

CRIMINAL REFERENCE.

Before Mr. Justice Parsons, Acting Chief Justice, and Mr. Justice Ramule.

1899.

QUEEN-EMPRESS v. JEYRAM HARIBHAI.*

March 9.

*Criminal Procedure Code (Act V of 1898), Secs. 269, Cl. 3, and 307—Jury—
Trial by jury of an offence triable with the aid of assessors—Practice.*

The accused was tried by a jury on four charges: (1) forgery, (2) using a forged document, (3) criminal misappropriation, and (4) attempting to use a forged document as genuine. The jury returned a unanimous verdict of "not guilty" on all the charges. The Sessions Judge agreed with the jury in their verdict on the 1st, 2nd and 4th charges, but he differed from them on the 3rd charge, which was criminal misappropriation. This offence was not triable by a jury and ought, therefore, under clause 3 of section 269 of the Criminal Procedure Code (Act V of 1898), to have been tried by the Sessions Judge with the aid of the jurors as assessors. Nevertheless the Judge took the verdict of the jury upon this charge, and differing from it, referred the case to the High Court under section 307 of the Code.

Held, that although the procedure of the Sessions Judge was irregular, the trial by jury must be accepted as legal, and the case as one that could be referred to the High Court under section 307 of the Criminal Procedure Code,

REFERENCE by E. H. Moscardi, Sessions Judge of Surat, under section 307 of the Criminal Procedure Code (Act V of 1898).

The accused was tried by a jury on four charges: (1) forgery of a valuable security under section 467 of the Indian Penal Code, (2) using as genuine a forged document under section 471, (3) criminal misappropriation of property under section 403, and (4) attempting to use as genuine a forged document under sections 511 and 471 of the Code.

The jury returned a unanimous verdict of not guilty on all the charges.

The Sessions Judge concurred with the verdict of the jury on the 1st, 2nd and 4th heads of the charge, but differing from their verdict on the 3rd charge, referred the case to the High Court under section 307 of the Code of Criminal Procedure (Act V of 1898).

Ráo Bahádur Vasudev J. Kirtikar, Government Pleader, for the Crown.

* Criminal Reference, No. 4 of 1899.

Ramdutt V. Desai for the accused.

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QUEEN-
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PARSONS, (ACTING) C. J.—The Sessions Judge in this case agreed with the jury in their verdict on the 1st, 2nd and 4th charges, but he differed from them on the 3rd charge, which was criminal misappropriation, an offence punishable under section 403 of the Indian Penal Code. This latter offence was not triable by jury and, therefore, under sub-section 3 of section 269, Criminal Procedure Code, should have been tried by the Court of Session with the aid of the jurors as assessors. Nevertheless the Sessions Judge took the verdict of the jury upon it, and differing from it has submitted the case under section 307 of the Criminal Procedure Code. The procedure of the Sessions Judge was clearly most irregular, but it appears on the authorities that we must accept the trial by jury as a legal one, and hold the case to be one that can be submitted under section 307. This was the decision of the Calcutta High Court in *In the matter of Bhoolnath Dey*⁽¹⁾ and *Surja Kurmi v. Queen-Empress*⁽²⁾. It was also the decision of this Court in *Imp. v. Dev Vithu*⁽³⁾, where the verdict of the jury of not guilty of an offence triable with the aid of assessors was treated as valid, and the Court heard and disposed of the case under section 307. Our decision in *Imp. v. Lalbu*⁽⁴⁾, as to the right of appeal in a case so tried, in no way conflicts with these decisions.

On the merits, the guilt of the accused is clearly proved. He found this Government promissory note, kept it with him for two years without trying to discover the owner, and then attempted to obtain the principal and interest due upon it. No doubt witnesses Nos. 20 and 22 were also in the plot, but that fact does not exonerate the accused. We convict the accused of the offence of misappropriation charged punishable under section 403 of the Indian Penal Code and sentence him to six months' rigorous imprisonment and a fine of Rs. 50, in default of payment to fifty days' additional rigorous imprisonment.

(1) (1879) 4 C. L. R., 405.

(3) Cr. Rul. No. 19 of 1892.

(2) (1898) 25 Cal., 555.

(4) Cr. Rul. No. 15 of 1898.