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WILSON, J.—I concur in the judgments that have been delivered.

TOTTENHAM, J.—I too concur generally in these judgments, but I am not quite satisfied that the Magistrate should be deterred from taking cognisance of offences against public justice except on the complaint of parties actually aggrieved by them.

GHOSE, J.—I concur generally in the judgments that have been delivered by the Chief Justice and Mr. Justice Norris.

T. A. P.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep, Mr. Justice Pigot, Mr. Justice Ghose, and Mr. Justice Beverley.

QUEEN-EMPRESS *v.* KARTICK CHUNDER DAS.*

1887 *July* 20.

Evidence, Admissibility of—Previous conviction for the purpose of increasing the evidence at the trial against accused—Evidence Act (I of 1872), *s.* 54—*Criminal Procedure Code (Act X of* 1882), *s* 310.

Under s. 54 of the Evidence Act a previous conviction is in all cases admissible in evidence against an accused person.

ON the 10th June, 1887, one Kartick Chunder Das was charged under s. 411 of the Penal Code with receiving stolen goods. During the course of the trial the prosecution tendered as evidence against the accused a previous conviction, three years old, for attempting to commit the same offence. The evidence was tendered under s. 54 of the Evidence Act as tending to show guilty knowledge. The evidence was objected to, but the objection was overruled by the Magistrate and the evidence admitted. The prisoner was subsequently convicted of the offence charged subject to a reference to the High Court on the question whether the evidence of the previous conviction was properly admitted or not.

On the reference being called on for hearing the Court (PETHERAM, C.J., and BEVERLEY, J.) considered the question to be one of great importance, and without giving any opinion on the question referred decided to call a Full Bench to hear the point argued. The case then came on before a Full Bench,

* Criminal Reference No. 1 of 1887 made by C. H. Reily, Esq., the Chief Presidency Magistrate of Calcutta, under s. 432 of the Code of Criminal Procedure.

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consisting of Petheram, C.J., Prinsep, J., Pigot, J., Ghose, J., and Beverley, J.

The *Officiating Standing Counsel* (Mr. *Bonnerjee*) for the Crown.—Since the Evidence Act there are only two reported cases on s. 54, *viz.*, *Roshun Doosadh* v. *Empress* (1) and *Reg.* v. *Parbhudas Ambaram* (2). The Bombay case shows the difference between the two parts of s. 54. Reading ss. 2 and 5 of the Evidence Act together it appears as if evidence may be given in criminal proceedings of previous convictions of accused persons. Section 11 shows when facts not otherwise relevant become relevant. The definition of the word "evidence" is given in s. 3. A similar section to s. 54, *viz.*, s. 19 of 34 and 35 Vic., c. 112, was in force in England before the Indian Evidence Act was passed, and that section applied to special cases. In the Calcutta case cited the Judges say evidence of bad character is relevant, but they do not say the Sessions Judge was in error in admitting the evidence, but they do say, so far as it was treated as evidence of bad character, the Judge was wrong. There is a case decided before the Evidence Act in which it was decided that a previous conviction was not admissible, *viz.*, *Queen* v. *Thakoordass Chootur* (3).

[PETHERAM, C.J.—Why did the Legislature pass s. 310 of the Criminal Procedure Code? If s. 54 has the meaning you ascribe to it the whole of any facts shut out by s. 310 might be brought in under s. 54 of the Evidence Act.] Section 310 of the Code and s. 54 of the Evidence Act must be read together.

[PETHERAM, C.J.—The provisions of s. 310 of the Criminal Procedure Code are safeguards for the protection of prisoners, and as the Code was passed in 1882 it cannot be supposed that the Evidence Act passed in 1872 should override it.]

Taylor on Evidence, par. 345, p. 325, Ed. 1885, sums up the English law on the subject. Section 54 cannot be limited to any particular cases; it must be read broadly, leaving it to the judicial officers to take care that it is made use of in a proper manner. In charges under s. 413, Penal Code, a previous conviction would be admissible. You may under s. 14 of the Evidence Act, give evidence that an accused had other stolen property in

(1) I. L. R., 5 Calc., 768. (2) 11 Bom. H. C., 90.
(3) 7 W. R., Cr., 7.

his possession. I submit, therefore, that evidence of a previous conviction may be given at the trial in all cases, whether such previous conviction is connected or not with the offence the accused is charged with.

