fourth schedule is a revision under section 185, which lies only to the Board of Revenue in certain cases, namely, those in which no appeals lie under section 177 to the District Judge. It is therefore argued that the section does not cover a revision in a case in which an appeal would lie under section 177 to the District Judge. The unfortunate part of this argument is that section 167 says:—"All suits and applications of the nature specified in the fourth schedule shall be heard and determined by the Revenue Courts." The nature of revisions is alike whether they lie in the Civil, Criminal or Revenue Courts, and the language really means that no such application as the present could lie because it is in the nature of an application such as is contemplated by section 185 of the Tenancy Act. I therefore fully agree with the rulings which I have already mentioned in so far as they are applicable to the circumstances of the present case. Here no appeal whatever has been preferred to the District Judge. The case has not gone into the Civil Court at all, and there is no order before me which could in any sense be deemed to be an order of a Civil Court. The language of section 167 of the Tenancy Act is fatal to the present application, and I must therefore uphold the preliminary objection and hold that no revision would lie to this Court in the present case. The application for revision is therefore rejected. It must not be inferred from this that I consider the order passed by the Revenue Court to be a correct one. The application is rejected with costs.

Application rejected.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

EMPEROR *v.* SARJU AND ANOTHER. *

1918
December, 17.

Criminal Procedure Code, sections 110, 117—*Security for good behaviour—Joint inquiry—Statements made by parties concerned amounting to confessions and implicating other parties to the inquiry—Use of such statements as against the others—Act No. I of* 1872 *(Indian Evidence Act), section* 30.

On an inquiry which was being conducted against six persons jointly under sections 110 and 117 of the Code of Criminal Procedure, the case for the

* Criminal Revision No 742 of 1918, from an order of N. C. Stiffe, District Magistrate of Cawnpore, dated the 2nd of May, 1918.

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prosecution being that all six were habitually thieves and house-breakers and also were associated together in the matter under inquiry, two of such persons made statements to the magistrate amounting to confessions of the actual commission of a particular offence and containing incriminating matter as to the relations of two others out of the six persons before the court with the other persons associated with them in the inquiry.

Held that these statements might be taken into consideration along with the other evidence in the case as against the other persons mentioned in them whose cases were being jointly inquired into, if not under section 30 of the Evidence Act, at any rate under section 117 (8) of the Code of Criminal Procedure.

THESE were applications in revision by two persons against whom an order had been passed by the District Magistrate of Cawnpore directing them to furnish security to be of good behaviour under section 110 of the Code of Criminal Procedure. The facts of the case are fully set forth in the judgment of the Court.

Mr. *A. P. Dube*, for the applicants.

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

PIGGOTT, J.:—These are applications of two persons, Sarju and Lallu, who have been required to furnish security to be of good behaviour for a period of one year. They were brought before a Magistrate along with four other persons, the case for the prosecution being that these six men were individually habitual thieves and house-breakers and also were associated together in the matter under inquiry. The judgment of the trying Magistrate and the appellate judgment of the learned District Magistrate show that the police had beyond question very substantial reasons for the action taken by them. The six men had been arrested together under circumstances of grave suspicion and the circumstances of their arrest constituted in themeslves evidence of association. As against four out of the six men there was overwhelming evidence of their being habitual criminals as alleged by the prosecution. Such being the case the evidence of habitual association on the part of Lallu and Sarju with these criminals of inferior social status would constitute in itself very strong ground for an inference that such association could only be based upon community in crime. As regards Sarju there was, over and above the evidence as to the

arrest, certain documentary evidence as to which I agree with both the courts below that it was suspicious in a high degree. The contents of the documents and the circumstances under which they came into the hands of the police were such as in my opinion very definitely to warrant the inference that Sarju was associated with habitual criminals as their accomplice and partner in crime. The case against Lallu differs from that against Sarju mainly because he is not implicated in any of these documents. In this connection a question of law has been raised, for the consideration of which no doubt this application in revision was admitted by the learned Judge of this Court before whom it was presented. It appears that after the arrest of the accused persons two of them, namely Chheda and Narain, made statements which amounted to confessions of the actual commission of a particular offence and which contained incriminating matter regarding the relations of Sarju and Lallu with the other persons associated with them in this inquiry. The question is whether anything contained in those statements could lawfully be taken into consideration by the Court in coming to a conclusion as regards the propriety of binding over Sarju and Lallu to be of good behaviour. I am satisfied that the provisions of section 30 of the Indian Evidence Act, considered by themselves, do not justify the admission in evidence of these statements. It is true that the word "offence" is not defined in the Indian Evidence Act and that the subsequent definition of that word in the General Clauses Act cannot be treated as governing its use in the Indian Evidence Act, a Statute already in force when the General Clauses Act was passed. At the same time, having regard to the way in which the word "offence" is defined elsewhere, I do not think that persons against whom proceedings are being jointly taken under section 117 of the Code of Criminal Procedure in one and the same inquiry can be said to be on their joint trial for the same offence, within the meaning of section 30 of the Indian Evidence Act. I do not think, however, that this consideration altogether disposes of the point now before the Court. The inquiry was one under section 117 of the Code of Criminal Procedure. The prosecution had to make good the assertion that the six persons before the Court had been

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associated together in the matter under inquiry and moreover, as I have already pointed out, the fact of association with the other four persons was a strong point against Lallu and Sarju. Under these circumstances I think the prosecution were entitled to put the statements in evidence which two of the persons then before the court had made before a responsible Magistrate and which, if true, established the existence of such association as the prosecution alleged. I do not mean to say that the statements by Chheda and Narain could have been taken in evidence against Lallu and Sarju in the absence of all other evidence of association, or could have been accepted as proof of criminal association in the absence of any other evidence. In the present case the court had before it *primâ facie* evidence of criminal association in the circumstances under which the arrest of the six men had been effected. The principle underlying the provisions of section 30 of the Indian Evidence Act obviously is that, when a statement can be proved against one of two accused persons jointly on their trial, it is very difficult, if not practically impossible, to require the court to exclude that statement altogether from its mind when it comes to consider the case against the other accused. Such a consideration seems to me to apply *a fortiori* to proceedings in an inquiry under section 117 of the Code of Criminal Procedure, when once the prosecution has made out a reasonable case for dealing with two or more persons in the same inquiry under sub-clause (4) of the said section. The effect of the words "or otherwise" is to render admissible any evidence which would be relevant if the accused person or persons were being tried on a charge of being habitual offenders. Thus the words of the section are wide enough to admit of these statements being put in evidence and of their being taken into consideration by the court when coming to its conclusion as to whether the case of habitual association for the purpose of committing such offences as theft and house-breaking was made out against each of the persons before the court. On a consideration of the record as a whole I see no reason to doubt that the order in question was justified as against Lallu, as it certainly was, in my opinion, in respect of Sarju. I dismiss both these applications.

Application dismissed.