Anandachârlu and *Sundaram Sastri* for petitioners. THATHAYYA *in re.*

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT:—A sanction granted under s. 195 of the Code of Criminal Procedure is a condition precedent to the entertainment of a complaint by the magistrate. There is nothing in the section to restrict the right of complaint to any particular individual when a sanction has been granted under that section.

The order of the Sessions Judge is right.

APPELLATE CRIMINAL.

Before Mr. Justice Wilkinson and Mr. Justice Shephard.

QUEEN-EMPRESS

against

RAMAKRISHNA.* 1888. Sept. 11.

Penal Code, s. 403—Criminal misappropriation—Intention, Proof.

R. was a Government servant, whose duty it was to receive certain monies and to pay them into the treasury on receipt. He admitted that he had retained two sums of money in his possession for several months when fearing detection he paid them into the treasury making a false entry at the time in his books with a view to avert suspicion. His explanation as to his reason for retaining the money was not credited by the magistrate who convicted him of criminal misappropriation under s. 403 of the Indain Penal Code:

Held, that the conviction was right.

APPLICATION under ss. 435 and 439 of the Code of Criminal Procedure to quash the conviction of petitioner by W. E. Clarke, First-class Magistrate, Nilgiris, confirmed on appeal by D. Irvine, Sessions Judge of Coimbatore, in appeal No. 11 of 1888.

The facts of this case are set out in the judgment of the Court (Wilkinson and Shephard, JJ.).

Mr. *Wedderburn* for petitioner.

Mr. *Subramanyam* for the Crown.

For the prisoner it was argued that there was no proof of criminal intention, and that the prosecution was bound to prove something more than retention of the money and non-payment.

---

* Criminal Revision Case No. 405 of 1888.

QUEEN-EMPRESS v. RAMA-KRISHNA.

There must be proof of denial of receipt or a false account or the like. *Rex* v. *Owen Jones*(1), *Rex* v. *Hodgson*(2). The false entry of payment was not evidence of any such intent (2, Russell on Crimes, p. 455, note), for if the crime had been committed it was complete long before the false entry was made. However suspicious the circumstances might be, the reasons given by the prisoner for non-payment were not proved to be false.

For the Crown it was urged that the circumstances of the case precluded any reasonable hypothesis of innocence, and that if further proof was necessary, it would be almost impossible to convict Government servants who misappropriated the public monies.

WILKINSON, J. — The petitioner was, in 1887, Income-tax clerk in the office of the Collector of the Nilgiris. As such, it was his duty to receive monies paid by persons assessed to income-tax, to enter such receipt in the remittance book, to pay such monies into the treasury, and to prepare and obtain the signature of the Deputy Collector to receipts to be given to the payees. The facts found are (1) that petitioner received Rs. 17-5-1 in July 1887, and failed to pay in the same to the treasury until January 23rd, 1888; (2) that he received Rs. 44-10-0 on September 9th, 1887, but did not pay in the same to the treasury till January 23rd, 1888; (3) that he made false entries in the remittance book as to date of receipt; and (4) that he had these monies in his own possession from the dates of receipt until January 1888. The petitioner admitted these facts and stated that he had put the monies into his pocket and taken them home awaiting an opportunity of replacing them without detection. Under these circumstances, the petitioner has been found guilty of criminal misappropriation under s. 403, Indian Penal Code, and sentenced to six months' rigorous imprisonment. The finding and sentence have been confirmed on appeal by the Acting Sessions Judge of Coimbatore. We are asked to set aside the conviction on the ground that there is no evidence of dishonest misappropriation or conversion. I am of opinion that the petitioner has been rightly convicted of the offence of criminal misappropriation. The offence consists in the dishonest misappropriation or conversion either permanently or for a time of property which is already without wrong in the

(1) 7 C. & P., 833. (2) 3 C. & P., 422.

