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or heights, and the section makes the adding to an existing embankment an offence if such act is likely to interfere with, counteract or impede, any public embankment or public water-course.' If [484] an addition is made to a private embankment on one side of a stream which has the effect of making it higher than the public embankment on the other so that some of the water which would otherwise have flowed over the top of the private embankment is caused to flow over the public embankment, it seems to us that the public embankment is, by the addition to the height of the private embankment, interfered with or counteracted. In view therefore of the object of the section, we are of opinion that any addition to an existing embankment is an offence under section 76 if such addition is likely to interfere with, counteract or impede any public embankment or any public water-course.

The question which we refer to the Full Bench is :—

Do the words 'shall add to any existing embankment' in section 76 (*a*) of Act II (B. C.) of 1882 include an addition to the height of an embankment ?

Mr. *P. L. Roy* (Babu *Sarat Chandra Dutt* with him) for the petitioner. The words "add to" in s. 76 of Bengal Act II of 1882 can only mean an extension in the length of an existing embankment, and do not include an addition to its height. If they are held to mean addition in height, then it would be impossible to repair an embankment because such repair would necessarily effect some change in the height and breadth, and if any ordinary repair is not included, how is the line of demarcation to be drawn? If the section is construed in the way in which the learned referring Judges have construed it, there would be considerable difficulty in the application of the provisions of s. 79, under which the convicting Magistrate is only entitled to direct the removal of the embankment or obstruction. In the case of *Goverdhan Sinha* v. *The Queen-Empress* (1) their Lordships observed that "If throwing additional earth on an embankment means an addition to an existing embankment within the meaning of clause (*b*), it would be almost impossible for the convicting Magistrate to define the quantity of earth to be removed from the embankment in order to carry out the provisions of section 79. This case is entirely in favour of my contentions.

Deputy Legal Remembrancer (Mr. *Douglas White*) for the Crown was not called upon.

MACLEAN, C. J. I think the question submitted to us ought to be answered in the affirmative. I do not think I can usefully add anything to what has been said by the learned Judges who have referred this case.

[485] PRINSEP, J. I am of the same opinion.

BANERJEE, J. I am of the same opinion.

HILL, J. I concur.

STEPHEN, J. I concur.

30 C. 485.

CRIMINAL REVISION.

NARAYAN CHANGA *v.* EMPEROR.* [21st August, 1902.]

Trial by jury—Procedure—Delivery of verdict—Verdict, partial record of—Criminal Procedure Code (Act V of 1898) ss. 300, 301, 303—Prejudice—New trial.

Where after the delivery of an unanimous verdict of the jury, convicting the accused of the charge of rioting in connection with certain land and the crops thereon, possession of which was claimed by the complainant as well as by the accused, the foreman of the jury attempted to add that "the land and the crops are all theirs" (meaning that they belonged to the accused),

* Criminal Revision No. 755 of 1902, against the order of J. C. Mitter, Sessions Judge of Dacca, dated 19th May 1902, affirming the order passed by S. C. Dhar, Assistant Sessions Judge of Dacca, dated 8th March 1902.

(1) (1885) I. L. R. 11 Cal. 570.

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but was stopped by the Sessions Judge on the ground that the verdict was quite clear in its terms, and it was therefore unnecessary to hear anything further from them :—

Held, that it was undesirable to stop the jury at such a stage of the proceedings, that the words the foreman attempted to add to the verdict were very material, and that the accused having been seriously prejudiced by the procedure adopted by the Sessions Judge there should be a new trial.

RULE granted to the petitioners, Narayan Changa and another.

This was a Rule calling upon the District Magistrate of Dacca to show cause why the order of the Assistant Sessions Judge of Dacca, convicting the petitioners should not be quashed and a new trial ordered.

[486] The petitioners were tried by the Assistant Sessions Judge and a jury on charges under ss. 147, 148, and 304, read with s. 149 of the Penal Code, of having taken part in a riot which occurred in respect of the possession of certain land which was claimed by the tenants of the Baliati Babus on the one side, and the tenants of one Hara Kumar Sarkar and others on the other side. In the course of the riot one of the tenants of the Baliati Babus was injured so severely that he subsequently died of his wounds. The petitioners who were the tenants of the second party alleged that they were at the time of the riot in possession of the disputed land, and had grown the paddy which was standing thereon, a portion of which had been cut by the rioters, although still unripe.

