APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

RAMALINGAM AND OTHERS.*

1896. October 30.

Criminal trial in Sessions Court—Examination of some of the witnesses bound over—Stopping the trial.

Certain persons were tried in a Sessions Court for the offence of dacoity. Seven witnesses had been examined for the prosecution by the Committing Magistrate and were bound over to give evidence at the trial. After five witnesses have been examined, the Judge asked the jury whether they wished to hear any more evidence, and, on their stating that they did not believe the evidence and wished to stop the case, the Judge recorded a verdict of acquittal:

Held, that the procedure adopted was wrong, and that no final opinion as to the falsehood or insufficiency of the prosecution evidence ought to have been arrived at until the two remaining witnesses had been examined.

CASE of which the records were examined by the High Court under section 439 of the Code of Criminal Procedure in Calendar Case No. 38 of 1896 on the file of the Sessions Court of Tanjore.

Ten persons were tried for the offences of rioting, dacoity and mischief. The charges of the offences of rioting and mischief were withdrawn by the Public Prosecutor with the consent of the Court under section 494 of the Code of Criminal Procedure. The trial on the charge of dacoity was stopped after the examination of five of the witnesses for the prosecution, when the jury stated that they did not believe the evidence, and the accused were acquitted.

The High Court sent for the records of the case under section 435 of the Code of Criminal Procedure.

The Public Prosecutor (Mr. *Powell*) for the Crown.

Ramarája Rau for the complainant.

Krishnasami Ayyar for the accused.

JUDGMENT.—The Sessions Judge having examined five witnesses for the prosecution, and there being no further direct evidence of the offence, asked the jury whether they wished to hear any more evidence, and on their stating that they did not believe the evidence and wished to stop the case, the Judge recorded a verdict of

* Criminal Revision Case No. 414 of 1896.

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acquittal. We are unable to approve of the procedure adopted by the Sessions Judge. It is not warranted by any provision of law, and it might, under certain circumstances, lead to a failure of justice.

It appears that there were, in this case, two other witnesses examined before the Magistrate, and bound over to give evidence at the trial, whose evidence, if believed, would have corroborated the case for the prosecution, and might possibly have led the jury to form a different opinion of its credibility. No final opinion as to the falsehood or insufficiency of the prosecution evidence ought to be arrived at by the Judge or jury until the whole of that evidence is before them, and has been considered, and the jury ought, if need be, to be cautioned by the Judge to this effect. If, however, at the end of the prosecution evidence, the Public Prosecutor waives his right to sum up the evidence, where he has such right, and the jury then express an opinion that the evidence is incredible and the Judge agrees with them in such a case, we do not, as at present advised, say that it is necessary for the Judge to go through the formality of summing up the case to the jury. Their opinion might, in that case, we think, be at once accepted as a verdict. But we are clearly of opinion that this should not be done until the whole of the prosecution evidence has been duly recorded. In the present case, looking to the evidence recorded and all the circumstances, we do not think it necessary to do more than point out the proper procedure for the future guidance of the Sessions Judge.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

1897. January 26.

NATHURAM SIVIJI SETT (PLAINTIFF), APPELLANT,

v.

KUTTI HAJI (DEFENDANT), RESPONDENT.*

Civil Procedure Code, 1882, s. 252—*Legal representative—Suit against the heir and possessor of the assets of a deceased person.*

Where a party is sued for money as the heir and possessor of the assets of a deceased debtor, and it is proved that he has received sufficient assets to meet the debt, a personal decree therefor can be passed against him.

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* Second Appeal No. 1213 of 1895.