

FULL BENCH.

1874

April 11.

Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice L. S. Jackson, Mr. Justice Phear, Mr. Justice Markby, Mr. Justice Glover, Mr. Justice Ainslie, Mr. Justice Pontifex, Mr. Justice Birch, and Mr. Justice Morris.

THE QUEEN *v.* MAHOMED HOOMAYOON SHAW. *

Alternative Charge—Finding—False Evidence—Contradictory Statements—Criminal Procedure Code (Act X of 1872), s. 455, Sch. iii—Penal Code (Act XLV of 1860), s. 193.

Where a person was convicted of giving false evidence upon an alternative charge in the form given in Sch. iii of the Criminal Procedure Code, *Held*, by the majority of the Court (JACKSON and PHEAR, JJ., dissenting), that the conviction was good, notwithstanding the jury had not distinctly found which of the two statements charged was false.

Held, per JACKSON J., that such a charge is bad, and further that an alternative finding upon such charge is invalid.

Held, per PHEAR, J., that, although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specifically which branch of the alternative is true.

THE question arising in this case was as to the validity of a conviction upon a charge of giving false evidence framed in the alternative. The matter was referred for the opinion of a Full Bench by JACKSON and MITTER, JJ. The facts appear sufficiently in the observations made by the former Judge on referring the case.

JACKSON, J.—The offence of which the prisoner is convicted is stated in these words:—“That he did, on or about the 23rd day of January 1873, at Alipore, in the course of the trial of Tulsi Das Dutt and Mahomed Latif on a charge of cheating, state in evidence before Moulvi Abdul Latif, Deputy Magistrate at Alipore, that the greater part of the furnitures was sent by

* Criminal Appeal, No. 656 of 1873, against an order of the Officiating Additional Sessions Judge of the 24-Pergunnas, dated the 12th August 1873.

me to that house (*viz.*, the house at Chitpore), and a small portion by Belilios and Zahuruddin; and that he did, on or about the 13th day of February 1873, at Alipore, in the course of the trial of J. R. Belilios, Tulsi Das Dutt, and Mahomed Latif, in the same case of cheating, state in evidence before Moulvi Abdul Latif, Deputy Magistrate at Alipore, that Belilios never sent any furniture of his own or of any one else to that house (*viz.*, the house at Chitpore), nor was any of the furnitures in that house belonging to Belilios;”—and it is said that one of these two contradictory statements, the prisoner “either knew or believed to be false, or did not believe to be true, and that he has thereby committed an offence punishable under s. 193 of the Indian Penal Code.” It is not found that one or the other of these statements is in fact false, or that either of such statements, if false, was intentionally given, but the conviction manifestly rests upon the simple circumstance that the two statements are contradictory one of the other. It has been contended that neither s. 193 or s. 72 of the Indian Penal Code, nor any provision of the Criminal Procedure Code of 1872, justifies such conviction. There is a ruling of the Full Bench in the case of *The Queen v. Musst. Zamiran* (1) which supports the conviction, but the authority of that decision has been questioned in several later cases, *viz* the case of *The Queen v. Mati Khowa* (2), the case of *The Queen v. Namal* (3), and the cases of *The Queen v. Soonder Mohoorie* (4), *The Queen v. Kalichurn Lahoree* (5), and *The Queen v. Bidu Noshyo* (6). For myself I feel bound to say that I

(1) B. L. R., Sup. Vol., 521.

(2) 3 B. L. R., A. Cr., 36.

(3) 4 B. L. R., A. Cr., 9.

(4) 9 W. R., Cr. Rul., 25.

(5) *Id.*, 54

(6) *Before Justice Sir C. P. Hobhouse, Bart., and Mr. Justice Markby.*

The 24th June 1869.

THE QUEEN v. BIDU NOSHYO AND
OTHERS.*

Alternativel Finding—False Evidence—

Contradictory Statements—Criminal

*Procedure Code (Act XXV of 1861),
s. 381.*

THE following judgments were delivered:

HOBHOUSE, J.—I should have preferred in these cases that the Judge had come to a distinct finding on one or other of the alternative charges made against the prisoners, and that some attempt at least should have been made to obtain evidence upon one or other of the said charges before

1874

QUEEN
v.
MAHOMED
HOOMAYOON
SHAW.

*Criminal Appeals against orders of the Officiating Sessions Judge of Rungpore dated the 1st February 1869.