ORIGINAL CRIMINAL.

Before Mr. Justice Pigot.

QUEEN-EMPRESS *v.* SUKEE RAUR AND OTHERS.* 1893 *August* 26.

Penal Code (Act XIV of 1860), s. 372—Letting to hire a girl under sixteen for immoral purpose for one occasion—Prostitution for a course of life—Criminal Procedure Code (Act X of 1882), ss. 219, 226, 273.

A young prostitute under 16 years of age was brought to a house of assignation by the accused at the request of the complainant and for his supposed use on that one occasion, it not being contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by him for that course of life. *Held*, that such a letting out by the accused was not within the meaning of section 372 of the Penal Code, which on the authorities contemplates a case of letting or hiring or other similar transaction by which the possession of a girl is obtained with the intention of employing her habitually for the purpose of indiscriminate sexual intercourse.

Dowlath Bee v. *Shaik Ali* (1) followed.

ON the 22nd July 1893, certain persons M. and C., both belonging to the American Methodist Mission, went to a house in Free School Street and there saw one Gungaram Das (accused No. 3), who asked them if they required a girl; whereupon M. asked the third accused if he knew what he was doing, and the accused replied that he knew what he was doing, and that this was his business: he further said if he were paid Rs. 2 he would bring a girl. M. paid to the accused No. 3 two rupees and told him to bring a girl to the house at 4 P.M. M. and C. then went away and returned at 4 P.M. to the house; they there found one Sukee Raur, Dinoo Das and Gungaram (the 1st, 2nd and 3rd accused respectively).

The accused Nos. 2 and 3 then came up to M. and C. and said, "we have brought the girl." The accused Nos. 2 and 3 represented to M. that accused No. 1 was the mother of the girl, and M. therefore asked them if he ought not to make the arrangement with her; they said "no;" M. did not speak to the first accused at all. The

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accused Nos. 2 and 3 then took M. into another room and there pointed out to him a girl named Prosunno *alias* Lukhi, seated on a bed. C. was then outside the room, but could see into it. They told M. that he could have the girl for an immoral purpose. M. then asked "for how much"; the accused Nos. 2 and 3 said, "According to time; Rs. 5 for a short time and Rs. 50 if the girl is bought outright." M. then paid to the accused No. 3 Rs. 5, and the latter handed the girl over to M. M. took the child by the hand and placed her on a chair and told C. to go out and change a note. C. went out and brought in the police, who arrested the three accused.

The three accused were committed to the Sessions charged under section 372 of the Penal Code, and also separately under section 109 of that Code. After the commitment, but before trial, supplementary evidence was taken and sent up to the Sessions Court, which showed that the girl was at the outside 12 or 13.

The learned Sessions Judge (Mr. Justice PIGOT) on perusal of the depositions, and before the commencement of the trial, was of opinion that the charge was unsustainable, and that the procedure laid down in section 273 of the Criminal Procedure Code should be followed.

The *Officiating Standing Counsel* (Mr. *Pugh*) admitted that *Doulath Bee* v. *Shaik Ali* (1) was against him; but referred to *Queen* v. *Nourjan* (2), and contended that the words "employed or used" equally referred to a single employment or user as well to an habitual employment or user; and asked that a charge of abetment of rape might be added.

PIGOT, J.—In this case the prisoners are charged thus:—That Sukee Raur, Dinoo Das and Gungaram Das on or about the 22nd day of July 1893, in Calcutta, let to hire, or otherwise disposed of, one Prosunno otherwise called Lukhi, a minor under the age of 16, to wit, of the age of 11 years or thereabouts, with intent that she might be employed or used for the purpose of prostitution, or for an unlawful and immoral purpose, and thereby the said Sukee Raur, Dinoo Das and Gungaram Das committed offences punishable under section 372 of the Indian Penal Code. *2ndly*—That

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the said Sukee Raur, at or about the time and in the place aforesaid, abetted the said Dinoo Das and Gungaram Das in committing the offence in the first charge mentioned, which offence was committed in consequence of such abetment, and thereby she, the said Sukee Raur, committed an offence punishable under sections 109 and 372 of the Indian Penal Code. *3rdly*—That the said Dinoo Das abetted the said Sukee Raur and Gungaram Das; and *4thly*—That the said Gungaram Das abetted Sukee Raur and Dinoo Das.

