1872

NEWTON v. KURNEED-HONE.

the defendant did not appear. [MARKBY, J.—Under a strict interpretation of the Procedure Code, I should say the defendant can appeal as a matter of right.] If the Court is bound to allow the defendant to defend the case, it has power to put him upon terms, and I would ask for a postponement, and that he should be ordered to file a written statement, and that the costs of the postponement should be borne by him. [MARKBY, J.—I think there must be costs in the cause.]

Order accordingly

Before Mr. Justice Kemp and Mr. Justice Glover.

QUEEN *v.* RAM PANDA AND ANOTHER.*

Penal Code (Act XLV of 1860), ss. 108, 109, and 211—Giving Evidence in Support of a False Charge—Abetment of such Charge.

A person cannot be convicted of abetment of a false charge, solely on the ground of his having given evidence in support of such charge.

THE Assistant Magistrate of Bhuddruck convicted two persons, Ram Panda and Dátt Hari Ghose, as abettors of a false charge, s olely on th ground that they gave evidence in support of a charge brought by one Saraswati against her husband, which he (the Assistant Magistrate) had found in a prosecution against Saraswati and others under s. 211 of the Penal Code to be false, and sentenced them under s. 109 of that Code to periods of imprisonment below one month.

1872. *July.* 11

The Sessions Judge of Cuttack referred the proceedings of the Assis tan Magistrate to the High Court, under s. 434 of the Criminal Procedure Code, for the purpose of having the sentence and conviction quashed as being illegal. The Sessions Judge, in his letter of reference, made the following observations:—

"After careful consideration, I hold that s. 108 does not contemplate any acts of subsequent abetment, and that the Code does not provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218 of Chapter XI of the Indian Penal Code.

Many very excellent reasons could be assigned for this apparent, though not real, omission. It will, however, suffice for the purposes of this reference to point out that if the inferior and theoretically less experienced Criminal Courts were allowed to punish as abettors persons who gave evidence in support of false charges, or rather charges found by the said Courts to be false, the provisions of the Procedure Code by which the punishment of the crime of false evidence can only be inflicted by the Sessions Court would be practically neutralized and set at nought. It is, I think, obvious that this was

*Reference to the High Court, under s. 434 of the Code of Criminal Procedure by the Sessions Judge of Cuttack.

never intended, and that the framers of the Criminal Procedure Code, although they allowed the lower Criminal Courts to punish for false charges, never vested them with authority to punish those who supported such charges, not by previous acts, but by evidence merely."

1872

QUEEN v. RAM PANDA.

The judgment of the High Court was delivered by

KEMP, J.—We concur with the Sessions Judge. The conviction and sentence are set aside.

Before Mr. Justice Macpherson.

HIRALAL SEAL AND OTHERS *v.* A. CARAPIET.

1872
June 27-29.

Surety—Execution—Act VIII of 1859, s. 204.

THIS was an application against one Radhakrishna Sett for execution under s. 204 of Act VIII of 1859. It appeared that a suit had been instituted by A. Carapiet against Hiralal Seal and others in the District Court of Hooghly; that it had been dismissed with costs; that the plaintiff had appealed to the High Court from the decision of the Judge of Hooghly; that pending the appeal, Hiralal Seal and his co-defendants had applied for and obtained an order from the High Court calling upon Carapiet to give security for his costs in the Court below and of the appeal; that Radhakrishna Sett had, in pursuance of the order, charged his house in Calcutta with the payment of the costs to the extent of Rs. 2,000; that the appeal to the High Court was dismissed with costs; that the costs of the Court below and of the appeal amounted to Rs. 2,052-7-6; and that the present applicants had been unable to realise the costs by execution within the jurisdiction of the Hooghly Court. They now applied for execution against Radhakrishna Sett by the attachment and sale of the house charged by him with the payment of Rs. 2,000.

Mr. *Bonnerjee* for the applicants.—S. 204 was at one time thought to be restricted to sureties under s. 76 or s. 83, and not to apply to sureties after decree like Radhakrishna Sett—*Baboo Ram Kishen Doss* v. *Hurkoo Singh* (1). But this view has been departed from. See *Akhut Ramana* v. *Ahmed Yousaffji* (2). At any rate this case is distinguishable from *Baboo Ramkishen Doss'* case (1), for there the arrangement was entered into after the case had finally terminated. *Akhut Ramana's* case (2) is on all fours with this, and the applicants are entitled to execution.

MACPHERSON, J., made the order for execution as prayed (3).

(1) 7 W. R., 329.
(2) 7 B. L. R., 81
(3) See *Abdul Karim* v. *Abdul Huque Kazi*, 8 B. L. R. 205.