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LALCHAND NANCHAND v. NARAYAN HARI.

Vythilinga Pillai v. *Thetchanamurti Pillai*[1] ; *Husain Ali Khan* v. *Hafiz Ali Khan*[2] ; and *Ganesh Krishn* v. *Madhavrav Ravji*[3]. In all these cases it was held that Article 116 covered suits for debts or sums certain due upon registered instruments. In the Madras case, Article 110 was held to be inapplicable to a suit for arrears of rent due on a registered instrument as Article 116 gave a period of six years and this view was adopted in *Umesh Chunder Mundul* v. *Adarmoni Dasi*[4] and *Kesu Shivram* v. *Vithu Kanaji*[5].

We think this body of authority must be accepted. We, therefore, reverse the decree of the lower Court and remand the case for trial on the merits and order that costs in this Court and in the Court of Appeal be paid by the respondents and that the appellant's costs in the first Court be costs in the cause.

Decree reversed.

G. B. R.

(1) (1880) 3 Mad. 76.
(2) (1881) 3 All. 600.
(3) (1881) 6 Bom. 75.
(4) (1887) 15 Cal. 221.
(5) (1884) 9 Bom. 320.

CRIMINAL APPELLATE.

Before Mr. Justice Batchelor and Mr. Justice Shah.

1913.
June 25.

EMPEROR *v.* SANALAL LALLUBHAI AND EMPEROR *v.* GORDHANDAS KESHAWLAL.*

Indian Penal Code (Act XLV of 1860), sections 213, 214—Screening offence—Restitution of property for screening offence—The offence screened must be shown to have been committed before the screening could be punished.

G gave certain jewellery to M by way of *jangad*. M pledged the same with S under circumstances which constituted such pledging an offence of criminal breach of trust. The jewellery was later returned by S to G on the

* Criminal Appeals Nos. 223 and 224 of 1913.

latter undertaking not to prosecute M for the offence of criminal breach of trust. M was tried for the offence of criminal breach of trust with regard to the jewellery and was acquitted. S and G were next tried for offences under sections 213 and 214 of the Indian Penal Code, in that they offered and took restitution of property in consideration of screening an offence. The trying Magistrate convicted them of the offences charged, holding that for the purposes of their case M must be deemed to be guilty of the offence of criminal breach of trust. On appeal:—

Held, acquitting the accused, that they could not be convicted of screening of the offence of criminal breach of trust, when the offence of criminal breach of trust had not been proved.

Held, also, that under the circumstances the trying Magistrate was bound to proceed on the footing that no criminal breach of trust had been committed.

THESE were appeals from convictions and sentences passed by A. H. S. Aston, Chief Presidency Magistrate of Bombay.

The facts were that Gordhandas (one of the appellants) gave jewellery valued at about Rs. 12,000 to one Manilal by way of *jangad*. Later on Manilal pledged the same with Sanalal (appellant in one appeal). This jewellery was subsequently returned by Sanalal to Gordhandas on the latter undertaking not to prosecute Manilal for the offence of criminal breach of trust. However Manilal was prosecuted for the offence of criminal breach of trust; but was acquitted. Sanalal and Gordhandas were also prosecuted for the offences under sections 213 and 214 of the Indian Penal Code, the charge against the former being that he offered and against the latter being that he took restitution of property for screening the offence of criminal breach of trust.

The trying Magistrate held that for the purposes of the present case Manilal must be deemed to have committed the offence of criminal breach of trust. He, therefore, convicted Sanalal and Gordhandas of the offences charged and sentenced them to pay a fine of Rs. 250 each.

Sanalal and Gordhandas appealed to the High Court.

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Velinkar, instructed by *Tyabji & Co.*, and with *M. N. Mehta*, for Sanalal.

Welden, instructed by *Mansukhlal, Jamsetji, Hiralal & Co.*, for Gordhandas.

S. S. Patkar, Government Pleader, for the Crown.

BATCHELOR, J. :—In this case there are two appellants before us. Appellant No. 1 has been convicted under section 213 of the Indian Penal Code with accepting the restitution of property in consideration of his screening a person from legal punishment for an offence; appellant No. 2 has been convicted under section 214 with causing the restoration of property to a person in consideration of that person screening some person from legal punishment for an offence.

