

1874. has committed an act of house-breaking, the fact of which
 REG. has been proved *aliunde*. In the present case it is attempted
 v. to use the possession of the implements of forgery as evidence
 PARBHUDA'S. that a forgery has been committed.

But excluding the evidence thus improperly admitted, I am of opinion that there remains sufficient to sustain the conviction. The greater part of the evidence for the prosecution has been believed by the Sessions Judge and the assessors ; and I do not think that, as a court of appeal, we should be justified in dissenting from the view taken by them, merely because evidence of the same description is frequently manufactured. I have no hesitation in expressing my opinion that the evidence of the complainant having executed a bond to prisoner No. 3, by which it has been attempted to rebut the evidence for the prosecution, is, even if it be admissible, wholly unreliable.

I concur in confirming the conviction and sentence.

Conviction and Sentence confirmed.

[APPELLATE CRIMINAL JURISDICTION.]

Feby. 11.

REG. v. GULA'BDA'S KUBERDA'S.

Session Case—Criminal Procedure Code, Secs. 4, 296, and 473—Jurisdiction—Giving false evidence in a judicial proceeding—Contempt of Court—Session Court—Assistant Session Judge.

To make a case a "session case" within the meaning of Section 4 of the Code of Criminal Procedure, it is not necessary that it should be triable exclusively by the Court of Session.

For the purposes of Section 473 of the Code, an Assistant Session Judge is a different Court from the Session Judge. Accordingly, an offence, which is committed in contempt of the Session Judge's authority, is cognizable by an Assistant Session Judge.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction. The accused Guláb-dás was tried, and convicted by J. W. Walker, Assistant

*Session Judge of Ahmedabad, of the offence of giving false evidence in a judicial proceeding, and sentenced to three years' rigorous imprisonment. He made an appeal to W. H. Newnham, the Session Judge, which was rejected.

1874.
REG.
GULA'BDA'S.

The accused, Gulábdás, was charged with having given false evidence in the case of *Reg. v. Govind Narsi*, tried by Mr. Melvill in September 1873. This charge was at first inquired into and dismissed, but the accused was subsequently directed to be committed by the Session Judge.

The application to the High Court was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Leith (with him *Shántáram Náráyan*):—The commitment of the accused is illegal in this case, as it is not a "session case." Section 4 of the Code of Criminal Procedure defines this phrase by saying that it means and includes all cases specified in column 7 of the fourth schedule to this Act, as cases triable by a Court of Session and all cases which Magistrates commit to a Court of Session, although they might have tried them themselves." The former part of this definition is intended to meet cases exclusively triable by the Court of Session and the latter part to cases which the Magistrates themselves commit of their own accord without any order from the Court of Session. *In re Haran Mandal (a)*. [WEST, J.:—Another objection may be suggested to the trial of the case. The offence of giving false evidence is a contempt of court, and was committed before the Court of Session. Can the Assistant Session Judge, who is only a branch of that Court, try it?] This is a question of jurisdiction, and I take the objection. Section 15 of the Procedure Code provides only one Court of Session for every sessions division.

Dhiraílál Mathurádás, Government Pleader, for the Crown:—Wherever the Legislature intended that a case should be triable by a Court of Session exclusively, they have expressly made use of that word, as, for instance, in Section 347. The power to order commitment was given to that Court

1874.
 REG.
 v
 GULA'BDA'S.

by Section 435 of the old Code ; and the new one does not take it away. With regard to the second objection, the Assistant Judge should be regarded as a separate Court from the Session Judge ; for, otherwise, a man guilty of a grave misstatement before a Session Court must be sent for trial to a Magistrate who cannot award more than two years' imprisonment, while if he makes a misstatement, however unimportant, before a Magistrate, he renders himself liable to a sentence of seven years.

Leith in reply.

WEST, J. (in delivering the judgment of the Court said) :—
 On consideration, we have arrived at the conclusion that this is a “ session case.” Section 435 of the Code of Criminal Procedure of 1861 as amended by Act VIII. of 1869 gave power to the Court of Session to order the commitment of an accused person discharged by the Magistrate in case of an offence triable exclusively by that Court or by that Court and the District Magistrate ; and there is nothing in the present Code of Procedure to indicate an intention to limit the authority of the Court of Session within narrower bounds. The latter part of Section 296 provides “ that in session cases, if a Court of Session or Magistrate of the District considers that a complaint has been improperly dismissed or that an accused person has been improperly discharged by a Subordinate Court, such Court or Magistrate may direct the accused person to be committed for trial.” The true construction of this, we think, is that a Court of Session may direct commitment in any case specified in Schedule IV. to the Code as triable by that Court, although there may also be a specification of the offence as triable by a Magistrate. In order that a case may be a session case within the meaning of Section 4 of the Code, it is not necessary that it should be triable exclusively by a Court of Session.

Considering this case, therefore, to be a session case, we must hold that the Court of Session, no doubt, had power to order the committal of it under Section 296.

The next question is a more difficult one. It is whether the offence of giving false evidence having been committed

by the accused in contempt of the authority of the Court of Session, the Assistant Session Judge, who is only a branch of that Court, has jurisdiction to try it. Section 473 of the Criminal Procedure Code says that, with certain exceptions, no Court shall try any person for an offence committed in contempt of its own authority. The intention of the Legislature in this language may be the more easily perhaps gathered if we consider the definition of the phrase "Criminal Court" in Section 4. It is there enacted that "Criminal Court" means and includes every Judge or Magistrate, or body of Judges or Magistrates inquiring into, or trying any criminal case, or engaged in any judicial proceeding." This definition is a personal one; a change of the Judge involves a change of the Court. Reading Section 473 by the light of Section 4 thus construed, we think the intention of the Legislature was to ensure that no Judge, who had formed any (even a provisional) opinion upon a case, should be the one to try it. The Assistant Judge is thus, for the purposes of Section 473, and according to the view of the Legislature, a different Court. This construction is not inconsistent with Sections 17 or 18 of the Code which provide for the appointment of Joint and Assistant Session Judges. In one sense, no doubt, the Session Judge, the Joint Judge, and the Assistant Judge may be regarded as one Court of Session; but for the purposes of Section 473, we hold them to be separate. This construction, where it applies, removes the anomaly that a person who makes an unimportant false statement before an inferior tribunal is liable to be imprisoned for seven years on trial by a Court of Session, whereas one who falsely makes a grave misstatement before a Court of Session must be sent to a Magistrate and cannot be punished with more than two years' imprisonment.

We must, therefore, reject the petition of the accused Gulábdás.

1874.

 REG.
 v.
 GULÁBDA'S.