Under section 273 of the Criminal Procedure Code, in trials before this Court, when it appears to the High Court, at any time before the commencement of the trial of a person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect. Such entry shall have the effect of staying the proceedings upon the charge or portion of the charge, "as the case may be."

Now upon the informations, I am clearly of opinion that an offence under section 372 of the Indian Penal Code is not made out, and it becomes my duty, I think, to act upon that opinion, and to stay the proceedings by making an entry as contemplated by the section. Section 372, Indian Penal Code, under which this charge is made, and section 373, relate to the same subject-matter; that is to say, to the letting to hire, selling, or otherwise disposing of, any minor under the age of 16 years with a certain intent. The first of these two sections contemplates an offence committed by the person who sells, lets to hire, or otherwise disposes of, any minor under the age of 16 years as aforesaid. Section 373 relates to the case of the person who buys, hires, or otherwise obtains possession of, any minor under the age of 16.

Section 372 is in these words: "Whoever sells, lets to hire, or otherwise disposes of, any minor under the age of 16 years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years." Section 373 says, "Whoever buys, hires, or otherwise obtains possession of, any minor under the age of 16 years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful or immoral purpose, or knowing it to be likely that such

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minor will be employed or used for any such purpose, ... shall be punished, &c." as in preceding section.

Now, the mischief contemplated and against which these sections were framed to provide, is the selling or letting out or dedication of minors for the purpose of prostitution or for any unlawful and immoral purposes as a course of life. This is the mischief which the section contemplates. Section 373 has been the subject of very careful consideration by the Madras High Court with reference to the nature of the offence which is contemplated by it, and which is common to it with section 372. In that case, *viz.*, that of *Dowlath Bee* v. *Shaik Ali* (1), a person was tried charging him that he obtained possession of one Dowlath Bee, a minor under the age of 16, namely of the age of ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and he was charged with having thereby committed an offence under section 373 of the Indian Penal Code. Chief Justice Scotland tried the case and referred it to the Court for opinion, and stated that he was inclined to the opinion that the section applied only to a case of buying and hiring or other similar transaction by which the possession of a girl is obtained with the intention of employing or using her habitually for the purpose of indiscriminate sexual intercourse with man, or in some unlawful and immoral course. Upon the case being heard by the Court, Chief Justice Scotland said that a very careful consideration of the section under which the prisoner had been found guilty had removed his doubts and confirmed the opinion he had formed before the trial as to "its proper construction," &c. He said, "To bring a case within the section, it is in my opinion essential to show that possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having the possession, whether ostensibly for a proper purpose or not." He goes on to say that the provisions as to the intent or knowledge of its being likely that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, indicating plainly as it does "an employment or use of the minor at some time future to the obtaining of

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possession," is in his mind strong to show that complete possession and control of the minor's person obtained by buying, hiring, or otherwise, with the intent or knowledge that, by the effect of such possession and control the minor should or would afterwards be employed or used for either of the purposes stated, is what the section was intended to make punishable as a crime. The provision, he says, appears to him to exclude the supposition that an obtaining of possession in the sense in which that expression is no doubt sometimes used, of merely having sexual connection with a woman, could have been in the contemplation of the framers of the section. He then goes on to say, referring still to the purposes of the section:—"With respect to the further point of the meaning of the words 'for the purpose of prostitution', which it has been necessary to consider in deciding this case, I have a clear opinion. Acts of improper sexual intercourse are acts of prostitution in one strict sense of the term. But proof of more than that, I think, is required. The ordinary and commonly understood meaning of the word 'prostitution' is the offering of the person for promiscuous sexual intercourse with men, and that, I think, must be taken to be its meaning in the section, there being nothing in the context opposed to it, but rather the contrary. The words 'employed or used' strike me as confirmatory of that being the only meaning intended. If these words had been followed by the words 'as a prostitute,' no doubt could have arisen, and I see no indication that anything different was meant by the words 'for the purpose of prostitution.' Further, it is a weighty consideration in support of this construction, as well as of that given to the first part of the section, that, if not right, there would be no stopping short of holding every man to be punishable under section 373 who had casual sexual intercourse with a willing girl under the age of 16, capable of giving consent, or kept her as his mistress or concubine, even although the girl had been a common prostitute before he associated with her. Such an effect could not possibly have been intended." The severity of the punishment provided by the section seems alone almost conclusive as to the justice of this opinion.

