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KEVAL BHAGVA'N GUJAR v. GANPATI NA'RA'YAN.

serves to make him liable to the extent of its value for his father's debt. He may deny the existence of property while the creditor asserts it. In that case the creditor may properly be awarded relief to the *primâ facie* extent of the property existing and recoverable, subject only to a limitation of execution to the amount that proves actually available. And, having obtained his decree, the creditor may, should he be further obstructed, properly claim the aid of the Court to enable him to sue, or get a suit brought on behalf of the minor, in order that the estate may be realized for the satisfaction of his claim. The usual official administrator would generally be the proper one to appoint under Act XX of 1864 should the relatives of the minor refuse the office, or be distrusted by the District Court.

APPELLATE CRIMINAL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

QUEEN EMPRESS *v.* NUR MAHOMED.*

December 6.

Counterfeit coin.—Evidence—Confession—Indian Penal Code (XLV of 1860), Sec. 239.

Evidence of the possession and attempted disposal of coins of unusual kind is relevant on a charge of uttering such coins soon afterwards when the *factum* of uttering is denied.

A. and *B.* were tried together, under section 239 of the Indian Penal Code (XLV of 1860), on a charge of delivering to another counterfeit coins, knowing the same to be counterfeit at the time they became possessed of them. *A.* confessed that he had got the coins from *B.* and had passed them to several persons at his request.

Held that the confession of *A.* was relevant against *B.* When two persons are accused of an offence of the same definition arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through acts separable from those ascribed to his accomplice, and capable, therefore, of constituting a separate offence from that of the accomplice.

Reg. v. Purbhudás Ambárám (1) distinguished.

THIS was an appeal from the decision of W. H. Crowe, Session Judge of Poona.

* Criminal Appeal No. 143 of 1883.

(1) 11 Bom. H. C. Rep., 90.

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QUEEN EMPRESS v. NUR MAHOMED.

Inverarity (with him *Shámráv Manickji Rele*) for the appellant.

Hon. Ráv Sáheb *V. N. Mandlik*, Government Pleader, for the Crown.

The facts and arguments fully appear from the following judgment of the Court delivered by

WEST, J.—The appellant Nur Mahomed valad Abdul, commonly called Numa Seth (accused No. 2 before the Court of Session), has been convicted along with Mahomed valad Imám (accused No. 1 before the Court of Session) by the Session Judge at Poona, under section 239 of the Indian Penal Code, of having fraudulently delivered to another, counterfeit coin, knowing, at the time that he became possessed of it, that it was counterfeit, and has been sentenced to suffer rigorous imprisonment for two years. Illias valad Jusuph, who was tried with him for abetment, has been acquitted. Mahomed Roshan Moulavi was also accused but the committing Magistrate discharged him under section 209 of the Criminal Procedure Code.

The principal evidence against the appellant is that of four women, three of whom are the connections of his fellow-prisoner, Mahomed Imám. As members of the Mahomedan community they are dependent on their male relative and susceptible to his influence. Their story is that on the 21st of July last,—that is, the day on which Mahomed Imám was arrested,—the appellant came to their residence by the back door, sat on a stone, and delivered to Mahomed Imám some silver coins which looked like the Poona Shivrai pice and similar to the Hyderabad *Halle Sikka* rupees produced in Court. The story, coming as it does from the wife, mother and aunt of Mahomed Imám, might fairly be ascribed to their desire to attenuate their relatives' guilt, and lay the chief portion of the blame on the appellant. It is, however, supported by the testimony of a fourth woman, a Portuguese, the wife of a clerk in the Finance Office, a resident of the same house and frequent visitor, and who says she was present at the alleged delivery of the coins by the appellant. *Primâ facie*, there is nothing to throw discredit on her testimony. But there are circumstances in the case, which have been dwelt

on by the learned counsel for the appellant, which go to detract from the value of that testimony. The name of this woman is not mentioned by Mahomed Imám's mother in her petition to the Magistrate, which led to the arrest of the appellant. It is urged by the prosecution that the omission might be due to a mistake, negligence, or oversight on the part of the writer of that petition. But we think that the omission was so material that she would certainly have insisted upon rectifying it, and that the explanation suggested is not sufficient to account for it. In the next place, there seems to be no good reason why the appellant, who is the part-proprietor of a well-to-do firm, should go to Mahomed Imám's house and count out counterfeit rupees within three feet of not only the women of the house, but a stranger. If the appellant knew that they were counterfeit, he must also have known that disclosure was certain, and his open delivery of them in their presence was a gratuitous betrayal of himself. The learned counsel for the appellant has pointed out the discrepancies in the evidence of these four women. If the discrepancies stood by themselves, they might not be very important, but taken with the other circumstances of the case, they are most easily accounted for by supposing that the alleged delivery of the coins never took place. If the testimony is evenly balanced, we are bound to draw the inference which favours the accused.

There is, however, the further evidence of the two Márwáris, Lunia Sapáji and Moti Gulál. The former deposes to the purchase of some tents by the appellant and Mahomed Imám, and the offer by the appellant to pay for them in *Halle Sikka* rupees. The latter deposes to a negotiation with him for the sale of some rupees of that coinage. On the authority of the case of *Reg.* v. *Purbhudás Ambárám*[1] it has been argued that their evidence is inadmissible. The possession, by an accused person, of a number of documents suspected to be forged, was in that case held to be no evidence to prove that he had forged the particular document with the forgery of which he was charged. We do not think that ruling applies to the circumstances of the

[1] 11 Bom. H. C. Rep., 90.

