

CRIMINAL JURISDICTION.

1880
September*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

EMPRESS OF INDIA v. TIKA SINGH.

*Discharge—Revival of Prosecution—Place of inquiry or trial—Enticing away
Married woman.*

A person was prosecuted before a Criminal Court in the Panjab for enticing away a married woman, with a criminal intent, an offence punishable under s. 498 of the Indian Penal Code. Such prosecution was legally instituted in such Court and such offence was properly triable by it. Such Court discharged such person under the provisions of s. 215 of Act X of 1872. Subsequently it appeared that such person was detaining such woman at a place in the North-Western Provinces, and he was prosecuted before a Criminal Court of the district in which such place was situated for the same offence as he had been prosecuted for before the Criminal Court in the Panjab, *viz.*, enticing away such married woman, and was convicted of that offence. *Held* that, although his previous discharge did not bar the revival of a prosecution for the same offence, such prosecution could only be revived in the Panjab Court, and he could not be convicted under the latter part of s. 498 of the Indian Penal Code for detaining an enticed woman until the enticing had been proved, and such conviction had been properly set aside by the Court of Session.

TIKA SINGH was charged before the Extra Assistant Commissioner of Jalandhar, in the Panjab, under s. 498 of the Indian Penal Code, with having, on or about the 3rd February, 1880, enticed away one Jas Kuar, the wife of one Ganga Singh, with a criminal intent. Such offence was alleged to have been committed by him at Bindraband in the Jalandhar district. Jas Kuar was not produced as a witness in the case, as she could not be found. The Extra Assistant Commissioner, being of opinion that the charge was not proved, directed that Tika Singh "should be released immediately from the security and liability taken from and imposed on him." Subsequently Jas Kuar was discovered in the Bijnor district, in the North-Western Provinces, in which district Tika Singh resided. On the complaint of her husband, Tika Singh was tried before the Assistant Magistrate of Bijnor, under s. 498 of the Indian Penal Code, on the same charge as was made against him before the Extra Assistant Commissioner of Jalandhar, *viz.*, "that he on or about the 3rd February, 1880, did entice away Jas Kuar, the wife of Ganga Singh," and was convicted by the Assistant Magistrate of Bijnor on that charge. On appeal by Tika Singh, the Sessions Judge of Bijnor, Budaun Division (Mr. C. Daniell), on the 17th April, 1880, set aside his conviction, and directed his release. The

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Sessions Judge's grounds for setting aside the conviction will appear from the following extract from the letter of the Magistrate of the Bijnor district, Mr. C. W. Mellor, referring the case directly (the Sessions Judge having refused to refer it at his instance) to the High Court for orders under s. 297 of Act X of 1872 :—"The case for the prosecution was as follows:—The complainant charged Tika Singh with abducting his wife: he had originally instituted the charge in a Court in the Panjab, but this had fallen through as the woman could not be found: complainant then petitioned the Bijnor Magistrates: it was notorious that the woman was kept in hiding in or about Nagina in this district, and after a while she was arrested as an absconding witness, and the accused convicted: the Sessions Judge discharged the accused on appeal on the ground that (supposing accused had not been acquitted of the offence by the Panjab Court under s. 220, Code of Criminal Procedure), the prosecution, though it could be revived under s. 215, Explanation II, of the Code of Criminal Procedure, could only be so revived in the Court in the Panjab in which it was originally instituted, and that therefore the Bijnor Magistrate acted without jurisdiction: the Judge says that there is nothing in s. 67, Code of Criminal Procedure, which conflicts with this view, but I can see nothing in s. 67 or in s. 215 which favors the view or prevents the prosecution being revived in Bijnor. The Judge says the trial could not be held partly in one district and partly in another, but the trial in Bijnor was complete in itself; it did not require to be supplemented by the proceedings in the Panjab Court, which could not be said to constitute a part of the trial: the Judge also appears to me to have entirely overlooked the fact that the offence charged was a continuous one; that the accused (if guilty) was committing the offence every day so long as he detained or concealed the woman; and that therefore the offence for which he was tried here was in reality committed after the proceedings in the Panjab Court; and that therefore any previous proceedings held in the Panjab Court could by no possibility act as a bar to a charge being made against the accused here: the Judge also remarks that he does not consider it necessary to delay passing orders 'until the prosecution can prove whether the Extra Assistant Commissioner's order was issued under s. 215 or s. 220, Code of Criminal Procedure;' it appears to

me that it was for the accused to prove that he had already been tried and acquitted, and not for the prosecution to prove the negative: suppose an accused person were to allege a previous acquittal without specifying the place and date or producing a copy of the order, is the prosecution to ransack the record of every Court in India until it can satisfy the Court that the alleged defence is a false one"? The High Court having procured the record of the trial of Tika Singh before the Extra Assistant Commissioner of Jalandhar, the reference was laid before Pearson, J., and Oldfield, J., for disposal, by whom the following order was passed:—

PEARSON, J.—Having examined the records of the Court of the Extra Assistant Commissioner of Jalandhar, we come to the conclusion that he discharged Tika Singh under the provisions of s. 215, Act X of 1872. In the case tried by that officer, no charge was drawn up, and Tika was not acquitted, but only released. His discharge does not bar the revival of a prosecution for the same offence, but it can only be revived in the Court in which it could legally be instituted. That offence was committed in Philor and was properly triable by the Jalandhar Court. Tika was not tried in the Court of the Assistant Magistrate of Bijnor for concealing or detaining a woman who had been enticed away with criminal intent under the latter part of s. 498, Indian Penal Code, but for the very same offence of which he had been accused at Jalandhar, *viz*, "that you, on or about the 3rd February, 1880, did entice one Jas Kuar, the wife of Ganga Singh, with criminal intent." It is moreover obvious to remark that he could not be convicted of detaining an enticed woman until the enticing had been proved. The orders passed by the Sessions Court appear to us therefore to be right. With these remarks the record may be returned.

APPELLATE CRIMINAL.

Before Mr. Justice Pearson and Mr. Justice Straight.

EMPRESS OF INDIA *v.* ABDUL HAKIM.

Right of Private Defence—Murder.

A head-constable, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum

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