for an offence under s. 54 A of the Calcutta

* Criminal Revision, No. 1109 of 1917, against the order of K. B. Das Gupta, 4th Presidency Magistrate of Calcutta, dated Sep. 21, 1917.

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Police Act (Beng. IV of 1866) in respect of the same act, or series of acts which formed the subject of the previous trial; the case falling within *Illustration* (*a*) of s. 236 and the *Illustration* attached to s. 237 of the Criminal Procedure Code.

Queen-Empress v. *Croft* (1) distinguished.

An act or possession punishable under s. 54 A of the Calcutta Police Act is an "*offence*" within s. 4 (*l*) (o) of the Code.

THE petitioner was a dealer in jute carrying on business at 115, Beniatola Street, in the town of Calcutta. One Jitmul Marwari had a jute godown at No. 141, Darmahata Street in charge of a sircar. On the 20th April, 1917, the latter was alleged to have locked the godown and gone away. Next morning, when the room was opened, it was discovered that there was some shortage of the jute stored there. Jitmul informed the police and went with them to the petitioner's godown. On search, eighty-three drums and two half bales of jute were found inside together with some gunny labels bearing certain marks. Two similar labels were discovered in a lane near a latrine of the building in which the petitioner's godown was situated. The complainant identified the jute and the labels as his. The petitioner was accordingly put on trial before Abdus Salam, the Third Presidency Magistrate, on charges in the alternative under ss. 380 and 411 of the Penal Code. He was convicted, on the 28th June, and sentenced to six months' rigorous imprisonment. The High Court, however, acquitted the petitioner, on 8th August, and directed the jute to be restored to him. He, thereupon, applied to the Magistrate who ordered the police to return the jute to him. On the 22nd August, he went to the Jorabagan thana where the same had been kept, took delivery and loaded them in five carts. As he was taking the carts away the police arrested him and

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recovered possession of the jute. He was placed before K. B. Das Gupta, the Fourth Presidency Magistrate, who overruled his plea of *autrefois acquit*, on the 21st September, and proceeded with the trial. He thereupon obtained the present Rule from the High Court.

Babu Probodh Chandra Chatterjee, for the petitioner.

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown.

RICHARDSON AND BEACHCROFT JJ. This Rule was issued on the Chief Presidency Magistrate to show cause why certain proceedings taken against the petitioner under section 54 A of the Calcutta Police Act should not be quashed. The petitioner is a dealer in jute carrying on business at 115, Beniatola Street, Calcutta. It appears that he was found in possession of certain bales and half bales of jute. With reference to that jute he was placed on his trial before a Presidency Magistrate on charges framed in the alternative under sections 380 and 411 of the Indian Penal Code. He was convicted by the learned Magistrate in the alternative on those charges. He then moved this Court which set aside the conviction, and directed that the jute which was the subject matter of the charge, should be returned to him. Apparently he was removing this jute in five carts from the thana, where it had been stored, when he was again arrested, the jute being again seized, in order that the present proceedings might be taken against him under section 54 A of the Calcutta Police Act. That section runs as follows: "Whoever has in his possession, or conveys in any manner, or offers for sale or pawn anything which there is reason to believe to have been stolen or fraudulently obtained,

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shall, if he fails to account for such possession or act to the satisfaction of the Magistrate, be liable to fine, etc., etc." The point taken before us on the petitioner's behalf is that, having been acquitted of the charges made against him at the previous trial, he cannot now be tried again for the offence created by section 54A which I have read. There is no doubt that the act or possession made punishable by section 54A is an offence within the definition in the Criminal Procedure Code by which "offence" includes any act made punishable by any law for the time being in force. Section 403 of the Code of Criminal Procedure enacts in its first paragraph that "a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237." The question here is whether the petitioner is now to be tried on the same facts for an offence with which he might have been charged at the previous trial under section 236, or of which he might have been convicted at that trial under section 237. Section 236 provides that "If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences." For the present purpose section 237 carries the matter no further, and need not be more particularly referred

to. It is not disputed that the present proceedings relate to the same act or series of acts which were the subject of the previous trial. Mr. Orr, who has appeared for the Crown, does not deny that all the evidence which was relevant at the previous trial would be relevant on the present charge. The trial, in other words, will take place on the same facts, and it is not suggested that there are any additional facts to be placed before the Court. In that state of things we can see no reason why the accused should not have been charged at the previous trial, under the provisions of section 236, with the offence for which he is now being prosecuted. As I have stated, the present proceedings relate to the same act or series of acts to which the previous trial related, and it appears to us that before that trial it might have been said, in the terms of section 236, that it was doubtful whether the facts which could be proved would constitute theft, or receiving stolen property or an offence under section 54A of the Calcutta Police Act. If that be so, the case clearly falls within *Illustration (a)* of section 236 and the *Illustration* attached to section 237. Reference was made in the course of the argument to the case of *Queen-Empress* v. *Croft* (1). In our opinion that case is clearly distinguishable. The offences there in question were separate and distinct offences which were separately triable and punishable. It seems to us that the petitioner in the present case is about to be tried a second time on the same facts for an offence cognate to, or involved in, the offences with which he was previously charged. It is not suggested that if the previous conviction and sentence had been upheld by this Court, the petitioner could now be punished a second time under section 54A. The proceedings, therefore, come within

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the prohibition contained in section 403 of the Criminal Procedure Code. In that view of the matter, the Rule must be made absolute and the proceedings quashed; and we direct accordingly.

With regard to the jute, we direct that it be re-delivered to the petitioner.

E. H. M

Rule absolute.