PRIVY COUNCIL.

HUNMANTRAO *v.* KING-EMPEROR.

J. C.*
1924.
November 11.

[Petition for Special Leave to appeal from the Court of the Judicial Commissioner, Central Provinces.]

Privy Council—Criminal appeals—Principles of jurisdiction—Practice.

Power of the Judicial Committee to entertain criminal appeals considered and explained. Principles and practice emphasised.

PETITION for special leave to appeal to the Privy Council.

The appellant had been convicted and sentenced to six months' rigorous imprisonment, the conviction and sentence being duly confirmed by the Court of the Judicial Commissioner, Central Provinces. The facts of the case are of no interest, but it is considered that a report of the observations made when the matter came before the Board, will prove useful.

Sir George Lowndes, K. C., with *Wallach*, appeared for the petitioner.

Kenworthy Brown appeared for the Crown.

Sir George Lowndes:—My Lords, this is a petition which was in hand before the petition in *Umra's case* was presented to your Lordships. May I state the point very shortly? I do not think I can distinguish it from *Umra's case*, but I should like to tell your Lordships what the point is, because it appears that a very gross injustice has been done in India, and the only way of correcting that is by way of appeal here. There were two grave injustices done in this case. In the first place, my client was convicted upon a confession made by him to a police officer, and the Court allowed that to be proved in Court against him, directly contrary to the provision of section 25 of the Indian

* *Present.*—Viscount Haldane, Lord Dunedin, Lord Atkinson, Lord Sumner and Lord Salveson.

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Evidence Act. The second point is this: under the Criminal Procedure Code, every accused person has to be called upon to make any statement he likes at the end of the evidence, and the section says specifically that he is to be called upon to do this to explain any points in the evidence appearing against him to enable the accused person to make his statement. In this case there were two accused. One of them made his statement in the ordinary course before the Court, answering certain questions, and then he said, "I have nothing more to state; I do not desire to say anything more." The case was put back and adjourned for a fortnight during which this co-accused was in the custody of the police. At the end of the fortnight he was brought back again to the Court, and, at the request of the police, he was asked whether he wished to make any further statement. He then made a statement implicating my client, his co-accused. I submit that is entirely contrary to the provisions of the law, and that it is a grave injustice; but it is right for me to tell your Lordships that when we went on appeal to the Judicial Commissioner's Court, the Judge, in summing up the case against my clients, in his judgment did not refer in any way to either of these pieces of evidence, which clearly ought not to have been admitted. He did not say that he disregarded them; he did not say that they ought not to have been admitted but he summed up the other evidence against my client, and said in his judgment the conviction must be upheld. In *Umra's case*, as I understand it, your Lordships laid it down that, where the High Court, to whom it was definitely committed by law to say whether there was sufficient evidence, apart from the evidence that ought not to have been admitted, has said that it is sufficient, that is not the sort of case in which leave would be granted. I cannot say that that does not cover this case.

VISCOUNT HALDANE :—You cannot say that there was no evidence at all ?

Sir George Lowndes :—No, my Lord.

VISCOUNT HALDANE :—I should like to make this observation. The power to entertain appeals here arises, not from the relation of this Board to the Court below, as a Court of Criminal Appeal, but as the Privy Council, advising the Sovereign with regard to the exercise of the prerogative. The prerogative is that remnant of the power of the Crown which remains to the Crown to interfere with Tribunals of Justice which does not exist in this country at all ; it has passed away in the historic development of the constitution ; it used to exist, and it does exist to some extent in the case of the Crown Colonies, because they are managed directly by the Crown through Ministers, but, when one comes to self-governing dominions, I should be very sorry to say that even the principles of *In re Abraham Mallory Dillet*[1] could be applied to the constitution of Canada. The constitutions of Canada and of Australia, taking those as illustrations, have so developed that they are virtually self-governing dominions, and it is a question, to my mind, as to whether the principles of *Dillet's case*[1] apply in the case of self-governing dominions. India is not yet in that state, but it has been publicly said that India is recognised by the Imperial Government as being on the way to becoming now a self-governing dominion, and, therefore, even with regard to India, it is with the utmost care that we should pronounce any proposition that that disappearing fragment of the prerogative, of which I have spoken, remains. It follows, therefore, that, unless you can prove that there was no proper trial at all, that the forms of all judicial

[1] (1887) 12 App. Cas. 459.

