

APPELLATE CRIMINAL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

THE CROWN—Appellant,

versus

JASWANT RAI AND CO., AND ANOTHER—

Respondents.

1924

March 16

Criminal Appeal No. 1120 of 1923.

Criminal trial—Prosecution producing no evidence and relying entirely on admissions by the accused—Acquittal of accused by trial Court—Appeal by Crown—Whether Appellate Court should remand case for proper trial.

Where, on a charge under section 87 of the Indian Companies Act, no evidence was recorded, but the Court was asked to give a finding in law upon admissions made by Counsel for either side, and thereupon acquitted the accused—

Held, on appeal, that such admissions could not enable the Crown to procure a legal decision, and, there being no material for the High Court to adjudicate upon, the appeal must fail. It is not the function of the Court to supplement the deficiencies of the prosecution by remanding the case for proper trial.

Appeal from the order of Khan Sahib Sheikh Munir Hussain, Additional District Magistrate, Lahore, dated the 13th July 1923, acquitting the respondents.

CARDEN NOAD, Assistant Legal Remembrancer,
for Appellant.

MUKAND LAL PURI and NANAK CHAND, Pandit,
for Respondents.

The judgment of the Court was delivered by—
FFORDE, J.—This is an appeal by the Local Government from an order of the Additional District Magistrate of Lahore, acquitting Jaswant Rai and

Company and the Managing Director of that Company, who were charged with having committed an offence in failing to comply with the provisions of section 87 of the Indian Companies Act, 1913. In order to set aside the acquittal in this case it would be necessary for us to hold that the accused have been proved to have committed an offence under the section in question. It appears, however, that no evidence whatsoever was given in the trial Court either on behalf of the Crown or the defence, and the plea of the accused Jaswant Rai was not even recorded. The result is that we are now asked on appeal to hold that an accused person, against whom no evidence whatsoever has been produced, has been wrongly acquitted. The failure to prove the charge against the accused lies with the prosecution. It is suggested that the absence of all evidence is due to the fact that counsel for the prosecution and counsel for the defence made certain admissions upon which the Court was asked to give a finding in law. It is quite obvious that such a course amounts to a travesty of justice. An accused person cannot be asked to make admissions for the purpose of enabling the Crown to procure a legal decision. As to whether or not the judgment in question is valid in point of law is not a question which it is necessary for us to determine. The questions involved, in the first place, could not possibly be determined until the facts upon which the judgment has been based are satisfactorily established by proper and legal evidence. As I have already said, in the present case there is no evidence whatsoever on the record. We have been asked by the learned counsel for the Crown, in view of the fact that there has been no proper trial, to remand the case for such trial. I consider that to comply with this request would be highly improper as it would be expos-

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ing the accused to a further ordeal and expense to which the Crown has no right to expose him. It is not the function of a Court of Justice to supplement the deficiencies of the prosecution, and the subject cannot be made to suffer because of the neglect or omissions of the Crown in the mode in which it conducts a criminal proceeding.

In my judgment the appeal should be dismissed.

SCOTT-SMITH, J.—I agree.

Appeal dismissed.

C. H. O.

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Moti Sagar.

NARAIN DAS (PLAINTIFF) Appellant,

versus

MIRAN BAKHSH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 445 of 1921.

Indian Limitation Act, IX of 1908, article 67—and Punjab Act, I of 1904—Balances struck, mentioning that interest is payable at the Sahukara rate—Whether bonds or mere acknowledgments.

The plaintiff advanced grain and money to the defendants, who struck balances in the books of the plaintiff. If the balances were bonds the suit of the plaintiff was within time (the period of limitation laid down in article 67 of the Limitation Act having been extended to 6 years by Punjab Act I of 1904), while if they were mere acknowledgments the suit in respect of the grain advances was barred by time.

Held, that although the entries in question did not contain express promises to pay the principal they made mention of interest being payable at the *Sahukara* rate, and this implied a promise to pay the principal. The entries, which were attested by witnesses, were therefore bonds and the whole suit was within time.

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April 15.