

PERUNDEVI-
TAYAR AMMAL
v.
NAMMALVAR
CHETTI.

transaction is a 'loan' or a deposit is clearly a question of fact to be decided upon the evidence in each case and if *Ichha Dhanji v. Natha*(1) be intended to lay down a different rule, we with all deference to the learned Judges who decided that case, are unable to agree with that decision. The view taken in the Calcutta case seems to us to be more reasonable, and we accordingly hold that this case is governed by article 60.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

BASAPPA.*

1895.
April 3.

*Criminal Procedure Code—Act X of 1882, ss. 16, 350—Bench of Magistrates—Change
in constitution of the Court during a trial.*

A trial under the Town Nuisances Act of 1889 was begun before a bench of Magistrates and adjourned. On the adjourned date the bench was constituted differently, only one magistrate being present of those who attended on the first occasion; but the trial was proceeded with and resulted in a conviction:

Held, that the conviction was illegal and should be set aside.

PETITION under Criminal Procedure Code, sections 435 and 439, praying the High Court to revise the proceedings of C. Ramasesha Ayyar, Deputy Magistrate of Bellary, in criminal appeal No. 83 of 1894, affirming a conviction by the Bench Magistrates of Bellary Town.

The facts of the case are stated above sufficiently for the purposes of this report.

Subramania Ayyar for petitioner.

The Government Pleader and the Public Prosecutor (*Mr. E. B. Powell*) in support of the conviction.

JUDGMENT.—Following the decision of the Calcutta High Court in *Hardwar Sing v. Kheya Ojha*(2), with which we entirely agree, we set aside the conviction and sentence and direct that the fine, if paid, be refunded and the case retried.

(1) L.L.B., 13 Bom., 338.

* Criminal Revision Case No. 30 of 1895.

(2) L.L.B., 20 Cal., 870.