

FULL BENCH.

*Before Mr. Justice Broadway, Mr. Justice Fforde and Mr.
Justice Campbell.*

BRAY—Petitioner

versus

THE CROWN—Respondent

Criminal Revision No. 691 of 1924.

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July 7.

Criminal Procedure Code, Act V of 1898 (as amended by Act XII of 1923), sections 275, 443, 446—Trial by jury in cases where the complainant and the accused person are respectively European and Indian British subjects and vice versa.

The petitioner, Bray, was committed to the Court of Session under section 446, Code of Criminal Procedure. In the Court of Session he claimed to be tried by a jury consisting of his own countrymen, but the Sessions Judge held that there is no provision in the Code of Criminal Procedure, as amended by Act XII of 1923, which entitles an European British subject to claim a trial by jury in the absence of a notification by the Local Government under section 269.

Held, that when an European British subject or an Indian British subject has been committed to the Court of Session under the provisions of section 446 (2), Code of Criminal Procedure, the trial must be by jury, and a majority of the jury shall, if, before the first juror is called and accepted, the accused person so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans, and in the case of an Indian British subject of Indians.

Provided that where in the ordinary course the trial would be with the aid of Assessors the accused has the right to claim to be tried with the aid of Assessors, all of whom shall be (a) Europeans or Americans or (b) Indians, according to the category within which the accused comes.

Per Fforde J.—By “ordinary course” is meant the course which would be followed in the absence of a claim by the accused to be dealt with under the provisions of Chapter XXXIII of the Code, or in the absence of a notification by the Local Government under the provisions of section 269.

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Application for revision of the order of Lala Rangi Lal, Sessions Judge, Lahore, dated the 28th April 1924, holding that the accused will be tried with the aid of assessors and not by a jury.

O'CONNOR, for Petitioner.

GOVERNMENT ADVOCATE, for Respondent.

The following judgments were delivered :—

BROADWAY J.

BROADWAY J.—The point before this Court is whether, in the case of a person committed to a Sessions Court under section 446 (1) of the Criminal Procedure Code, the trial must be with the aid of assessors or by jury. On behalf of the petitioner it has been contended by Mr. O'Connor that the proper construction of this section leads to the conclusion that the trial must of necessity be by jury, the proviso to sub-clause (2) of section 446 merely giving the person accused the right to claim to be tried by assessors—all of whom, under section 284-A should be of his own nationality.

The learned Government Advocate has conceded that the intention of the Legislature was to place Indian British subjects and European British subjects on the same footing and to make all trials falling within the purview of Chapter XXXIII of the Criminal Procedure Code trials by jury. He has also submitted that the intention of the Legislature has been carried out by the provisions of section 446.

In my judgment, this is the only construction to be placed on the provisions of this section, and the view taken by the learned Sessions Judge is erroneous. The trial of the present petitioner was by law bound to be by jury unless he himself desired to be tried by European assessors. He has not exercised the right given to him by that proviso and the trial therefore must be by jury. I direct accordingly.

FFORDE J.—When this case first came before us, it appeared to me that Mr. O'Connor was trying to make out a case that an European British subject was in a specially privileged position which entitled him to a trial by jury as of right merely because he happened to be of that class. He has now abandoned that position, and merely contends that an European British subject and an Indian British subject are both in precisely the same position once they claim under section 443 of the Criminal Procedure Code a right to trial under the provisions of Chapter XXXIII of that Code.

When an accused person claims that he should be tried under this Chapter—which contains special provisions relating to cases in which European and Indian British subjects are concerned—the duty of the Magistrate inquiring into or trying the case is to satisfy himself that:—

- (1) the complainant and the accused person are respectively European and Indian British subjects, or *vice versa* ;
- (2) that in view of such status of the accused and the complainant, respectively, it is expedient in the interests of justice that the case should be tried under the provisions of this Chapter.

If the Magistrate satisfies himself as above, he must record a finding that the case is such as should be tried under the provisions of this Chapter. Should the Magistrate arrive at this finding, the trial must then take place under the provisions of section 446 of the Code of Criminal Procedure, which provides for trial in accordance with section 275 and the other provisions of Chapter XXIII so far as they are applicable. That is to say, the accused must be tried by a Jury, the majority of whom shall, if the accused so

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requires be of the category within which the accused himself comes.

But when the trial before the Court of Session would in the ordinary course be with the aid of Assessors, the accused has the right, under the proviso to section 446, to be tried with the aid of Assessors, all of whom shall be Europeans or Americans or Indians according to the category within which the accused comes.

By "ordinary course" is here meant the course which would be followed in the absence of a claim by the accused to be dealt with under the provisions of Chapter XXXIII of the Code, or in the absence of a notification by the Local Government under the provisions of section 269.

The learned Government Advocate, I understand, agrees with this view as to the effect of the recent amendments to the Code of Criminal Procedure.

CAMPBELL J.

CAMPBELL J.—I agree and have nothing to add.

A. R.

Revision accepted.