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minor from suing again even through his guardian, to recover the sums which clearly were paid to him by the defendant. The guardian chose to neglect his duty, and the minor went about collecting rent and representing himself to the Court to be over eighteen years of age and competent to manage his own affairs.

This amounted to a virtual representation on his part that he was of full age and entitled to collect rent, and it would be very inequitable in these circumstances to allow the plaintiff to recover the above sums again.

The appeal is dismissed with costs.

S. C. B.

*Appeal dismissed.*

## CRIMINAL REFERENCE.

1901  
 Nov. 26, 27,  
 28 and  
 Dec. 2.

*Before Mr. Justice Prinsep and Mr. Justice Stephen.*

EMPEROR

v.

LYALL AND OTHERS.\*

*Jury—Verdict of Jury, disagreement with by Judge—Reference to High Court—Procedure by High Court—Evidence, consideration of—Code of Criminal Procedure (Act V of 1898), ss. 307 and 451—Penal Code (Act XLV of 1860) ss. 147, 149, 325, 343—Assam Labour and Emigration Act (VI of 1901) s. 210.*

S. 307 of the Code of Criminal Procedure requires that a High Court in dealing with a case referred under it, shall consider the entire evidence on the case, and next, after giving due weight to the opinions of the Sessions Judge and the Jury shall deliver judgment. The High Court in such a case is not bound to accept the opinion of the Jury if it is not shewn to be perverse or clearly or manifestly wrong. Without considering the entire evidence the High Court could not be in a proper position to give due weight to the opinions of the Sessions Judge and of the Jury.

In this case a coolie named Hiron, one of a number of Bilaspur coolies, who were under agreement with the Nanoi Tea

\*Criminal Reference No. 20 of 1901, made by T. Emerson, Deputy Commissioner of Nowgong, dated the 29th August 1901.

Garden, asked for leave of absence on the ground that he was unwell. The second accused Rajoni Cant Ghose, who was in charge of the garden, refused the leave and sent him to work. Subsequently while working in the garden Hiroa again met Rajoni, and repeated his request and was again refused. The Bilaspur coolies, who were irritated at Hiroa being made to work while unwell, then struck work in a body and went to the lines, saying that they were going to complain to the authorities at headquarters of his being made to work. Rajoni reported the matter to Lyall, the first accused. Manager of the garden, who sent for the coolies from their lines. They however refused to go to him. Lyall then went to the coolie lines, accompanied by Rajoni. A number of other coolies who were not connected with the Bilaspur coolies also came to the spot to see what was taking place. The Bilaspur coolies told Lyall they intended to go and complain. Lyall refused to allow them to do so. Lyall then ordered the other coolies to beat the Bilaspur men. The Bilaspur coolies were then thrown on the ground and severely beaten. After a time Lyall stopped the beating. The Bilaspur coolies were then kept for several days in confinement on the garden.

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The accused were all charged with offences under ss. 147 and 325 read with 149 and 343 of the Penal Code and s. 210 of the Assam Labour and Emigration Act, and were tried by the District Magistrate of Nowgong and a jury under the provisions of s. 451 of the Code of Criminal Procedure.

Lyall was acquitted of the offences under s. 343 of the Penal Code and s. 210 of the Labour and Emigration Act. Rajoni was acquitted of the offence under s. 210 of the Labour and Emigration Act and convicted under s. 343 of the Penal Code.

The jury however unanimously acquitted Lyall, Rajoni and all the coolies accused of the offences under ss 147 and 325 read with s. 149 of the Penal Code.

The District Magistrate disagreeing with the unanimous verdict of the jury referred the case to the High Court under s. 307 of the Code of Criminal Procedure.

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. This case, which was tried under the provisions of s. 451 of the Criminal Procedure Code, is under ss. 307 and 451(6) of that Code referred to the High Court, as I am not satisfied that the verdict given by the jury is in accordance with the evidence.