For the purpose of compendious description, preserving verbal accuracy only in points which are now material, it may be said that both the appellants have been convicted of taking or offering the restitution of property in consideration of screening an offence. The material words of the Statute which occur in both the sections are that the giving or accepting of the restitution of property should be in consideration of the accused person concealing an offence or of his screening any person from legal punishment for any offence or of his not proceeding against any person for the purpose of bringing him to legal punishment.

The charge against these appellants arose out of certain dealings with some jewellery, and the case for the prosecution was that this jewellery was given by the second appellant to a man named Manilal, and was by Manilal fraudulently pledged with the first appellant under circumstances which constituted such pledging by Manilal the offence of criminal breach of trust in regard to the jewellery over which the complainant averred that he had a valid charge. It was further the

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case for the prosecution that these jewels were restored to the second appellant by the first appellant on an undertaking by the second appellant that he would not prosecute Manilal for the offence of criminal breach of trust.

The case has already undergone various developments and it seems desirable to notice the more important dates.

The complainant filed his information against Manilal on the 19th October 1911. In this information Manilal was accused of criminal breach of trust. On the 17th February 1912, complainant filed informations against the present appellants under sections 213 and 214, Indian Penal Code. On the 27th February the case against the appellants was begun in the Presidency Magistrate's Court. At that time Manilal had not been arrested, but some time in the following March he was arrested. On the 16th April the present appellants applied for a postponement of their trial until the proceedings against Manilal were completed. Their application was, however, refused by the learned Magistrate. Then the present appellants came in revision to this Court which, on the 12th June, ordered the case as against them to stand over till Manilal's trial was finished. On the 5th November Manilal's trial was finished and it ended in his being acquitted on the charge of criminal breach of trust. The judgment acquitting him was delivered by the acting Chief Presidency Magistrate, Mr. Kemp, in the temporary absence of the permanent Magistrate Mr. Aston. On the 23rd November the appellants applied to Mr. Aston to discontinue the proceedings against them on the ground that the principal offence alleged against Manilal had not been proved, but three days later the learned Magistrate rejected this application. Afterwards a rule was granted by this Court upon the revisional application of the appellants

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and the proceedings against them were temporarily stayed, but on the 26th February 1913 that rule was discharged by a Bench of this Court, the learned Judges saying in effect that they would not interfere at that interlocutory stage of the proceedings, but that they decided nothing and directed the learned Magistrate to proceed with the trial and terminate it according to law. The result was that the trial continued till the 1st April 1913 when the learned Chief Presidency Magistrate, Mr. Aston, convicted the present appellants, and it is from these convictions that the present appeals are brought.

There is no doubt that the charge against the present appellants relates to some of the jewels in regard to which Manilal was charged and acquitted of criminal breach of trust. The first contention, which in these circumstances has been raised on behalf of the appellants, is that there could be no screening of the offence of criminal breach of trust, seeing that the only person who was ever accused of that offence, namely Manilal, was acquitted ; in other words, that no offence of criminal breach of trust had been proved.

The learned Magistrate, as we understand his judgment, demurred to this proposition, but it must, we think, be accepted on the authorities. In *Queen-Empress* v. *Saminatha*[1] the accused person agreed to give Rs. 10 to one Saminatha Pillai in consideration of his not giving evidence against one Kolundavelu who was accused of certain offences. Saminatha Pillai, however, gave evidence against Kolundavelu but the latter was acquitted. The accused was then charged under section 214 of the Indian Penal Code but was acquitted. The learned Judges said : "It is contended that it is not necessary that an offence should be actually committed, or that

[1] (1890) 14 Mad. 400.

