therefore, set aside his appointment and direct the Subordinate Judge to enquire if there is any objection to the appointment of the person nominated by the appellant, and, if his appointment is also found on enquiry to be open to objection, to proceed to appoint a competent Dhurmapuram Tambiran to Tiruppanandal.

The Advocate-General has also filed a petition for revision of the order of the Subordinate Judge. We do not consider it necessary to pass a separate order upon it.

The respondents will pay the appellant's costs.

APPELLATE CRIMINAL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Handley.

QUEEN-EMPRESS

v.

GURUVADU AND ANOTHER.*

1890. March 26.

Criminal Procedure Code, s. 307—Duty of Sessions Judges as to referring cases tried with a jury.

The discretionary power to refer cases conferred on Sessions Judges by Criminal Procedure Code, s. 307, should always be exercised when the Judge thinks that the verdict is not supported by the evidence.

APPEAL against the conviction and sentence in sessions case No. 56 of 1889, Bellary.

The Acting Sessions Judge said :—

"The jury found the prisoners guilty of theft. It is a question "of credibility, and I do not think it incumbent on me to send "the case to the High Court, though being personally doubtful "whether the verdict is justfied by the evidence. There will "probably be an appeal."

Mr. *Wedderburn* for the Crown.

JUDGMENT.—This is another case of the unsatisfactory result of a trial by jury under the present law. The Sessions Judge says that he is personally doubtful whether the verdict is justified by the evidence, but that he does not think it incumbent upon

* Criminal Appeal No. 46 of 1890.

QUEEN-EMPRESS v. GURUVADU.

him to send the case to the High Court. He observes that there will probably be an appeal. He should have remembered that there is no appeal on the facts, and the result of his not choosing to refer the case to this Court is that prisoners are convicted on evidence as to the sufficiency of which he is doubtful.

Section 307 leaves the referring of a case to the High Court entirely to the discretion of the Judge, for it is only when he disagrees with the verdict of the jury "so completely that he considers it necessary for the ends of justice to submit the case to the High Court" he should do so. This discretion should, however, always be exercised when the Judge thinks that the verdict is not supported by the evidence. It is the only way in which the miscarriage of justice by a perverse verdict of a jury, which is of too frequent occurrence, can be remedied by the High Court.

Under these circumstances, we reluctantly feel bound to dismiss the appeal.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

1890. March 10.

SIMSON (PLAINTIFF),

v.

McMASTER (DEFENDANT).*

Civil Procedure Code, ss. 525, 526, 646B—Provincial Small Cause Courts Act—Act IX of 1887, sched. II, clause 24.

A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a Subordinate Court on the small cause side. The Subordinate Judge returned the plaint, being of opinion that the suit was not cognizable by a Court of Small Causes. The plaint was then presented in the Court of the District Munsif as an ordinary suit, but the District Munsif returned it on the ground that the suit was cognizable by a Court of Small Causes. The plaintiff then applied to the District Judge to submit the record for the orders of the High Court:

Held, (1) that the District Judge was bound to submit the record under s. 646B of the Code of Civil Procedure on the requisition of the plaintiff, although the plaintiff might have appealed to the District Court against the order of the District Munsif;

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* Referred Case No. 4 of 1890.