

1863.

REG.
v.BHAVA'NI-
SHANKAR
HARIBHAI
et al.

PER CURIAM:—The Court considers that the Acting Senior Assistant^o Judge, in trying all the three accused jointly on a charge of intentionally giving false evidence, was guilty of great irregularity. Each of the accused was entitled to have the specific charge made against him tried quite independently of a like charge against another person. The Court would have been prepared to annul the proceedings, and order a fresh trial; but upon a review of the evidence it appears so extremely doubtful that a conviction could be arrived at, that they consider the ends of justice will be best met by reversing the conviction and sentence.

Convictions and sentences reversed.

REG. v. NA'RO GOPA'L.

July 22.

Forgery—Copy of a Document—Ind. Pen. Code, Sec. 467.

The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorise the delivery of moveable property, is not punishable under Sec. 467 of the Indian Penal Code.

The High Court will not alter a conviction by a Session Court aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised.

THE accused was charged, before the Session Judge of the District of Puná and a jury, with having forged a document purporting to give authority for the delivery of moveable property, and also with having used as genuine the said forged document.

The jury having returned a verdict of guilty on both these charges, the Session Judge passed a sentence of three years' rigorous imprisonment on each. From the conviction and sentence the prisoner appealed.

The Appeal was argued before WARDEN and GIBBS, JJ.

White (with him Pándurang Balibhadra), for the petitioner:—The document, which the accused is said to have forged and used as genuine, bears on the face of it the word

“copy.” The first portion of it purports to be a copy of a report made by the Pátíl of the village of Ambe to the Mámílatdár of Bársi, in which the former brings to the notice of the latter a certain dispute between two of the *rayats* of that village for a share in the crops of a field, and solicits instructions in the matter. At the end of this first portion of the document there occurs the name of the Pátíl. After this comes the order of the Mámílatdár containing instructions for the disposal of the matter referred to him, and, last of all, his name, and the designation of his office. The whole of the document, from beginning to end, including the alleged signatures, is said to be in the same handwriting, and has been treated as such by the Session Judge. Now it has been proved in the case by the Mámílatdár that he never wrote an order of the kind. The paper alleged to be forged, therefore, purports to be a copy of a document which had no existence. The making of such a paper is, I submit, no forgery within the meaning of Sec. 467 of the Indian Penal Code. It is only a copy of such a document as is contemplated in that section. All the sections of the Penal Code on the subject of documents, and the illustrations given by the Legislature, refer to originals. [GIBBS, J.:—Is not the definition of the word “document” given in the Penal Code comprehensive enough to take in a document of this nature? although I see there is no illustration regarding a copy. The sections and illustrations all refer to originals, and Russell apparently only notices the cases of copies of decrees of court and of Government records, which are punishable under special statutes.] Even the definition in the Code refers to originals. At best, the accused may be said to have concocted a document; but every concoction of a document is not forgery. Supposing A says to B he has got a promissory note from B, and threatens to sue him if he does not pay the money due upon it. B finds that the document in possession of A purports to be a copy of a promissory note by B. If B had never given a promissory note, A cannot be convicted of forgery or of uttering a forged document, but of cheating he may be. I, therefore, submit that the conviction and sentence should be annulled.

1868.

REG.

v.

NA'RO GOPA'L.

1868.
 REC.
 v.
 NA'RO GOPA'L.

Dhirajlal, contra :—Looking to the definition given in Sec. 464 of the Penal Code, the document appears to be an original; at all events it has the effect of an original. [WARDEN, J. :—We are of opinion that it is a copy, and has not the effect of an original document.] [GIBBS, J. :—The document, if a genuine copy, is not such a document as that moveable property could be transferred under it. It does not purport to be an attested copy, and no Government officer would act on such a paper. It purports to be an unauthenticated copy of an order supposed to have been given by the Mámlatdár of Bársi, but which in fact was never given.] If that be the opinion of the Court, I beg that an order may be made for a re-trial of the accused on an appropriate charge.

White, in reply :—Unless the Code expressly gives power to the Court to order a new trial, it must be left to the prosecution whether the accused should be proceeded with under some other charge. The Code nowhere gives such power, and the Court, therefore, cannot interfere. [WARDEN, J. :—The Court has frequently given such directions, but never in a case tried with the aid of a jury, because as yet in no instance has it been found necessary to annul the proceedings in a case so tried.]

PER CURIAM :—The accused has been convicted, under Sec. 467, of having forged a document purporting to give authority for the delivery of moveable property, and, under Sec. 471, of having used as genuine a forged document. The document which is alleged to have been forged purports to be a copy of an order which is supposed to have been given by the Mámlatdár, and it has, all throughout the proceedings of the Magistrate and Session Judge, been treated as such, and the Session Judge, in his summing up to the jury, spoke of it as “a copy.” This being the case, we consider that the conviction of the accused under Sec. 467 will not hold good; for this forged paper, being only a copy and unauthenticated, would not, if genuine, be a document which could give authority to deliver moveable property. As the conviction under Sec. 467 falls to the ground, the conviction under Sec. 471 must likewise fall to the ground; for “making

use of a forged document" is not one of those offences which of themselves are triable by a jury, unless the document used is of a nature the forging of which is punishable with ten years' imprisonment, which we hold the document in this case not to be. Under these circumstances, we annul the conviction and sentence, as well as the proceedings of the Session Judge, leaving it to the Magistrate, if so advised, to put the accused on his trial on some other charge.

Conviction and sentence annulled.

REG. V. DHANIA' DA'JI.

July 23.

Causing to be taken an unwholesome thing with intent to injure—Criminal Intention—Ind. Pen. Code, Secs. 81 and 328.

Held that a person who placed in his toddy-pots juice of the milk-bush, knowing that if taken by a human being it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under Sec. 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure;" and that Sec. 81, which says that "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.

THIS was an appeal to the High Court from a conviction and sentence passed upon the accused by C. G. Kemball, Session Judge of Súrát.

The facts of the case appear sufficiently from the following extracts from the finding recorded by the Session Judge:—

"The accused owns some date-trees at Títhal, from which the toddy was being constantly stolen; and he, as he says, to detect the thief, put into certain of the pots some of the juice of the milk-bush.

"On the night of the 21st ultimo some soldiers belonging to the Títhal Sanitarium sent out, as they say, to buy some toddy. The wardboy who was despatched went to the trees belonging to the accused, where he bought, he alleges, not from the accused, but from some third person, some toddy. At all events, he brought from those trees a pot full of toddy, and delivered it to the gunner Filloley, who drank some and handed it on to certain of his comrades and the