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reposed in him by Government, and we are of opinion the charges cannot be sustained.

It is true that he did not at once pay the money to the two persons entitled to receive it. The reason of this was, however, that they were willing to trust him. Sheikh Lal deposes that he thought the appellant would eventually pay him the money, which amounted to only a rupee and a half. Sitárám, who was entitled to receive Rs. 2-8-0, deposed as follows:—"I was in the temple when I signed the receipt. Accused said he would pay the money in eight days or so. After signing the receipt I went away on tour, and did not return to Dharangaum till *Ashvin*." In another part of the deposition he stated that he did not think accused would cheat him. Neither of these men preferred any criminal complaint, and there is no evidence that he ever repudiated these inconsiderable [debts, or did anything to justify a charge of cheating or other dishonest act.

On these grounds we reverse the conviction and sentence, and direct that the appellant be set at liberty.

Conviction and sentence reversed.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS v. MANGAL TEKCHAND.

1885.
iber 6.

Jurisdiction—Perim (island of) a part of British India—Law in force at Perim—Aden—Jurisdiction of Court of Political Resident at—Perim included in Sessions Division and District of Aden—Act II of 1864, Sec. 29—Appeal from sentence of Political Resident at Aden to High Court of Bombay in criminal case arising at Perim.

Held, that the island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat. 21 and 22 Vic., cap. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September, 1858.

The Indian Penal Code (XLV of 1860) and the Code of Criminal Procedure (X of 1852) extend in their entirety to the whole of British India, and, therefore, to the island of Perim.

Section 7 of the Criminal Procedure Code (X of 1882) gives to the Local Government the power to alter the local limits of Sessions Divisions, and continues the Divisions existing when that Code came into force. A notification was issued by the Government of Bombay on the 6th May, 1884, under the above section including the island of Perim within the Sessions Division or District of Aden, and empowering the officer from time to time commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a magistrate of the second class within the island, and to commit persons for trial to the Court of Session at Aden.

Held, having regard to the language of Act II of 1864, that for the purposes of section 7 of the Criminal Procedure Code (X of 1882) the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which Act II of 1864 applied was the Sessions Division which was in existence at the date of the above notification when the limits thereof were altered by the inclusion of the island of Perim.

A prisoner charged with having committed murder in the island of Perim was committed by the magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death he appealed to the High Court of Bombay. By the Aden Act II of 1864, section 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim.

THE accused, having committed a murder in the island of Perim was charged with that offence by Captain Snell, a First Class Magistrate of that place, and committed by him for trial before the Court of Session. The Political Resident at Aden tried the accused, and on his plea of guilty convicted him of the offence of murder, and passed sentence of death on him, subject to the confirmation by the High Court. The accused lodged an appeal.

The case now came on for hearing.

Rāv Sāheb V. N. Mandlik for the Crown.

Shāmrao Vithal for the accused.

JARDINE, J. :—The prisoner, Mangal Tekchand, was committed for trial by Captain Snell, a Magistrate of the First Class at Perim, on a charge of murder committed at Perim on the 10th August, 1885. The trial was held by Brigadier-General Hogg, Political Resident at Aden, at a Court of Criminal Sessions; the sentence is signed by this officer as Sessions Judge. He convicted the prisoner on his plea of guilty, and sentenced him to death.

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He then submitted the proceedings to this Court under section 28 of Act II of 1864, in order that this sentence might be confirmed. He also forwarded an appeal made by the prisoner.

Before dealing with the merits, we have deemed it proper to satisfy ourselves as to the jurisdiction of the lower Court to try and as to the powers possessed by this Court over the case, which differs from other cases of confirmation of sentence of death coming from the Court of the Resident at Aden, in respect to the fact that Act II of 1864 is admittedly not in force at Perim, where the offence was committed. We have been referred to different records of Government and to Government notifications for information regarding the acquisition of the island of Perim on behalf of Her Majesty and regarding the law in force there. In "A History of Arabia Felix or Yemen," by Captain Playfair, First Assistant Political Resident, Aden, being No. 49 of the Selection from the Records of the Bombay Government, New Series, at page 17 we find it stated that Perim was occupied in 1799 by the East India Company, but subsequently abandoned. In the beginning of 1857 it was re-occupied on behalf of the Indian Government. Further information is supplied in another "Selection" from the same records, namely, the "Descriptive and Historical Account of the British Outpost of Perim, Straits of Babel-Mandeb," by Lieutenant King, Bombay Staff Corps, dated 1877. In this work it is stated that, on the night of the 13th January, 1857, Lieutenant Greig, who was then an Assistant Executive Engineer at Aden, left Aden for Perim in the East India Company's schooner "Mahi" with a detachment of sappers and miners, and established himself and this detachment on the island. We have, moreover, been supplied by Government with copies of other papers. (His Lordship mentioned the papers.) These show the reasons which induced Brigadier Coghlan, then Resident at Aden, to recommend the re-occupation of Perim. They also mention the re-occupation as accomplished, and show, further, that the Government of Bombay ratified that act on the 4th February, 1857. We are of opinion, on the above facts, that the island of Perim, having been occupied with a view to its permanent retention by

the officers of the Government of Bombay, became a part of British India within the definition of the Statute 21 and 22 Vic., cap. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on the 2nd September, 1858.

