

CRIMINAL REFERENCE.

Before Mr. Justice O'Kinealy and Mr. Justice Hill.

1894
April 27.

QUEEN-EMPRESS ON THE PROSECUTION OF THOMSON v. GUNNING
(ACCUSED).^{*}

Jurisdiction—Offences committed on the High Seas—Trial of British Seaman for offence committed on a British Ship on the High Seas—Procedure at such Trial—Merchant Shipping Act, 1854 (17 and 18 Vic., c. 104), sec. 267—Merchant Shipping Act, 1855 (18 and 19 Vic., c. 91), sec. 21—Courts (Colonial) Jurisdiction Act, 1874 (37 and 38 Vic., c. 27).

The trial of a British seaman for an offence committed on a British ship on the High Seas must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under English law.

THIS was a reference by the Chief Presidency Magistrate under the provisions of section 432 of the Code of Criminal Procedure, and it was in the following terms :—

“EMPRESS on the prosecution of HENRY THOMSON, Steward of the British Ship “Lord Brassey” v. CAPTAIN GUNNING, Master of the said ship.

“SIR,—I have the honour to refer the following under the provisions of section 432 of the Code of Criminal Procedure for the opinion of the High Court.

“2. The accused in the above case is charged under sections 323 and 504 of the Indian Penal Code with having, during the month of October last, voluntarily caused hurt to the complainant, and intentionally insulted and thereby given provocation to him, intending or knowing it to be likely that such provocation would cause him to break the public peace on board the British ship “Lord Brassey” while on the high seas. The question arising is :—

“Whether the accused must be tried under the English law or whether he can be tried under the Indian Penal Code.

“I would call their Lordships’ attention to *Queen-Empress v. Abdool Rahiman* (1) and *Queen-Empress v. Barton* (2).

The *Standing Counsel* (Mr. Phillips) appeared on behalf of the Crown.

The accused was not represented.

Mr. Phillips.—The accused in this case is charged under sections 323 and 504 of the Indian Penal Code. The allegation is that these offences were committed in the month of October last on board the British ship “Lord Brassey” while on the High Seas. The question for determination is whether the accused must be tried

^{*} Criminal Reference No. 1 of 1894, made by F. J. Marsden, Esq., Chief Presidency Magistrate, Calcutta, dated the 28th of March 1894.

(1) I. L. R., 14 Bom., 227.

(2) I. L. R., 16 Calc., 235.

under the English law or the law as it is administered in this country, *i.e.*, under the Penal Code.

I submit that according to the cases in this Court the offence must be an offence under the English law, but the trial must be conducted under the Code of Criminal Procedure, and the punishment must be also regulated by local law. With regard to the first point, it is clear that if the accused is guilty of any offence, it is by reason of the general Admiralty Jurisdiction, or under 17 and 18 Vic., cap 104, section 267, or 18 and 19 Vic., cap. 91, section 21 : see the case of *The Queen v. Anderson* (1) ; see also 12 and 13 Vic., cap. 96, section 1. This statute was extended to India by 23 and 24 Vic., cap. 88, section 1. The statute was discussed in *The Queen v. Thompson* (2). It was held (see page 9 of the report) that the offence was punishable according to English law, and also that the substance of the offence must be one recognized by English law. In that case, however, the accused was not charged as a British seaman or as a British subject, but as a person who was in a British ship. The provisions of the enactments above mentioned were extended to all persons on a British ship by 30 and 31 Vic., cap. 124, sections 2 and 11.

The other cases on this subject are : *Reg. v. Elmstone* (3), and *Queen-Empress v. Barton* (4). In the first of these cases it was laid down that the procedure applicable in such cases is the ordinary Criminal Procedure of this country. That case however lays down that the law of England is to be regarded as the law of India as regards punishment. The case of *Queen-Empress v. Barton* (4) also decides that the trial is to be held according to the Criminal Procedure of this country.

The opinion of the High Court (O'KINNEALY and HILL, JJ.) was as follows :—

This is a reference made by the Chief Presidency Magistrate for the town of Calcutta under section 432 of the Code of Criminal Procedure. In it he states that Henry Thomson, a steward of the British ship "Lord Brassey," charged Captain Gunning, master of the said ship, with offences committed on the high seas under sections 323 and 504, Indian Penal Code, and he asks whether

(1) L. R., 1 Cr. Ca., 161.

(2) 1 B. L. R., O, Cr., 1.

(3) 7 Bom. Cr., 89.

(4) I. L. R., 16 Calc., 238.

1894

QUEEN-
EMPRESS
v.
GUNNING.

1894 the accused must be tried under the English law, or whether he can be tried under the Indian Penal Code.

QUEEN-
EMPRESS
v.
GUNNING.

It would appear from the case of *Queen v. Anderson* (1), if Captain Gunning is guilty of any offence, it is because of the general Admiralty Jurisdiction or under 17 and 18 Vic., cap. 104, section 267, or 18 and 19 Vic., cap. 91, section 21. In each case the offence of which he must be tried is an offence under English law. In the case of *Reg. v. Mount* (2), a question arose not as to the nature of the offence but as to the amount of punishment that should be inflicted. All doubts on that point are now settled by 37 and 38 Vic., cap. 27. The answer, therefore, is that the trial must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under English law.

H. T. H.

PRIVY COUNCIL.

P. C.
1894
Feb. 28.

KISHORE BUN MOHUNT (OBJECTOR) v. DWARKANATH ADHIKARI AND OTHERS (PETITIONERS).

KISHORE BUN MOHUNT v. PROSONNOCOOMAR ADHIKARI.

[On appeal from the High Court at Calcutta.]

Execution of decree—Execution under section 260, Civil Procedure Code, Act XIV of 1882—Refusal of execution where opportunity to obey the decree had not been afforded by the decree-holders—Effect of such refusal—Subsequent order for execution.

An order of a Court dismissed a petition for execution under section 260 of the Civil Procedure Code because the petitioning decree-holders had not then afforded to the judgment-debtor an opportunity of obeying the decree, which directed him to do specific acts. *Held*, (1), that another application, made after such opportunity had been afforded to him, was not barred as having been matter of prior adjudication within section 13 of the Civil Procedure Code; (2) that the decree which also declared rights on the part of the decree-holders against him was not incapable of being executed under section 260, on the objection that it was only declaratory.

Two appeals upon petitions for execution of a decree, dated 31st March 1881. The first appeal from an order (5th September 1890) of the High Court, reversing an order (30th March

* *Present*: LORDS MACNAGHTEN and MORRIS, and SIR R. COUCH.

(1) L. R., 1 C. C. R., 161.

(2) L. R. 6 P. C., 283.