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QUEEN-
EMPRESS
v.
HAWTHORNE.

enabling him to explain any circumstance appearing in *the evidence* against him " had not come into play. A Magistrate has no right, in such a way as was adopted here, to elicit damaging or incriminating admissions from a person against whom he has issued process, for the purpose of afterwards treating them as evidence in the case, and chapter XXI of the Code gives no countenance to any such procedure. The impression left upon my mind upon a perusal of all the papers, is that the case was tried in too much of a storm, and that from the beginning to the end the Magistrate lost sight of the fact that one of the not the least important incidents in the administration of criminal justice " is to clear away everything which might engender suspicion and distrust of the tribunal, and to promote the feeling of confidence in the administration of justice which is so essential to social order and security " *Sergeant v. Dale* (1). It is, however, unnecessary for me to enter at large into the proceedings of the trial, being of opinion, as I am, that the accused having claimed his right under the last clause of s. 191 of the Code, the jurisdiction of the Magistrate was ousted.

I quash the conviction and fines in all Courts, and having regard to all that has taken place, I think no further action should be ordered by me or adopted by the local authorities. Any money that has been realised as fine should be refunded.

Before Mr. Justice Knox.

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April 4.

IN THE MATTER OF THE PETITION OF MALCOLM DECASTRO.

Criminal Procedure Code, ch. XV, s. 488.—Order for maintenance of wife—Wife living apart from her husband for good cause.—Jurisdiction.

Where a wife, after a temporary absence from her husband on a visit, found on her return that he was living with another woman and thereupon left him and went to live in a different district and in that district applied for an order for maintenance against her husband,—

Held that, the wife being justified in refusing to live with her husband and in choosing her own place of residence, the neglect of her husband to maintain her was an offence within the jurisdiction of the appropriate Court at the place where the wife

(1) L. R. 2 Q. B. D. 558.

resided—*In re the petition of Shaik Fakrudin* (1) distinguished—*In the matter of the petition of W. B. Todd* (2) followed.

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The facts of this case sufficiently appear from the judgment of Knox, J.

Mr. J. Simeon, for the applicant.

Mr. C. Ross Alston, for the opposite party.

The Government Pleader (*Munshi Ram Prasad*), for the Crown.

KNOX, J.—On the 15th October 1890, Mary DeCastro, lawfully married wife of Malcolm DeCastro, applied under s. 488 of the Code of Criminal Procedure for an order directing her husband to make a monthly allowance for her maintenance and that of her three children. Summons to appear and answer to this application was served upon Malcolm DeCastro. It is evident from the record and as a matter of fact admitted by him that he made no appearance and allowed the case to proceed against him *ex-parte*.

From the statement on oath of Mrs. DeCastro it appears that she lived with her husband till the year 1881; that she went on a temporary visit to her sister, and on her return to her husband found herself compelled to leave him because he had a woman living with him.

Upon these statements the Magistrate of Allahabad passed an order for maintenance. Malcolm DeCastro now applies to this Court to revise that order on the ground that he was a resident of Ajmere at the time Mrs. DeCastro had made the application for maintenance, and consequently the Cantonment Magistrate of Allahabad had no jurisdiction to entertain the application. He put forward two other grounds as grounds why the order of the Magistrate should be revised, but they are grounds which entirely deal with facts, and, sitting as a Court of Revision, I see no reason to interfere with the Magistrate's finding on those facts.

There remains the question of jurisdiction. *Mr. Simeon*, who appeared for the petitioner, maintained that the only Court which had

(1) I. L. R. 9 Bom. 40.

(2) 5 N.-W. P. H. C. Rep. p. 237.

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jurisdiction was the Court within the local limits of whose jurisdiction his client was actually residing at the date when the application for maintenance was instituted. He referred the Court to the case of *Fakrudin* (1).

Mr. *Ross Alston*, who appeared for Mrs. DeCastro, contended that the Magistrate of Allahabad had jurisdiction and that the case before this Court differed from that before the Court at Bombay. It was proved in the case before this Court that the wife had good cause for refusing to live with her husband, and in such a case she was at perfect liberty to choose her own place of residence. She had, moreover, the right to be maintained by her husband at the place of residence which she might choose, and if he failed to maintain her she had a right to institute her application for maintenance in the district in which she happened to reside.

The learned Government Pleader, who appeared in support of the Magistrate's order, drew attention to the case of *W. B. Todd* (2).

The question of jurisdiction is one which must be decided by the provisions of the Code of Criminal Procedure. The neglect to maintain a wife is an offence, inasmuch as it is an omission which is made punishable by the Code, and as an offence its place of trial must be determined by the provisions laid down in Chapter XV of the Code. In the present instance I am satisfied that Mrs. DeCastro has proved that her living apart from her husband was a lawful act, and that she was entitled to be maintained by him at Allahabad, which she had chosen as her place of residence. The neglect to maintain her was thus an offence committed within the local limits of the jurisdiction of the Magistrate of Allahabad. This is in accordance with the view taken by this Court in *Todd's* case, and I therefore find that the contention of want of jurisdiction fails.

The case before the Bombay High Court appears to have been based upon facts of a different kind.

The application is dismissed and the order of the Magistrate of Allahabad maintained.

(1) I. L. R. 9 Bom. 40.

(2) 5 N.-W. P. H. C. Rep. p. 237.