possession of the offender. There must be the intention to cause wrongful gain or wrongful loss, and it is argued that such intention must be affirmatively made out by the prosecution, as the original taking in this case was innocent. In my judgment the Lower Court rightly held that in a case like the present dishonest intention can only be inferred from the circumstances of the case, looking at all the facts of the case it seems to me that the only conclusion to be drawn is that the intention of the prisoner was dishonest, if not when he put the monies in his pocket and carried them home with him, at all events the next day when he omitted to take back the monies with him to the office and credit them to Government. The learned counsel for the petitioner has referred us to the case of *Rex* v. *Owen Jones* decided by Baron Bolland in 1837. That was a charge of embezzlement, and the learned Judge ruled that it was not enough to prove that the accused had received a sum of money and failed to enter it in his accounts unless there was evidence that he had denied the receipt or rendered some false account. The facts of that case are entirely different from this. There the prosecutor and the prisoner had mutual dealings and accounts which had not been adjusted for two years. All that was proved was an omission to enter certain sums received on behalf of the prosecutor in the books kept by the prisoner. The case of the *Queen* v. *Proud*(1) is more in point. The prisoner was a member of a friendly society, and his duty as paid secretary was to receive monies from members to pay what was due from the society, and to place the balance in a box in the society's room. Suspicions having arisen, prisoner was called upon to deliver up his books, and it was discovered that he had omitted to enter in the book a large number of subscriptions. When called upon for an explanation, prisoner at once admitted he had received the money and offered to repay it. The prisoner was found guilty, and the conviction was affirmed by the Court of crown cases reserved. I may notice here the remarks of the Judges in Criminal Revision Case No. 913 of 1883 (Weir, 3rd Edition, p. 265), a case very similar to the present.

It was the duty of the prisoner to remit the monies he received to the treasury immediately. Instead of doing so, he retained two sums for several months without entering them in his accounts,

(1) 31 L.J. (M.C.), 71.

QUEEN-EMPRESS v. RAMA-KRISHNA.

and it was not until he knew that detection was inevitable that he paid up the money; and even then he attempted to impose upon his superior by putting before him for signature false receipts. There were circumstances from which a fraudulent intention might have been inferred, and I see no reason for interference on revision. The sentence is not too severe.

The petition is therefore dismissed.

SHEPHARD, J.—The petitioner has been convicted on two charges framed under s. 403 of the Indian Penal Code, the Magistrate who tried the case and the Sessions Judge on appeal appearing to take much the same view of the facts. There is no question as to the fact of the petitioner having received the sums on account of income-tax in the months of July and September 1887 and retained them in his hands till the 23rd January 1888. But it is objected that there is no proof of any dishonest conversion of the monies to his own use. The petitioner has endeavoured to account for an act which *primâ facie* does not seem consistent with honesty, by saying that he received the two sums late in the day and was therefore unable to enter them in his book or pay them into the treasury in the usual course; apprehensive of official displeasure on account of the breach of duty, he says he kept the monies with him waiting for an opportunity of replacing them without detection. It is to be observed that he admits having taken these two sums to his own house and does not say he kept them there intact, whereas, with regard to a third sum, in respect of which he was also charged, he says, he kept it in his office desk, and on the strength of this circumstance, as it appears, he was acquitted by the magistrate. As I read the magistrate's judgment touching the sums in respect of which he convicts the petitioner, the magistrate did not accept his explanation as true. Having regard to the circumstances, he did not believe that the petitioner really had intended to pay the monies into the treasury, but thought that he had intended to appropriate them to his own use. And the Sessions Judge agrees in thinking that the explanation cannot be accepted. If the petitioner's account of the reasons for not crediting the money in the usual way is put aside, I think there is no doubt the conviction is right. If he did not intend to pay the money into the treasury, he must have intended to appropriate it to himself, and it cannot make any difference that one of his reasons for adopting this course,

which was clearly a dishonest one, was that he desired to avert the displeasure of his superior. It was argued that proof of the offence was not complete, because the petitioner was not shown to have ever denied receipt of the money; and we were referred to the case of *Rex* v. *Jones*(1) as authority for the position that evidence of denial is essential. But the facts of that case were very different. The prisoner then, though called a clerk, was really an agent carrying on the prosecutor's business at another place. There were accounts between them unsettled for two years, and all that was shown was that certain small sums received by the prisoner had not been entered in his accounts. It is clear that in such a case the prisoner's conduct was quite consistent with honesty—the omission to make the entries might be attributed to carelessness. It might well, therefore, be said that without evidence that he had denied receipt of the money or made some false account, no case of embezzlement was made out.

The position of the present defendant was very different. He had no business to retain in his own hands money received by him in his official capacity: strictly he was bound to pay it as and when he received into the treasury without waiting for any request; and if it were proved against him that instead of paying the money into the treasury he had put the money in his pocket and taken it home, that without any more would, I think, be sufficient to convict him of dishonest misappropriation. Unless he convinced the magistrate that he had made a mistake or had kept the money intact fully intending to pay it in, he must have been convicted. Lapse of time makes it less likely such an explanation would be credited, but otherwise is I think immaterial.

There are doubtless cases in which a denial of receipt of the money is necessary in order to prove the dishonest intention, but this case in my opinion is not one of them. I think the case against the petitioner was complete, when once it was found that having taken the money he resolved to keep it and not pay it into the treasury.

I agree in holding that the petition must be dismissed.

(1) 7 C. & P., 833.