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the manner in which the mortgagee's possession over those two plots commenced. There remains the more important question as to the admissibility of the evidence on which the facts have been ascertained. It must be strictly borne in mind that the question is merely one of admissibility of evidence. There is nothing in the proceedings between the parties in the month of July, 1875, obnoxious to the provisions of the Transfer of Property Act. The plaintiff was perfectly entitled to mortgage plot No. 1248 to the defendants by delivery of possession over the same, provided the amount of the mortgage-debt thereby secured did not exceed Rs. 100. The question is whether the plaintiff is trying to prove a subsequent agreement to rescind or modify the contract embodied in the registered instrument of March, 1875. If the question now before the Court were as to the right of the defendants to mortgagee possession over the residential house or the scattered plots specified in the registered deed, it is possible that different considerations would arise. I think, however, that the plaintiff was clearly entitled to lead evidence to prove two facts, (1) that the possession of the defendants over plot No. 1248, was that of mortgagees and had never been adverse to himself, and (2) that the right of mortgagee possession was terminated by the payment of Rs. 99 which had been duly tendered by him. On these grounds I would dismiss this appeal with costs.

WALSH, J.—I agree.

BY THE COURT.—The appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Justice Sir George Knox.

EMPEROR *v.* KHIALI.*

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January, 3.

Criminal Procedure Code, section 339—Withdrawal of pardon—Procedure.

Where an accomplice who has accepted a tender of pardon made under section 337 of the Code of Criminal Procedure fails to make a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence under inquiry, there is no necessity to record any formal order withdrawing the pardon. If the accomplice has forfeited his pardon and

* Criminal Revision No. 940 of 1916, from an order of A. G. P. Pullan, Sessions Judge of Mainpuri, dated the 2nd of October, 1916.

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is put on his trial for the offence in respect of which the pardon was tendered it is open to him to plead his pardon in bar of trial, and it will then be for the prosecution to show in what manner the pardon has been forfeited. *Kullan* v. *Emperor* (1) followed.

IN this case one Khiali had been offered a pardon by the committing magistrate in case of *Emperor* v. *Khushi Ram*. He was examined as a witness before the committing magistrate and in the court of session. In the court of Session he totally denied having made any statement in the court of the committing magistrate and added that he took no part in the dacoity in respect of which the trial was being held. The Sessions Judge directed the committing magistrate to record evidence and to commit Khiali to the sessions on a charge under section 396 of the Indian Penal Code, and he added :—" The pardon offered to Khiali is declared to be forfeited." Khiali applied in revision against this order to the High Court urging that the Sessions Judge had no jurisdiction to withdraw the conditional pardon ; that there was no ground for the trial of the applicant under section 396, and that he could not be prosecuted for any offence other than that of giving false evidence.

Munshi *Baleshwar Prasad*, for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

KNOX, J.—This is an application in revision. The order with which it is concerned is an order passed by the learned Sessions Judge of Mainpuri. It appears that one Khiali had by the committing magistrate been offered a pardon in the case *K. E.* v. *Khushi Ram and others* and had been examined on oath as a witness for the Crown both in the court of Session and of the committing magistrate. In the court of Session he totally denied having made any statement in the court of the committing magistrate and added that he took no part in the dacoity. On this the learned Sessions Judge directed the committing magistrate to record evidence and to commit Khiali to sessions on a charge under section 396, Indian Penal Code, and added the words " pardon offered to Khiali is declared to be forfeited." The pleas taken in revision are that the learned Sessions Judge had no jurisdiction to withdraw the conditional pardon, that there was

(1) (1908) I. L. R., 32 Mad., 173.

no ground for the trial of the applicant under section 396, Indian Penal Code, and that he could not be prosecuted for any offence other than that of giving false evidence. In support of the first plea I was referred to the case of *Queen Empress* v. *Ramasami* (1). In that case the learned Judges, following a Calcutta decision in *Q. E.* v. *Manick Chandra Sarkar* (2), held that the proper authority to withdraw a pardon is the authority which granted it. But in the very same case the learned Judges, who were asked to quash the commitment on the ground that it was an illegal commitment, refused to do so and directed the Sessions Judge to proceed with the trial according to law. Whatever weight is to be attached to this judgement, the same High Court in *Kullan* v. *Emperor* (3) held that under section 339, Criminal Procedure Code, there is no necessity for withdrawal, and withdrawal has no effect. In this particular case the pardon in question had been tendered by the committing magistrate. The person to whom it had been tendered had at the trial before the Sessions Judge retracted the evidence previously given by him, and the District Magistrate, who was not the person who had tendered the pardon, purported to withdraw the pardon, and the appellant was subsequently tried and convicted of dacoity, the offence of which a pardon had been tendered. I agree with the view taken by the learned Judges who decided the case of *Kullan* v. *Emperor* (3). If the accused is committed to the court of Session, it will still be open to him to plead the pardon as a bar to his trial. The prosecution will have to prove that the pardon has been forfeited. The concluding words of the judgement are perhaps out of place and are not to be taken as in any way affecting the plea of the bar of pardon if put forward. With this modification the application is dismissed.

Application dismissed.

(1) (1900) I. L. R., 24 Mad., 321. (2) (1897) I. L. R., 24 Calc., 492.

(3) (1908) I. L. R., 32 Mad., 173.