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procedure were disregarded, not merely according to local ordinances, but according to what I may call the unvarying character, which is common to all, we cannot interfere. If there was anything very, very gross, it might come under the same category, but even then the Crown has to be extraordinarily cautious in asserting the survivor even of the very restricted prerogative which existed fifty years ago, but which may not exist now. I think you will find that referred to in some of the words of Lord Watson in *Dillet's case*[1]. What you have told us so frankly is that you cannot bring the case up to that; it is a mistake, if at all, in the exercise of its jurisdiction, by the Court in India; we are not a Court of Criminal Appeal, and cannot take cognizance of a mere mistake. It is not a case in which justice has been set at naught, and, therefore, we have no jurisdiction. I should like to add this. I do not think it right for either counsel or Privy Council agents to encourage the bringing of such petitions as the one we have had before us to-day; it is a waste of time of the Judicial Committee and, after the repeated intimations which their Lordships have given, and the recent intimation of my noble and learned friend, Lord Dunedin, it is hardly respectful to the Tribunal.

Sir George Lowndes:—Will your Lordships allow me to say this: I speak for all the members of the Bar who have practised in India and are now practising here. We do all we possibly can to discourage these applications, but we have been told by the Attorney-General that, when we are instructed to appear on these petitions, we must do so. Your Lordships would help us if you had a rule that no petition should be presented here without a certificate of counsel that it is within the rules of the Board. At present we are

[1] (1887) 12 App. Cas. 459.

helpless. I can tell your Lordships as frankly as I can what the position is.

VISCOUNT HALDANE :—We are much obliged to you for your suggestion.

Their Lordships will humbly advise His Majesty that the petition be dismissed.

K. McI. K.

ORIGINAL CIVIL.

Before Sir Lallubhai Shah, Kt., Ag. Chief Justice, and Mr. Justice Kincaid.

1924.

September 30.

BHIKUBAI YESHWANTRAO MEHER, APPELLANT AND ORIGINAL PLAINTIFF *v.* HARIBA SAWALARAM MEHER AND OTHERS, RESPONDENTS AND ORIGINAL DEFENDANTS*.

Hindu Law—Widow—Unchastity—Return to chastity—Bare maintenance.

Where a Hindu widow who had been unchaste was proved to have given up the life of unchastity,

Held, that she was entitled to bare maintenance.

Honamma v. *Timannabhat*[1], *Valu* v. *Gangu*[2] and *Parami* v. *Mahadevi*[3], discussed.

Roma Nath v. *Rajonimoni Dasi*[4] and *Sathyabhama* v. *Kesavacharya*[5], referred to.

Per SHAH, AG. C. J. :—"If *Honamma's case*[1] is read as laying down that bare maintenance should be allowed to a widow who is in fact leading a life of unchastity, there is undoubtedly a difference of opinion..... But if the decision in *Honamma's case*[1] is, as I think it should be, restricted to the case of a widow who has really given up a life of unchastity, there is really no conflict of decisions. In view of the concurrence of judicial opinion in the three High Courts, that a widow, who has been unchaste, but who is proved to have given up the life of unchastity, should be given bare maintenance, I think that that view may be given effect to without any reference to a Full Bench. I

* O. C. J. Appeal No. 5 of 1924 from Suit No. 482 of 1922.

(1) (1877) 1 Bom. 559.
(2) (1882) 7 Bom. 84.
(3) (1909) 34 Bom. 278.
(4) (1890) 17 Cal. 674.
(5) (1915) 39 Mad. 658.