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in evidence, in that case it would follow that if any law were to direct zemindars to keep their *jama-wasil-baki* papers in a certain form and to submit copies of them to the Collector that would make the *jama-wasil-baki* papers public documents or official registers within the meaning of section 35 of the Indian Evidence Act.

We are of opinion, therefore, that the Court below was quite right in holding that these *teishkhana* papers were inadmissible in evidence ; and, that being so, the appeal fails, and must be dismissed with costs.

s. c. c.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Beverley and Mr. Justice Gordon.

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 December 4. JUGDOWN SINHA (APPELLANT) v. QUEEN-EMPRESS (RESPONDENT).^o
Criminal Breach of Trust—Penal Code (Act XLV of 1860), sections 403 and 405—Immoveable property.

The property referred to in section 405 of the Penal Code is, as in section 403, moveable property, and criminal breach of trust cannot be committed in respect of immoveable property. *Reg v. Girdhar Dharamdas* (1) followed.

THE appellant was a jemadar of the Muktapore Indigo Factory, and as such it was his duty to see that certain plots of the factory land were cultivated with indigo. It was alleged that he let out some plots of that land without the knowledge of the factory authorities for his own benefit to raiyats who cultivated them with other crops and gave him a portion of the produce. The charge against him was that being a servant, namely a jemadar, of the Muktapore Indigo Factory, and being in such capacity entrusted with dominion over certain plots of land, he committed criminal breach of trust in respect of these plots. On the objection being taken that criminal breach of trust could not be committed in respect of immoveable property, the Sessions Judge who tried

^o Criminal Appeal No. 685 of 1895, against the order passed by F. S. Hamilton, Esq., Officiating Sessions Judge of Mnzafterpore, dated the 13th of September 1895.

the case considered that to be a defect in form only, and read the charge in the sense that the accused dishonestly disposed of the plots in question in violation of a legal contract which he had made touching the discharge of his trust, and convicted the appellant under section 408 of the Penal Code.

Mr. *Jackson* and Babu *Dasarathi Sannyal* for the appellant.

Mr. *Biswas* for the Crown.

Mr. *Jackson*.—The word “property” in section 405 of the Penal Code means moveable property only. That section must be read with section 403 where “moveable property” is distinctly mentioned. See *Reg v. Girdhar Dharamdas* (1).

Mr. *Biswas* for the Crown.—In section 405 of the Penal Code the word “property” has been used which includes both moveable and immoveable property, as has been made clear by the use of the words “converts to his own use” and “dishonestly uses or disposes of that property.” Immoveable property is capable of being converted to one’s own use and can be dishonestly disposed of. The word “property” has also been used in section 421 and section 424, which sections distinctly relate to properties moveable and immoveable. See the remarks of Norman, J., in the case of *Ram Manick Shah v. Brindabun Chunder Potdar* (2).

The following judgment was delivered by the High Court (BEVERLEY and GORDON, JJ.) :—

The appellant has been convicted under section 408 of the Indian Penal Code on the charge that being a servant, namely a jemadar, of the Muktapore Indigo Factory, and being in such capacity entrusted with dominion over certain plots of *zerait* land, he committed breach of trust in respect of those plots. It was objected at the trial, and the objection has been repeated here, that the offence so set forth really does not subsist, inasmuch as criminal breach of trust cannot be committed in respect of immoveable property. The Sessions Judge considered that this was a defect in form only, and he is inclined to read the charge in the sense that the accused dishonestly disposed of the plots of land in question in violation of a legal contract which he had made touching the discharge of his trust. The case for the prosecution is that it was the appellant’s duty to see that certain plots

(1) 6 Bom. H. C. Cr., 33.

(2) 5 W. R., 230.

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of land were cultivated with indigo, and that he knowingly allowed them to be cultivated with other crops.

We are ourselves inclined to the opinion that the property referred to in section 405 of the Indian Penal Code must, as in section 403, be moveable property, and that, as it has been ruled in *Reg v. Girdhar Dharamdas* (1), criminal breach of trust cannot be committed in respect of immoveable property. In this case the appellant was at most entrusted with the supervision or management of the factory lands, and the fact that he mismanaged the land does not in our opinion amount to a criminal offence under section 408. Be that as it may, we think that upon the evidence the conviction cannot be sustained. Both the assessors found the appellant not guilty, and, as they have pointed out, the evidence in the case is extremely unsatisfactory. There are not only contradictions in the evidence, but the witnesses are, upon their own showing, accomplices with the accused, and their evidence is entirely uncorroborated. It appears, moreover, that the factory people had a grudge against the accused who appears to have left their service and entered the service of a neighbouring factory. Under all these circumstances it would not be safe to convict the accused.

We accordingly set aside the conviction and direct the discharge of the appellant.

S. C. B.

Conviction set aside.

APPELLATE CIVIL.

Before Mr. Justice Banerjee and Mr. Justice Rampini.

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 November 27.

NORENDRA NATH PAHARI, MINOR, UNDER THE COURT OF WARDS
 (DECREE-HOLDER) v. BHUPENDRA NARAIN ROY, MINOR, BY HIS
 GUARDIAN, GOUR MOHUN ROY (JUDGMENT-DEBTOR.) *

Execution of decree—Application for execution—Objection not taken in the Court below—Limitation—Deposit of process fees—Part-payment and acknowledgment—Order for registration of the application for execution

* Appeal from Original Order No. 237 of 1894, against the order of Babu Karunamoy Banerjee, Subordinate Judge of Midnapore, dated the 9th of May 1894.