Mr. *Garth* for the accused.—The question is not one of English law but of Indian law. But even in England, before 34 and 35 Vic., c. 112, previous convictions could not be given in evidence except for the purpose of enhancing punishment, and since that Statute they can only be given in certain cases and for particular purposes.

It is clear that, prior to the passing of the Indian Evidence Act, the English law as it existed before 34 and 35 Vic., c. 112, prevailed in India. See *Queen* v. *Thakoordass Chootur* (1), *Queen* v. *Gopal Thakoor* (2) and *Queen* v. *Phoolchand* (3). If the construction of s. 54 of that Act contended for by the Crown is correct, the effect of it is to admit evidence of a previous conviction of any offence, even one of a wholly different character from that charged, and at any stage of the trial. This would have been a most radical change, going far beyond the existing law in England, and opposed to all the English authorities. Surely, if this had been intended, the change would have been mentioned in the speeches of Sir FitzJames Stephen upon the bill. But the section is never alluded to. Surely also the change would have been effected by more apt and precise words. It is submitted that s. 54 was, in reality, only intended to codify the existing law, not to alter it. Evidence of previous convictions is relevant, and was so before the passing of the Evidence Act, in criminal proceedings, but only for the purpose of enhancing punishment, and it was for this purpose only that the Legislature intended to make it relevant by this Act. This view is supported by the authority of Mr. Norton in his treatise on the Evidence Act—see Ed. 9, p. 231.

By s. 55 character includes reputation and disposition, and evidence can only be given of general reputation and disposition, and not of particular acts. It is submitted that evidence of

(1) 7 W. R., Cr., 7. (2) 6 W. R., Cr., 72.
(3) 8 W. R., Cr., 11.

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a previous conviction could only be relevant (if at all) before conviction as a particular fact showing reputation or disposition. If so, by the express term of the Act it is inadmissible.

The Legislature have also themselves put a construction on the section—see s. 310 of the Criminal Procedure Code. All the elaborate precautions there taken would be useless if the evidence was admissible under s. 54. It might, if the argument for the Crown is correct, be first used as evidence during the trial, and after conviction be made the basis of a fresh charge against the accused for the purpose of enhancing punishment. This could never have been intended.

The construction contended for would work the grossest injustice. It is said the Court has a discretion. But the words of the section are precise and allow of no discretion, and in any case the discretion would be a dangerous one to entrust to the subordinate tribunals of the country.

The opinion of the Full Bench was delivered by

PIGOT, J. (PETHERAM, C.J., PRINSEP, GHOSE and BEVERLEY, JJ., concurring).—The question referred to us by the Chief Presidency Magistrate is whether, upon the trial of a person charged with being in dishonest possession of stolen property, evidence can be given of a previous conviction of the accused for attempting to receive stolen property, knowing it to be stolen, under ss. 511 and 411 of the Indian Penal Code. There is not, in the law of this country, any such special provision as is made by 34 and 35 Vic., c. 112, s. 19, relating to the admission in evidence against a person charged with having received stolen goods knowing them to be stolen, of a previous conviction of such person, for any offence involving fraud or dishonesty. The question, therefore, involves the determination of the construction to be put on s. 54 of the Evidence Act.

Section 54 is one of a group of sections, 52 to 55 inclusive, placed in the Act, under the heading "character when relevant." Sections 53 and 54 relate to criminal proceedings only; 52 and 55 to civil cases; the explanation to s. 55 relates to all four sections.

Sections 53 and 54 and this explanation are as follows :—

Section 53 says : "In criminal proceedings the fact that the person accused is of a good character is relevant."

Section 54 says : "In criminal proceedings the fact that the accused person has been previously convicted of any offence is relevant ; but the fact that he has a bad character is irrelevant unless evidence has been given that he has a good character, in which case it becomes relevant."

"*Explanation.*—In ss. 52, 53, 54 and 55 the word "character" includes both reputation and disposition ; but evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown."

