

APPELLATE JURISDICTION (a)

*Criminal Petition, No. 125 of 1862.***THE QUEEN against DÁLÁPATI RAU.**

Where a prisoner was convicted and sentenced under sec. 50 of Act XVII of 1850, upon the charge of fraudulently secreting a post-letter, and on appeal such conviction and sentence were confirmed:—*Held*, that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion, both acts being connected and substantially a part of one criminal transaction.

THIS petition was presented by the prisoner against his conviction by L. C. Innes, the Session Judge of Rajahmundry, in Calendar Case No. 75 of 1862, under Act XVII of 1854, sec. 50. That section enacts that “ whoever being in employ of the Government in the Post Office Department shall fraudulently secrete, make away with, or appropriate any letter, parcel or packet which may have been entrusted to him, or anything contained in any such letter, parcel or packet, or shall mutilate or break open any such letter, parcel, or packet, or any banghy parcel or box, with the intention of fraudulently appropriating anything therein contained, shall be punished with imprisonment, with or without hard labour, for a term not exceeding seven years, and shall also be liable to fine.”

1862.
December 1.
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of 1862.

Mayne for the petitioner.

The facts sufficiently appear from the judgment of the Court, which was delivered by

SCOTLAND, C. J. :—The prisoner in this case appeals against a conviction under section 50 of Act XVII of 1854 upon the charge of his having fraudulently made away with a post-letter, on the ground, amongst others, that he had before been convicted of fraudulently secreting the same letter, and therefore could not legally be tried a second time for an act which was substantially a part of one and the same offence. We are of opinion that this objection is valid and must prevail. The prisoner was the principal officer in charge of the post-office at Cocanada, and before the present charge was made, he had been convicted and sentenced by

(a) Present Scotland, C. J. and Frère, J.

1862.
 December 1.
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the Session Court at Rajahmundry, in Calendar Case No. 64, under the same section, upon the charge of fraudulently secreting the same post-letter and upon the same occasion. Against this former conviction an appeal-petition was presented; and after hearing all that was urged on behalf of the prisoner, we thought the evidence fully sustained the charge, and gave judgment confirming the conviction and sentence.

The section under which both convictions to place, no doubt provides in the alternative, that several acts shall be criminal, and amongst them either of the acts for which the prisoner has been convicted. But to each of such criminal acts it attaches one and the same punishment. In cases to which this section applies the circumstances may go to shew that the party charged had been guilty of all of only some or one of the acts provided against; or it may be altogether doubtful in the first instance which act had been committed; and according to the particular circumstances the prisoner may and should properly be charged at first with all, some, or one of such acts. In the present case the prisoner might properly have been charged in the first instance with both the criminal acts of fraudulently secreting and making away with the letter; and all though either act is punishable under the section as an offence without any evidence of the other,—still, as it appears that both acts were connected and formed substantially a part of one and the same criminal transaction, and the evidence with reference to such acts was necessary and material on the first charge as it was on the second, the prisoner must be considered to have been tried and in peril in respect of the whole transaction as one offence on the first charge. The evidence as to his making away with the letter was properly a part of the case in support of the first charge and the strongest proof of it. There was in fact no part of the evidence upon which the second conviction took place which was not properly evidence on the first charge. For these reasons the judgment of the court is that the second conviction must be set aside, and the punishment of the prisoner confined to the sentence passed upon him on the first conviction.

Conviction set aside.