On the 27th July Hiroa, a coolie, under agreement under Act I of 1882 now superseded by Act VI of 1901 in Nonoi Tea Garden in the district of Nowgong asked the babu (Rajoni) in charge of the garden, which is an out garden of Rangamati Tea Garden, to excuse him from work, as he was ill. The babu refused the leave on the ground that Hiroa was not ill, and sent Hiroa to work on the garden. Hiroa went to work. An hour or so after this the babu Rajoni went to see the work, and, when he came near Hiroa, Hiroa again applied for leave, but Rajoni got angry and raised a cane. Thereupon Sriram, a brother of Hiroa, seized the babu, and there was a scuffle, in which the latter fell on the ground. Hiroa is one of a lot of Bilaspur coolies of whom there are about 15 or 20 on the garden. These Bilaspuris, who were working, were working in the same part of the garden and all, including Hiroa, about 12 in all, ran to the lines to their houses, with the intention, they say, of going to Nowgong to complain to the Inspector of Labourers of Hiroa's being made to work, while unfit. An hour after this Lyall, the Manager of the Rangamati Garden, of which Nonoi is an out garden, came to the office and summoned the coolies to come to him for an inquiry into the case. Rajoni was with him. The Bilaspuris refused to obey. They said they would not leave the lines. After attempting to get the coolies to come to him, Lyall accompanied by Rajoni went to the lines; although it was still working hours, a great many old garden coolies had gathered round, and were apparently watching the Bilaspur coolies. Up to this point both the prosecution and defence witnesses may be said to agree, with the exception that the defence do not admit or deny the account of the origin of the attack on Rajoni given by the prosecution. It is however reasonable to believe that the Bilaspur coolies were angry, because one of their number was made to work when other persons, who were ill, were given leave. The prosecution witnesses state that when the sahib and the babu arrived at the spot an order was given both by the sahib and by Rajoni to the old coolies to beat the Bilaspuris, because they wanted to go to Nowgong to complain. Thereupon the babu beat Hiroa with a stick on the head and the babu then beat Sriram and then the other coolies got all the Bilaspur coolies, who were present, face down on the ground and beat them mercilessly. Lyall and his defence witnesses say that Nahu, an old man of about 65 a non-worker dependent on his sons Sriram and Hiroa, attacked Lyall when he came to the lines and knocked him down and he was hit on the ankle by Sriram. The old coolies released Lyall and then of their own accord went and beat the Bilaspuris. This statement, if accepted, would exonerate Lyall and Rajoni, but would

still leave the coolies guilty of riot. After using the force necessary to rescue Lyall the coolies had no right to attack the Bilaspur coolies, and I do not believe they would have done so without orders from the babu or the sahib. The attack made on the Bilaspur coolies was ferocious. Two of them, Hiroa's father and brother, had their arms broken and nearly all of them most severely beaten; one having a bone of his hand broken. Even on the days of the trial, a month after the occurrence, marks are visible on many of their backs. Two of them had over 30 bamboo marks on their backs. To excuse this beating neither the babu nor the coolies can show any marks, nor do they allege that they themselves were beaten. The attack made on the sahib by Naulu is the only reason given for this barbarous treatment. We have no evidence that the sahib took any steps to stop the beating before it had progressed so far as to leave the result now observable on the backs of the witnesses for the prosecution. It is not credible that if Lyall had said, "Do not beat the men, overpower them and keep them to be dealt with later"—that this would not have been done. There is on the other hand the statement of one of the accused coolies implicating the sahib, and the babu—the other coolies volunteered no statement, but put in a written explanation through their pleader. I think for the reasons given above the jury should have found Lyall, Rajoni and the other accused coolies, except Durga Charan, about whose presence in the *mâlê* there is a slight doubt, guilty under ss. 147 and s.  $\frac{325}{139}$  of the Indian Penal Code. After the coolies had had their beating, those, who had broken arms—Sriram and Naulu, were taken to the Ranganati hospital, while the others were fed and then imprisoned in a house on the garden, which they call the *phatak ghar* or prison house; they were kept there until the police arrived in the garden on the 7th August to investigate a case of hanging, alleged to be one of suicide, which occurred in the house. On the arrival of the police they were released. During the night they were kept in the prison house, and during the day they were made to hoe 40 knolls, being watched and prevented from absconding, or  $\frac{1}{4}$  more than the ordinary rate. This treatment was given under the directions of Rajoni babu and the jury have found him guilty under s. 343 of the Indian Penal Code, with which I agree. Lyall they have found not guilty on that charge and as there is room, however little, for doubt as to whether he knew of the imprisonment and confinement during the days, I think the verdict should be accepted.

