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.

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

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 Súrat.

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

1868.

REG. v. DHANIA' DA'JI.

wardboy, who all drank thereof. Shortly after they were all seized with vomiting and purging, and a burning sensation in the throat; the Staff Assistant Surgeon was sent for, who at once applied the stomach-pump. All recovered soon from the effects of the liquor, with the exception of one man, in a more delicate state of health, who was confined to his bed for a time. The Assistant Surgeon deposes that he took the pot in which the remains of the toddy were, and the following day gave a portion to a fowl, which died.

"That some unwholesome thing was put by the accused into the pot or pots of which he expected to be robbed of the contents, and that certain soldiers and the wardboy partook of the liquor thus drugged and dosed, is perfectly clear. The only questions which remain for consideration are—whether, first, the accused can be said to have administered or caused to be taken the noxious thing; and, secondly, whether the accused knew that it would be likely that he would cause hurt.

"Upon the first, I think, there is sufficient evidence of the administering or causing to be taken. The act of the accused was not that of an innocent person placing poison or other unwholesome thing in a place where he could not reasonably suppose that it would fall into the hands of some person ignorant of its nature. He admits, on the contrary, that he expected his pots would be robbed again of their contents, as they had been so often before, and he put the unwholesome drug in with the intention that it should be taken by the thief. * * *

"I next come to the intention to injure. The assessors have thought that, because the accused was engaged in the laudable endeavour to detect the thief of his property, he cannot be held to have intended to cause injury; but the accused says himself that he knew the milk-bush he put in would cause purging. * * *

"The Court, differing from the assessors, finds that Dhaniá Dáji is guilty of the offence specified in the charge, namely, that Dhaniá has committed the offence of causing to be taken an unwholesome thing with intent to injure, and

has thereby committed an offence punishable under Sec. 328 of the Indian Penal Code; and the Court directs that the said Dhaniá suffer simple imprisonment for two months."

1868.

REG. v. DHANIA' DA'JI.

The case was heard this day before NEWTON and TUCKER, JJ.

Nánábhai Haridás for the petitioner.

Dhirajlál Mathurádás for the prosecution.

PER CURIAM:—We are of opinion that Sec. 328 of the Indian Penal Code applies to this case. It says that whoever causes to be taken by any person any poison &c. knowing it to be likely that he will thereby cause hurt, shall be punished, &c. In order to meet this definition it is not necessary that the hurt should be caused to any particular person intended, or that the person injured or likely to be injured should have been previously known. The accused, with the object of punishing or detecting the stealers of his toddy, mixed a poisonous drug with it, supposing that they might drink it, and he must have known it to be likely that it might be drunk by others, and that they would suffer in consequence. We consider, therefore, that he "caused it to qe taken," within the meaning of the section. The case does not come within the provisions of Sec. 81 of the Indian Penal Code, which applies only to acts done without any criminal intention to cause harm.

We must reject the petition.

Petition rejected.

REG. v. VITHOBA' bin SOMA'.

July 30.

Imprisonment in default of payment of fine—Ind. Pen. Code, Secs. 40 *and* 65—*Crim. Proc. Code, Sec.* 45—*Salt Revenue Act* (*XXXI. of* 1850), *Sec.* 3.

Sec. 45 of the Criminal Procedure Code makes applicable the provisions of Sec. 65 of the Indian Penal Code not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under Sec. 21 of the Criminal Procedure Code.

Imprisonment for one month awarded in default of payment of a fine under Sec. 3 of the Salt Revenue Act (XXXI. of 1850) was accordingly reduced to three weeks' simple imprisonment.

THIS was a case referred for the orders of the High Court by J. Elphinston, Acting Magistrate of the District of Cánará, with the following remarks:—