

a very probable one, and in fact he did release the prisoner on bail though the offence was not a bailable one. I can only regard the judgment of the Magistrate as showing that if it had not been for the contradiction afforded by the statement made to the police officer who was conducting the investigation, he would have acquitted the prisoner. In that view he must have treated that statement not only as discrediting the evidence of Jahan, but as evidence showing that the whole case for the defence was false, and consequently as evidence against the accused. The learned Sessions Judge, so far as I can read his mind through his judgment, was influenced by the same considerations as the Magistrate, and it appears to me that Madho, the appellant here, would most probably never have been convicted if his witness Jahan had not been called. Under the circumstances I must accede to this application and treat this conviction as having been made upon evidence which, as against the accused, was excluded by reason of s. 162 of the Code of Criminal Procedure, 1882. I accordingly allow the petition, set aside the conviction, and acquitting the prisoner, direct that he be set at liberty.

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Before Sir John Edge, Kt., Chief Justice.

QUEEN-EMPERESS v. BHURE.

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September 12.

Act XI of 1878 (Arms Act), s. 19 (c)—“Going armed”—Presumption as to persons found carrying arms.

Where a person is found carrying arms apparently in contravention of the provisions of the Arms Act, it must be presumed, in the absence of proof to the contrary, that he is carrying such arms with the intention of using them should an opportunity of using them arise. *Queen-Empress v. Alexander William* (1), explained and approved.

This was a reference made by the Sessions Judge of Farakhabad in respect of an application for revision of an order of the Joint Magistrate convicting the petitioner, one Bhure, of an offence under s. 19, clause (c) of the Arms Act. The petitioner before the Magistrate denied possession of the weapon, possession of which was

(1) Weekly Notes, 1891, p. 208.

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charged against him, but this defence was abandoned before the Judge, and it was urged that the weapon belonged to a zamindár, and that the petitioner was merely taking it to be repaired. The Sessions Judge with reference to the case of *The Queen-Empress v. Alexander William* (1) was of opinion that there should have been evidence to show an intention on the part of the prisoner to use the weapon should opportunity arise, and no such evidence appearing in the record, referred the case to the High Court for orders.

On this reference the following order was passed by EDGE, C.J.:—

It appears to me that the decision in the case of *The Queen-Empress v. Alexander William* (1) has been misunderstood. In that case my brother Knox acted on the prisoner's statement that he, the prisoner, was carrying the gun for the purpose of getting it repaired. The gun did not belong to the prisoner. The prisoner in that case was no doubt carrying the gun, he was not, however, carrying it as weapon, but as a parcel, and was rightly considered not to have been going armed. In the present case the prisoner had in his possession a pistol, for the possession and carrying of which no explanation such as that in the case of *The Queen-Empress v. Alexander William* (1) was given, much less proved. A man who is found going about with a pistol, gun, sword or other weapon within the definition of "arms" in s. 4 of Act No. XI of 1878 must, in the absence of proof to the contrary, be presumed to be carrying it with the intention of using it, should an opportunity for using it arise, and, unless he is licensed to carry the weapon and is not exceeding the terms of the license, may properly be convicted under s. 19, clause (e) of the Act, as this man was. I see no reason to interfere. Bhure must undergo the punishment to which he has been sentenced. The record may be returned.

(1) Weekly Notes, 1891, p. 208.