From a notification, No. 430 E., of the Government of India in the Foreign Department, dated 13th February, 1884, and published at page 42 of the *Gazette of India*, 1884, it appears that on that date the Governor General in Council, in exercise of the powers vested in him by the Statute 28 and 29 Vic., cap. 17, sec. 4, was pleased to declare that the island should be subject to the Government of Bombay. A copy of a resolution of the Secretary of State in Council has been shown us, dated the 10th September, 1884, whereby the provisions of the Statute 33 Vic., cap. 3, are made applicable to Perim. We are not aware that any regulations under that Act affecting Perim have been made by the Government of India. The Indian Penal Code and the Code of Criminal Procedure extend to the whole of British India, and, therefore, to the island of Perim in their entirety.

No jurisdictions appear to have been created in Perim under the Criminal Procedure Codes of 1861 or 1872. But on the 6th May, 1884, the following notification was issued with reference to the present Code (see *Bombay Government Gazette* for 1884, page 351.) :—“ Political Department. Bombay Castle, 6th May, 1884. No. 2336. The island of Perim, situated in the Straits of Babel-Mandeb, having been declared to be subject to the Government of Bombay, by proclamation of the Government of India, dated the 13th February, 1884, the Governor in Council is pleased, under the provisions of section 7 of the Code of Criminal Procedure (X of 1882), to include the said island within the Sessions Division and District of Aden. The officer from time to time commanding the detachment of troops stationed at Perim shall, in virtue of his office, exercise powers of a magistrate of the second class within the island, and shall be empowered to commit persons for trial to the Court of Session at Aden.—By order of His Excellency the Right Hon. the Governor in Council.

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—C. Gonne, Chief Secretary to Government.” Now, section 7 of the Code of Criminal Procedure (X of 1882) gives the local Government power to alter the local limits of Sessions Divisions, and also continues the divisions existing when the Code came into force. We have, therefore, to ascertain if there is any Sessions Division of Aden, no notification creating such an area having been mentioned by the Government pleader as existing to his knowledge.

Going back a step to the Criminal Procedure Code (X of 1872) we find that section 14 declares the existing local jurisdictions of Courts of Session to be Sessions Divisions. On examination of the language of Act II of 1864, we are inclined to hold that, for the purposes of this section, the Resident's Court at Aden may be considered as a Court of Session, and that the local area to which that Act applies, is the Sessions Division which was in existence on 6th May, 1884, when the limits thereof were altered by the inclusion of Perim. The Criminal Procedure Code (Act X of 1872) sec. 15, declares: “There shall be a Court of Session in every Sessions Division.” Section 9 of the present Code (X of 1882) requires the local Government to “establish a Court of Session in every Sessions Division, and appoint a Judge to such Court.” But as section 1 saves special jurisdictions and powers, and as ample provision is made in Act II of 1864 for criminal justice in the area to which that Act applies, namely Aden itself, the Government had no occasion to exercise this power of appointment until a new area to which Act II of 1864 is not applicable, was included in the Sessions Division. The difficulty thus created is one on which we would wish to have the advantage of hearing argument by counsel. There is no legislative or other authority for applying to Perim any criminal procedure (of course we except special laws) except that of the Criminal Procedure Code. But by the arrangements under which the present trial was held, the prisoner was tried by a Court with peculiar and unique powers, which is not only a Court of Session, but also a District Magistrate. In the absence of authority, we are disinclined to hold that the special provisions of the local Act II of 1864, such as section 29, barring appeal, apply to cases arising in the island of Perim. Such a

ruling would be tantamount to an extension by judicial decision of the local Act to territory to which the proper authority has never extended it, and might be inconsistent with the intention of section 178 of the Code of Criminal Procedure (X of 1882).

At the present stage of the case before us, we refrain from giving further reasons; but, as regards the point of jurisdiction, we are of opinion that we can admit the appeal, and as it amounts to a claim to have the conviction reduced to culpable homicide not amounting to murder, and as there is nothing on record to show that the charge was explained as well as read to the prisoner, (see section 271 of the Code of Criminal Procedure (X of 1882), we consider that the appeal is one to be admitted. We fix it for hearing on the 7th January, 1886. The notices required by law, to issue.

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APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS v. PRIVATE MANGAL TEKCHAND.*

1886.
January 25.

Perim—The Aden Act (Act II of 1864)—Jurisdiction of the Resident at Aden over offences triable by a Court of Session committed at Perim—Criminal Procedure Codes (Act X of 1872), Secs. 2 and 15, and (Act X of 1882), Secs. 1, 3, 7 and 9.

Held, notwithstanding the notification of the Government of Bombay (No. 2336), dated the 6th May 1884, including the island of Perim within the Sessions Division and District of Aden and empowering the officer in command of the troops stationed at Perim to commit persons for trial to the Court of Sessions at Aden, that the Court of the Political Resident at Aden had no jurisdiction over the island of Perim, and that the Political Resident at Aden was not a Judge of a Court of Session for that island.

Where, therefore, a person charged with having committed murder at Perim was committed by the Magistrate at Perim for trial in the Court of the Political Resident at Aden, where he was convicted and sentenced to death, the conviction was annulled, and the prisoner was ordered to be re-tried before a Court of competent jurisdiction.

The island of Perim, although under the control of the Political Resident at Aden, cannot be regarded as part of Aden, and the provisions of the Aden Act II of 1864 are not in force at Perim.

* Confirmation Case, 19 of 1885.