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INSOLVENCY JURISDICTION.

31 C. 761=8 C. W. N. 553.

[782] " the Assignee or any person duly acting under his authority except to recover any property detained after an order made by the Court for its dilivery," affords the Official Assignee protection from suit by the Trustee. In this application, so far as it seeks to get possession of the assets, the Court was asked to use its authority over its own officer, but the Court is a Court of Equity and it will only act on equitable principles.

If I have rightly understood much that was said in argument the Trustee objects very strongly (and I am not satisfied that the form of his application has not to some extent been moulded upon this consideration) to the Official Assignee being paid any commission or indeed any remuneration at all. He is apparently anxious in the interests of the creditors to avoid the payment of a double commission. The nature or value of the assets collected or to be collected is not stated in the affidavits used upon the Rule. If I might venture to make a suggestion there is one way by which the payment of a double commission might possibly be avoided, namely by the retention of the assets here in the hands of the Official Assignee and subsequently, when the Court in England shall have determined upon the mode of distribution, by applying them for the purpose of paying off the creditors in India under the directions of the Trustee himself.

Any endeavour to preserve as much of the estate as possible for the creditors cannot be too highly commended, but I confess I am unable to understand the objection of the Trustee in this instance to the payment of any remuneration to the Official Assignee. He cannot be ignorant of the facts. The Official Receiver as early as the 4th February addressed a telegram to the Official Assignee officially and, in a letter dated the 5th February addressed to the Official Assignee and enclosing office-copies of the receiving order and order of adjudication, he stated " In the meantime it will be an assistance to me that you will have taken possession of and preserved the assets for the creditors." He has been informed what the Official Assignee has done from the time that he took possession on the 2nd February.

The rule must be discharged with costs.

Attorneys for the applicant: *Orr, Dignam & Co.*

Attorneys for the Official Assignee: *Watkins & Co.*

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31 C. 783 (=8 C. W. N. 909).

[783] CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

JUNAB ALI *v.* EMPEROR. *

[10th May, 1904.]

Good behaviour, security for—General repute—Locus pœnitentiæ—Criminal Procedure Code (Act V of 1898) ss. 110, 118.

The petitioner was imprisoned for one year on failure to furnish security for his good behaviour under s. 110 of the Criminal Procedure Code.

About fifteen months after his release from jail fresh proceedings of the same nature were started against him and he was again ordered to furnish security to be of good behaviour.

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* Criminal Revision No. 359 of 1904 made against the order passed by H. W. Scroope, District Magistrate of Tipperah, dated the 29th of February, 1904.

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CRIMINAL REVISION.

31 C. 783=8 C. W. N. 909.

Held, that the order should be set aside as the petitioner had not had a sufficient *locus pœnitentiæ*.

[Ref. 16 C. L. J. 467=17 C. W. N. 238=14 Cr. L. J. 5=13 I. C. 149; 28 I. C. 648=19 C. W. N. 228; 32 I. C. 677=1915, 11 U. B. R. 86.]

RULE granted to the petitioner, Junab Ali.

This was a Rule calling upon the District Magistrate of Tipperah to show cause why the order under s. 118 of the Criminal Procedure Code should not be set aside on the grounds :—

(1) that the evidence on the record was unreliable and the result of party feeling ;

(2) that no evidence of a period anterior to the imprisonment of the petitioner should have been admitted or relied on ;

(3) that the Court below had misconceived the real issue in the case ;

(4) that having regard to the facts of the case the opinion as to general repute was insufficient.

The petitioner was released from jail on the 26th September 1902 after having undergone one year's imprisonment on failure to furnish security for his good behaviour under s. 110 of the Criminal Procedure Code. About fifteen months afterwards fresh proceedings under s. 110 of the Code were started against him before the District Magistrate of Tipperah, it being alleged [784] that he was a habitual thief and burglar and associated with others for the purpose of committing theft. On the 29th February 1904 the District Magistrate under s. 118 of the Criminal Procedure Code directed the petitioner to execute a bond for Rs. 200 with two sureties for Rs. 100 each to be of good behaviour for a period of one year.

The judgment of the District Magistrate was as follows :—

The accused is one Junab Ali : the proceedings against him are under s. 110 of the Criminal Procedure Code. He is alleged to be a habitual thief and burglar and to associate with others for the purpose of committing theft.

