

APPELLATE JURISDICTION (a)

*Criminal Regular Appeal No. 175 of 1870.*

THOMAS NASH TURNBULL.....Prisoner.

The prisoner pleaded that he was a British born subject and therefore not amenable to the jurisdiction of the Session Judge of Tellicherry, by whom the prisoner had been convicted of criminal misappropriation.

The evidence showed that the prisoner was the great grandson of John Turnbull, said to have been a Serjeant in the service of the King or of the East India Company, but was insufficient to establish a lawful marriage between him and a Native Christian woman by whom he had a son, and the evidence as to his nationality was also incomplete.

*Held*, that the plea to the jurisdiction was not made out.

THIS was a Petition against the sentence of J. W. Reid, the Session Judge of Tellicherry, in Case No. 10 of the Calendar for 1870.

1870.  
November 14.  
C. R. A. No. 175  
of 1870.

The prisoner was employed in the Forest Department and was convicted by the Session Judge of Tellicherry of having dishonestly misappropriated various sums of money belonging to the Government of Madras which had been entrusted to him. The prisoner pleaded to the jurisdiction on the ground that, being a British born subject, he ought to be tried before the High Court. The prisoner appealed to the High Court.

Upon the first hearing of the Appeal, the High Court remitted the case to the Session Court with directions to the Session Judge to receive any admissible evidence tendered by the prisoner in support of his plea and return the finding upon such evidence to the High Court.

The Session Judge found that the prisoner failed to establish his plea.

The prisoner was sentenced to undergo nine years' rigorous imprisonment and to pay a fine of Rupees 10,000, or in default of payment to undergo rigorous imprisonment for the further period of one year.

*Miller*, for the appellant, the prisoner.

*The Government Pleader*, for the prosecution.

(a) Present : Scotland, C. J. and Holloway, J.

1870.  
 November 14.  
 C. N. S. No. 115  
 of 1870.

The Court delivered the following

JUDGMENT :—When this case was last before us we remitted it to the Lower Court for the purpose of giving the prisoner, Thomas Turnbull, full opportunity of adducing any evidence in his favor as to his being the legitimate descendant of an European British subject, and therefore exempt from the jurisdiction of the Tellicherry Court. That evidence has now been returned to us and the questions for our consideration are two :—

(1) Is Thomas Turnbull the legitimate great grandson of John Turnbull, said to have been a Serjeant in the service of the King or of the East India Company ?

(2.) If so, what was the nationality of the said John Turnbull ?

As regards the first question we entertain no doubt upon the evidence that the prisoner, Thomas Turnbull, was the legitimate son of Thomas Bowyer Turnbull, and that the said Thomas Bowyer Turnbull was the legitimate son of one Thomas Turnbull. The real question is was this Thomas Turnbull as alleged the legitimate offspring of John Turnbull and a Native Christian woman ? The mere fact of Thomas Turnbull being the offspring of these two persons is of course no evidence of a lawful marriage having taken place, and the probabilities are certainly not in favor of a European having contracted marriage with a native woman at that period. The only evidence therefore consists of statements of the loosest description said to have been made by Thomas Turnbull and Thomas Turnbull's wife to the effect, that his father John was lawfully married, and even if we believe that those statements were actually made, we do not think they are entitled to much weight of themselves. But taking the least unfavourable view of the evidence it seems to us that the persons who profess to have heard those statements have only persuaded themselves into the belief that they did hear them. The improbability of any such statement having been really made is enhanced by the fact that Thomas Turnbull was a mere child at his father's death. We think therefore the legitimate descent set up by the prisoner in this case has not been proved, and it is unnecessary for us to express any opinion as to the admissibility of the hearsay evidence to which objection was taken

in the Lower Court. We may however state that, as at present advised, we agree with the remarks of Bruce, V. C. in the case of *Shields v. Boucher*, 1 *De Gex* and *Smale*, 40, cited at the bar. And we may add that, even if the legitimate descent had been proved to our satisfaction, we should have been compelled to hold that the evidence as to nationality was incomplete. All that the evidence, if admissible, amounts to is that John Turnbull was a European, and there is nothing to show that he was a British born subject. The Judge before whom a plea of this kind is set up may, as the High Court has recently laid down, be satisfied by the appearance of the prisoner and the circumstances brought forward at the time that the plea is true ; but if not so satisfied, the plea, if persisted in, must be substantiated by sufficient evidence. The result is that the conviction of the Session Court must be affirmed, no objection having been taken to the findings upon the facts. As regards the punishment we are disposed to reduce it, and we shall send for the record for that purpose.

The sentence of the High Court was that the prisoner be rigorously imprisoned for a period of five years and pay a fine of Rupees 10,000 and in default be rigorously imprisoned for a further period of one year.

APPELLATE JURISDICTION (a)  
*Special Appeal No. 202 of 1870.*

TADIYA.....*Special Appellant.*  
 HASANEBIYARI.....*Special Respondent.*

According to Mahomedan Law dower is presumed to be prompt in the absence of express contract and may be enforced at any time.

THIS was a Special Appeal against the revised decision of Srinivasa Rao, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 350 of 1867, modifying the decree of the Court of the District Munsif of Mangalore, in Original Suit No. 199 of 1863.

The plaintiff brought the suit setting forth that her husband, the defendant, not having maintained herself and the minor daughter (born of her by the defendant) for the year

(a) Present : Holloway and Innes, JJ.