On the 6th March 1902, after the Assistant Sessions Judge had charged the jury, they retired to consider their verdict ; upon their return the foreman informed the Court that the jury were not unanimous, and the Court requested them to retire again : in a few minutes they again returned, and the foreman informed the Court that the jury unanimously found the petitioners guilty under ss. 147 and 148 of the Penal Code, and not guilty under s. 304 read with s. 149 of that Code. The foreman immediately after delivering the verdict, attempted to add the words "the land and the crops are all theirs," meaning thereby that they belonged to the petitioners. The Assistant Sessions Judge stopped the foreman, and declining to record the additional statement, reserved passing sentence till the next day.

On the 7th March an application supported by an affidavit was made by the petitioners to the Assistant Sessions Judge, asking him to refer the case to the High Court on the ground that after giving the verdict, the foreman wanted to state something which was in the petitioners' favour, and which showed that the verdict had been delivered under a misconception of the law governing the right of private defence of property.

The Assistant Sessions Judge rejected the application observing as follows :—

"That the verdict was quite clear in its terms and nothing was left to be ascertained. There was therefore no necessity for adopting the procedure laid down in s. 303 of the Criminal Procedure Code . . . . . There was also no case of a wrong verdict being delivered by accident or mistake."

[487] The petitioners appealed to the Sessions Judge of Dacca, who dismissed their appeal on the 19th May.

Mr. *P. Mitter* (Babu *Hara Chandra Chakravarti* with him) for the petitioners. The Assistant Sessions Judge was wrong in not recording the additional statement with which the foreman of the jury wished to

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supplement the verdict. The facts alleged by the prosecution are, that we had gone to the disputed land two hundred in number, variously armed, to take possession; whereas we say that we were in possession, and had raised the crops, and that the other side were really the aggressors. The additional statement by the foreman is, therefore, very material, as it showed that the jury did not believe the story of the prosecution; and that being so, it would be for the jury to determine whether the petitioners who were not the aggressors had exceeded their right of private defence of their property.

PRINSEP AND MITRA, JJ. The Assistant Sessions Judge, in a trial of the petitioners under charges of rioting (section 147) and rioting armed with deadly weapons (section 148) as well as other charges connected with injuries caused in the course of that rioting, recorded a verdict of the jury convicting the petitioners of charges connected with rioting, but acquitting them of the other charges. It appears that the Assistant Sessions Judge stated that in the first instance the jury were not unanimous, and that after retiring they returned, delivered an unanimous verdict, and after delivering a verdict convicting the petitioners of the charges of rioting, the foreman of the jury attempted to say something. He was stopped by the judge, and it is this matter which has led to the proceedings now before us. The Assistant Sessions Judge attempts to justify his conduct by stating that, when the verdict of the jury had been so delivered, it was unnecessary to hear anything further from them. We cannot agree in this view. After the delivery of a verdict by a jury, it may be their desire to add a recommendation to mercy, and in this country it is specially undesirable to stop the jury at such a stage of the proceedings, for it may so happen that before the verdict is recorded, the foreman of the jury may make some observation in respect of that verdict which may show the presiding Judicial [488] Officer that the jury have not properly understood the case, and then it would be the duty of the Sessions Judge not to record the verdict, but to recharge the jury so as to lay the case properly before them. In this particular case, although we have not the statement of the foreman as to what he was about to say, or had said in a manner inaudible to the Sessions Judge, the Sessions Judge has recorded that the pleaders of both sides, who apparently heard the words, agreed as to what was said, and we thus learn that, after the delivery of verdict convicting the accused of rioting and rioting armed with deadly weapons, the foreman of the jury added "the land and the crops are all theirs," meaning thereby that they belonged to the accused. If the Sessions Judge had heard this remark, he would certainly not have passed the extreme sentence provided by the law, and we further find that on the facts of this case, these words are very material because they would seem to show that the case for the prosecution was not regarded by the jury as established or, indeed, true. It would be for the jury, in this case, to determine whether the accused who were not the aggressors had or had not exceeded the right of private defence of their property. In this view, we think that the petitioners have been seriously prejudiced. We accordingly direct that a new trial be held.