

1869
 QUEEN
 v.
 NAWAB SING.

ment recorded by the Registrar were put in, proved, and authenticated. The bond was simply produced before the Small Cause Court Judge with the record of the agreement, and verified by the petitioner. When the Small Cause Court Judge found, that a full enquiry had been made by the Sub-Registrar; that the Registrar, to whom the proceedings of the Sub-Registrar had been transmitted for sanction of the prosecution under section 95 of the Registration Act, had come to the conclusion that the prisoners ought to be prosecuted for the forgery of the bond which had been put in and specially registered by the Sub-Registrar; that the Sub-Registrar had been giving evidence and assisting in the prosecution before the Magistrate; the Small Cause Court Judge, whose function in giving effect to the registered agreement by a decree and execution under section 53 of Act XX. of 1866 was merely ancillary to that of the Registrar recording the agreement, was fairly justified in sanctioning the prosecution without further enquiry. He was, no doubt, wrong in setting aside the decree in favor of the plaintiff, as he did, without going into evidence. He should have enquired as to any special circumstances which might have justified such an order under section 55 of Act XX. of 1866, but with that we have now nothing to do.

Before Mr. Justice Norman and Mr. Justice E. Jackson,

1869

IN RE QUEEN v. GOLAK SING AND OTHERS.*

May 6.

Perjury—Sanction to Prosecution.

Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed, at any time, even after the order for commitment to the Sessions has been made.

THE following is the letter of reference from the Sessions Judge, made, as directed, in Circular No. 7, dated June 2nd, 1864, under section 434, Act XXV. of 1861 :—

“ In a case of theft and abduction tried by me, as Sessions Judge, in September last, Golak Sing, Durgadas Sen, and Dinanath Dutt, police officers, appeared as witnesses for the pro-

* Reference under section 434, Act XXV. of 1861.

secution. The trial was a difficult and protracted one, and I was unable to resist the suspicion that the above police officers had spoken falsely and acted improperly, if not illegally. I brought the matter to the notice of the Magistrate, with a view to the Superintendent of Police making an enquiry on certain points specified. No intimation was given to me of the result of this enquiry; but on the 23rd February 1869, I was informed by the Assistant Magistrate, through the Officiating Magistrate, that he had committed Golak Sing, Durgadas Sen, and Dinanath Dutt, to take their trial before the Court of Session on a charge, under section 193, Indian Penal Code, of having given false evidence in a stage of a judicial proceeding. Subsequently, on the 9th instant, the officiating Joint Magistrate (late Assistant Magistrate), applied to me to sanction the prosecution of Golak Sing, Durgadas Sen, and Dinanath Dutt, for the offence of giving false evidence in the theft and abduction case noted above, and that sanction I gave on the 10th idem, under section 169, Criminal Procedure Code. This day Golak Sing, Durgadas Sen and Dinanath Dutt have been arraigned at the bar of the Court of Session, charged with the offence described in section 193, Indian Penal Code, under the commitment of February 23rd, 1869. The prisoners' counsel at once raised the objection that this Court had no jurisdiction, and could not entertain the charge, inasmuch as the sanction of the Court of Sessions before which the alleged false evidence was given, had not previously been accorded under section 169, Criminal Procedure Code. It was further argued that the sanction, accorded by the Court of Session on the 10th April 1869, cannot apply to this commitment made on the 23rd February 1869, and that the terms of section 169, Criminal Procedure Code, that "such sanction may be given at any time," have reference to the period of limitation, within which a charge of this description may be entertained in a Criminal Court and cannot be held to neutralize the previous provision of the same section, that no charge of an offence against public justice, described in section 193, shall be entertained in the Criminal Courts except, with the sanction of the Criminal Court before which the offence was committed. It appears to me that this contention is correct. The 6th paragraph of my letter No. 253, dated

1869.

IN RE QUEEN
v.

GOLAK SING.

1869
 IN RE QUEEN
 v
 GOLAK SING. October 16th, 1868 (1), cannot be considered as conveying the necessary sanction for the entertainment of the charge under section 193; and, therefore, as the Assistant Magistrate is a Criminal Court, as defined in section 11, Criminal Procedure Code, lawfully exercising jurisdiction for commitment to the Court of Session, the entire proceedings of the said Assistant Magistrate, commencing December 11th, 1868, and terminating on the 22nd February 1869, with present commitment, are illegal and void. I, therefore, beg that the Assistant Magistrate's proceedings may be annulled, and this commitment quashed."

JACKSON, J.—I think the Sessions Judge's letter No. 253, paragraph 6, contains a sufficient sanction.

