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due and payable by him in respect of this house property. We think there is possibly an explanation of the discrepancy, but we find it unnecessary to arrive at a conclusion upon that matter. In our opinion, if the receipts for rent had been forgeries or interpolations for the purposes of this case, they would have purported to be signed by some person on behalf of the lessor. We are also satisfied that if the story of the witness had been a concocted story, it would have been made to coincide accurately with the documentary evidence in possession of the party who called him. We therefore find that the gift of the house property is not invalid for lack of possession by the appellant here. The result is that the appeal is allowed, the decree of the lower Court is set aside, and the plaintiff's suit is dismissed with costs. The appellant will have her costs of this appeal.

Appeal decreed.

APPELLATE CRIMINAL.

1899
January 3.

Before Sir Arthur Strachey, Kt., Chief Justice, and Mr. Justice Knox.

QUEEN-EMPRESS *v.* SONEJU AND OTHERS.*

Criminal Procedure Code, section 288—*Admissibility of evidence—Statement of approver made before committing Magistrate and afterwards retracted in the Court of Session.*

Pardon was tendered by a Magistrate to one of several persons who were being tried before him for dacoity. The pardon was accepted, and the person to whom it was tendered made a statement as a witness before the Magistrate. The case having been committed to the Court of Session, the approver in that Court totally repudiated his statement made before the Magistrate. *Held* that this repudiation did not prevent the Sessions Court from considering the evidence of the approver under the provisions of section 288 of the Code of Criminal Procedure.

IN this case twenty persons were committed for trial to the Court of the Sessions Judge of Jhansi charged with dacoity under section 395 of the Indian Penal Code. Out of these, twelve were convicted, of whom two were sentenced to transportation for life, and the remainder to rigorous imprisonment for ten years.

* Criminal Appeal No. 1059 of 1898.

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In the course of the inquiry preceding the Sessions trial one of the accused, Jujhar Singh, was offered a pardon by the committing Magistrate. He accepted the offer, and made a statement at considerable length, naming all the accused, and giving a minute account of the manner in which the dacoity was carried out. This statement was repeated a few days later. In the Court of Session, however, Jujhar Singh absolutely denied his previous statements. He asserted that he had been induced to make them by torture practised upon him by the Police, and that even while he was in the midst of making his second statement before the committing Magistrate, a Police officer had taken him outside the Court-room and threatened him with a renewal of the treatment to which he had been formerly subjected.

Concerning the evidence of this witness the Sessions Judge recorded the following opinion:—"Although, however, the above testimony corroborates the statements made by Jujhar Singh and the confessions made by Mazbut Singh and Jaggat Singh in the committing Magistrate's Court, yet I am afraid that the former statements cannot be used as evidence against the accused in this Court. The ruling *Queen-Empress* v. *Nagu* (1) very clearly lays down that where, in the Sessions Court, a person whom a pardon has been tendered in the committing Court in consequence of which he made a full confession implicating himself and another person of murder, retracts and disavows the confession, the latter is no evidence in the trial. STRAIGHT, J., in *Empress* v. *Nazzara* (2) says that he entertains the grave doubts whether section 288 of the Criminal Procedure Code was ever intended to apply to the case of an approver who has made a deposition before the Magistrate, but in the Sessions Court withdraws it *in toto* upon the allegation that it was not a voluntary but an enforced statement. In the light of those rulings I am unable to take upon myself the responsibility of admitting in evidence, under section 288 of the Criminal

(1) Weekly Notes, 1891, p. 184. (2) (1881) 2 Leg. Rem., 170.

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Procedure Code, the depositions made by Jujhar Singh in the preliminary inquiry, whatever my own opinion may be of their truth."

On appeal from the convictions under section 395 of the Indian Penal Code the question of the admissibility of the statement of the accomplice Jujhar was discussed.

The Officiating Government Advocate (Mr. *A. E. Ryves*) for the Crown.

The Court (STRACHEY, C. J., and KNOX, J.) held that there was nothing in the previous rulings of the Court which would make inadmissible, under section 288 of the Code of Criminal Procedure, the statement of the approver made before the Magistrate.

REVISIONAL CRIMINAL.

1899
January 4.

Before Sir Arthur Strachey, Kt., Chief Justice, and Mr. Justice Knox.

QUEEN-EMPRESS *v.* LALIT TIWARI AND OTHERS.*

Rules of Court of the 18th January 1898, rule 83—Finality of judgment or order of the High Court—Judgment or order not complete until sealed

Held that a judgment or order of the High Court is not complete until it is sealed in accordance with Rule 83 of the Rules of Court of the 18th January 1898, and up to that time may be altered by the Judge or Judges concerned therewith without any formal procedure by way of review of judgment being taken.

A reference asking for an enhancement of sentence being before a Judge of the High Court, the Judge wrote an order declining to interfere, and signed and dated it. Subsequently, on the same day, the Judge reconsidered that order and erased it, substituting therefor an order calling upon certain convicts to show cause why the sentences passed upon them should not be enhanced. When the case came up for disposal on the return of the notice to show cause, Mr. *Amiruddin*, for the persons called upon, contended that the Judge had no power to change the order which had been originally written and signed by him, except on

* Criminal Reference No. 656 of 1898.