The Standing Counsel to Government contends that under s. 54 evidence may be given of a previous conviction of an accused person of any offence whatever, whether such previous offence be connected or not in any way whatever with the offence with which he is charged ; that it may be given as direct evidence upon his trial and not merely in reply to evidence of good character offered on the part of the accused ; and, of course, that it may be given, whether or not the accused be charged under s. 75 of the Indian Penal Code.

Mr. Garth for the accused contended that the Legislature cannot possibly have contemplated so serious a change in the law of evidence in criminal cases as this construction of the section would involve ; that the section was not meant to alter but to codify the existing law, and that it cannot have been intended that evidence of a previous conviction should be given, save for the purposes of punishment under s. 75, Indian Penal Code ; and he urged that under the explanation to s. 56 evidence can be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

The question appeared to be not merely of great importance, but of much difficulty. The words of the section are express. On the other hand we felt great difficulty in attributing to those words a meaning which might involve the admission as evidence against an accused, of proof of a convic-

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tion, the fact of which might, in many cases, have no possible bearing whatever upon the question whether he was guilty or innocent of the offence charged against him, and could, in such cases, have no effect save to produce against him a prejudice which, to use the words of an English Act to be referred to presently, would "not be consistent with a fair and impartial enquiry" as regards the subject-matter of the charge against the accused.

We doubted whether the Legislature could have omitted to advert to this danger; and we thought it our duty to consider whether some construction could not properly be given to the section such as would avoid it.

We were the more impressed with the force of this consideration because the Legislature has, in s. 310 of the Criminal Procedure Code, expressly guarded against the possibility of a jury's being prejudiced against a prisoner while on his trial upon one charge by being made aware of his being charged under s. 75 with a previous conviction.

Section 310 is as follows:—

"In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction, for any offence, the procedure laid down in ss. 271, 286, 305, 306 and 309 shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does

not, answer such question, the jury or the Court and the assessors (as the case may be) shall then enquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again."

That section, it is true, relates only to a very limited class of cases. Still it appears to recognise as to such cases, at least, the principle that a prisoner on his trial ought not to be prejudiced by a statement of a previous conviction suffered by him. That provision appears to be taken from English Statute Law, and originally appeared in 6 and 7 William IV, c. III, entitled "An Act to prevent the fact of a previous conviction being given in evidence to the jury on the case before them except when evidence to character is given."

The preamble is as follows: "Whereas by an Act passed in the seventh and eighth years of the reign of King George the 4th intituled *An Act for further improving the Administration of Justice in Criminal cases*, provision is made for the more exemplary punishment of offenders who shall commit any felony not punishable with death after a previous conviction for felony: And whereas since the passing of the said Act the practice has been on the trial of any person for any such subsequent felony to charge the jury to enquire at the same time concerning such previous conviction: And whereas doubts may be reasonably entertained whether such practice is consistent with a fair and impartial enquiry, as regards the matter of such subsequent felony, and it is expedient that such practice should from henceforth be discontinued." Then comes the enacting part of the Act, which provides that evidence of a previous conviction shall not be given until after the finding for a subsequent felony except where evidence of good character is given.

We felt, as we have said, that the indiscriminate admission against an accused person of any previous convictions against him would not merely operate in many cases so as to work what we should have called an unjust and unreasoning prejudice; but also that, by the construction contended for on behalf of the prosecution, a formidable novelty must be admitted

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into the rules of evidence applied in criminal proceedings; for in a multitude of cases the section, by this construction, renders admissible, and declares by its statutory force to be relevant—facts which, in no possible sense, save the technical statutory sense in which the word is used in the Act, could be relevant. It is not necessary to dwell on many of the innumerable examples which might be suggested. A previous conviction for bigamy would, under this construction, be relevant on a charge of theft, a previous conviction for cheating, on a charge of riot, and so on. Great therefore as the difficulty is of adopting any other construction of the words of the section, when taken by themselves, we might, perhaps, aided by the indication of the intention of the Legislature as disclosed in s. 310, have adopted the construction of the section laid down by a Division Bench of this Court in *Roshun Doosadh* v. *Empress* (1).

