

## FULL BENCH.

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*Before Sir Richard Couch, Kt., Chief Justice, Mr. Justice Jackson,  
Mr. Justice Phear, Mr. Justice Birch, and Mr. Justice Morris.*

1874  
March 30.

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THE QUEEN *v.* OKHOY COOMAR SHAW.

IN THE MATTER OF THE PETITION OF NAGENDRA LAL CHATTERJEE.\*

*Penal Code (Act XLV of 1860), s. 405—Partner—Criminal  
Misappropriation.*

A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted, or which he has dominion over, is guilty of an offence under s. 405 of the Penal Code.

THIS was an application under s. 297 of the Code of Criminal Procedure to call up the record of a case before the Cantonment Magistrate of Dinapore, in which the petitioner, on the 26th of January 1874, on solemn affirmation, charged Okhoy Coomar Shaw and others with the offence of criminal misappropriation. The Magistrate, relying upon the decision *In the matter of the Petition of Lall Chund Roy* (1), dismissed the complaint, and discharged the defendants on the ground that, by a deed of partnership, the complainant and the accused were joint owners of the property in respect of which the criminal misappropriation was alleged to have been committed. The application was made before Couch, C.J., and Ainslie, J., who differing from the decision *In the matter of the Petition of Lall Chund Roy* (1), referred to a Full Bench the following question:—"Whether, if a partner dishonestly misappropriates, or converts to his own use, or dishonestly uses or disposes of, any of the partnership property which he is entrusted with, or has dominion over, he is guilty of an offence punishable under the Penal Code?"

The parties were not represented by Counsel.

(1) 9 W. R., Cr. Rul., 37.

\*Criminal Appeal of 1874 against an order of the Cantonment Magistrate of Dinapore, dated the 26th January 1874.

1874

QUEEN  
v.  
OKHOY  
COOMAR  
SHAW.

The opinion of the Full Bench was delivered by

COUCH, C.J.—In this case a charge was preferred by the applicant against Okhoy Coomar Shaw and sother before the Magistrate of an offence of criminal misappropriation. The Magistrate dismissed the complaint, and discharged the defendants on the ground that the complainant and the accused were partners, or as he says in the first part of his judgment, that they were, according to a deed of partnership, joint owners of the property in respect of which the criminal misappropriation was alleged. He founded his decision upon a case in this Court—*In the matter of the Petition of Lall Chand Roy* (1)—in which two of the learned Judges, Kemp, J., and the late Mitter, J., held that, if there was a partnership, there could not be a conviction for criminal breach of trust. Elphinstone Jackson J., appears to have doubted this, and not have concurred with the other two Judges. He took a different view of the facts of the case, and also said that he was inclined to think that there might be circumstances under which one partner might be guilty of criminal breach of trust against another.

An application was made to this Court before myself and Ainslie, J., under s. 297 of the Criminal Procedure Code, to send for the papers, and to decide upon the validity, in point of law, of the Magistrate's decision.

Seeing that the Magistrate had acted upon a decision of this Court, we felt bound to refer the question for decision by a Full Bench, although I think, I may say, that we neither of us at the time entertained any serious doubt upon it.

It appears that there is a decision of Markby and Birch, JJ. in the case of *The Queen v. Gour Benode Dutt* (2), in which those,

(1) 9 W. R. Cr. Rul., 37.

Mr. T. D. Ingram (Baboo's Poorno

(2) Before Mr. Justice Markby and Mr. Chunder Mookerjee and Sham Lal Mitter with him) for the petitioners.

THE QUEEN v. GOUR BENODE  
DUTT AND ANOTHER.\*

The 4th December 1873.

Penal Code (Act XLV of 1860), s.

424—Partner—Fraudulent Removal  
of Property.

The judgment of the Court was  
delivered by

MARKBY, J.—The prisoners in this  
case have been convicted of dis

\* Application under s. 297 of the Criminal Procedure Code against an order of the Officiating Magistrate of East Burdwan, dated the 22nd September 1873.