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EMPRESS v. SUNKER GOPE.

The opinion of the High Court (GARTH, C. J., and MACLEAN, J.) was as follows:—

GARTH, C. J.—We are of opinion that the conviction of Shunker Gope, for an offence under s. 411 of the Penal Code, is legal, and that we should not interfere. Shunker Gope confessed to having stolen cattle in the kingdom of Nepal, and he was found in possession of them in British territory. Section 66 of the Criminal Procedure Code, illustration (*b*), lays down, that "a charge of receiving or retaining stolen goods may be inquired into and tried, either in the district in which the goods were stolen or in any district in which any of them were at any time dishonestly received or retained." Now the theft having occurred beyond British territory, the prisoner could not be tried for that offence in our Courts, see *Reg.* v. *Adivigadu* (1), but the present case seems to be very similiar to one reported in the Indian Law Reports, *Reg.* v. *Lakkya Govind* (2); and therefore we think that the conviction may be sustained.

It is unnecessary for us to say anything on the question of extradition; that matter will be dealt with by the local authorities under the orders of Government.

Conviction upheld.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Maclean.

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Oct. 7.

IN THE MATTER OF MUTTY LALL GHOSE AND OTHERS.*

Criminal Procedure Code (Act X of 1872), ss. 471, 467, 193—Institution of Criminal Prosecution, pending Appeal in Civil Court.

If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such person under s. 471 of the Criminal Procedure Code without any further enquiry than that which he has already held in his own Court.

* Criminal Motion, No. 19 of 1880, against the order of J. P. Grant, Esq., District Judge of Hooghly, dated the 5th August 1880.

(1) I. L. R., 1 Mad., 171. (2) I. L. R., 1 Bom., 50.

As a matter of discretion and propriety, it is right for a Court, before committing a person on a charge of perjury upon his own uncontradicted statement, to await the hearing of the appeal, where an appeal is pending, in the case in which he is charged with such perjury.

IN this case the District Judge of Hooghly ordered a prosecution to be instituted against Mutty Lall Ghose, Ram Kumar Mundle, Becharam Roy, and Heroo Lal Ghose for forgery and perjury in a civil suit, under ss. 467, 471, 193 of the Criminal Procedure Code.

An application was made to the High Court on behalf of the accused, that the criminal proceedings might be stopped until the appeal in the civil suit was heard.

Baboo *Juggut Chunder Banerjee*, for the petitioner, contended that the order of the District Judge should be set aside, or at least stayed, and that the Judge should have issued a rule calling on the petitioners to show cause why they should not be prosecuted under s. 471, before the proceedings were actually instituted.—*The Queen* v. *Baijoo Lall* (1).

The judgment of the Court (GARTH, C. J., and MACLEAN, J.) was delivered by

GARTH, C. J.—We think that there is no ground either for setting aside or for staying the criminal proceedings.

We consider that the Full Bench decision of this Court in *In the matter of the Petition of Ram Prasad Hazra* (2) is a direct authority for the position, that where criminal proceedings have been instituted by a District Judge against the parties or their witnesses in course of a civil suit, the High Court has no power to stay those proceedings until the decision of the Judge in the civil suit has been heard upon appeal.

As regards the other point, we think that the ruling of the Court in the case of *The Queen* v. *Baijoo Lall* (1) has been somewhat misunderstood. It seems to be supposed from that ruling, that a Court, either civil or criminal, which has heard a case tried, has no right to institute proceedings under

(1) I. L. R., 1 Calc., 450.

(2) B. L. R., Sup. Vol., 426; S. C., 5 W. R., Mis., 24.

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IN THE MATTER OF MUTTY LALL GHOSE.

s. 471 of the Criminal Procedure Code against any of the parties concerned in the suit, without first holding an enquiry, and calling upon those parties to show cause why such proceedings should not be taken.

We think that this is clearly a mistake. If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury, or any other offence against public justice, he is justified in directing criminal proceedings against such persons under s. 471, without any further enquiry than that which he has already held in his own Court.

Mr. Justice Macpherson in that very case says distinctly, "If in the course of the civil trial the Judge has before him clear and unmistakable proof of a criminal offence, and if, after the trial is over, he, on consideration, thinks it necessary to proceed at once, of course it may be right to do so."

There is, therefore, no ground, as far as we can see, for setting aside the proceedings in this case, upon the ground that the Judge should, before instituting them, have held any other enquiry than that which he had already held in the probate case.

At the same time we think that the Judge might well take warning from the very excellent advice which is given to Subordinate Courts by Mr. Justice Macpherson in the judgment which we have been quoting. We do not pretend of course to give any opinion as to the merits of this case, but it would certainly seem rather rash to institute criminal proceedings in a case where the evidence is all one way, and where an appeal is now pending to this Court. We think that, as a matter of discretion and propriety, the Judge might have waited until the appeal had been heard before he ventured to commit the accused for perjury upon their own uncontradicted statements.

Application dismissed.