

[261] APPELLATE CRIMINAL.

The 2nd September, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE  
MUTTUSAMI AYYAR.

Subramania Ghanapati.....Prisoner

versus

The Queen.\*

*Secreting document produced before arbitrator—Theft—Dishonest intention—  
Object too remote.*

Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying besides the arbitrator, ran away, and refused to produce it:

*Held* that the offence committed was not theft, but secreting a document under Section 204 of the Indian Penal Code.†

IN this case the prisoner was tried by a jury in the Court of Session of *South Tanjore* on a charge of theft in a dwelling-house of a valuable security, an offence punishable under Section 380 ‡ of the *Indian Penal Code*.

The Jury found the prisoner not guilty, and were of opinion that the case was a false one.

The Sessions Judge, under Section 263|| of the *Criminal Procedure Code*, submitted the records for the judgment of the High Court, being of opinion

\* Case referred by G. A. Parker, Acting Sessions Judge of South Tanjore, under Section 263 of the Criminal Procedure Code.

† [Sec. 204:—Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any

Destruction of document to prevent its production as evidence. proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Courts or public servant

as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]

‡ [Sec. 380:—Whoever commits theft in any building, tent, or vessel, which building, tent, or vessel, is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.]

Theft in dwelling house, &c.

|| [Sec. 263:—In cases tried by jury, the jury may retire to consider their verdict. It shall be the duty of an officer of the Court not to suffer any person to speak to or hold any communication with any member of such jury. When the jury have considered their verdict, the fore-

man shall inform the Court what is their verdict, or what is the verdict of a majority. Verdict to be given on each charge. The jury shall return a verdict on all the charges on which the accused is tried, and the Court may ask them such questions

Judge may question as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded.

If the jury are not unanimous, the judge may require them to retire for further consider-

that the verdict was contrary to the most conclusive and overwhelming evidence, and that the jury were reluctant to convict the prisoner owing to the fact that he was a *Brahman* and a *Ghanapati* (learned in the Vedas).

The prisoner was plaintiff in a suit to recover money due upon a bond in the District Munsif's Court. By consent of the parties the suit was referred for arbitration to a Vakil of the Court who examined witnesses, to ascertain the amount due to plaintiff, in his house. One of the witnesses having stated that payment of a certain sum was endorsed on the bond, the arbitrator directed his clerk to fetch the bond: it was placed on the floor beside the arbitrator. The prisoner who disputed the amount of the alleged payment endorsed on the bond objected to the bond being shown [262] to the witness. The objection was overruled by the arbitrator: upon this the prisoner suddenly took up the bond and ran out of the house without saying a word. The clerk followed the prisoner and stopped him. The arbitrator followed and requested him to return; prisoner declined to return and went away.

In charging the jury the Sessions Judge said:—

“The points for you to consider are—

“(1) Whether the prisoner took this document out of the arbitrator's possession.

“(2) Whether if he did he did, so with a dishonest intention either to cause gain to himself in the suit or loss to the defendant.”

*A. Ramachandrayyar* was heard on behalf of the prisoner.

**Judgment** of the Court (TURNER, C.J., AND MUTTUSAMI AYYAR, J.) was delivered by

**Turner, C.J.**—The evidence abundantly proves that the document which it is said the accused stole was taken by him in the manner described by the witnesses. The question arises, did his acts amount to theft. It appears that the accused had made no objection to the production of the document. It had been brought in by a stake-holder; it had been used in evidence and filed. The opposite party had called a witness who spoke to a payment of Rs. 516 as made on account of, and endorsed on, the instrument. It is said the sum endorsed was Rs. 540, and in order to refresh the witness' memory, the opponents of the accused applied that the bond should be shown to the witness. The accused strenuously objected to this course, and when the arbitrator pronounced against him, he seized the document, ran out of the house with it, and subsequently refused to produce it. It can hardly be inferred from these circumstances that the act of the accused was prompted by any desire to cause wrongful loss or wrongful gain. The loss or gain suggested

Procedure where jury differ. ation. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

If the Court does not think it necessary to dissent from the verdict of a majority of the jurors, it shall give judgment accordingly. If the accused person is acquitted, the Court shall record judgment of acquittal. If the accused person is convicted, the Court shall proceed to pass sentence on him according to law.

If the Court disagrees with the verdict of the jurors, or of a majority of such jurors, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court, and may either remand the prisoner to custody or admit him to bail.

The High Court shall deal with the case so submitted as with an appeal, but it may convict the accused person on the facts, and if it does so, shall pass such sentence as might have been passed by the Court of Session.]

by the Judge is too remote, and was not in our opinion present to the mind of the accused and operating to influence his conduct. The obvious inference from the circumstances is that, considering himself aggrieved by the decision of the point against him, he determined to prevent effect being given to it, and with that intention removed the document and subsequently refused to produce it. He has been guilty of secreting a document he [263] may be lawfully compelled to produce in evidence before a public servant, an offence punishable under Section 204 of the *Indian Penal Code*.

We direct a conviction to be entered for that offence, and looking to the detention he has undergone, we sentence him to pay a fine of 50 rupees, and in default to undergo simple imprisonment for one month.

[3 Mad. 263]

APPELLATE CIVIL.

*The 5th September, 1881.*

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Narasimha Rau.....(Defendant) Appellant.

*versus*

Lakshmipati Rau and others.....(Plaintiffs), Respondents.\*

*Civil Procedure Code, Section 458—Liability of guardian of minor defendant to be assessed with costs.*

The Civil Procedure Code does not authorize a Court to decree costs against the guardian of a defendant except in the case referred to in Section 458.

THE facts and arguments in this case, so far as they are necessary for the purpose of this report, are stated in the judgment of the Court (INNES and MUTTUSAMI AYYAR, JJ.).

*Gurumurti Ayyar* for the Appellant.

*Anundacharlu* and *Sundram Sastri* for the Respondents.

**Judgment** :—The appeal is entirely as to costs.

The defendant, that is, the infant, not the guardian, is made liable for the costs.

In the case of an ordinary defendant there can be no doubt that the defendant should bear the costs where, as in the present suit, the plaintiff has succeeded in almost every point of contention.

Some of the contentions on behalf of the defendant appear to have been put forward without sufficient ground, and if we had power to assess the guardian with the costs, it might be a question whether we ought not to do so, but we do not think that the *Code of Civil Procedure* authorizes the Court to decree costs against the [264] guardian of a defendant, except in the case referred to in Section 458. That section contemplates conduct on the part of the guardian which is not apparent in the present suit and is not applicable. There are certain decisions which have been quoted, to be found in the *Weekly*

\* Appeal No. 64 of 1881 against the decree of D. Buick, Acting District Judge of Kistna, dated 19th December 1880.