The jury has found the accused, Rajoni and Lyall, not guilty of the offence under s. 210 of the Emigration Act. I believe the origin of the whole disturbance was Rajoni's refusal to allow Hiroa to complain to the Inspector of labourers, and do not think that Rajoni should be acquitted. As no complaint was made to Lyall, he should, I think, be acquitted.

I forward this record to the High Court, as I consider that the jury seriously erred in not finding Lyall, Rajoni and all the coolies accused, except Durga Charan, guilty under ss. 147 and  $\frac{325}{139}$  Indian Penal Code

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The whole evidence on both sides shows that a riot took place for the purpose of causing hurt to the Bilaspur coolies. Although the jury decided unanimously, the error would cause such a serious miscarriage of justice that I feel bound to refer the case.

*The Advocate General (Mr. J. T. Woodroffe) for the Crown.  
 Mr. Pugh and Mr. Henderson for Lyall.*

*Mr. Casperz for Rajoni Cant Ghose.*

*Babu Radhika Charan Mitter and Babu Bepin Behary Ghose for the remaining accused.*

*Cur. adv. vult.*

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PRINSEP and STEPHEN JJ.—This is a trial held by the District Magistrate under s. 451 of the Code of Criminal Procedure, one of the accused being an European British subject and the others, who were natives of this country, having elected to be tried with him. The District Magistrate has disagreed with the unanimous verdict of the jury on the main points of the case and has referred it to this Court under s. 307 of the Code of Criminal Procedure.

The prosecution and the defence have been both represented by learned Counsel, and we have therefore had the advantage of a complete argument on the case. Mr. Pugh who appears for Lyall, a tea planter and an European British subject, contends on the authority of several reported cases that we are bound to act in accordance with the unanimous verdict of the jury, unless it is shown to be perverse or clearly or manifestly wrong. Since those cases, however, the terms of s. 307 of the Code of 1882, under which the most recent of the cases quoted were decided, have been altered by the amending Act of 1896, which expressed the law in the language in which it stands. In the present Code s. 307, clause (3) declares that in dealing with the case, such as is now before us, the High Court may exercise "any of the powers which it may exercise on an appeal and subject thereto it shall after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury acquit or convict the accused," etc. No cases under the law thus expressed have been cited to us which are in accordance with the authorities on which Mr. Pugh relies.

It seems to us that we are now bound to consider the entire evidence in the case, and we are then required to give due weight to the opinions of the Sessions judge and the jury and not to rely only on the verdict of the jury. Without considering the evidence the High Court would not be in a proper position to give due weight to such opinions. It is not necessary for the prosecution to show that the opinions of the jury are perverse or clearly and manifestly wrong, as was held in the cases cited to us which were decided before the law was amended in 1896 and expressed as it now stands.

We now proceed to consider the entire evidence laid before us.

It appears that certain coolies under agreement with a tea garden, who are the witnesses for the prosecution, all came from Bilaspur. One of them, Hiroa, represented to the second accused Babu Rajoni Cant Ghose that he was unwell and asked for leave of absence. This was refused. Shortly afterwards, while working in the garden, he again met the babu and repeated his request and was again refused. There is evidence to show that the babu did so in abusive terms. Thereupon another coolie working in the garden, but not under agreement, a brother of Hiroa, attacked the babu and threw him down. Two coolie sirdars interfered and there this incident ended. The Bilaspur coolies, however, were irritated. Five out of the twelve men were very nearly related, and they all struck work and went to the lines saying that they were going to complain to the zillah, that is to the authorities at the head-quarters of the district. It is also in evidence that they sent one of these men to bring their wives and children, who were working in the garden, so far as we can judge, with the intention of inducing them to join in striking work. These persons were not allowed to leave the garden. It appears that the babu reported the matter to Lyall, the Manager of the garden, who more than once sent for the coolies from their lines to go to him. They refused to do so. One witness for the defence, the dispensary doctor, states that they accompanied this refusal with threats, but there is not the slightest evidence to support this and the man, who himself went to bring them, does not say so. The coolies say that they were making preparations to leave the garden to go

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to the zillah to make their complaint. Lyall then went to the coolie lines, accompanied by Babu Rajoni Cant Ghose, the accused No. 2. A considerable body of coolies, who are called old coolies and are not connected with the Bilaspur coolies, came to the spot. There was no assemblage of these men by Lyall or Rajoni Cant Ghose, and it would seem that they came to the coolie lines from another direction to see what was taking place. Some of the coolies may have been present at the spot when Lyall arrived and others may have come afterwards. But they were all present when the order for the beating was given and they all joined in it.

