

APPELLATE CRIMINAL.

Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.

THE EMPRESS *v.* AMIRUDDIEN.*

1878
Feb'y. 12.

Penal Code, ss. 217, 218—Evidence that Offence has been committed.

It is sufficient for the purpose of a conviction under s. 217 of the Penal Code, that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that in point of fact the person so intended to be saved had committed an offence or was justly liable to legal punishment.

THE charges against the prisoner, who was a police constable, were that he, when in charge of the Gourruddey Police Station, on the 28th of July, in his capacity of head constable of police, induced one Radha Churn Dhopa to compromise a complaint, which he came to make against one Adhari Dhopa,† of cutting off his ear, and, in further violation of his duty, suppressed the fact that Radha Churn Dhopa came to make a complaint; and in so doing framed an incorrect public record with a view to save one Adhari Dhopa from legal punishment. The prisoner Amiruddeen was committed for trial under ss. 217 and 218 of the Penal Code, and, on conviction under these sections, was sentenced to imprisonment and fine. He appealed to the High Court.

Mr. M. M. Ghose for the appellant.

The judgment of the Court was delivered by

JACKSON, J.—It has been pressed upon us in this appeal that the prisoner has not been duly convicted under s. 217 of the Indian Penal Code, because there was not before the Court upon the present trial any evidence to show that in point of

* Criminal Appeal, No. 34 of 1878, against the order of H. C. Sutherland, Esq., Sessions Judge of Backergunge, dated the 17th November, 1877.

† Adhari Dhopa was charged before the Sessions Court with the murder of Radha Churn, who died from the wound in his ear, and was acquitted.

fact an offence had been committed, still less that such offence had been committed by the person in respect of whom the wrongful act of the Police officer, the prisoner, had been done. What appears is, that a person named Adhari Dhopa was charged before the Court of Session, and was tried and acquitted, of an offence, the offence charged being the cutting off somebody's ear; and it appears that the particular act which the prisoner in this case had committed, and which amounted to knowingly disobeying a certain direction of the law as to his conduct as a public servant, had a tendency to save a person, namely, the person charged, as first stated, from legal punishment. It appears to me quite sufficient, for the purpose of a conviction under s. 217 that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he should have done this with the intention of saving a person from legal punishment, and that it is not further necessary to show that in point of fact the person so intended to be saved had committed an offence or was justly liable to legal punishment. It appears to me certain that a public servant charged under that section is equally liable to be punished, although the intention which he had of saving any person from legal punishment was founded upon a mistaken belief as to that person's liability to punishment. We have been pressed with a case in which I myself gave judgment—the case of *Queen v. Joynarain Patro* (1). It is not necessary for us at present to consider whether that judgment was right, because the section on which that case turned was wholly different from the section now under consideration. That is a section under which any member of the community is punishable, and it is one under which the essence of the offence is that the person to be dealt with must know, or have reason to believe, that an offence has been committed. This is an offence applying only to public servants, and an act of a certain kind is made punishable as an offence when such act is done knowingly against the direction of the law and with the intention of saving a person from legal punishment, whether

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the person so intended to be saved from punishment had committed the offence or not.

I think, therefore, that the conviction in this case was right and that the appeal must be dismissed.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.

1878
 July. 16.

NILKUNTO DEY (ONE OF THE DEFENDANTS) v. HURRO SOONDEREE
 DOSSEE (PLAINTIFF).*

Mode of Attachment in Execution of Decree—Malikana Rights payable for ever—Act VIII of 1859, ss. 235, 236, 237.

A and *B* were entitled to receive annually and for ever a specified amount by way of malikana rights from the Collector as compensation for their extinguished rights in lakhiraj lands. In execution of a decree, *C*, on 13th September, purported to attach, under s. 237 of Act VIII of 1859, *A*'s share in such specified amount. Subsequent to this attachment, namely, on 23rd September, 1873, *A* and *B* mortgaged their rights to the plaintiff. In a suit brought by him against *A* and *B* and *C*,—*held*, that attachment under s. 237 was not applicable to a right to receive money for ever; that such an attachment is only good so far as it relates to any specific amount, which may be set forth in the request to the officer in whose hands the moneys are, as being then payable or likely to become payable, and that the attachment in question was therefore invalid.

Semle.—The attaching-creditor should have proceeded under s. 235 or s. 236. In either of such cases the defendant, the person to whom the money was payable, would be entitled to notice that he was not at liberty to alienate his rights.

THIS was a suit brought against three defendants to recover a sum of money due by the defendants Nos. 1 and 2 under a mortgage dated 9th Assin, 1281 (23rd September, 1873). The plaintiff charged defendant No. 3 with having purchased part of the mortgaged property in execution of a money decree obtained by him against defendants Nos. 1 and 2. Defendant No. 3, in his written statement, admitted the attachment of the property

* Special Appeal, No. 690 of 1877, against the decree of L. R. Tottenham, Esq., Judge of Zilla Midnapore, dated the 19th March, 1877, modifying the decree of Baboo Debendro Lal Shome, Sudder Munsif of that district, dated 5th January, 1877.