the person charged should be really liable to be punished for such offence. We do not, however, think that it was the intention of the Legislature to punish the giving of gratifications, under a delusion that an offence had been committed or that a person was guilty of such offence. The words 'concealing an offence' and 'screening any person from legal punishment for any offence' appear to us to presuppose the actual commission of an offence, or the guilt of the person screened from punishment." Then later in the judgment they quoted with approval what was said by Mr. Justice Jackson in *The Queen* v. *Joynarain Patro*[1] to the effect that the intention of the Legislature was to discourage malpractices, when offences have really been committed, or when persons really guilty are screened, and not to ensure general veracity on the part of the public in regard to imaginary offences or offenders. That was a case decided under section 214 of the Indian Penal Code and it was followed in a case under the cognate section 213 in *Girish Myte* v. *Queen-Empress*[2]. In *Queen-Empress* v. *Fateh Singh*[3], where the somewhat similar sections 212 and 201 had to be considered, the decision was to the same effect. The learned Magistrate's only reason for supposing that it is not necessary to prove the commission of the principal offence as a condition precedent to establishing a charge of screening the offender is that if this view were accepted, it would follow that the screeening need only be successful in order to evade the punishment provided for by-law. We doubt, however, whether this construction creates any difficulty. In truth it seems to us, with respect, to beg the question which is at issue. For the only thing which is made punishable is the screening of an offence, and if it cannot be made to appear that an offence has

(1) (1873) 20 W. R. Cr. R. 66. (2) (1896) 23 Cal. 420.
(3) (1889) 12 All. 432.

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been committed, then there has been no screening of an offence. In such circumstances, as it seems to us, there would be as little reason to complain of the powerlessness of the law as in any other case where the prosecution are unable to establish an accused person's guilt.

But though, as I have said, the learned Magistrate demurred to the proposition which, as we think, is to be collected from the foregoing authorities, yet his judgment is really based not on the view that the appellants could and should be convicted, even although the principal offence, *i. e.*, the criminal breach of trust, was not committed, but on the view that for the purposes of this case against the present appellants, the guilt of the principal accused person, *viz.*, Manilal, should be held to be established. Now, on his own trial, Manilal was acquitted by the learned Magistrate's own Court, though it was then presided over by a different officer. What the learned Magistrate has now done is this. He has reconsidered all the evidence bearing upon Manilal's guilt, and has come to the conclusion that for the purposes of this case Manilal must be held guilty. In other words his judgment is based on the reversal of his predecessor's judgment aquitting Manilal of the offence imputed to him of criminal breach of trust. We are of opinion that it was not open to the present learned Magistrate thus to review his predecessor's judgment or to set aside, as he virtually does set aside for the purposes of the present case, the order acquitting Manilal. That order being unreversed stood, it seems to us, immune from challenge in the Magistrate's Court, and the present Magistrate's judgment was, in our view, bound to proceed on the footing that no offence of criminal breach of trust had been proved. But of things which do not appear and of things which do not exist, the reckoning in a Court of law is the same, and it would follow that the learned

Magistrate's judgment was bound to proceed on the footing that no criminal breach of trust had been committed. For the prosecution could not make it appear that such an offence had been committed.

In this context it seems relevant to refer to what was said by Mr. Justice Bruce in *Rex* v. *Plummer*[1]. There the learned Judge referred to a note made by Mr. Greaves in Russell on Crimes where it was suggested that "a verdict of 'not guilty' is not to be taken as establishing innocence of the person acquitted, because the verdict may have been arrived at simply in consequence of the absence of evidence to prove his guilt", but, said the learned Judge, "I think it is a very dangerous principle to adopt to regard a verdict of 'not guilty' as not fully establishing the innocence of the person to whom it relates", and this passage was cited with approval by Sir Lawrence Jenkins, C. J., in *Emperor* v. *Lalit Mohan Chuckerbutty*[2].

We are of opinion, therefore, in the circumstances of this case that it was not open to the learned Magistrate to base his judgment on any other footing than that Manilal was innocent of the offence which had been imputed to him. It was nobody's case that that offence had been committed by anybody other than Manilal, and the judgment, therefore, in our view, should have proceeded upon the presumption that the alleged principal offence had not been committed.

For these reasons it appears to us that these appeals should be allowed and the convictions and sentences should be set aside. The fines, if paid, will be refunded to the appellants.

Appeals allowed.

R. R.

[1] [1902] 2 K. B. 339 at p. 348. [2] (1911) 38 Cal. 559 at p. 578.