The evidence for the prosecution is that, when Lyall appeared, there was some talk between him and the coolies, the exact purport of which is not clear. It is however clear that the coolies stated their intention to go to the zillah to make a complaint and that Lyall stated that he would not allow them to do so. The evidence for the prosecution then shows that Lyall ordered the other coolies, called the old coolies, to beat these men, on which the Bilaspur coolies were severely beaten with sticks. They say that they were thrown on the ground and were beaten on their backs. The marks which they bear confirm the statement. Mr. Pugh however points to the fact that other injuries are shown from which he would ask us to doubt this portion of the evidence. But it would be impossible to expect that under the circumstances stated all the blows should have fallen on the backs. Some, no doubt, as has been stated by the witnesses, were inflicted before the men were thrown down. Their persons show a very great number of bruises on their backs, and it is impossible to suppose that, while they were being so beaten, they should have remained motionless, so as to cause all the injuries to be inflicted on that part of their bodies. Two of the men, as stated in the charge, suffered grievous hurt, one by fracture of the arm and the other by fracture of a bone in the *humerus*. After a time Lyall stopped the beating and left the place telling the old coolies, as he says in his defence, that they were to watch the Bilaspur coolies as they were likely to abscond. As a matter of fact they were taken away and kept several days in confinement under lock and key by night and under the

watch of men in the tea garden, while working by day, and they were not allowed for several days access to their wives and children. This confinement forms the subject of one of the charges at this trial, and the District Magistrate has accepted the verdict of the jury convicting Rajoni Cant Ghose of an offence under s. 343 of the Indian Penal Code and acquitting Lyall. That part of the case therefore is not before us.

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The disturbance took place on the 27th July. On the 7th August the District Superintendent of Police came to this tea garden to inquire into the death of a coolie, who was stated to have committed suicide in the building termed the old hospital, in which also the Bilaspur coolies are said to have been confined. Amongst those men Hiroa was put before the District Superintendent for examination in this matter by the Manager, Lyall. Stress is laid on this by Mr. Pugh, who appears for Lyall, as tending to show that Lyall would not have produced this man, if he had been maltreated and kept under confinement. Hiroa made no complaint at that time, which is probably accounted for by the fact that the matter under inquiry related to an alleged suicide. On the following day, however, the Inspector of labourers arrived and had the coolies, who had been beaten, sent in to Nowgong for treatment. The District Superintendent of Police states that, from information received, he knew that there had been a riot and the coolies had complained to him of beating and illtreatment. He commenced inquiry into this matter at Nowgong by recording on the 10th August as the first information the statement of Hiroa, and on the same day we are told that he received a letter from Lyall requesting that at the same time inquiry might be made into an assault committed on him and Rajoni Cant Ghose. There has been no delay in the trial of this case, as the proceedings were first taken by the Magistrate on the 16th August, and this trial commenced on the 26th.

In defence Lyall has stated in his written statement that, when he went to the coolie lines to inquire into the matter, he was most unexpectedly assaulted with sticks and knocked down by Nahu and Sriram, witnesses for the prosecution; that immediately there was a row between the old coolies, who came up to



