

KING v. WALTER DON.

1901.

D. C., Kandy, 1,359.

December 18.

*Evidence of an accomplice who had not been convicted, acquitted, or pardoned—Evidence Ordinance, 1895, s. 133 and illustration (b) under s. 114—Admissibility of such evidence.*

The evidence of an accomplice who stands indicted for the same offence, but had not been convicted, acquitted, or pardoned, is admissible in law.

Although, as a general rule, a person ought not to be convicted on the evidence of an accomplice, yet where the circumstances sworn to leave no reasonable doubt as to his guilt, it is to the interest of justice that he should be convicted.

IN this case the defendant appealed against his conviction for receiving money having reason to believe that it was stolen, on the ground that the evidence against him was that of an accomplice, who was indicted for the same offence, and had not been either convicted or acquitted or pardoned.

Dornhorst (with him H. Jayawardene) contended that the evidence of such a person was inadmissible in law.

18th December, 1901. BONSER, C.J.—

It seems to me quite clear on principle that the evidence of an accomplice, who stands indicted for the same offence and had

1901. not been convicted, acquitted, or pardoned, is admissible. The question of the weight to be given to such evidence when admitted is a different one. Under the old English Law, an accomplice was always a competent witness although his expectation of pardon depended upon the defendant's conviction; and the present case is like the one which occurred not many years ago in Engand, where one Winsor was indicted, jointly with another person, for murder. Winsor was put upon her trial, and the other person, who had not been either convicted or acquitted or pardoned, was called as a witness against her, and upon the evidence of that witness Winsor was convicted. The question of the admissibility of the evidence of this witness was argued before the Exchequer Chamber, and the Court was unanimously of opinion that the evidence was admissible, *Winsor v. Queen*, *L. R. 1 Q. B.* (1866), 390.

Therefore, in point of law, I hold that the appeal fails.

As regards the other point, as to whether the appellant ought to have been convicted on the evidence of his accomplice, I agree with the District Judge that, although as a general rule a person ought not to be convicted on the evidence of an accomplice, yet the circumstances were such that it was necessary, in the interests of justice, that he should be convicted. There was, and could be, no reasonable doubt as to the guilt of the appellant. He is proved to have been in embarrassed circumstances. He was found in possession of a large sum of money, much of it in notes of a high denomination. He gave no satisfactory account of how he came by the money. I consider that he was rightly convicted.

