

Máhádev : *Dabee Rawoot v. Heeramun Muhatoon.*<sup>(1)</sup> As to Vishnu, the sub-purchaser of part of the property, the same considerations apply. He knew of Satyabhámábái's position and her claim. If, with this knowledge, he chose to purchase from Lakshman, himself but recently become vendee, he took the property with the same risks as Lakshman. If he acted in good faith and with due care, he is entitled to protection for his purchase.

These being the principles on which the case ought to have been disposed of, and the question of notice, except as an element of the larger question of whether Satyabhámábái's interests were fraudulently touched by Lakshman's purchase, not being determinative of the rights of the parties, I think that the decision of the case solely by reference to that question in the Court below is to be regarded as having shut out the consideration of the really decisive issues. Was the sale justifiable under the circumstances? Was it unfairly prejudicial to Satyabhámábái's rights or remedies? Was Lakshman's and was Vishnu's purchase made under such circumstances that the property passed to each or either of them exonerated from the liability to support Satyabhámábái with which it was burdened in the hands of Máhádev? That these questions may be dealt with in the form prescribed by my Lord the Chief Justice, we must reverse the decree of the District Court, and remand the cause for re-trial and a new decree on the merits.

*Decree reversed and case remanded.*

(1) 8 Calc. W. R. 223.

### [APPELLATE CRIMINAL.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.*  
 IMPERATRIX v. BHAWANI BIN PANDUJI AND SAKHÁRAM BIN  
 KHUNDOJI.\*

*Criminal Procedure Code (Act X. of 1872), Section 263, Clauses 4 and 5—Dissent of Court from verdict of jurors.*

The "dissent" referred to in the 4th clause of section 263 of the Criminal Procedure Code (Act X. of 1872) must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case to the High Court.

THE prisoners Bhawáni and Sakháram were tried by a jury before H. Phillpotts, Acting Sessions Judge of Poona, on a charge

\* Criminal Appeal No. 15 of 1878.

1877.

LAKSHMAN  
 RA'MCHAN-  
 DRA JOSHI  
 AND ANOTHER  
 v.  
 SATYA-  
 BHA'MA'BA'I,

1878.  
 February 14.

1878.

IMPERATRIX  
".  
BHAWA'NI  
BIN PANDUJI  
AND SAKHA'.  
RA'M BIN  
KHUNDOJI.

of forgery under section 469 of the Indian Penal Code. The jury, by a majority of 4 to 1, found the prisoners guilty of the offence; but the Sessions Judge disagreed with their verdict. He, however, convicted the prisoners, and sentenced them, each, to suffer rigorous imprisonment for a period of three years. His finding contained the following passage:—"The Court disagrees with the verdict of the majority. But, as it is entirely a case depending on the appreciation of the evidence and the habits and customs of the natives, and as they must be more familiar with the motives which actuate these people, and what they would be likely to do, than a foreigner, the Court will not send up the case under section 263."

The prisoners appealed to the High Court.

*Shámrao Vithal* for the prisoners:—The Sessions Judge, having disagreed with the verdict of the jury, ought to have submitted the case to the High Court, as required by clause 5, section 263, of Act X. of 1872. His omission to do so, rendered the conviction and sentence illegal. They must, therefore, be set aside. The learned pleader referred to *Imperatrix v. Hari Ghannu*.<sup>(1)</sup>

*Nánábhái Hariddás* (Government Pleader) appeared for the Crown.

PER CURIAM:—This case depends upon the 4th and 5th clauses of section 263 of the Criminal Procedure Code. These clauses are not very clearly drawn; but taking them together, as we are bound to do, in order to ascertain the meaning of the Legislature, we think that the "dissent," spoken of in the 4th clause, must be such a complete dissent as to lead the Judge to consider it neces-

(1) In this case, the prisoner Hari Ghannu was tried by a jury before H. Phillpotts, Acting Sessions Judge of Poona. The jury returned a verdict of not guilty, with which the Sessions Judge disagreed. He, however, acquitted the prisoner (16th November 1877), but did not think it necessary to refer the case to the High Court, under section 263 of Act X. of 1872. The Government of Bombay thereupon preferred an appeal against the Sessions Judge's order of acquittal, and the High Court (Westropp, C. J., and Melvill, J.) admitted the appeal, holding that Government had a right to appeal against an acquittal by a jury, where the Judge differed from the jury, although he did not consider it necessary to submit the case to the High Court. On the receipt of the record of the case, the High Court (Melvill and Kenlall, JJ.), on the 21st March 1878, found on the evidence the prisoner guilty of the offence charged, and sentenced him to transportation for life.

sary for the ends of justice to submit the case to the High Court. There being no such complete dissent in this case, we think that the conviction and sentence must stand. This decision is not in conflict with our decision in *Imperatrix v. Hari Ghanu*, where we held that Government might appeal against an acquittal by a jury where the Judge differed from the jury, but did not consider it necessary for the ends of justice to refer the case to the High Court.

1878.

IMPERATRIX  
v.  
BHAWA'NI  
BIN PANDUJI  
AND SAKHA'  
RA'M BIN  
KHUNDOJI.

*Conviction and sentence upheld.*

[APPELLATE CRIMINAL.]

*Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Kembal.*

*In re* TUKARA'M VITHAL.\*

February 21.

*The Bombay District Municipal Act No. VI. of 1873.*

Non-compliance with notices issued by the Municipality under section 36 or cl. 1 of section 39 of the Bombay District Municipal Act No. VI. of 1873 is not an offence punishable under the Act, as clause 1 of section 74 of that Act does not apply to either of those provisions. The latter clause applies only to the 2nd clause of section 39.

THIS was a reference, under section 296 of the Code of Criminal Procedure, by William Ramsay, Magistrate of the District of Násik, submitting, for the orders of the High Court, the proceedings of Ráv Sáheb Shridhar Gundo, Subordinate Magistrate, Second Class, at Násik.

In submitting the proceedings the District Magistrate said: "The municipality of Násik, through their secretary, brought a complaint against one Tukárám walad Vithal Kásár and another for failing to comply with a notice issued under clause 1 of section 39 of the Municipal Act by the Second Class Magistrate of Násik. The latter threw out the complaint (apparently under section 147 of the Criminal Procedure Code) on the ground that section 74, clause 1 of the Act, sanctioning penalties, applies only to the second clause of section 39, above quoted. The municipality, through their chairman, have now appealed to me to use the power vested in me under section 298 of the Criminal Procedure Code, and direct the Subordinate Magistrate to take up the case again and try it.