1876.

ABDUL KARIM v. MANJI HANSRAJ AND OTHERS.

acted upon recently in *The Queen* v. *The Leeds and Bradford Railway Co.* (1). Coupling the postponement of the operation of Act IX. of 1871 with the circumstance already noticed, that the construction, which we propose to give it, does not take away any right which parties had acquired, under previous enactments, before Act IX. of 1871 came into force (2), we think that either Article 58 or 72 of the second schedule of that Act is applicable to this case. Both of those articles provide that, where the money is payable on demand, the period of limitation of three years begins to run when the demand is made. This suit will, therefore, be sustainable, if there has not been a demand made more than three years before the filing of the plaint.

(1) 18 Q. B. 343; S. C. 21 L. J. N. S. Mag. Ca. 193.

(2) See the observations of Lord Hatherley in *Pardo* v. *Bingham*, L. R. 4 Chanc. 735, explaining *Moon* v. *Durden*, 2 Exch. 23, and *Jackson* v. *Wooley*, 8 E. and B. 778, and see *Cornill* v. *Hudson*, 8 E. & B. 429; S. C. 27 L. J. N. S. Q. B. 8.

[APPELLATE CRIMINAL JURISDICTION.]

1876.
August 21.

REG. v. BHISTA BIN MADANNA.

Act XXXI. of 1860, Section 32, Clause 6—Fine—Imprisonment—Penal statute—Construction—Sentence.

Under Act XXXI. of 1860, Section 32, Clause 6, a sentence of fine only, or of imprisonment only, is a legal sentence.

A penal statute should, when its meaning is doubtful, be construed in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character.

THE accused Bhistá was tried by J. K. Spence, Magistrate, First Class, at Sirsi, in the District of Kanara, under Act XXXI. of 1860, and on the 28th July 1876 was sentenced to pay a fine of Rs. 5, under Section 32, Clause 6 of that Act, for having had in his possession a matchlock without a license. The Magistrate of the district (Mr. A. R. Macdonald) being of opinion that the sentence was illegal, because no imprisonment was awarded, referred the case for the consideration of the High Court.

The case first came before MELVILL and NA'NA'BHA'I HARIDA'S, JJ., and was by them referred to a Full Bench, the learned Judges being of opinion that certain previous decisions of the Court, which were in accordance with the opinion expressed by the Magistrate, ought to be reconsidered. Accordingly the case

1876.

REG. v. BHISTA' BIN MADANNA.

was considered by a Full Bench, consisting of WESTROPP, C.J., MELVILL, KEMBALL, and NA'NA'BHA'I HARIDA'S, JJ., on the 21st August 1876.

The judgment of the Full Court was delivered by

MELVILL, J.:—The question referred for the decision of the Full Court is whether a sentence of fine only, or of imprisonment only, under Clause 6, Section 32 of Act XXXI. of 1860, is a legal sentence.

The clause in question enacts that every person who commits the offence thereby made punishable "shall be liable to be imprisoned, with or without hard labour, for a term not exceeding two years, and also to a fine not exceeding one thousand rupees." The ordinary meaning of this phraseology would certainly be that the offender may be punished with imprisonment, or fine, or both.

The difficulty of assigning to the words their natural interpretation arises from the circumstance that in other sections of the same Act (viz., 5, 15, 23, and 34) the Legislature has declared that persons who commit certain offences are "liable to fine, or imprisonment, or to both fine and imprisonment," and it may reasonably be argued that, if the Legislature had intended that offences under Section 32 should be punishable in the same way, it would have employed the same terms.

We admit the difficulty; but we think that there is, at least, an equal difficulty in putting upon the words quoted from Section 32 any other than their natural construction.

Only two other constructions are possible. The words may mean either that the offender (in the language of the Indian Penal Code) shall be punished with imprisonment, and shall also be liable to fine, or that the punishment must combine both imprisonment and fine.

