

EDGE, C. J.—In this case the three prisoners were arrested in the State of Gwalior on a charge of dacoity, and were transferred to these Provinces to be tried for an offence under s. 396 of the Indian Penal Code. At the trial they were acquitted of the offence under s. 396 of the Indian Penal Code, but were convicted on a charge under s. 412. There was no evidence that they had dishonestly or otherwise received or retained in British India any stolen property whatever. The evidence was that they were found in possession in Gwalior of property the subject of a dacoity in British India. There is no evidence that they were British subjects. Under these circumstances Mr. Gordon, who appears for the appellant Harbhan, contends that no offence was proved to have been committed within the jurisdiction of the Court. In my judgment this contention is well founded, and, this being a question as to jurisdiction, I think we are bound to give the other appellants the benefit of the point raised for one of them. I am of opinion that these appeals should be allowed, the convictions quashed, and the prisoners discharged.

BRODHURST, J.—I concur.

Convictions quashed.

EXTRAORDINARY ORIGINAL CRIMINAL.

1887
May 31.

Before Mr. Justice Straight.

QUEEN-EMPRESS v. GORDON.

Charge—Addition of charge at trial—Altering charge.—Criminal Procedure Code, s. 227.

Held that on a trial upon charges under ss. 467 and 471 of the Penal Code, the Court had power, under s. 227 of the Criminal Procedure Code, to add a charge under s. 193 of the Penal Code, upon which the prisoner had not been committed for trial. *Queen-Empress v. Appa Subhana Menre* (1) dissented from.

The prisoner in this case, who was a European British subject, was tried at the Criminal Sessions of the High Court before Straight, J., and a jury. He was committed for trial by the Assistant Commissioner of Jabalpur upon charges of offences punishable under ss. 467 and 471 of the Penal Code. It appeared that he had acted as the agent of his mother-in-law, Mrs. E. Watts,

1887

QUEEN-
EMPERESS
v.
GORDON.

who had taken out letters of administration, with the will annexed, to the estate of her deceased husband, E. R. Watts, who died in February, 1885, leaving property worth about Rs. 51,000. By his will the testator left his moveable property to his wife absolutely. With regard to the immoveable property, he directed that the rents should go to his wife for her life, and, after her death, should be equally divided between his daughter Mrs. A. C. Gordon (wife of the prisoner) and her minor children, with provisions as to survivorship which need not be stated, and a clause stipulating that his daughter's husband (the prisoner) should not be entitled to any portion of the estate. There was also a clause prohibiting the selling of any part of the immoveable property until all the testator's grandchildren should come of age.

At the end of a year from the grant of letters of administration, the prisoner, as representing the administratrix Mrs. Watts, filed an account of the estate in the Court of the Commissioner of Jabalpur, in accordance with the provisions of s. 277 of the Succession Act (X of 1865). Upon inspection of the accounts, it appeared that certain houses, which formed part of the estate, had been sold and mortgaged by the administratrix and by the prisoner as her agent, and that the proceeds of these transactions amounted to Rs. 10,000. To account for this sum, a document was filed with the accounts, which purported to be a promissory note for the same amount executed by the testator, shortly before his death, in favour of a Mrs. de Saran; and the expenditure side of the accounts contained entries which purported to show that the amount due under the promissory note had been repaid at various dates. The appearance of this note was so suspicious as to lead the Commissioner to institute inquiries, the result of which showed that the testator had never borrowed any money from Mrs. de Saran, or executed any promissory note in her favour, and that the note filed with the accounts, as well as the entries above referred to, had been fabricated by the prisoner. This led to his commitment and trial as already stated.

In support of the charges under ss. 467 and 471 of the Penal Code, a number of witnesses were called. When the case for the prosecution had concluded, and the prisoner had made a statement,

Mr. *W. S. Howell*, on his behalf, submitted that there was no case to go to the jury upon either of the charges.

The *Public Prosecutor* (Mr. *G. E. A. Ross*) was heard in reply.

STRAIGHT, J., then directed the Clerk of the Crown to add a charge of fabricating false evidence under s. 193 of the Penal Code, with reference to the provisions of s. 227 of the Code of Criminal Procedure.

Mr. *Howell*, for the prisoner, objected that the Court had no power under s. 227 to add a fresh charge upon which the accused had not been committed for trial. All that the Court could do was to alter the existing charges: what it was proposed to do was not to "alter" the charges, but to leave them untouched, and to add another charge perfectly distinct from them. He cited *Queen-Empress v. Appa Subhana Mendre* (1).

The *Public Prosecutor* (Mr. *Ross*), for the Crown, contended, in reply, that the practice of the Court had always been, when such a course was necessary, to alter or add to the charge in the manner proposed, and that such a procedure was covered by the terms of s. 227 of the Criminal Procedure Code.

STRAIGHT, J., overruled the objection. His Lordship was not bound by the decision of the Bombay High Court in the case referred to, and the Court in that case was not unanimous. He agreed with the dissentient judgment of Mr. Justice Scott, and considered that the course he proposed to take was within the meaning of the words "alter any charge" used in s. 227 of the Code.

The charge under s. 193 of the Penal Code was then added. The prisoner pleaded guilty to this charge. Upon the direction of the Court, the jury returned a verdict of not guilty upon the charges under ss. 467 and 471, and upon the charge under s. 193 convicted him on his plea of guilty. The Court sentenced him to ten months' rigorous imprisonment (2).

(1) L. L. R., 8 Bom. 200.

(2) See *The Queen v. Waris Ali* (N.-W. P. H. C. Rep., 1871, p. 337). The Code of Criminal Procedure then in force was Act XXV of 1861, s. 244

of which (corresponding with s. 227 of the present Code) provided that "it shall be competent to any Court before which a trial is held, at any stage of the trial to amend or alter the charge."