

## APPELLATE CRIMINAL.

Before ~~Mr.~~ Justice Jackson and Mr. Justice Tottenham.

THE EMPRESS v. KHERODE CHUNDER MOZUMDAR AND OTHERS.\*

1880

March 2.

Sessions Case—*Fraudulent use of Forged Document as Genuine—Penal Code (Act XLV of 1860), ss. 196, 471.*

The offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine, a document which he knew to be a forged document, is on cognizable under s. 471 of the Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196 of the Code.

THE facts alleged against the accused in this case were, that they, in a civil suit, instituted against one Kazi Lutful Huq, filed, as evidence in such suit, a letter of receipt purporting to have been given them by the defendant. The date of this document had, it was alleged, been fraudulently altered from 1281 B. S. to 1282 B. S. (1876 to 1877). It was also alleged that the names of two witnesses, purporting to attest such document, had also, with similar fraudulent intent, been subsequently added by the accused. The Magistrate enquiring into the case framed a charge under s. 196 of the Indian Penal Code, and himself tried, and on the facts convicted the accused.

In appeal before the Sessions Court, it was contended, *inter alia*, that the offence, if any, committed by the accused was one which came exclusively within s. 471 of the Penal Code, and as such was triable exclusively by a Court of Sessions; the Magistrate had, therefore, erred in framing his charge under s. 196, and trying the accused himself. The Sessions Court overruled this objection, and on the facts confirmed the sentence of the Magistrate. The case came before the High Court under the revisional sections of the Code of Criminal Procedure.

Mr. Monomohun Ghose (with him Baboo Aukhil Chunder Sen) for the petitioner.—Where the facts found by a Magistrate

\* Criminal Motion, No. 27 of 1880, against the order of F. H. McLaughlin, Esq., Sessions Judge of Noakhali, dated the 16th December 1879.

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constitute an offence triable exclusively by the Court of Session, he has no power to bring the case within his own cognizance by trying the accused on a minor charge, and ignoring the graver one. In this case the Magistrate was moved to commit the accused to the Sessions (1). In the unreported case of *Maher Ali*, referred to by the Judge, the prisoner had been convicted of an offence under s. 193, Penal Code, as he had given evidence in support of the forged document, and the Magistrate had jurisdiction to try a case under that section. In the present case the conviction is substantially for using as genuine a forged document. [JACKSON, J., referred to *Queen v. Oodun Lall* (2).] The question did not arise in that case, as that was a trial by jury.

JACKSON, J.—It appears to us that this was properly a case cognizable under s. 471 of the Indian Penal Code, and not under s. 196; and that, consequently, the Magistrate had no jurisdiction to convict, but ought to have committed the prisoner for trial to the Court of Session. We observe that there is only one case—*Queen v. Oodun Lall* (2)—in which incidentally a conviction in a case somewhat resembling the present appears to have been held legal under s. 198; but there the conviction had taken place before a Sessions Judge with the aid of a jury, and the question of jurisdiction did not arise. We are not aware that that *dictum* has been followed in other cases, and that was a ruling by a single Judge. We think the conviction must be set aside, and that the Magistrate should commit the prisoner for trial.

*Conviction set aside.*

(1) See *Reg. v. Ram Tuhul Sing*, 5 W. R., Cr., 65; and *Reg. v. Hiran Singh*, 8 W. R., Cr., 80.

(2) 3 W. R., Cr., 17.