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his rescue and the Bilaspur men before he could stop it, and that the Bilaspur men got worsted in the fight. He adds that, "after a great deal of persuasion he put a stop to the fight and had the injured persons sent to the hospital." In support of this statement, the doctor employed by the tea garden states that he followed Lyall when he went to the coolie lines, that Lyall said "what has happened? Leave your *lathies* "and come to me and see what I shall do. Then Nauhu said, how you come to decide" and struck a blow on the sahib, who fell. Then Sriram hit the sahib on the ankle two or three times. Then the old coolies came and rescued the sahib." He also states that he gave Lyall a liniment, which he used for two or three weeks as an application to his ankle. Another witness the Mohurir of the tea garden states that he went with Lyall and saw Nauhu strike the sahib, who fell down and Sriram hit him on the ankle, that then the old coolies came to protect him and the chamars, that is, the Bilaspur coolies attacked these coolies and there was a fight. A third witness gives similar evidence stating, that when Lyall was struck, he said "*dekho hamko mara*" (see they have struck me). We are unable to credit the evidence that Lyall was assaulted. It is inconsistent with what subsequently took place. We find it impossible to believe that, if Lyall was so struck, he should not himself have taken some active part against those, who had attacked him, at least by disarming them. On the other hand we see no reason to discredit the facts as related by the witnesses for the prosecution. That there was no fight between the Bilaspur coolies and the old coolies seems clear from the fact that no injuries are shown to have been inflicted on the old coolies and this, we may observe, would in itself seem to show that the Bilaspur coolies were unarmed. Undoubtedly they were considerably outnumbered as, at the lowest estimate, the numbers of the old coolies was more than double that of the Bilaspur coolies, Lyall undoubtedly stopped the beating. He says that after a great deal of persuasion he put a stop to the fight, but, if it had commenced by an attack on him by the Bilaspur coolies and there was a fight between them and the old coolies, he could not have exercised any persuasion on the Bilaspur coolies. So far, however,

he is entitled to credit that he stopped the beating of the Bilaspur coolies, but we may observe that, if he could do so, he might have interfered earlier or tried to have prevented any disturbance at all. It was by his order that the beating took place. The bodies of the Bilaspur coolies, when examined by the medical officer, showed that they had been severely dealt with. Two of these men were suffering from bone fractures, whilst one of the others is described by the medical officer as showing thirty-seven abrasions and contusions on his body. The others are also stated to have received very numerous bruises and contusions.

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The accused have been charged with rioting with the common object of causing hurt to Hiroa and others, that is the Bilaspur coolies. They have next been charged with causing grievous hurt to two men, named in the course of the rioting, so as to render themselves liable by the application of s. 149, to punishment under s. 325 of the Indian Penal Code. Lyall and Rajoni Cant Ghose have, as has been already stated, been also charged with wrongful confinement under s. 343, and lastly with an offence under s. 210 of Act VI of 1901, in refusing to allow Hiroa to proceed to Nowgong to complain, that he had been compelled to work, when he was ill. The jury unanimously acquitted the accused of rioting. They also unanimously acquitted the accused of the offence of grievous hurt under s. 325 read with s. 149 of the Indian Penal Code, but it is recorded that in delivering the verdict on this charge the foreman stated that the coolies and the babu, that is the accused, with the exception of Lyall, were guilty of beating under serious provocation, the beating being to an extent not justified by the provocation. Mr. Henderson, who appears for the defence, explains this verdict to mean that the jury found that Lyall had been assaulted and that this provoked the babu, accused No. 2, and the other accused, the old coolies, to beat them, but that the beating thus inflicted was excessive. It is not unlikely that this explanation is correct. Both Lyall and Rajoni Cant Ghose were acquitted by the jury of the charge under s. 210 of Act VI of 1901.

The District Magistrate has referred this case in respect of all the accused, except Durga Charan, on the first and second charges and in respect of the 4th charge, under s. 210,

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Act VI of 1901 against Rajoni Cant Ghose alone. The accused should in his opinion be convicted of these offences. The evidence in our opinion proves that the Bilaspur coolies struck work and announced their intention to complain to the authorities at Nowgong, the zill'ah, as it is termed, and that when Lyall went to the lines to meet them and was told of this he ordered the accused coolies, who happened to be present, to beat them. It is also proved beyond all doubt that the Bilaspur coolies were by his order severely beaten, grievous hurt by fracture of bones being caused to two of them as charged and also that this beating was stopped by Lyall's order. We have no doubt that there was no fight, that is to say, that what took place was only the severe beating of the Bilaspur coolies, for there is nothing to show that any injuries were caused to those, who inflicted the severe injuries, which are spoken to by the medical officer. We do not believe the defence that Lyall was assaulted first. There was no mention of this on the 8th August when the Inspector of labourers took notice of the matter and sent the injured coolies to the hospital at Nowgong for treatment. The first mention was in Lyall's letter of the 10th, when the District Superintendent of Police recorded the statement of Hiroa at Nowgong. Next Lyall's conduct as related by him and the witnesses for the defence, after the alleged assault on him, is incredible. We are asked to believe that he remained passive, and that then the other accused, the babu accused No. 2 and the old coolies, voluntarily attacked the Bilaspur coolies, not only the two men who had assaulted Lyall, but all of them, that a fight took place, that is, that both parties joined in an assault and that this disturbance was stopped by Lyall's persuasion. That he stopped it seems clear; but it is equally clear that, on the case for the defence, he could have had no control over the Bilaspur coolies. The stoppage was by drawing off the accused. The injuries caused only to the Bilaspur coolies also show that there was no fight, but that they were suddenly attacked and it, also in our opinion, shows that the Bilaspur coolies were unarmed and not prepared to act violently. The case, therefore, is as represented by the evidence for the prosecution, that when Lyall