In the case of the *Queen* v. *Nourjan* (1) cited by the learned Standing Counsel, Mr. Justice Jackson says that

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"that which section 372 contemplates is the selling, letting to hire, or otherwise disposing of, any minor with intent that such minor should be employed as stated, that is to say, making her over to a person either in perpetuity or for a term for a consideration, or otherwise transferring the possession of a minor." In that case the learned Judges differed. Mr. Justice Jackson found that there had been no "disposal" by one prisoner and no "obtaining possession" by the other. Mr. Justice Glover treated what he held to have been done as amounting to a "disposal" of the girl by the mother, and to "obtaining possession" of her by the brothel-keeper, differing from his colleague in this respect, but not in holding that the purpose for which the disposal and the obtaining possession were committed, must, under the section, be the devoting of the girl to the practice of prostitution.

Now, in this case what occurred was this, that the Reverend complainant, desiring to secure the punishment of the defendants under this section for the acts which, according to the informations, they avowed, communicated with the defendants, and as a result the girl, in this case a young prostitute, as she appears to be from the evidence, who lives with the accused No. 1, was brought by the accused No. 1 to the house of the accused No. 3 (as had been done for the use of another person on a previous occasion) for the use, as was supposed, of Mr. M. on that occasion, as a person who was desirous of having sexual intercourse with her. There was a talk apparently about a sale, and about a longer employment of the girl than merely for the one occasion, but it was only spoken of; the girl was neither sold nor hired out for a period of employment, and it certainly was not in the contemplation of any one that she should be sold or hired out for the purpose of being employed by the purchaser or hirer as a prostitute, or being disposed of by that person for that course of life. The only offence, if any, committed, was in bringing the girl to the house, in order that she might have an immoral interview with the supposed customer on that one occasion. For a short interview Rs. 5 was stated to be the charge, and that was the sum paid.

It appears to me quite clear that, upon the authorities quoted above, the commission of an immoral act of sexual intercourse at an interview so brought about is not in the contemplation of the section, and that had the accused been put upon their trial, and

had all the evidence that appears upon the depositions been laid before the jury, I should have been bound to tell them that they could not convict upon that evidence under section 372; and I say that, accepting the supposition that the evidence recently taken as to the age of the girl, of which there was none whatever upon the original depositions, can properly be incorporated under section 219 with the other depositions.

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I am asked also to allow a charge of abetment of rape to be entered, founded, when coupled with the Age of Consent Act, upon that additional evidence—evidence which was taken only the day after the Sessions had commenced, and after I had drawn attention to the fact that the original depositions contained no evidence of age whatever. I do not think it would be right for me to include a charge of abetment of rape, or under the circumstances to apply the evidence taken upon a charge under one section to a wholly different one. I therefore direct that an entry be made to the effect that the charge is unsustainable, and such an entry will have the effect that the proceedings will be stayed. The prisoners must be discharged from custody.

Accused discharged.

Solicitor for the Crown: *The Government Solicitor* (Mr. *W. K. Eddis*).

T. A. P.

APPELLATE CRIMINAL.

Before Mr. Justice Prinsep and Mr. Justice Trevelyan.

MURRAY (APPELLANT) *v.* THE QUEEN-EMPRESS (RESPONDENT).*

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June 28.

Compounding offence—Requisites for composition of offence valid in law—Criminal Procedure Code (Act X of 1882), s. 345—Onus of proof—Wrongful restraint and confinement of coolies employed on tea garden.

Where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the

* Criminal Appeal No. 488 of 1893, against the order passed by H. Boileau, Esq., Deputy Commissioner of Jalpaiguri, dated the 7th of June 1893.