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their liability, because they had abandoned it in the lower Appellate Court. The point was no doubt abandoned by their pleader in that Court, as appears from its judgment, where it is said:—"Mr. Ajrekar for appellants does not now dispute the general liability of grandsons for such a debt as that on which the original suit was based, and it is therefore unnecessary to consider further the numerous authorities cited by the respondent's pleader in support of the conclusion arrived at by the Subordinate Judge."

We understand that to mean no more than that the pleader on his view of the law thought that the point was unarguable. A party is not bound, generally speaking, by a pleader's admission in argument on what is a pure question of law amounting to no more than his view that the question is unarguable. The decision of the Privy Council in *Raja Bommadevara Venkata* v. *Raja Bommadevara Bhashyakarlu*,[1] cited by Mr. Kelkar, turned on a different state of facts. The pleader for a party there waived the point of limitation on which evidence was being led and which turned on a question of fact. After such waiver the party could not raise the point as the waiver amounted to an admission of a fact.

We must reverse the order and reject the *darkhast*. Each party to bear his own costs throughout.

Decree reversed.

(1) (1902) 29 I. A. 76.

CRIMINAL APPELLATE.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

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EMPEROR *v.* KONDIBA DHONDIBA POWAR AND OTHERS.*

Criminal Procedure Code (Act V of 1898), sections 303, 304—Judge—Jury—Misunderstanding the law—Verdict mistaken or ambiguous—Powers of the Judge to question the jury.

Section 304 of the Criminal Procedure Code (Act V of 1898) obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. It has no application where there is no

* Criminal Appeals Nos. 29, 30 and 77 of 1904.

accident or mistake in the delivery of the verdict; and the mistake lies in the misunderstanding of the law by the jury. If such a mistake results in an erroneous verdict, it can be corrected only by the Judge disagreeing with the jury and referring the case under section 307 of the Code to the High Court.

PER CURIAM:—"There is no provision in the Code of Criminal Procedure (Act V of 1898) which empowers the Judge to question the jury as to their reasons for a unanimous verdict when there is nothing ambiguous in the verdict itself, and no lurking uncertainty in the minds of the jury themselves regarding it. Section 303 of the Code limits the power of the Judge to question to cases in which it is necessary to ascertain what the verdict of the jury is —that is, where the verdict being delivered in ambiguous terms or with uncertain sound their meaning is not clear."

APPEALS from convictions and sentences passed by A. Lucas, Sessions Judge of Poona.

The accused were charged with counterfeiting Queen's Coin, and having in their possession implements and materials for the purpose of counterfeiting Queen's Coin, offences punishable under sections 232 and 235 of the Indian Penal Code (Act XLV of 1860). They were tried by the Sessions Judge with a jury. After the case was summed up by the Judge to the jury, the latter returned a unanimous verdict of guilty under section 235, part 2, of the Indian Penal Code (Act XLV of 1860) and a unanimous verdict of not guilty under section 232 in respect of all the accused. With the latter part of the verdict the Judge did not agree; and he therefore put the following question to the jury.

Question.—May I ask your reasons for holding that the accused are not guilty under section 232 ?

Answer.—The accused were not actually caught in the act of coining.

What followed then was thus recorded by the Sessions Judge. "The commentary of section 232 (which had already been read to the jury by the Public Prosecutor when summing up the case) is again read to the jury, as it appears to me probable that their verdict of 'not guilty' under section 232 is the result of a mistake, and the jury are asked to retire and reconsider their verdict in the light of the commentary on section 232. In my heads of charge I told the jury that if they believed the evidence for the

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prosecution they should find the accused guilty of both offences. I did not again read out the commentary on section 232, because the Public Prosecutor had read it but a very short time before. After retiring for some time the foreman states that the jury were under a mistake and that they had not properly understood the commentary on section 232; he states that the verdict of the jury now is that all of the accused are also guilty of an offence under section 232 of the Indian Penal Code."

The Sessions Judge then agreed with the verdict and sentenced each of the accused to undergo rigorous imprisonment for five years.

The accused appealed to the High Court.

The *Government Pleader* for the Crown.

No one appeared on behalf of the accused.

PER CURIAM:—In this case the accused were tried before the Sessions Judge of Poona and a jury on charges under sections 232 and 235 of the Indian Penal Code. The jury returned a unanimous verdict of guilty under section 235, and a unanimous verdict of not guilty under section 232 in respect of all the accused. The learned Judge thereupon questioned the jury as to their reasons for holding that the accused were not guilty under section 232. The jury answered that the accused had not been actually caught in the act of coining. The learned Judge then explained to them the law under section 232 and asked them to reconsider their verdict. Upon this the jury returned a unanimous verdict of guilty under section 232.

The ground upon which the Judge asked the jury to reconsider the verdict was, as explained in the record of the case, that it appeared to him that the first verdict of "not guilty" was the result of mistake. No doubt section 304, Criminal Procedure Code, provides that "when by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict." But that section obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. Here there was no accident or mistake in the delivery of the verdict, for the jury having arrived at the conclusion that the accused were not guilty gave the verdict in accordance with it. The mistake

was in their misunderstanding the law under section 232. If such mistake has resulted in an erroneous verdict, it can be corrected only by the Judge disagreeing with the jury and referring the case under section 307 of the Criminal Procedure Code to the High Court. There is no provision in the Code which empowers the Judge to question the jury as to their reasons for a unanimous verdict when there is nothing ambiguous in the verdict itself and no lurking uncertainty in the minds of the jury themselves regarding it. Section 303 limits the power of the Judge to question to cases in which it is necessary to ascertain what the verdict of the jury is—that is, where the verdict being delivered in ambiguous terms or with uncertain sound their meaning is not clear. In the present case there was no ambiguity in the unanimous verdict of "not guilty" and the only course left for the Judge, if he disagreed with it, was to record it and act under section 307 of the Criminal Procedure Code. This view is in accordance with the decisions of this Court in *Empress* v. *Bharmia*,[1] and *Queen-Empress* v. *Madhavrao*.[2] In the former it was held that "the questions actually put to the jury demanding their reasons for acquitting of the charge of murder, on which charge the jury had delivered an unanimous verdict without any uncertain sound, exceeded the limits of questioning which the law contemplates": see also the remarks of Phear, J., in *Queen* v. *Sustiram Mandal*.[3]

Though for these reasons we think the procedure of the Judge was irregular, we are of opinion that it has not led to a miscarriage of justice and we do not see any reason to interfere with the sentence of 5 years' rigorous imprisonment passed on the accused, as it could have been passed under the Indian Penal Code for the conviction under section 235 of the Indian Penal Code. We confirm the convictions and sentences and dismiss the appeals.

(1) (1895) 6 Bom. L. R. 258 at p. 261.

(2) (1894) 19 Bom. 735.

(3) (1873) 21 W. R. I. (Cri. Ru.).