APPELLATE CRIMINAL.

Before Mr. Justice Cunliffe.

1928
Mar. 28.

YEOK KUK
v.
KING-EMPEROR.*

Autrefois acquit, *plea of—Criminal Procedure Code (Act V of 1898), ss. 235 (1), 236, 237, 403—'Distinct offence,' meaning of—Offences under the Burma Forest Act (Burma Act IV of 1902), rr. 87 (b) (vi), 21, 87 (b) (ii), 71, and s. 61 (a) and (b) whether connected with offences under the Penal Code (Act XLV of 1860), ss. 379 and 411.*

The Common Law plea of *autrefois acquit*, based on grounds of public policy, shields a man from being put twice in peril for the same offence. *Held*, that on the same facts a plea of *autrefois acquit* cannot be sustained for a different offence unless the requirements of s. 403 (1) of the Criminal Procedure Code are fulfilled. Conversely the plea of *autrefois acquit* in similar circumstances cannot be defeated except under sub-section (2) of the same section. By "distinct offence" is meant an offence entirely unconnected with the former offence charged.

Extraction of teak timber without license amounts to theft of Government timber. Counterfeiting an *akauk* mark on stolen timber and converting timber at a sawpit without license are offences connected with dishonest receiving of timber. A person acquitted of such charges under the Burma Forest Act, ought not to be prosecuted again under the Indian Penal Code for theft and dishonest receiving of stolen property.

McDonnell for the petitioner.

A. Eggar (Government Advocate) for the Crown.

CUNLIFFE, J.—This is an application in revision by one Yeok Kuk.

Yeok Kuk was prosecuted in April last year for offences under the Burma Forest Act. There were originally six charges made against him and they must be set out in detail. They are as follows :—

(1) An alleged offence under rule 87 (*b*) (*vi*) for putting a mark on green teak timber ;

(2) Under rule 21 for extracting teak timber without a license ;

* Criminal Revision No. 32B of 1928.

(3) Under section 61 (*a*) and (*b*) for counterfeiting an *akauk* mark up on teak timber stolen by him ;

(4) Under rule 87 (*b*) (*ii*) for causing a mark on timber to be obliterated;

(5) Under rule 71 for converting timber at a sawpit without a sawpit license ; and

(6) Under rule 88 for marking through his agent timber for is own benefit.

After hearing evidence on the 6th of May, Mr. Crosby, the Additional District Magistrate, Toungoo, charged the petitioner under two only of these charges, namely, for a breach of rule 87 (*b*) (*vi*) and a breach of section 61 (*a*) of the Act. In fact, the remaining four charges had been withdrawn by the prosecution. After hearing further evidence the Additional District Magistrate acquitted the petitioner of the two remaining charges.

In my opinion the withdrawal by the prosecution of the four charges mentioned above amounts under section 494 of the Code of Criminal Procedure also to an acquittal. Subsequently, however, the petitioner was prosecuted afresh under sections 379 and 411 of the Indian Penal Code. These sections deal respectively with theft and receiving. A preliminary objection was taken to this procedure on behalf of the petitioner that, having regard to the previous acquittal under the Forest Act and its Rules, he was entitled to set up a plea of *autrefois acquit*. The Additional District Magistrate having ascertained that the same evidence would be used in the second prosecution came to the conclusion nevertheless that a plea of *autrefois acquit* was not maintainable. He cited a good deal of authority in his judgment and went very carefully into the matter. The reason why he came to this conclusion was that he

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considered breaches of sections 379 and 411 of the Indian Penal Code by no means the same class of offences as the offences put forward under the Forest Act and its Rules. The case then went to the Sessions Judge of Toungoo on this point of law, and the Sessions Judge came to the same conclusion for very much the same reason.

Autrefois acquit is an old Common Law plea in bar raised by way of demurrer. It is an established rule of the English Common Law that no man may be put twice in peril for the same offence. The principle does not rest on any doctrine of estoppel but rather on the grounds of public policy. It seems always however to have been held in the old days that a previous acquittal can only be pleaded in bar to a subsequent indictment (1) where the acquittal is for the exact offence charged in the subsequent indictment, or (2) where the subsequent indictment is based on the same acts or omissions in respect of which the previous acquittal was made, and there is some Statute which directs that the defendant shall not be tried or punished twice in respect of the same acts or omissions. It is, of course, not necessary to refer to any English Acts here. The principle of *autrefois acquit* has been enshrined, with slight additions, in section 403 of the Code of Criminal Procedure. The material portion of section 403 which I have to consider here runs as follows :—

(1) "A person who has been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) "A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1)."

Section 235 (1) is in the following terms :—

"If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

Section 236 reads :—

"If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences."

And finally these are the provisions of section 237 :—

"If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

It will thus be seen that on the same facts a plea of *autrefois acquit* cannot be sustained for a different offence unless the requirements of section 403 (1) are fulfilled. Conversely the plea of *autrefois acquit* in similar circumstances cannot be defeated except under sub-section (2) of the same section. In my opinion, the key to sub-section (2) lies in the words "distinct offence." By "distinct offence" I apprehend the plain

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meaning of the section to be that it must be an offence entirely unconnected with a former offence charged. It is by this test that the present application must be regarded. I am quite unable to understand how it can be said that a general offence of theft is wholly unconnected, for example, with an offence of extracting teak timber without a license. To extract teak timber without a license within the meaning of the Forest Act and its Rules is an offence which amounts to nothing more nor less than stealing Government timber. So, too, I am unable to hold that counterfeiting an *akauk* mark upon teak timber which is stolen or converting timber at a sawpit without a sawpit license are wholly unconnected with dishonestly receiving timber. Stealing, receiving, converting and marking property with a Government mark contrary to law are all to my mind offences closely connected with one another.

In the circumstances, therefore, I am unable to hold that a plea of *autrefois acquit* cannot be here maintained. I regret that I have to come to this conclusion because on reading the whole evidence in this case I am of the opinion that an offence has been committed. The original prosecution, however, was not very well handled. I doubt very much whether the technical plea under section 403, sub-section (1) which I hold here to be successful under the Indian Law could possibly have been successful under the English Common Law, or under any English statute with which I am conversent. Nevertheless, for the reasons I have stated above I shall allow this application. The proceedings of the Additional Special Power Magistrate at Toungoo in the second trial will be set aside.