

REVISIONAL CRIMINAL.

1903
November 12.*Before Mr. Justice Know and Mr. Justice Aikman.*

EMPEROR v. GEORGE BOOTH.*

Criminal Procedure Code, sections 274, 451 (6)—Notification No. ¹⁶⁹³ VI—545A-10 of 1884—Trial held by a jury consisting of a larger number than that prescribed by law—Illegality.

Where the Local Government had by notification under section 274 of the Code of Criminal Procedure directed that in trials by jury before a Court of Session the jury should consist of five, it was held that a trial before a District Magistrate under section 451 of the Code with a jury consisting of seven persons was held before a tribunal not properly constituted and must be set aside.

THIS was a reference submitted under section 307 of the Code of Criminal Procedure by the District Magistrate of Cawnpore. The case was submitted because the District Magistrate disagreed with a verdict of acquittal arrived at by a majority of the jury; but when the case came on for hearing before the High Court, exception was taken by the learned counsel who appeared in support of the acquittal to the legality of the trial on the ground that the jury by which his client was tried consisted of seven persons, when, according to the notification of the Local Government then in force, it should have been composed of five members only. It appeared that the District Magistrate had, in appointing the jury, acted under an order of Government made in 1873, which directed that the jury should consist of seven persons; but that order had been cancelled by a subsequent notification published in 1884 reducing the number to five. It was therefore contended that the verdict of a jury of seven was a nullity and must be so declared.

Mr. A. Harrison, for George Booth.

The Assistant Government Advocate (Mr. W. K. Porter), in support of the reference.

KNOX and AIKMAN, JJ.—This case has been submitted to us by the District Magistrate of Cawnpore on the ground that the verdict of the so-called jury with the aid of which the case was tried was a most perverse one, and stating his opinion that the accused George Booth is guilty of an offence under section 304A

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of the Indian Penal Code. The prisoner has been very ably represented in this Court by counsel; and on his behalf it has been urged that the so-called trial is not a trial at law. It appears that the Magistrate, acting apparently on an old order of the Local Government, which was cancelled in 1884 by Notification No. $\frac{1693}{VI-545A-10}$, empanelled a jury of seven, whereas by the order we have just cited, which order has the force of law, the trial ought to have been held before the Magistrate and a jury consisting of five persons. After hearing the learned Assistant Government Advocate we find ourselves compelled to sustain the contention and to hold that the so-called trial is a nullity as not having been held by a properly constituted tribunal. The case cannot be held to be one of mere irregularity. The trial was held by a court which had no jurisdiction to try it.

Into the merits of the case we do not propose to enter in view of the order we are about to pass. There has been no trial as provided by law, and we are of opinion that the case is one which should be tried. At the same time, without pronouncing on the merits of the case one way or the other, we would observe that should the case result in a conviction, the District Magistrate would do well to consider whether taking into consideration the facts as put at their highest by the prosecution, and the expense and detention which the prisoner has already undergone, anything more than a nominal sentence is called for in the interest of justice. We set aside the trial, leaving it to the district authorities to take such further action as they may deem fit.

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November 19.

APPELLATE CIVIL.

Before Mr. Justice Atkman.

LEKHRAJ (PLAINTIFF) v. GURDAT AND ANOTHER (DEFENDANTS).*

Pre-emption—Wajib-ul-urz—Pre-emption rights of manager of a Hindu temple.

Held that the manager of a Hindu temple, who as such manager holds zamindari property on behalf of the temple, has the same rights of

* Second Appeal No. 107 of 1902, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 18th of November, 1901, reversing a decree of Muhammad Musharraf Ali Khan, Munsif of Shahjahanpur, dated the 22nd of May, 1901.