

of the Indian Penal Code (Act XLV of 1860), where the accused, who was a servant of the Port Canning Company, seized the nets of a party of fishermen who were poaching on the Company's fisheries, and was convicted of theft. The Calcutta High Court set aside the conviction; as dishonest intention, which is an essential ingredient of the offence of theft, was absent, the accused having acted *bonâ fide* in the interest of their employers in retaining possession of the nets pending their orders, and the taking not having, therefore, been criminal when the possession was changed. The Sub-divisional Magistrate has distinguished that case from the present case, where the taking was illegal and was known by the accused to be illegal. The taking caused wrongful loss, as defined in the Penal Code, and was intended to cause the loss which was actually caused. No essential ingredient of the offence of theft appears, therefore, to be wanting in the present case; and we cannot interfere with the finding and sentence.

JARDINE, J. :—As the Magistrate who heard the appeal found that the accused did not in good faith believe he was justified in taking the boat, and as the taking was *primâ facie* an improper act, I see no reason for interference; see *Luckee Nârâin Banerjee v. Râm Kumâr Mukherjee* (1); and Paley on Summary Convictions (4th ed.), p. 121.

*Conviction upheld.*

(1) I. L. R., 15 Cal. 564.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Birdwood and Mr. Justice Candy.*

HEERA'BA'I AND ANOTHER v. FRA'MJI BHIIKA'JI.\*

*Criminal Procedure Code (Act X of 1882), Sec. 439—High Court's powers of revision—Acquittal—Order of acquittal—High Court's power of revising such order—Practice.*

Though the High Court has the power, under section 439 of the Code of Criminal Procedure (Act X of 1882), to revise an order of acquittal, yet ordinarily it does not interfere with such an order in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government under section 417 of the Code.

\* Criminal Application for Revision, No. 20 of 1890.

1890.

July 30.

1890.

HEERÁBAI

v.

FRÁMJI  
BHÍKÁJI.

THIS was an application for revision of an order of acquittal passed by C. P. Cooper, Chief Presidency Magistrate.

The applicants filed a complaint against FRÁMJI BHÍKÁJI and five other persons on charges of assault and criminal trespass under sections 355 and 447 of the Indian Penal Code.

The Chief Presidency Magistrate, who tried the case, acquitted the accused, on the ground that the evidence in the case was of the most conflicting nature, and that the statement made by the accused No. 1 was, in his opinion, the more probable story.

Against this order of acquittal the complainants applied to the High Court under its revisional jurisdiction, contending that the evidence for the prosecution conclusively established the guilt of the accused, and that the Magistrate was wrong in refusing to allow the complainants to call evidence to contradict the statements made by one of the accused in his examination by the Court.

*Inverarity* (with him Messrs. *Crawford, Burder, Buckland, and Bayley*) for the complainants.

*PER CURIAM*:—We are asked in this case to review an order of acquittal. Though we have the power to do this under section 439 of the Code of Criminal Procedure, yet ordinarily this Court does not interfere with an order of acquittal in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government against such an order under section 417 of the Code, and it would be open to the complainants in the present case to move the Government, if so advised, to appeal against the Chief Presidency Magistrate's order. We think that in the circumstances of the present case, which is a summons case, (for which a particular procedure is provided which was followed by the Magistrate), we ought not to interfere on the complainants' application. Even if we assume that the Magistrate ought to have examined Mr. Cowasji Dubash, whom the prosecution wished to call in order to rebut a part of the story told by accused No. 3 regarding an alleged arrangement between the complainants and accused No. 2 regarding the custody of their children, still the fact remains that after examining all the direct evidence adduced by the parties as to the alleged assault

and criminal trespass, the Magistrate disbelieved the witnesses for the prosecution. We ought not, we think, in these circumstances, to direct the Magistrate to take further evidence to rebut the accused's story about the alleged arrangement, and then to re-assess the value of the whole evidence in the case in the light of that evidence. We reject the application.

*Application rejected.*

1890.

HEERABAI  
v.  
FRAMJI  
BHIKAJI.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Birdwood and Mr. Justice Candy.*

QUEEN-EMPRESS v. E. M. SLATER.\*

1890.

August 5.

*Defamation—Indian Penal Code (Act XLV of 1860), Sec. 499, Exception 9—  
Imputation made in good faith by a person for the protection of his interest.*

In order to substantiate a defence under the ninth exception to section 499 of the Indian Penal Code (Act XLV of 1860), it is sufficient to show that the imputation was made in good faith and for the protection of the interest of the accused.

• Any one in the transaction of business with another has a right to use language *bonâ fide* which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly or by its consequences be injurious or painful to another.

The complainant, Hâji Jusub Pirbhoy, and his partner Balâdina were owners of the steam-ship "Tanjore." The ship was mortgaged to the Bank of Bengal for Rs. 50,000. In March, 1890, the complainant desired to send the vessel to Jeddah with pilgrims and freight. For this purpose he entered into an agreement with Mr. Slater, the Agent of the Bank, to pay Rs. 5,000 to the Bank as a condition precedent to the vessel being allowed by the mortgagees to go on her intended voyage. The sum was to be paid out of the freight and passage-money collected by the complainant. On the 9th April, 1890, on which day the vessel sailed, the complainant promised to pay the sum in the evening. This he did not do. Thereupon Mr. Slater wrote to the complainant, demanding immediate payment of the amount, and also sent for him five or six times, but the complainant neither called at Mr. Slater's office, nor made the payment. On the 12th April Mr. Slater wrote to the complainant's partner as follows:—"Hâji Jusub Pirbhoy (*i. e.* the complainant) has misappropriated the Rs. 5,000 which were to have been paid to the Bank for allowing the 'Tanjore' to go to Jeddah, and is keeping out of the way." Immediately after the receipt of this letter the complainant tendered the money to the Bank's solicitors. Thereupon Mr. Slater wrote to Balâdina on the 13th April, withdrawing the statement made by him about the complainant in his letter of the 12th April. On the 14th April, the complainant filed a complaint against