APPELLATE JURISDICTION. (*a*)

Criminal Petition No. 101 *of* 1862.

Ex parte VIRABUDRA GAUD.

The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-criminating statements.

1863. *February* 7. *Crim. P. No* 101 *of* 1862.

THE petitioner, the sixth prisoner in Case No. 155 of 1862, Sessions Court, Bellary, was convicted by that Court of receiving with guilty knowledge property stolen in the commission of a dacoity. On the 15th November 1862 the High Court called for the record and suspended the sentence. This record was returned, and the case now came on for final disposal.

Branson and *Tirumalachariyar* for the prisoner.

The facts appear from the following

JUDGMENT :—The petitioner, the sixth prisoner in the case, has been sentenced to transportation for life, as a receiver of stolen property obtained by dacoity.

The evidence against him is that he has been found in possession of a quantity of gold bullion, showing traces of having been melted down from gold ornaments such as were stolen at the dacoity, and for the possession of which, he has been unable to account satisfactorily.

We are of opinion that this evidence is insufficient for the conviction of the prisoner upon the charge laid against him. Identification of gold thus melted down being impossible, it was necessary, in some direct manner, to connect the bullion found with the prisoner with the robbery, so as to warrant the reasonable conclusion that it formed part of what was stolen. There is no such connecting evidence ; and it would be quite unsafe to decide that because this gold is of a suspicious description and its possession by the prisoner, in a lawful way, had not been properly accounted for, it formed in fact part of that particular property which was taken at the dacoity.

(*a*) Present : Strange and Frere, J. J.

1863. *February 7.* *Crim. P. No* 101 *of* 1862.

Being thus unable to uphold the conviction of the prisoner, we set aside the sentence passed upon him, and direct that he be released.

We are constrained to observe that in the severe cross-examination which the prisoner has undergone before the Sessions Court, the proper limits for holding an examination of him have been greatly exceeded. The discretion given by the law for the questioning a prisoner, has not been allowed for the purpose of driving him to make statements criminatory of himself. This discretion can, we think, only be properly used for ascertaining from a prisoner how he may be able to meet facts in evidence appearing against him, so that these facts should not stand against him unexplained. It is declaredly within the competency of the accused to decline answering any question, while of course the Court is at liberby to weigh his answers whether they tell for him or against him.

Conviction quashed.

ORIGINAL JURISDICTION.

Original Suit No. 73 *of* 1862.

WINTER *against* WAY.

A sued B for goods said in Madras and delivered to B personally outside the local limits of the High Court's original jurisdiction. B dwelt outside those limits. The goods were sent to him at his request, sometimes by sea, sometimes through the Post-Office, but always at A's risk during the journey :—*Held*, that the suit must be dismissed for want of jurisdiction.

So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee.

Dhollet v. *Russell* observed upon.

The Indian Government, like the Post Master General, is not responsible for loss or damage occurring to anything entrusted to the Post-Office for conveyance.

1863. *February* 2, 9. *O. S. No.* 73 *of* 1862.

THE plaintiff sued for rupees 346-9-2 and interest for goods sold and delivered.

The summons were served upon the defendant at Secunderabad where he had dwelt at and for some time previously to the filing of the plaint.