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present case. The possession of documents of unknown character is a common occurrence, and they could not be pronounced forgeries without a trial of the fact. If the papers, however, had all been of an identical and peculiar pattern, that would have afforded some ground of inference under particular circumstances. Now, *Halle Sikka* rupees are not in common circulation in Poona, and, therefore, the possession of a large number of them is unusual, and may suggest that coins of that description, possessed by the accused, formed part of the quantity of spurious coinage disposed of by Mahomed Imám. We think, however, that the evidence, when it is received, is not by any means very strong. The rupees might have been good; the appellant might easily suppose them to be genuine, and that Mahomed Imám had got them from Hyderabad. It is possible—and we think not improbable—that Mahomed Imám may have gone to the appellant, represented to him that he had got *Halle Sikka* rupees from his earnings by theatrical performances at Hyderabad, and begged the appellant to aid him to change them for Government coins, and the appellant may have gone innocently with him. That there was nothing in the appearance of the rupees to excite the suspicion of an unprofessional man like the appellant, is shown by the fact that the shroff Bhagwándás accepted them as genuine over and over again. It is, therefore, quite probable that the appellant should take them as genuine. We are, consequently, of opinion that the corroboration afforded by the evidence of the Márwári witnesses is very feeble, and insufficient to supply the patent imperfection of the evidence of the four female witnesses.

As to the confession of Mahomed Imám, (who says he passed the rupees given him by the appellant,) which has been objected to as inadmissible, we think that when two persons are accused of an offence of the same definition arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through acts separable from those ascribed to his accomplice, and capable, therefore, of constituting a separate offence from that of the accomplice. The object sought by the rule of law is a safeguard for sincerity and for

information, and this safeguard equally subsists in the case supposed as where the confession implicates both in an identical act. But while this is so, and while it justifies the admission of the confession in this case, the particular circumstances in which the confession was made, equally with the character of the confession itself, deprive it of any material weight. Mahomed Imám was caught, so to speak, red-handed; and his confession tends to reduce his guilt to that of a subordinate agent of the appellant as principal. Such a confession wants in a great measure the intended guarantee of truth. It is self-serving according to the ideas of him who makes it, and cannot be relied on.

These are the items of evidence against the appellant. On the other hand, he has brought forward witnesses who depose to his good character. No importance can be attached to evidence of this kind when the case against the accused is clear. But when it is doubtful, as it is in this case, some weight must be given to it. It must also be borne in mind that Mahomed Imám, when he was first asked by the police where he got the rupees from, mentioned the name of the Moulavi, who was the third accused before the Magistrate, and in whose house implements for coining were discovered. He does not appear to have mentioned the appellant's name till some days afterwards. It is extremely unlikely that, if the appellant had been implicated in the manner alleged, his name should not have been mentioned by Mahomed Imám at the beginning. Bhagwándás does not depose to Mahomed Imám's telling him that he had received the rupees from the appellant. But we do not believe that statement. If he had mentioned the appellant's name, his house would certainly have been searched before spurious coins could be got rid of. Suspecting the appellant as he did, he seems to have drawn upon his imagination in implicating him in that manner. The fabrication of spurious coins in His Highness the Nizám's dominions is common, for importation of such coins into British territory. It is not improbable that Mahomed Imám, a member of a theatrical *troupe*, got mixed up with coiners, and attempted to pass off their fabrications through the appellant. When caught with the false coins in his possession, and questioned as to whence he got them, he at once mentioned the person in whose house coining imple-

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ments were found. Here was a *vera causa* for the existence of the coins, superior apparently to the one resting on questionable testimony produced long afterwards.

Upon evidence of this description, independently of the *alibi* set up, we think it is unsafe to rest the conviction of the appellant. All the assessors find him not guilty. The first assessor, Mr. Máhádeo Moreshwar Kunté, who believes the evidence of the women as to the delivery of the coins, believes at the same time that the appellant's connection with Mahomed Imám was innocent. We think there is some basis for this view; and, reluctant as we are to interfere with the Session Judge's application of evidence, we think we must reverse the conviction and sentence, and direct the appellant Nur Mahomed to be acquitted and discharged.

Conviction and sentence reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

December 13.

BA'BA' (ORIGINAL DEFENDANT), APPELLANT, *v.*
VISHVANA'TH JOSHI (ORIGINAL PLAINTIFF), RESPONDENT.*

Landlord and tenant—Notice to quit—Permanent tenancy—Tenancy from year to year—Ejectment.

Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant,

Held that the setting up of this right was a repudiation of the landlord's title, and absolved him from the obligation which would have devolved on him of giving to the defendant a notice to quit if the defendant had set up a tenancy from year to year.

THIS was a second appeal from the decision of C. F. H. Shaw, Judge of the district of Belgaum, reversing the decree of Ráv Sáheb Vithal Vináyak, Subordinate Judge of Athni.

In 1820 the British Government granted to one Náná Sáheb Chinchni the village of Jhunjurvád as *saranjám*. In 1835 Náná Sáheb granted it to his sister Durgábái. Náná Sáheb dying in 1836, the British Government resumed it, but re-granted it to Durgábái for her life. Durgábái, availing herself of the provi-

* Second Appeal, No. 313 of 1882.