The accused is an inhabitant of Muradpur, one of the mohallas included within the municipal limits of Comilla and the witnesses, who have deposed both in his favour and against him are most of them residents of the town belonging to the mohallas of Muradpur, Bajrapur, Chartha, Dakhin Chartha, Mirpur and Mogaltoli. He has been once convicted under s. 110 of the Criminal Procedure Code and was released after a year's imprisonment on 26th September, 1902. During the earlier months of the present year there was a serious outbreak of thefts and burglaries in the town, and I infer, though it is nowhere expressly stated in evidence, that to this circumstance is mainly due the institution of cases under s. 110 of the Criminal Procedure Code against the accused and several other persons who are alleged to be his intimate associates. What has to be regarded as the real point of issue in the present proceedings is the nature of the accused's reputation among his fellow townsmen, since his release from jail. The learned pleader, who argues the case on his behalf, contends that the inability of the prosecution witnesses to quote specific instances of misconduct against him since his release is a fact which would justify the dropping of the present proceedings, but I cannot accept this view having regard to the facts which have been elicited as to the accused's general reputation and the ruling in *Rai Isri Pershad* v. *Queen-Empress* (1). Thirty-three witnesses have been examined for the prosecution and Nos. 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 16, 19, 20, 21, 22, 27, 29, 30 and 33 depose that the accused has the reputation of being an habitual thief. Many of these witnesses are persons holding respectable positions and their evidence leaves no doubt in my mind as to the fact that accused is an object of fear and suspicion to his fellow townsmen. Of the other witnesses No. 2 proves that the accused visited Koshba in company with other notorious bad characters on a date when a serious burglary occurred in a house in that village and I see no reason for disbelieving that the witness identified the accused on that occasion. Witnesses 14 and 15 established that the accused visited the house of one Ashgorali, who was subsequently arrested on a charge of

(1) (1895) I. L. R. 23 Cal. 621.

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concealing stolen property, witness No. 17 saw the accused in Hill Tipperah in company with Syedali and Altabali, who are notorious bad characters of the town and witnesses 24, 25 and 26 prove the occurrence of theft cases in Hill Tipperah, in which however there were no sufficient reasons for suspecting accused.

[783] None of the witnesses are shown to have any reason for wishing to injure the accused and it is absolutely certain that the present case is not one of those which has its origin in party feeling. The accused has cited 18 defence witnesses, most of whom are related to him. The others know little or nothing about him beyond the fact that he is now working as a driver of a tikka-gari; it is mainly upon this that they base their opinion as to his character. The defence evidence offers no satisfactory explanation of the general consensus of opinion among the prosecution witnesses that the accused is an associate of thieves and himself a suspected thief. I therefore direct the accused to execute a bond of Rs. 200 with two securities of Rs. 100 each to be of good behaviour for a period of one year. In default he will undergo rigorous imprisonment for that period.

M. Syed Shamsul Huda for the petitioner. The petitioner was only released from jail a few months ago, and it is hardly fair to have proceeded again against him under s. 110 of the Criminal Procedure Code without giving him an opportunity of reforming. The evil reputation he had still follows him. He has not had sufficient time to throw off the slur cast upon him by his imprisonment. The evidence against him was mainly that of general repute. Under the circumstances it would be impossible for a man to acquire a good reputation in so short a time.

PRATT AND HANDLEY, JJ. The petitioner was released from jail on the 26th September 1902, after having undergone one year's imprisonment on failure to furnish security for his good behaviour under section 110 of the Code of Criminal Procedure. About fifteen months afterwards fresh proceedings of the same nature were started against him and in the result he has been again ordered to furnish security to be of good behaviour for a period of one year.

We think that the petitioner has not had a sufficient *locus pœnitentiæ* and that the evil reputation which he had before his imprisonment has still followed him and permeated the evidence of many of the witnesses. We therefore think that the order of the Magistrate dated the 29th February 1904, should be set aside and we order accordingly.

Rule made absolute.

31 C. 786 (=8 C. W. N. 325.)

[786] APPELLATE CIVIL.

Before Mr. Justice Hill and Mr. Justice Stevens.

GHOLAM MOHIUDDIN HOSSEIN *v.* KHAIRAN.*

[6th January, 1904.]

Ejectment, partial—Joint estate—Co-sharer landlord, rights of—Service tenure—Fair and equitable rent—Bengal Tenancy Act (VIII of 1885).

Were tenants where originally let into possession of land by all the co-sharers in a zemindari, a co-sharer landlord is not competent to obtain a partial ejectment of the tenants to the extent of his share, unless the tenancy has been determined by all the co-sharers.

Hulodhur Sen v. *Goroo Doss Roy* (1) *Radha Proshad Wasti* v. *Esuf* (2) and *Kamal Kumari Chowdhurani* v. *Kiran Chandra Ray* (3) distinguished.

* Appeal from Appellate Decree No. 1886 of 1901, against the decree of W. H. Lee, District Judge of Purneah dated the 12th of July 1901, reversing the decree of Sasi Bhusan Chatterjee, Subordinate Judge of that District, dated the 29th of August 1900.

(1) (1873) 20 W. R. 126.
(2) (1881) I. L. R. 7 Cal. 414.
(3) (1898) 2 C. W. N. 229.