found that the Bilaspur coolies, who had struck work, were inclined to give trouble, he ordered them to be beaten by those who happened accidentally to be present, that they were then severely beaten and that the beating was stopped by Lyall's influence over the assailants. Lyall is of course entitled to some credit for this, for, judging from the injuries received, if the attack had continued there can be little doubt that it would have ended with most serious result. We cannot at all agree with the findings of the jury, even on the explanation suggested by Mr. Henderson. The assembly of the accused, as has been already stated, was in our opinion not unlawful, but it became unlawful, when Lyall ordered the Bilaspur coolies to be beaten, and the other accused carried out that order, acting together, with the common object of beating the Bilaspur coolies. The offence of rioting charged is, therefore established against all the accused whose cases have been referred to us, that is, against all the accused except one man, Durga Charan.

The accused are next charged with grievous hurt by bone fractures caused to two men in the rioting. That this grievous hurt in the rioting was so caused is beyond doubt, and it is equally clear that it must have been known to those engaged in the rioting or responsible for it to be likely to be committed in prosecution of the common object. We are, therefore, of opinion with the District Magistrate that the accused should have been convicted also of the second charge.

We also agree with the District Magistrate that Rajoni Cant Ghose (accused No. 2) should be convicted under s. 210, Act VI of 1901, for, as stated by the District Magistrate, his refusal to allow the coolies to complain, caused them to act as they did, to strike work and to prepare to go to the zillah, that is to Nowgong, to complain of illtreatment.

It remains now to consider the sentences that should be passed. Lyall was undoubtedly responsible for all that took place, for the beating was under his orders. But he is entitled to credit for having stopped this beating, when he saw that it was becoming excessive. Still, when he caused it, he must have known that it was likely to become serious, and therefore he is responsible for all that took place.

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The second accused, Rajoni Cant Ghose is a superior employee of the tea garden, and there is evidence to show that he himself took a prominent part in the beating. The acts of the others are in our opinion not so serious. They are ignorant men and acted under sudden impulse under the direction of their superiors, who should have known better than to incite them.

We accordingly sentence Lyall under the first head of the charge, that is under s. 147 of the Indian Penal Code to one month's simple imprisonment and to a fine of 1,000 Rupees, or in default of payment to one month's further simple imprisonment. We do not think it necessary to pass further sentence on the second charge.

Rajoni Cant Ghose is sentenced under s. 147 to one month's simple imprisonment and to a fine of 200 Rupees, or in default of payment to one month's further simple imprisonment.

We leave it to the District Magistrate to pass whatever (if any) sentence he may think proper on the third charge, which is not before us and of which the jury have convicted Rajoni.

The other accused, who are ignorant coolies and acted on sudden impulse and under orders, are less to blame, and are therefore sentenced each to fifteen days simple imprisonment.

D. S.

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## APPELLATE CIVIL.

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*Before Mr. Justice Ameer Ali and Mr. Justice Pratt.*

KASHI PROSAD SINGH,

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.

*Practice—Test case—Stay of proceedings until trial of test case—Court fees—Court Fees Act (VII of 1870) s. 17. sch 1. art. 1—Consolidation of Appeals.*

\* Appeals from Original Decree No.  $\frac{172}{1}$  to  $\frac{172}{43}$  of 1901.

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