1904
JULY 14, 15.

SMALL CAUSE COURT REFERENCE.

31 C. 1001.

MACLEAN, C. J. The question submitted to us is this : "Is the jurisdiction of this Court," that is the Small Cause Court, "ousted by the defendant's raising a question of title in a suit which, according to the case as stated in the plaint, this Court has jurisdiction to try, the question of title being the principal contested matter in the suit?" It is quite clear that, looking at the plaints, the Court had jurisdiction to try these two suits. It is established by authority that the Court has jurisdiction to try questions of title, which arise incidentally in the suit. It was also apparently the view of Mr. Ormond, and this is in favour of Mr. Garth's client that, if the question of title is the sole contested matter in the suit, then the jurisdiction of the Small [1006] Cause Court is ousted. But in this case Mr. Panioty says:—"In these cases," that is the cases under discussion, " I am unable to say that the sole object of the plaintiff in bringing these suits was to have the title litigated, nor am I able to say whether the defence raised was or was not *bona fide*." The question is whether these suits ought to be nipped in the bud as they have been or ought to be tried out. Apparently if the question of title was the sole question in the case, then both the Judges agree that the jurisdiction of the Small Cause Court would be ousted : and in this view we concur. But it has been found that that was not the sole object of these suits. If that is so, although the question of title may be a principal one, if it be not the sole one, I do not think the jurisdiction is ousted. One must bear in mind that it is an easy thing for a defendant to set up a question of title, with a view to ousting the jurisdiction and driving the plaintiff to another tribunal. In the circumstances of the case before us the question referred must be answered in the negative. The costs of this reference will, after taxation in the usual manner, be costs in the cause.

SALE, J. I agree.

BODILLY, J. I also agree.

Attorneys for the appellant: *G. C. Chunder & Co.*

Attorneys for the respondent: *Morgan & Co.*

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31 C. 1007 (=8 C. W. N. 717=1 Cr. L. J. 714.)

[1007] CRIMINAL APPEAL.

Before Mr. Justice Pratt and Mr. Justice, Handley.

EMPEROR *v.* PRASANNA KUMAR DAS.*

[31st May and 1st June, 1904.]

Joint trial—Same transaction—Previous conviction—Counterfeit Coin—Possession, delivery of—Criminal Procedure Code (Act V of 1898) ss. 235, 239, 403—Indian Penal Code (Act XIV of 1860) ss. 240, 243.

C gave the appellant 50 counterfeit rupees to pass for him. These rupees were stolen and the appellant on the discovery of the theft gave certain information to the police, which led to the discovery of 64 other counterfeit coins in C's house.

C was separately tried and convicted under s. 243 of the Penal Code of being in possession of the latter coins.

C and the appellant were also tried jointly and were convicted ; C under s. 240 of the Penal Code with reference to the 50 counterfeit rupees he had

* Criminal Appeal No. 399 of 1904, against the order passed by J. H Temple, Sessions Judge of Backergunge, dated Feb. 27, 1904.

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made over to the appellant, and the appellant under s. 243 of the Code of being in possession of the said rupees.

On appeal it was contended that C could not be tried for an offence under s. 240 after he had been previously convicted of the possession of base coin under s. 243 of the Penal Code and further that the joint trial was bad in law.

Held that the joint trial was valid; that the trial of C under s. 240 of the Penal Code was legal, it being for an offence distinct to that for which he had been previously convicted.

THE appellant Prasanna Kumar Das, who was a contributor to a local newspaper at Barisal, informed the editor that he knew of certain people who made counterfeit coins and asked the editor to put him in communication with the special Police Inspector so that he might help him to an arrest and secure a reward. This was done, and the appellant told the Inspector he knew of one Wahed Ali of Jhalakhati, who made false coins. Having thus put the police on a false scent, the appellant went off to Calcutta with some forty or fifty counterfeit rupees, which he had obtained from one Chand Sarip previous to the [1008] interview with the Inspector, and which he had arranged to pass in Calcutta. While in Calcutta the appellant's trunk was broken open and the counterfeit coins were stolen. The theft was subsequently discovered when a coolie went to the post office with ten of the conterfeit rupees to obtain a money-order. The appellant then gave certain information to the police which led to the discovery of sixty-four counterfeit rupees in Chand Sarip's house.

