

THE QUEEN v. PERERA.

D. C. (Crim.), Colombo, 1,488/44,279.

1898.

March 7.

Using as genuine a forged valuable security—District Court—Jurisdiction—Ceylon Penal Code, ss. 456, 459, and 392—Ordinance 1 of 1888, s. 11.

Under section 11 of Ordinance No. 1 of 1888, District Courts have jurisdiction to try the offence of uttering all forged documents in the nature of valuable securities knowing the same to be forged, although the offence of forging such documents is triable only by the Supreme Court.

THE accused, who was clerk and interpreter of the Itinerating Police Magistrate, Western Province, was charged (1) with fraudulently and dishonestly using as genuine a forged document purporting to be a valuable security, knowing the same to be forged, an offence punishable under sections 456 and 459 of the Ceylon Penal Code; and (2) with criminal breach of trust as a public servant, an offence under section 392 of the Penal Code.

At the trial the accused's counsel took objection to the jurisdiction of the District Court on the ground that the offence laid in the indictment was abetment under section 459 of forgery of a document of the class mentioned in section 456, and that as the maximum punishment for that offence may extend to twenty years the District Court had no jurisdiction to try it. He quoted in support of his objection the case of *Reg. v. Rangaram Malji*.

1898.
March 7.

It was contended on behalf of the Crown that the indictment being under section 459 the District Court had jurisdiction; and the Additional District Judge (Mr. Pagden) overruled the objection in the following terms :—

“The case quoted from the Indian Courts, *Reg. v. Rangaram Malji* (Bombay High Court Reports) seems hardly in point. There it was held that the Sessions Court had no right to punish with the severer punishment or try by a jury a man who has only been indicted for the lesser offence, which is punishable in India with only two years, and therefore should have been tried by a First Class Magistrate.

“There is no question of course that a charge of forging a document such as is mentioned in section 456 is beyond the jurisdiction of this Court. There is equally no doubt that a charge of using a forged document under 459 is punishable by this Court. The present question is, whether using a document under sections 459 and 456 is beyond the jurisdiction of this Court. It is section 459 which prescribes the punishment, and if it is said what that punishment was the offence would certainly be triable by this Court. Section 459, however, does not say this. It says, ‘shall be punished in the same manner as if he had forged such document.’ We must therefore consider where the punishment is to be found. It is to be found by referring to section 456, but, be it noted, that section 456 does not deal with uttering or using documents, but only with forging them. Then we come to section 11 of the Procedure Code. Any offence under the Penal Code may be tried by any Court by which such offence is shown in the 7th column of the 2nd schedule to be triable. Now, the offence in this case is under section 459 and not section 456, for the latter section is only referred to for ascertaining what punishment can be given under section 459. It is the latter section and not the former which really prescribes the punishment. The District Court has therefore jurisdiction, and I overrule the objection and call on accused to plead.”

After hearing evidence the District Judge found the accused guilty, and the accused appealed.

Dornhorst, with *H. Jayawardene* and *H. J. C. Pereira*, for accused.

Drieberg, Acting C. C., for the Crown.

7th March, 1898, LAWRIE, J.—

The accused was indicted for committing the offences punishable under sections 456, 459, and 392, viz., dishonestly using a

forged document, being a valuable security, knowing the same to be forged, and criminal misappropriation by a public servant. The Penal Code treats forgery and uttering forged documents as worthy of the same punishment. Forging of a valuable security can be tried only by the Supreme Court with a jury. It is puzzling to find that the legislature, by the Ordinance 1 of 1888, section 11, gave jurisdiction to District Courts to try the offence of uttering *all* forged documents, both those the forgery of which *can* and those the forgery of which cannot be tried by the District Courts. It may be that it was intended to give District Courts only the power to try uttering of ordinary forged documents punishable under sections 454 and 458, but the words of the Ordinance are clear and extend to the uttering of all forged documents.

It is impossible to hold that the District Court had no jurisdiction to try the accused on this indictment.

On the merits, I have given the best attention to the evidence. After careful consideration I affirm.

1898.

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LAWRIE, J.

