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these receipts and notes one only was filed by the defendant Ball. The promissory notes payable on the death of Ball are dated 13th November, 1874, 13th May, 1875, 17th November, 1875, 17th May, 1876, 8th December, 1876, and 18th June, 1877. Those payable on the death of Stowell are dated 18th November, 1874, 13th May, 1875, 17th November, 1875, 17th August, 1876, 8th December, 1876, 18th December, 1877, and 12th June, 1878. With this evidence before us which shows that there has been no default in the payment of premia, and entertaining the opinion that the default giving rise to a right of immediate demand for payment of the amount due on the bond before its expiration must be a default in respect of both interest and premia, I must come to the conclusion that there was no such default that gave to the plaintiff a complete and present cause of action. Therefore the contention that more than three years had elapsed from the date of default, and thereby the suit was barred, fails, the suit being within time, and the debt being acknowledged by one defendant and execution of the bond by the other, limitation alone being pleaded, the plaintiff would be entitled to a decree.

I have now considered all the points involved in the first to the fourth plea inclusive. There are two other pleas to be noticed, the fifth and sixth.

The fifth plea has no force, for if the interest had been barred by limitation, the suit must have been barred by the same limitation. The plea was not pressed before us, and I only notice it because it is on the memorandum of appeal. The sixth plea—that the Judge should have dismissed the suit with costs—is disposed of by this judgment.

I would dismiss the appeal, and affirm the decree of the lower Court, with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL

1879
*July* 17.

*Before Mr. Justice Spankie.*

EMPRESS OF INDIA *v.* MURLI.

*High Court, Powers of Revision—Act X of* 1872 *(Criminal Procedure Code), s.* 297.

*Held* that great laxity in weighing and testing evidence is a material error in a judicial proceeding, within the meaning of s. 297 of Act X of 1872.

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AT a Sessions for jail delivery held at Agra on the 27th April, 1875, seven prisoners, *viz.*, Harphal, Dipa, Bhawani, Dhan Singh, Bhima, Murli, and Jhentar were charged with the offence of dacoity. Jhentar was acquitted, and the first six were convicted and sentenced to transportation for life. Murli was sent to the Andaman Islands, to undergo the sentence of transportation for life From there and through the Chief Commissioner of the Andaman and Nicobar Islands he forwarded his petition of appeal to the High Court in the month of May, 1879, urging in his petition of appeal that, through want of friends and funds, he could not appeal before. The petition of appeal was received by the High Court, and was heard by Mr. Justice Spankie, by whom the appeals of the first five were heard and disposed of.

The following was the judgment delivered by

SPANKIE, J.—The petitioner, convict No. 21013, Murli, is undergoing sentence of transportation for life in the penal settlement of Port Blair. He was convicted on the 27th April, 1875, by Mr. H. G. Keene, the Sessions Judge of Agra, on a charge of dacoity, under s. 395 of the Indian Penal Code. Six other persons, Harphal, Dipa, Bhawani, Dhan Singh, Bhima, and Jhentar were tried at Agra with him. Jhentar was discharged by the Sessions Judge, and the others, including Murli, were transported for life. The five persons appealed to this Court, and on the 26th June, 1875, were acquitted, and it was directed that they should be released. Murli did not appeal at the time, but does so now in a petition received through the Chief Commissioner of the Andaman and Nicobar Islands, and Superintendent of Port Blair and Nicobars, that officer following the instructions conveyed to him in the letter of the Secretary to the Government, Home Department (1). Murli states that he was undergoing imprisonment for two years, on conviction of the offence of being in possession of stolen property, knowing the same to have been acquired by theft, when he was named by Pita, an informer, as having been one of the persons concerned in dacoity. He was put on his trial before the Sessions Judge of Agra, and convicted and sentenced to transporta-

(1) Mr. Officiating Secretary Bernard, C. S. I., dated 14th April, 1879, to Superintendent of Port Blair and Nicobar Islands.

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tion for life. Five persons appealed and were released. But he (Murli) was unable to represent his case at that time, having neither funds nor friends. Since his arrival in the penal settlement he has succeeded in obtaining a copy of the judgment of the Sessions Judge of Agra, and now appeals from the order passed by him. The prisoner ought to have appealed to this Court in sixty days from the date of the sentence, the 27th April, 1875. The period of limitation has so long expired, and the explanation of the delay in appealing, though there may be some truth in it, is not altogether satisfactory, that I feel compelled to disallow the appeal. It is the case that all convicts have a right of appeal once, but that right is subject to the law of limitation, and I think that it would be unwise so to apply s. 5 of this law as to encourage the idea amongst the convicts of a penal settlement that they can at any time, as in this case, five years after the date of their conviction, appeal to this Court At the same time, being well acquainted with the facts of the case, as I decided the appeal of the five other persons who had been transported for life, I am quite prepared to admit the petition as one for revision of the proceedings.

The case of Murli is on all fours with that of Harphal and others, and the same reasons which influenced my decision with respect to those appellants, lead me now to say that there is no satisfactory evidence to justify the conviction of Murli, and he ought to be released. My reasons will appear from the copy of my judgment in the case of Harphal and others which I have directed should be put up with this proceeding. I cannot at this time remember how it happened that I did not consider, as a Court of Revision, the case of the petitioner. I can only attribute my not having done so to the uncertainty that prevailed in this respect as to whether the Court was at liberty to interfere with the conviction of a prisoner who had not appealed, (when dealing with the case of any person tried with him who had appealed) simply on a question of credibility of evidence. Later decisions both of this and of other Courts for years past have not tended to remove this uncertainty as to what is or is not a material error in a judicial proceeding. I am myself inclined, indeed I have acted in other cases in this view, to regard great laxity in weighing and testing evidence as a material error in a judicial proceed-

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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 annual the conviction of Murli and the sentence passed upon him and direct his release

*Conviction quashed.*

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*Before Mr. Justice Oldfield.*

1879
*July* 18.

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.