Chand Sarip was separataly tried and convicted under s. 243 of the Penal Code of being in possesion of counterfeit coin. The appellant and Chand Sarip were also tried jointly by the Sessions Judge of Backergunge; the appellant under s. 243 and Chand Sarip under s. 240 of the Penal Code with reference to the forty or fifty rupees he had made over to the appellant to pass off in Calcutta. The appellant was convicted and sentenced to five years' rigorous imprisonment. He then appealed to the High Court.

Mr. *P. L. Roy* (Babu *Brojendra Nath Chatterjee* with him, for the accused. I submit that the joint trial of the appellant with Chand Sarip was illegal. Chand Sarip had been previously tried and convicted for an offence under s. 243 and therefore he could not again be tried for the cognate offence under s. 240 of the Penal Code along with the appellant, who has been tried in the present case for an offence under s. 243. The sole object of trying Chand Sarip for this offence with the appellant and not calling him as a witness seems to have been to make use of his confession against the appellant, so that the appellant might be deprived of the right of crosss-examining Chand Sarip on that statement. Chand Sarip was sentenced only to one day's imprisonment in the present case, so that the motive alleged by the defence is apparent. The confession of Chand Sarip has been improperly used against the appellants in this case, and the joint trial of the two men is *ultra vires*.

The *Deputy Legal Remembrancer* (Mr. *Douglas White*) for the Crown. It has been argued by the defence that s. 403 of the Criminal Procedure Code applies and that, because Chand Sarip has been previously convicted under s. 243 of the Penal [1009] Code, he could not be tried again under s. 240. This, however, is not correct. Section 403 of the Criminal Procedure Code does not apply in this case. The two offences for which Chand Sarip has been tried and convicted are distinct

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offences. His previous conviction under s. 243 of the Penal Code was with reference to sixty-four counterfeit coins found in his house, and had nothing to do with the offence for which he was subsequently tried, that being under s. 240 of the Penal Code with regard to the delivery by him to the appellant of some fifty other coins. The offences are distinct and the facts relating to each offence are different. Therefore there was nothing improper in using the confession of Chand Sarip against the appellant. The joint trial of the appellant and Chand Sarip was not illegal. Sections 235 and 239 of the Criminal Procedure Code apply. The two were acting in concert in order to pass off bad coins. *Emperor* v. *Sherufalli Allibhoy* (1) applies.

Cur. adv. vult.

PRATT AND HANDLEY, JJ. Prasanna Kumar Das has been convicted of an offence under section 243 of the Indian Penal Code. The history of the case, as appears from the evidence which we accept, is as follows:—Prasanna, who was a contributor to a local newspaper at Barisal, told the editor that he knew of people, who made counterfeit coins and asked him to place him in communication with the special Police Inspector that he might help him to an arrest and so secure a reward. This was done, and Prasanna told the Inspector he knew of one Wahed Ali of Jhalakhati, who made false coins. The Inspector told him he would be rewarded, if he could get the man caught in possession of conterfeit coin. Suddenly Prasanna went off by steamer and rail to Calcutta with 40 or 50 counterfeit rupees. These he admittedly obtained from one Chand Sarip, and for the reasons stated by the Judge we are satisfied that he got them before the interview with the Inspector. Prasanna's trunk was broken open by some thief in Calcutta, and the counterfeit coins were stolen and thus he was unable to pass them as had been arranged with [1010] Chand Sarip. The theft was disclosed when a coolie went to the post office with 10 of the bad rupees to obtain a money order. Then Prasanna finding himself in a corner gave information to the Police, which led to the discovery of 64 counterfeit rupees in Chand Sarip's house. For this Chand Sarip was separately tried and convicted.

