THE KING *v.* SUPPAIYA.

1901.
May 20.

D. C., Kandy, 1,279.

Criminal breach of trust—Penal Code, s. 391—Payment of money to servant for the use of the master—Denial of receipt by servant—Presumption of misappropriation.

A servant who receives money on behalf of his master and enters the amount received in his master's book, but afterwards denies the receipt of the money, is liable under section 391 of the Penal Code.

His false denial of the money received is *primâ facie* evidence of dishonest misappropriation.

THE accused in this case, being a servant of the complainant Karpaya Kankani, was charged under section 391 of the Penal Code with having committed criminal breach of trust in respect of three sums of money, viz., Rs. 80, Rs. 125, and Rs. 220, entrusted to him on the 14th, 16th, and 29th July, 1900, respectively.

The case was heard with the aid of assessors.

It appeared that when the complainant left the Island in April, 1900, he appointed the accused and one Vellasami his attorneys to act jointly in all money transactions. In September, 1900, complainant returned to the Island, in consequence of a telegram he received from his brother, who had been sent by him to see how his business was getting on. Complainant met the accused on his return and they went through the account

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books in the presence of some Chetties. A large deficiency was discovered, whereupon the accused wrote and signed an ola admitting the deficiency. The three sums in question formed part of the deficiency.

The District Judge acquitted the accused in regard to the two sums of Rs. 80 and Rs. 125, but as regards the sum of Rs. 220 he found as follows:—

"That amount was paid to him direct by Palaniappa Chetty, who has been credited that in the ledger, the entry being in the accused's handwriting. Accused denies the receipt of that amount. For the prosecution there is the evidence of Palaniappa that he paid the accused, and he is corroborated by the ledger. Accused admits that the ledger entry is in his handwriting, but he says he wrote it at the request of the complainant after his return from India, and that complainant threatened to beat him if he did not write it."

The assessors and the District Judge were agreed that the accused was guilty of criminal breach of trust in respect of Rs. 220. Being sentenced to rigorous imprisonment for two years, he appealed.

Senátirája, for appellant.—Section 391 relates to transactions between master and servant, but it has not been proved that the sum of Rs. 220 in question belonged to the complainant. The evidence is that a third party, Palaniappa, paid the money to the accused, and that he secured himself by taking a promissory note on a subsequent day from the accused for the amounts alleged to be paid to him. There was no dishonest misappropriation (*Queen v. Costa*, *2 C. L. R. 205*). The circumstances of the present case are similar to those of *R. v. Hodgson* (*3 Car and P. 422*), where it was held that a clerk, whose duty it was to receive moneys daily at Newcastle, to enter the moneys received in a book, and to remit the amount weekly to Liverpool, and who, having correctly entered the receipts in the book, failed to remit the moneys received, was not guilty of embezzlement, Vaughan, B. observing, "it is only a default of payment; the mere fact of not paying is not a felony, but matter of account only." [Counsel argued on the merits also.]

Rámanáthan, *S.-G.*, for respondent.—The money which the accused received from Palaniappa is proved to have been paid for and on account of the complainant. The case of *R. v. Hodgson* cited for appellant was decided in 1828, but it has been overruled by *R. v. Lister*, *26 L. J. M. C. 26* (*1856*). Pollock, C. B., entirely dissented from the dictum of Vaughan, B., and held that entering

the amount received in the ledger did not exempt the prisoner from liability to the charge of having embezzled the money. In the present case, the accused denied the receipt of the money proved to have been paid to him. His denial and subsequent conduct in not accounting to his master were evidence that the original taking was with dishonest intention (*R. v. Taylor, 3 Bos. & Pul, 597*). In *Queen v. Costa* (*2 C. L. R. 206*) Mr. Justice WITHERS held that non-payment of the sums received by the accused to the shroff, to whom he should have paid them, was reasonable presumption of misappropriation.

Cur. adv. vult.

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Karpaya (the complainant) was a kankani on an estate, and also had a boutique at Ramboda: he went to India in April, 1900, leaving two attorneys, Vellasamy to manage his estate business and Suppaiya (the accused) to manage the boutique. Of Suppaiya, he said: "he was to be in my boutique and attend to the work there, and he was to keep the accounts." The power of attorney left by Karpaya gave authority to his two attorneys jointly, acting together, to borrow money, but the complainant admits that he relaxed that by authorizing Palaniappa Chetty to advance money on the written order of one of the attorneys only.

In July, 1900, Suppaiya asked Palaniappa Chetty to pay Rs. 20 for cart hire and Rs. 200 in cash, which was paid and entered as a payment to, and for, Karpaya, both by Palaniappa and, by Suppaiya. It is plain, I think, that Palaniappa did not look entirely to the complainant for payment. He had no authority to pay to one of the attorneys without a written order, and that he did not look to the complainant alone is, I think, plain from a significant passage in Palaniappa's evidence (which is not alluded to by the District Judge), that he got two promissory notes for Rs. 500 each from the accused, which were discounted at the bank and were dishonoured by the accused. Take with this the passage in the complainant's evidence: "I repudiate all promis-" sory notes and orders signed by accused alone, but I consider " myself liable to pay whatever he has entered in my account."

The fact that Palaniappa secured himself, by taking a promissory note from Suppaiya, for moneys advanced to him for Karpaya, however, does not necessarily change the character of the transaction, and I am of the opinion that the District Judge was right to presume that in getting this money from Palaniappa, the accused got it in trust to apply to the purposes of the boutique of which he was manager. I wish that were quite certain, but I think, as I said, it is a fair presumption to be drawn from the

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whole facts of the case, including the accused's defence, for if he had said "I borrowed the Rs. 200 from Palaniappa for my own use, and he knew that and made me give him a promissory note," the fact that he entered the payment in his master's book would not have been conclusive that he got it on trust.

The fact seems to be that the accused was (to say the least of it) a bad manager, and it is said that when the complainant returned in September he found his accounts in a mess; it took days, weeks I think, to get a balance sheet made up. The balance showed a deficit; it may be that the deficit was caused by bad times, bad debts, losses in legitimate trade. The reason why the small claim of Rs. 220 has been selected as one regarding which the accused was guilty of criminal breach of trust is that he denied he had received the money, and stated he had been forced involuntarily to make the entry in his books.

I have not had the advantage of seeing the books, and I do not know whether the District Judge and the assessors devoted their special attention to the entry. I presume there was nothing suspicious in its position or writing to show that it was made subsequently to other entries.

It is good law, that, when it is proved that an article or a sum of money has been placed in a man's hands in trust for another, with a duty to hand it over or to pay it, the false denial that there was a placing or paying is *primâ facie* evidence that the article or money, proved to have reached the accused in trust, was applied by him to his own use. It is not quite so clear that the same rule applies when the payment is part of a series of continued and complicated transactions, when the actual sum of money was not to be paid in the same cash, but was to be applied for the purpose of a business, which needed ready money for payments and purchases.

In this case I think the accused's statement to the Magistrate of much consequence. It is this: "I took a little money, but I did "it through ignorance. I have left the money at my uncle's. I "will get it and return it to the kankani and go back to work "under him."

Take that with the statement which the complainant says the accused made to him: "I asked him what he had done with the "Rs. 220. He said: "I spent some of it,' and that he left what remains with his uncle. He has not been able to pay either Palaniappa or the complainant. The sum taken is small. In the circumstances I think the sentence of two years too severe. I reduce it to six months, in addition to the period already spent in jail.