But we thought it right from the proceedings of the Legislative Council at the time this measure was in preparation to obtain such light as they could throw on the intention and scope of the section in question. Such a course has been more than once taken by the Courts here in recent times: and in a case of such difficulty and importance as this appeared to be we felt bound to adopt it.

The Evidence Act is, as it was intended to be, a complete Code of the law of Evidence for British India. It received the assent of the Governor-General in Council on the 15th March, 1872. It was the subject of two reports by Select Committees of that Council. In the first of these reports the subject now under consideration is dealt with. That report is published in the *Gazette of India* for June 24th, 1871, at pp. 235—242. It is signed by the then Legal Member of Council (now Mr. Justice Stephen) and by the other Members of the Committee, whose names follow: Messrs. J. Strachey, F. S. Chapman, F. R. Cockerell, J. F. D. Inglis and W. Robinson. It is a report by a Committee consisting of nearly one-half of the Members of the Legislative Council, and including the Legal Member in charge of the Bill, accom-

(1) I. L. R., 5 Calc., 768.

panying the draft Bill as settled by them, stating at length the scope of the proposed measure, the intentions and the reasons by which they have been influenced in framing it, and so submitting both to the Council. A second report was made upon the measure in the following year by the Select Committee upon the Bill, consisting of the same gentlemen,

report, when construing, in the face of the difficulties which we have adverted to, this section of the Act. We are asked to reject the most natural meaning of the words as one leading to a result manifestly unjust. We cannot disregard the fact that the Committee deputed to frame, and to advise the Legislature upon, the proposed Code, framed this section and advised its adoption to secure the result so described: and that the Legislature being so advised passed the section so framed. We think we must treat it as plainly shown, that the danger which, as we were disposed to hold, the Legislature must be supposed to have intended to avoid, was in truth the object which the Legislature sought to attain. It is stated in language plain, forcible, and concise. The Legislature lets in the evidence

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"for the purpose of prejudicing" the man upon his trial. It is, as is justly stated in the reports, the law of England "with some modifications." The English Legislature passes an Act for the sole purpose of shielding an accused from prejudice. The Legislature in this country enacts a provision for the express purpose of prejudicing him.

Having thus ascertained that the peremptory language of the section was meant to have the full effect which the words do, no doubt, *primâ facie* bear, we are relieved from the second difficulty which also oppressed us. It is in truth of the less consequence that the fact of previous convictions may have no possible bearing and constitute no possible guide upon the question of the truth of the charge at trial, because it is not for that purpose that they are admitted in evidence, but for another wholly different, and for which relevancy in the ordinary sense is immaterial.

We are constrained to answer this reference by saying that previous convictions are in every case admissible. That must be the law so long as this section remains unaltered.

We own that, could we have come to any other conclusion, we should have done so; but it is our duty to carry out the intentions of the Legislature.

T. A. P.

Before Mr. Justice Mitter, Mr. Justice Prinsep, Mr. Justice Wilson, Mr. Justice Tottenham and Mr. Justice Norris.

1887 *May* 23.

GIRWAR SINGH, AND ON HIS DEATH SRIKISHEN SINGH, AND OTHERS (PLAINTIFFS) *v.* THAKUR NARAIN SINGH AND OTHERS (DEFENDANTS).*

Limitation Act, 1877, *Arts.* 132 *and* 147—*Suit on a mortgage bond—English mortgage—"Mortgage" and "Charge"—Transfer of Property Act, ss.* 58, 60, 67, 83, 86, 87—89, 92, 93, 100.

A suit on a mortgage bond to enforce payment by sale of premises hypothecated is governed by Art. 132 of the Limitation Act. *Brojo Lal Sing* v. *Gour Charan Sen* (1) overruled; *Shib Lal* v. *Ganga Prasad* (2) dissented from.

* Full Bench Reference in Regular Appeal No. 488 of 1885, against the decree of Baboo Ram Pershad, Rai Bahadur, Subordinate Judge of Patna, dated the 12th of August, 1885.

(1) I. L. R., 12 Calc., 111. (2) I. L. R., 6 All., 551.