OWEN *v.* RATNAIKE *et al.*

D. C., Matara, 9,429.

1899.
April 26.

Criminal Procedure Code, ss. 181, 182, 213, and 347 (b)—Trial with assessors—Duty of assessor to state his opinion and reasons therefor —Power of Supreme Court to alter verdict in appeal.

Per WITHERS, J.—In plain cases where the witnesses testify without serious contradiction to a state of facts which amount to an offence and which is not met by the accused, one would not expect or require reasons to be given. But where there is a direct conflict of evidence, or where the accused offers an explanation of circumstances which tell against him and that explanation is not accepted, assessors should, I think, give some reason—as succinct as possible—why in the one case they prefer to believe the case for the prosecution or, in the other, why they are not satisfied with the accused's explanation.

It is in the power of the Supreme Court sitting in appeal to alter under section 347 of the Criminal Procedure Code, a verdict of riot into one of intentional use of criminal force.

IN this case six persons were jointly charged with unlawful assembly, riot, and criminal trespass, and tried by the District Judge with assessors. At the conclusion of the case for the defence the District Judge summed up and called upon the assessors "to give their verdicts." The assessors gave their verdicts without stating any reason, and the District Judge considered their opinions correct and found the accused guilty of various offences as declared in the verdict and sentenced them to various imprisonments.

The accused appealed.

Dornhorst (*Jayawardana*, and *Van Langenberg* with him), for the appellants: Assessors should have stated their reasons. (Criminal Procedure Code, section 213; Indian Criminal Procedure Code, section 307; 3 Weekly Reporter, *Cr. Rul.* 6 and 21). There is no evidence of unlawful assembly, and that charge and riot cannot stand together.

Ramanathan, S.-G.:—In section 213 of the Civil Procedure Code the District Judge is required to call upon the assessor to state his "opinion" only. Opinion is one thing, and reason for opinion is another thing. He referred to sections 181, 182, and 347 (*b*) of the Procedure Code, and urged it was open to the Supreme Court to alter the verdict.

26th April, 1899. WITHERS, J., reviewed the evidence at length and gave judgment as follows on the law points raised:—

This was just the case in which a District Judge might derive great help from having competent and respectable people of the district associated with him at the trial. Unfortunately this Court does not derive much help or gain, much enlightenment either, from the judgment of the Judge or the opinions of the assessors. The points for determination are not stated in the judgment, and no reasons are given for the decision. The

1899. *April 26.* WITHERS, J.

assessors were called upon to give their verdicts, but they are not jurors, and they do not give verdicts. The Judge, in my opinion, is the ultimate Judge of law and fact, for he is not bound to conform to the opinion of the assessors.

It was made a point by the appellant's counsel that not only should the opinion of each assessor have been recorded, but reasons for his opinion as well. Reliance was placed on judgments of some of the High Courts in India, which have declared that not only the result arrived at by each assessor sitting on a sessions trial should be recorded, but if possible the reasons by which each assessor arrives at the result. In plain cases where the witnesses testify without serious contradiction to a state of facts which amount to an offence and which is not met by the accused, one would not expect or require reasons to be given. But where there is a direct conflict of evidence, or where the accused offers an explanation of circumstances which tell against him and that explanation is not accepted, assessors should, I think, give some reason— as succinct as possible—why in the one case they prefer to believe the case for the prosecution or, in the other, why they are not satisfied with the accused's explanation. Again, if a Judge happens to defer in opinion from his associates, it is important to know what the reasons for the assessors' opinions are, that they may be compared with the reasons of the dissenting Judge.

I think it is in my power to alter the verdict of riot against the first accused into one of the intentional use of criminal force under section 341, and I alter the verdict against him accordingly. One of the objects of the alleged unlawful assembly, as I said before, was to commit an offence against the person of the complainant. Now, if the first accused was present and incited the other accused to seize the complainant and drag him out of the boutique and they attempted to do it, he was clearly guilty of the intentional use of criminal force.

In the result, the first accused is acquitted of riot and unlawful assembly and convicted of the intentional use of criminal force. His acquittal in the lower Court of house trespass stands affirmed.

The second, third, fourth, fifth, and sixth accused are acquitted of the charges of riot and unlawful assembly. The sixth accused is acquitted of the charge of riot. The convictions of the second, third, fourth, fifth, and sixth accused of house trespass will stand, but their respective sentences of imprisonment will be altered to a fine of Rs. 10 each, in default two weeks' rigorous imprisonment.

The sentence of the first accused will be altered to a fine of Rs. 50, or in default six weeks' rigorous imprisonment.

These sentences will, I think, sufficiently meet the ends of justice in this case.