1878

EMPRESS OF INDIA v. BHAWANI.

without corroboration on a material point, *a fortiori* such corroboration should be required to support the statement of a person naturally desirous of earning the favour of the Court in the hope of a lenient sentence, who makes a statement which does not expose him to the penalties of perjury, and who cannot be cross-examined by the other accused in turn. There existing against the appellants no other evidence than such statements, I do not consider them by themselves sufficient to place the guilt of the appellants beyond reasonable doubt, and I therefore acquit them.

Convictions quashed.

1878
May 20.

CRIMINAL JURISDICTION.

Before Mr. Justice Spankie.

EMPRESS OF INDIA *v.* PARTAB.

Punishment—Whipping—Act VI of 1864, *ss.* 2, 3—*Act XLV of* 1860 (*Penal Code*), *ss.* 378, 411—*Theft—Dishonestly Receiving Stolen Property—Act X of* 1872 (*Criminal Procedure Code*), *ss.* 504, 505—*Security for good Behaviour.*

P was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped, to be rigorously imprisoned, and, on the expiration of the term of imprisonment, to furnish security for good behaviour. *Held* that, the offence of theft not being the same offence as that of dishonestly receiving stolen property, the punishment of whipping was illegal.

Held also, with some hesitation, that there was evidence as to general character adduced before the Magistrate which justified him in dealing with *P* under s. 505 of Act X of 1872.

Held also that the order requiring security should not have formed part of the sentence for the offence of which *P* was convicted. A proceeding should have been drawn out representing that the Magistrate was satisfied, from the evidence as to general character adduced before him in the case, that *P* was by repute an offender within the terms of s. 505 of Act X of 1872, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of the imprisonment, *P* should be brought up for the purpose of being bound (1).

ONE Partab was convicted on the 1st February, 1878, by Mr. L. S. Porter, Assistant Magistrate of the first class, under s. 411

(1) See also *Queen* v. *Shona Dagee*, 24 W. R. Cr. 14, where it was held that when a conviction of an offence is contemporaneous with an order for taking security for good behaviour, ss. 504—506 of Act X of 1872 contemplate that the sentence for the offence shall first be carried out, and the person to be bound shall then be brought up for the purpose of being bound.

1878

EMPRESS OF INDIA v. PARTAB.

of the Indian Penal Code, of dishonestly receiving stolen property. He admitted on his trial that he had twice previously been convicted of theft. The sentence passed on him was as follows: "The sentence of the Court upon the prisoner is that he receive thirty stripes, and be kept in rigorous imprisonment for the space of two years, including three months' solitary confinement; and the Court further directs that, on the expiration of this term of two years, the accused Partab shall furnish security, himself in Rs. 100, with two sureties of Rs. 100 each, to be of good behaviour for the further term of one year. In default of furnishing such security he shall be kept in rigorous imprisonment for such further term of one year."

Partab applied to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872, contending that the sentence of whipping was illegal, inasmuch as he had previously been convicted of theft, a different offence from the offence of dishonestly receiving stolen property; and that the order requiring security from him was also illegal, as there had been no proceedings under s. 505 of Act X of 1872, and, irrespective of the proceedings in which he had been convicted, there was no evidence as to his general character as would justify the Magistrate in dealing with him under that section.

Mr. *Niblett*, for the petitioner.

SPANKIE, J.—The whipping in this case might have been awarded *in lieu* of the punishment to which the accused was liable under s. 411, and if previously convicted of an offence under this section, he might have been punished with whipping *in lieu of or in addition to* any other for which he would have been liable for the offence. But there is no record of the previous convictions of accused. He does not admit that he was twice before punished for a similar offence to that with which he was now charged. He stated that he had been twice punished for theft, but the offence of theft is not the same offence as that of dishonestly receiving stolen property, knowing the same to have been stolen. Whipping therefore should not have been added as a punishment, and that portion of the sentence is annulled.

1878

EMPRESS OF INDIA v. PARTAB.

In making an order for security for good behaviour I presume that the Magistrate holds the powers of a first class Magistrate and that he was acting under s. 505 of the Criminal Procedure Code. I have some doubt whether the Magistrate had adduced before him such *evidence as to general character* as to justify his dealing with the accused as a person known by repute to be a thief or receiver of stolen property. He had already sentenced the accused for the offence of which he was found guilty, and in the record of the trial I find no evidence from which it could be gathered that the accused was by repute a receiver of stolen property. But the prisoner certainly allowed that he had been punished twice for theft, and here he was again tried and found guilty of receiving stolen property. I am therefore unwilling to disturb the order. But the order should be no part of the sentence for the offence of which accused was convicted. There should have been a proceeding drawn out representing that the Magistrate from the evidence as to general character adduced before him in this case was satisfied that Partab was by repute an offender within the terms of s. 505 of the Criminal Procedure Code, and therefore security would be required from him. But as he had been sentenced to two years' rigorous imprisonment, which term has not expired, an order should have been recorded to the effect that, on the expiration of the term, the prisoner should be brought up for the purpose of being bound (cl. 2, s. 504).

FULL BENCH.

1878
May 27.

Before Mr. Justice Turner, Officiating Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.

THAKUR PRASAD (DECREE-HOLDER) *v.* AHSAN ALI AND ANOTHER (JUDGMENT-DEBTORS).*

Execution of Decree—Appeal—Act VIII of 1859 *(Civil Procedure Code)—Act X of* 1877 *(Civil Procedure Code)—Repeal—Pending Proceedings—Act I of* 1868 *(General Clauses Act), s.* 6.

The holder of a decree for money applied for the attachment in the execution of the decree of certain moneys deposited in Court to the credit of the judgment-

*Miscellaneous Second Appeal, No. 27 of 1878, from an order of H. D. Willock, Esq., Judge of Azamgarh, dated the 4th August, 1877, affirming an order of Maulvi Muhammad Husain Khan, Munsif of Azamgarh, dated the 4th June, 1877.