CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Handley.

<div style="float:left">1900
July 16.</div>

RAJ KISHORE PATTER (PETITIONER) *v.* JOY KRISHNA SEN
(OPPOSITE-PARTY.)[*]

*Criminal breach of trust—Refusal to pay to a person money claimed by an-
other—False claim—Suit brought by person claiming—Penal Code (Act
XLV of 1860), s. 406.*

An accused person should not be convicted of criminal breach of trust
on refusing to give to the complainant money, which is claimed by another
person as well as by the complainant, and which the accused denies is due
to the complainant.

The fact that that other person has brought a suit to recover the amount
claimed by him against the accused is a complete answer to the charge of
criminal breach of trust against the accused, and to the findings of the
Courts that the claim made by that other person was a false claim.

IN this case the accused was employed by the complainant
and other persons to sell their paddy. The accused sold the paddy
to a Marwari, from whom he received the full price. The com-
plainant claimed Rs. 107-8, the price of forty bags of paddy, but, as
the price of some of the forty bags were claimed by one Naloo,
the accused declined to pay the complainant the sum claimed by
him, until the dispute between him and Naloo had been settled.
The accused was charged before the Deputy Magistrate of Bala-
sore with criminal breach of trust in respect of the price of the
forty bags of paddy. Naloo was examined on behalf of the accused,
and it was found that his was a false claim. Whilst the
trial was proceeding, Naloo brought a suit against the accused to
recover the sum claimed by him. The accused was convicted
on the 5th of May 1900 under s. 506 of the Penal Code,
and sentenced to three months' rigorous imprisonment. He
appealed to the District Magistrate of Balasore who, on the
17th of May, 1900, dismissed his appeal.

[*] Criminal Revision No. 428 of 1900, made against the order passed by
M. Smither, Esq., District Magistrate of Balasore, dated 17th of May 1900
affirming the order passed by Babu N. N. Ghose, Deputy Magistrate of
Balasore, dated the 5th of May 1900.

Mr. *Swinhoe* (with him Babu *Atulya Charan Bose*) for the petitioner.

The judgment of the Court (PRINSEP and HANDLEY, JJ.) was as follows :—

1900.

RAJ KISHORE
PATTER
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SEN.

The petitioner has been convicted of criminal breach of trust. He was employed by the complainant and others to take their paddy for sale and he sold that paddy to a Marwari. The complainant states that the accused has withheld from him a portion of the money due from the sale of his paddy. There is a dispute between the parties as to the number of bags that were given to the complainant by the accused, and the defence is that some of the bags, for which the price is claimed by the complainant, were bags given to the accused by one Naloo. Naloo has been examined as a witness for the defence and he has been disbelieved both by the Magistrate and the Sessions Judge. Nevertheless the fact remains that Naloo claims some of these bags and that, with such a claim against him, it would have been dangerous for the accused to part with the money. Still we have before us the fact found by the Magistrate and accepted by the District Magistrate in appeal, that the claim by Naloo is a false claim. It may be so, but we have also this fact, which is stated by the District Magistrate in his judgment on appeal, that Naloo has during the trial of this case brought a suit against the accused to recover this sum of money. This seems to us to be a complete answer to the charge and to meet the findings of the Courts, that the claim made by Naloo was a false claim. It may turn out to be a false claim on the decision of the suit, and in that case the plaintiff will recover his money, but under the circumstances we think that the accused should not have been convicted of criminal breach of trust, on refusing to give the complainant money, which is claimed by another person as well as by the complainant, and which he denies is due to the complainant. The conviction and sentence are therefore set aside and the Rule is made absolute.

D. S.   *Rule made absolute.*