

ing, and looking at the trial in this case, it would seem to me that there had been great indifference and laxity on the part of the Sessions Judge in this respect. Accepting, however, the judgment of this Court in Full Bench in the matter of *Hardeo* (1) I believe that I have the power of interfering now with the conviction of Murli. If we are not precluded by a judgment of acquittal from exercising the power of revision under s. 297 of Act X of 1872, we cannot be precluded from doing so, where there has been a conviction on evidence which has received no sifting, and which in many respects is so transparently false that, if it had been at all tested, its falsehood could not have escaped notice. And in this opinion I am fortified by the amended new Code of Criminal Procedure of 1879. It seems that the dubious character of s. 297, Act X of 1872, has now been fully admitted. S. 439 of the amended Code, if it stand in the Act when passed, provides that the High Court as one of Revision may exercise all the powers of an Appellate Court with regard to appeals from convictions. Being of the opinion that I have the power of revision in this case, in which opinion my honorable colleagues, to whom the papers have been circulated, acquiesce, I have no hesitation in saying that the conviction of Murli ought not to be maintained, but that he ought to be at once released. I therefore annul the conviction of Murli and the sentence passed upon him and direct his release.

Conviction quashed.

Before Mr. Justice Oldfield.

EMPRESS OF INDIA *v* THOMPSON.

Adultery—Act XLV of 1860 (Penal Code), s. 497—Compounding of Offences—Act X of 1872 (Criminal Procedure Code), s. 188.

N charged *T* with having committed adultery with his wife. On inquiry into the charge by the Magistrate, the case was committed to the Sessions Court for trial when *T* was convicted. *T* appealed to the High Court. After conviction *N* and his wife were reconciled, and *N* at the hearing of the appeal asked for leave to compound the offence. *Held*, that at that stage of the case sanction could not be given to withdraw the charge.

ONE Nuttall charged one Thompson with having committed adultery with his wife. The case was inquired into by the Magis-

(1) I. L. R., 1 All., 139.

1879

EMPRESS
INDIA
v
MURLI.

1879

July 18.

1879

EMPRESS OF
INDIA
v.
THOMPSON.

trate and committed to the Sessions Court, by which the accused was convicted and sentenced to one year's rigorous imprisonment. He appealed to the High Court against the conviction and sentence. After the conviction the husband and wife had been living together, and the husband at the hearing of the appeal asked permission of the Court to be allowed to compound the offence.

Mr. *Leach*, for the prisoner.

The judgment of the Court, so far as it is necessary for the purposes of this report, was as follows :

OLDFIELD, J.—Since the conviction by the Sessions Judge the complainant has taken his wife back to live with him, and has asked this Court to be allowed to compound the offence, a sanction which cannot be given at this stage of the proceedings, but looking to the existing relations between the parties and the fact that the prisoner Thompson has been in custody since the 5th May, the Court is of opinion that the punishment already undergone will suffice, and his release is directed.

Appeal allowed.

FULL BENCH.

1879
September 2.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

EMPRESS OF INDIA v. MANGU AND OTHERS.

Act X of 1872 (Criminal Procedure Code), ss 272, 297—Arrest pending Appeal.

When an appeal has been preferred under s. 272 of Act X of 1872 the High Court may order the accused to be arrested pending the appeal.

ONE Mangu and six others had been tried on charges of culpable homicide, not amounting to murder, and voluntarily causing grievous hurt, by the Sessions Judge of Saháranpur and acquitted. The Local Government appealed to the High Court against the judgment of acquittal. After the admission of the appeal, the Junior Government Pleader applied for the arrest of the accused pending the appeal. The application was made to Straight, J., who referred the same to the Full Bench of the Court for disposal.