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recovery, but as the other two were not returned, a report of the theft was made at the thana on the 2nd March. The four persons above mentioned were arrested and put upon their trial upon charges under sections 380 and 215 of the Indian Penal Code. They were convicted and sentenced, each to two years' rigorous imprisonment, one year under each section. On appeal the Sessions Judge upheld the convictions and sentences. The convicts thereupon applied to the High Court in revision.

Mr. *G. W. Dillon*, for the applicants.

The *Government Pleader*, for the Crown.

AIKMAN, J.—The four accused, Muhammad Ali, Kure, Rahmatullah and Karim Bakhsh, were convicted of stealing four head of cattle, and sentenced to one year's rigorous imprisonment under section 380, Indian Penal Code. They were further found to have taken Rs. 50 from the owner for returning two of the cattle which they had stolen, and for this the Magistrate convicted them of the offence punishable under section 215, Indian Penal Code, and this conviction was upheld on appeal. A careful perusal of section 215 will show that it was never intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence. It is quite clear that the conviction under section 215 cannot stand. For the above reason I set aside the convictions of the four accused under section 215, Indian Penal Code, and the sentence of one year's rigorous imprisonment passed thereon. The conviction and sentence under section 380, Indian Penal Code, stand good.

Before Mr. Justice Aikman.

QUEEN-EMPRESS v. KANGLA.*

Act No. XIV of 1860 (*Indian Penal Code*), section 457—*House trespass by night with intent—Alleged intent theft—Proved intent adultery with complainant's wife—Evidence.*

Where, on a charge under section 457 of the Indian Penal Code, it was proved to the satisfaction of the Court that the accused did enter the complain-

* Criminal Reference No. 576 of 1900.

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ant's house in order to have sexual intercourse with a woman whom he knew was the wife of the complainant, and further that he did so without the husband's consent, and the accused was convicted: it was held that the conviction was proper. It was not necessary under the circumstances that the complainant should bring a specific charge of adultery. *Brijlasi v. The Queen-Empress* (1), referred to.

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IN this case the complainant brought a complaint against one Kangla, charging him with an offence under section 457 of the Indian Penal Code, and alleging that the intent was to commit theft. The case was tried by a Magistrate, and the Magistrate came to the conclusion on the evidence that the real intent of the accused was to commit adultery with the wife of the complainant, and further, that the complainant was proved not to be a consenting party to any such intent. On these findings the Magistrate convicted the accused and sentenced him to two months' rigorous imprisonment. An application in revision having been presented on behalf of the accused, the Sessions Judge reported the case to the High Court under section 438 of the Code of Criminal Procedure, recommending that the conviction should be set aside for the following reasons:—"The husband in this case distinctly charged appellant with house-trespass with intent to commit theft, and certain stolen property was produced. The appellant admitted house-trespass with intent to commit adultery, but the offence of criminal adultery cannot be established against any person unless and until the husband makes a specific charge of adultery. It is not sufficient for conviction in this case to find that appellant admits that the husband did not consent. If the husband chooses to make a false charge of trespass with intent to commit theft, the appellant should be acquitted, as the husband does not make any charge of trespass with intent to commit adultery."

Upon this reference the following order was made:—

AIKMAN, J.—In this case one Kangla was convicted by a Magistrate of the first class under section 457, Indian Penal Code, and sentenced to two months' rigorous imprisonment. The offence, which the accused is found to have entered the complainant's house in order to commit, is adultery. That such was his intention is clear from his own admission. The husband was

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the complainant in the case. He, it appears, alleged that the intention with which the accused entered his house was to commit theft. This was not made out to the satisfaction of the Magistrate. But it was proved to the satisfaction of the Magistrate that the accused did enter the complainant's house in order to have sexual intercourse with a woman whom he knew was the wife of the complainant, and it was further proved that he did so without the husband's consent. The facts of the case—*Brijbasi v. The Queen-Empress* (1),—cited by the learned Sessions Judge who has made this reference, were different from those of the present case. In my opinion the conviction is not open to objection on the ground of illegality, and I decline to interfere with it. If the accused was released on bail under the orders of the Sessions Judge, he must surrender to undergo the remaining term of the sentence.

APPELLATE CRIMINAL.

Before Mr. Justice Aikman.

QUEEN-EMPRESS v. UMRAO LAL.*

Act No. XLV of 1860 (*Indian Penal Code*) sections 466, 471—*Forgery—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for the use.*

Held, that a person who, being himself the forger thereof, has used as genuine a forged document, cannot be punished as well under section 471 of the *Indian Penal Code* for the use as under section 466 for the forgery.

THE facts of this case sufficiently appear from the judgment of the Court.

Babu Sital Prasad Ghose, for the appellant.

The Government Pleader, (*Maulvi Ghulam Mujtaba*), for the Crown.

AIKMAN, J.—In this, case one Umrao Lal, a village patwari, has been convicted by the learned Sessions Judge of Shahjahanpur of having forged a register kept by him in his capacity of patwari. He has also been convicted under section 471, *Indian Penal Code*, of having used as genuine this forged document. It appears that a zamindar served a tenant with notice of ejection under section

* Criminal Appeal No. 957 of 1900.

(1) (1896) I. L. R., 19 All., 74.