The first of these constructions (which has been adopted in certain cases by a Division Bench of this Court) involves the anomaly of putting upon the word "liable" two widely different interpretations when applying it to the two branches of the same

1876.

REG. v. BHISTA BIN MADANNA.

sentence. The law says (for the amplification of the section does not alter its meaning), that the offender "shall be liable to imprisonment, and shall also be liable to fine." It seems to us contrary to all rules, grammatical and legal, to hold that these words mean that the offender *must* be punished with imprisonment, and *may* be punished with fine.

The second construction is equivalent to substituting the word "punished" for the word "liable." If this be done in one section, it must be done throughout the Act; and then we are immediately brought into collision with the same difficulty which met us at the outset, that is, the difficulty of supposing that the Legislature would use different terms, in different sections of the same Act, to denote precisely the same thing. For if "liable" is equivalent to "punished," then Section 2 of the Act, which says that an offender "shall be liable to a fine and to imprisonment," means that he *must* be punished with both fine and imprisonment; and this might just as well have been expressed by using the terms of Section 32, "shall be liable to imprisonment, and also to fine." It is impossible to escape from this difficulty except by concluding, either that the substitution of "punished" for "liable" does not furnish the true construction, or else by concluding that no argument can be founded upon a comparison of the phraseology used in different sections of the Act. Whichever of these two conclusions we adopt, we are equally justified in putting upon the terms of Section 32 their ordinary natural construction.

The truth appears to us to be (and we cannot give a satisfactory judgment on the question referred to us without saying so), that Act XXXI. of 1860 has either been most carelessly drafted, or else different sections have been drafted by different hands, and no attempt has been made to bring them into harmony. The person who drafted Section 36 must, when he inserted the words "except as aforesaid," have supposed that there was something in the preceding sections of the Act relating to the *venue* of offences. There is really nothing of the kind. The person who drafted Section 40 of the Act must have supposed that some offences under the Act are punishable with imprisonment only. No offence is so punishable. The person who drafted Sections

23 and 40 of the Act would (it may be supposed) have used the term "liable *upon conviction*" instead of the single word "liable" in other sections of the Act, and would not have left room for the suggestion (which, however absurd in itself, is logically sustainable, if there is anything in the argument drawn from incongruity of expressions) that offences other than those mentioned in Section 23 are punishable without any conviction at all. The difference between the words "liable to be imprisoned" in Section 32 and "liable to imprisonment" in the other sections of the Act, however trivial that difference may be, indicates that Section 32 was drafted by a different hand from that to which we are indebted for the other portions of the statute.

For these reasons we think that we ought not to attach much weight to the only argument which is adverse to the natural construction of Section 32, viz., the argument drawn from the use of a different phraseology, to express the same thing, in other sections of the Act. On the other hand we feel bound to construe a penal statute, when its language is ambiguous, in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. Our answer to the question referred to us will, therefore, be that a sentence of fine only, or of imprisonment only, under Clause 6, Section 32 of Act XXXI. of 1860, is a legal sentence.

[APPELLATE CRIMINAL JURISDICTION.]

1876. August 24.

REG. *v.* GAJI KOM RA'NU.

Criminal Procedure Code (Act X. of 1872), Sections 197, 472, and 473—Contempt of Court—False evidence—Commitment—Sentence.

Giving false evidence is "an offence committed in contempt of the authority" of a Court within the meaning of Section 473, of Act X. of 1872. *Reg.* v. *Navranbeg* (10 Bom. H. C. Rep. 73) and the ruling in 7 Mad. H. C. Rep., Appx. XVII., followed. *Queen* v. *Kultaran Singh*, I. L. R., 1 All. 129 and *Queen* v. *Jagut Mull*, *ibid*, 162, dissented from (1).

(1) See also the case of *Safatoolah* (22 W. R. Cr. 49) in which the Calcutta High Court took the opposite view to that taken in the present case.