Chand Sarip was also tried jointly with Prasanna in the present case, the charge against him being one under section 240 with reference to the 40 or 50 rupees which he admittedly made over to Prasanna to pass off in Calcutta. On Chand Sarip's confession coupled with the evidence both direct and circumstantial it is clear that Prasanna is guilty and that he first put the police on the wrong scent and then slipped off to Calcutta with the false coins previously obtained from Chand Sarip.

It has been objected that Chand Sarip could not be tried for an offence under section 240 after he had been convicted of the possession of base coin under sction 243 and that therefore his confession as co-accused was improperly used against Prasanna. In the second place it is urged that the joint trial of these two men is bad in law.

As regards the first contention, we think that the delivery of base coin by Chand to Prasanna with a view to its being changed in Calcutta for good money is a distinct offence to that for which Chand was previously convicted.

The joint trial was, we think, permissible by section 239 read with

(1) (1902) I. L. R. 27 Bom. 135.

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the first clause of section 235 of the Criminal Procedure Code. Moreover, it is clear that Prasanna might have been charged and tried with Chand Sarip for abetting an offence under section 240 of the Indian Penal Code, inasmuch as he received the counterfeit coin with the deliberate intention of committing a fraud by passing it off as genuine Queen's coin.

We could legitimately alter the conviction of the appellant so as to bring it under section 240 read with section 109 of the Indian Penal Code. On the merits we need say no more, as we take the same view of the evidence which was accepted by both Judge and Assessors. The appeal is accordingly dismissed.

Appeal dismissed.

31 C. 1011 (=9 C. W. N. 193.)

[1011] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Geidt.

UMESH CHANDRA DASS *v.* SHIB NARAYAN MANDAL.*

[6 July 1904.]

Decree, execution of—Execution, steps in aid of—Sale, confirmation of—Civil Procedure Code (Act XIV of 1882), ss 311, 312—Limitation.

An application by a decree-holder, who has purchased a property in execution of his own decree, for confirmation of the sale, is not an application to take some steps in aid of execution of the decree.

[Ref. 92 P. R. 1907.]

SECOND APPEAL by Umesh Chandra Das, the decree-holder.

This appeal arose out of an application made on the 19th December 1902, for execution of a decree of the Munsif of Midnapore, dated September 20, 1895, by the purchaser of the decree from the original decree-holder. The judgement debtor, upon notice under s. 232 of the Code of Civil Procedure appeared and opposed the application mainly on the ground that it was barred by limitation under Art. 179, cl. (4) Sch. II to the Limitation Act (XV of 1877). There was a previous application for execution, by this purchaser, of the decree on 15th August 1902, but it was dismissed for want of prosecution on the 1st December following. Before this, the decree was sent for execution, at the instance of the original decree-holder, to the Court of the Munsif of Tamluk; and the last application for execution to that Court was made on the 3rd May 1899. In this execution case of the Tamluk Court, the immoveable property of the judgment-debtor was sold on the 16th August 1899, and the decree-holder himself becoming the purchaser, deposited on that very day of the sale-fee (poundage fee), and put in an application praying for a set-off of [1012] the purchase money against the decretal amount and also for confirmation of the sale is his favour There was also a petition by the decree-holder on the 15 August 1899 for permission to bid at the sale.

The learned Munsif relying upon *Toree Mohomed* v. *Mohomed Mabood Bux* (1) and *Ananda Mohan Roy* v. *Hara Sundari* (2) held that the application for execution by the purchaser decree-holder of the 15th August 1902 was then barred by limitation, that the execution of the decree thus becoming barred could not be revived by the subsequent

* Appeal from order No. 456 of 1903, against the order of E. G. Drake Brockman, District Judge of Midnapore, dated August 31, 1903, affirming the order of Radha Nath Sen, Munsif of that district, dated March 28, 1903.

(1) (1888) I. L. R. 19 Cal. 730 (2) (1895) I. L. R. 23 Cal. 196.