NORMAN, J.—I cannot appreciate the force of the Judge's scruples. He first directs an enquiry into the charge of perjury. What can that mean, but a regular judicial enquiry properly conducted; and subsequently, when this is supposed to be insufficient, as it certainly would have been, if the Judge had limited

(1) *Extract para 6. from letter No. 253, dated 16th October 1868. from the Sessions Judge to the Magistrate of Backe gunge.*

6. THE conduct of the Police, as per margin, concerned in this case, should, I think, be brought to the notice of the Superintendent of Police, and an enquiry held on the following points:—

1st.—Have the Sub-Inspector and Head Constable perjured themselves in the matter of the arrest of Hur Kumar at Menazudy on the morning of the 2nd April?

2nd.—How did it come to pass that Hur Kumar was in the hands of the Police four days, and was not sent to hajat till the 26th April?

3rd.—Why did Golak Sing take two days to go from Menazudy to Madareepore, and did he hand Hur Kumar over to the Court Inspector on the

morning of the 24th; and if he did what prevented the Court Inspector from at once obtaining the order of the Deputy Magistrate to confine him in hajat?

4th.—As by the Sub-Inspector's own showing, he stopped at Madareepore on the 5th April on his way to Rajnuggur, how was it that he allowed Hur Kumar to remain that day in the thanna guard-house, although he knew, by his own "abijagputra," that Hur Kumar had been despatched on the 22nd?

5th.—Did the Constable, Ram Misser maltreat the prisoners Wuzir Mohammed and Badorudi?

I fear that there has been some sharp practice, if not unfair dealing, on the part of the Police in this case; and that in their efforts to secure a conviction, they have not only spoiled the case, but overreached themselves.

his direction to an order that the police should enquire and report to himself with a view to future proceedings, the Judge on the 10th of April sanctioned the commitment by the Deputy Magistrate.

I wholly fail to see why this sanction is not sufficient. I cannot understand why a restricted construction should be put on the plain language of the proviso of section 169. Such sanction may be given at any time. The prisoners must be tried, and I think that there is no necessity for our interference.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

IN THE MATTER OF GOPAL BURNAWAR.*

Act XXV. of 1861, s. 318.—Act XLV. of 1860, s. 188—Disobedience of Orders.

1860
May 10.

When an order, under section 318 of the Criminal Procedure Code, was made between A on the one side and B and the then tenants of B on the other, declaring that A was in possession of the property in dispute, held, that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question.

THE facts are explained in the judgment of

NORMAN, J.—Gopal Burnawar obtained an order, under section 318 of the Code of Criminal Procedure, declaring him to be in possession of a wall separating his house from one in the occupation of the tenants of Ghannu Roy. Since that time the house of Ghannu Roy has come into the possession of Sheikh Ganowri, who was no party to the proceeding in 1865, which was against the former tenant. Sheikh Ganowri is now interfering with the enjoyment of the wall by Gopal. Gopal has applied to the Magistrate to interfere, and complained before the Magistrate that Sheikh Ganowri had committed an offence under section 188 of the Indian Penal Code. The Magistrate thinks that there is no necessity for interference, that there is no danger of breach of the peace, and that the parties should be left to settle their disputes in the Civil Court.

* Reference under section 434 of the Code of Criminal Procedure, from the Judge of Gya.

1869

IN THE MAT-
TER OF GOPAL
BURNABAW

The Judge sends up the case, suggesting that the Magistrate was bound to proceed under section 188 of the Indian Penal Code, which enacts that "whoever, knowing that by an order promulgated by a public servant lawfully empowered, &c., he is directed to abstain from a certain act, disobeys such direction, shall, if his disobedience tends to cause annoyance, &c., to any person, be punished with simple imprisonment."

He sends up the case under section 434. We think it clear that the section in question has no application to the present case, and therefore that no interference on our part is called for.

Sheikh Ganowri was no party to the order made in 1865, it was not addressed to him, and therefore he cannot be punished criminally for disobedience of it.

Before Mr. Justice Macpherson and Mr. Justice E. Jackson.

THE QUEEN *v.* KALISANKAR SANDYAL AND OTHERS.

1869

June 11.

Indian Penal Code, ss. 224, 225, 353—Cumulative Sentences.

Where substantially but one offence has been committed, and the acts which are the basis of one charge, are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed.

Where prisoners were convicted under sections 224 for escape, 225 for rescuing from lawful custody, and under section 353 for using criminal force in so doing, and sentenced to separate punishments under each section, *held*, that the prisoners had only done one act, and were guilty of only one offence, and should only have been found guilty under sections 224 and 225 of "escape" and "rescuing," respectively, and sentenced accordingly.

KALISANKAR Sandyal was convicted under section 224 of the Indian Penal Code of escaping from lawful custody, and under section 353 of using criminal force to deter a public servant from discharging his duty. The other prisoners were convicted under section 225 for rescuing Kalisankar Sandyal, and under section 353 for using criminal force. Each prisoner was sentenced to separate and cumulative punishments under each section, for breach of which he was convicted, the Magistrate holding that the offences were distinct and separate.