REX *v.* CADERAMEN.

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Forged document—Boat licences granted under Ordinance No. 6 of 1865—Valuable security—Penal Code, ss. 28, 456, and 459—Amendment of indictment and conviction—Evidence Ordinance, s. 132—Evidence in civil case tendered in criminal prosecution—Duty of witness—"Shall not be excused from answering any question"—Evidence given voluntarily—Evidence given on compulsion of Court.

Boat licenses granted under Ordinance No. 6 of 1865 are not valuable securities.

[MIDDLETON, J., dissenting:—As the issue of a license to a boat under the Ordinance No. 6 of 1865 gives to its owner a legal right to share in the monopoly of landing cargo and passengers, it is a valuable security within the meaning of section 28 of the Penal Code.]

A conviction upon an indictment for fraudulently and dishonestly uttering forged boat licenses is good under section 459 of the Penal Code.

Where the indictment laid the offence under sections 459 and 456 of the Penal Code, and the jury brought in a verdict of guilty under both those sections, it is open to the Supreme Court in revision to amend the indictment and conviction by striking out section 456, and to pass a suitable sentence under section 454.

In sub-sections 2 and 3 of section 132 of the Evidence Ordinance, the word "compel" refers to the course taken by the Judge to press a witness, who either refuses to answer questions or asks to be excused from answering. It does not apply to a witness who gives his evidence without raising any objection and without any pressure on the part of the Judge.

A witness is protected against the consequences of what he may say while under examination, but if he wishes to prevent his statements from being used against him as evidence of an offence previously committed, he must object to reply, and only answer on being compelled by the Court.

Where a person has made a statement in a civil case on oath voluntarily, and without compulsion on the part of the Court to which the statement is made, it may be used against him on his trial in a criminal prosecution.

AT the Criminal Sessions of the Supreme Court held in Colombo on the 31st July and 1st August, 1902, Nicholas Caderamen, Bastian Caderamen, and Hugo Perera Gunaratne were tried before Mr. Justice Middleton and a jury. The first accused was indicted for uttering certain forged documents, and the second and third accused for aiding and abetting the first accused in the commission of the said offence.

It appeared that seven cargo boat licenses had been granted on the 31st March, 1899, by the Master Attendant to one John Caderamen, under the Ordinance No. 6 of 1865, available till the 31st December, 1899. The alleged forgery was in respect of the words following, which appeared on the back of each of these licenses, namely, "Transferred over to Mr. N. Caderamen. (Signed) John Caderamen. 10th April, 1900".

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The counsel for the prosecution called witnesses to prove that John Caderamen died on the 24th April, 1900, and that a comparison of handwritings showed that the words above mentioned were not written by him. And one of the witnesses, Mr. J. B. Misso, Secretary of the District Court of Colombo, produced two records of that Court, in which certain statements made by the present first and third accused were recorded, when they gave evidence in that Court. One of these cases (No. 14,502, D.C., Colombo) was instituted by the executor of the late John Caderamen against the first accused and another person in order to try the right to a promissory note which the first accused claimed as against the said executor. The other case (No. 14,505, D.C., Colombo) was brought by the first accused against the maker of the same promissory note. These two cases being consolidated by order of the District Judge, the first accused (defendant in 14,502 and plaintiff in 14,505) gave evidence in the District Court, and Mr. Secretary Misso read it to the jury. The portion relevant to the present prosecution was as follows:—

"We (first accused and John Caderamen) had seven cargo boats, which he (John Caderamen) had purchased for me. The licenses were in his name, but I carried on the business. John said, 'bring the licenses, and I will endorse them over to you'. Those licenses were in one of my drawers, and I brought them to him. When I brought them he wanted the licenses endorsed with the words 'Transferred to N. Caderamen'. I then called in my son Muttiah and got him to endorse the licenses as required. After that was done, John signed underneath. While we were talking about the licenses, the Vidane Arachchi (Gunaratne, the third accused) came in quite casually. Bastian and the Vidane Arachchi attested John's signature.

"Some time after my brother died, a week or so, I took these licenses to the Master Attendant's Office and gave them to the clerk, J. M. Perera, in order to have my name registered as the owner of those boats. He refused to register my name without the authority of the Master Attendant. He said he was not satisfied that I was the owner on the mere production of the licenses. He said he wanted further proof."

No objection was taken to the reception of the above evidence as against the first accused, but it was argued that the evidence of the third accused, given in the District Court as follows, and read by Mr. Secretary Misso, was not admissible:—

"I went there quite casually as usual. I then found John, Nicholas, one of Nicholas's sons, and Bastian in the office room. I went in there myself, and was offered a seat and sat down.

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They were talking of some Boat Company matters. Nicholas then produced some papers, and his son was asked to write something on the back of them. John said, 'I cannot attend to these affairs; once before I was called a boatman. I must transfer these over to my elder brother'. This remark was made in reply to a question from me. 'Sir, why? Are not these boats yours? Last time also the license was taken in your name. Why do you want to transfer them?' As the boy wrote out each endorsement, John signed them and asked Bastian and me to sign as witnesses, and we did so. Seven of such documents were signed that day. I am acquainted with the signature of Bastian Caderamen. The signature of B. Cadiramen on the seven boat licenses appears to be that of second accused."

Middleton, J., allowed these statements of the first and third accused to go to the jury, over-ruling the objections of the counsel for the accused.

The jury brought in a verdict of guilty against all the accused, according to the indictment, which ran as follows:—

"(1) That you, Nicholas Caderamen, did, in or about the months of May, June, and July, 1900, at Colombo, fraudulently and dishonestly use as genuine, by uttering to one J. Matthew Perera, Chief Clerk to the Master Attendant in Colombo, seven documents, to wit, seven cargo boat licenses drawn in favour of one John Caderamen, and purporting to be respectively endorsed by him in your favour, which endorsements you knew to be forged, the same bearing date the 31st March, 1899, and numbered 735, 755, 803, 761, 819, 835, and 795, respectively, and you have thereby committed an offence punishable under sections 459 and 456 of the Ceylon Penal Code.

"(2) That on or about the month of April, 1900, at Colombo, you, Bastian Caderamen (No. 2 accused) and Mandalige Hugo Perera Gunaratne (No. 3 accused), did aid and abet the said Nicholas Caderamen to commit the said first-mentioned offence of fraudulently using as genuine the said seven cargo boat licenses drawn in favour of the said John Caderamen, and purporting to be endorsed by him to the said Nicholas Caderamen, numbered 735, 755, 803, 761, 819, 835, and 795, respectively, by attesting as witnesses to the forged signature of the said John Caderamen, deceased, on each of the said documents respectively, knowing at the time you so attested the said signatures that the same were respectively forged, and that you have thereby committed an offence punishable under sections 459, 456, and 102 of the Ceylon Penal Code."

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At the request of the counsel for the accused, Middleton, J., reserved the following questions for the consideration and decision of two or more Judges of the Supreme Court:—

(1) Whether he was right in allowing the evidence given by third accused in the civil action to be read to the jury, taking into consideration the terms of section 132 of the Evidence Ordinance?

(2) Whether he was right in holding that there was some evidence to go to the jury, which would support the indictment as laid against the third accused?

(3) Whether as regards all three accused, a boat license can be deemed a valuable security so as to render them punishable under section 456 of the Ceylon Penal Code?

The questions came on for argument before Moncreiff, A.C.J. Middleton, J., and Grenier, A.J., on the 11th of September, 1902.

Walter Pereira (with him *H. J. C. Pereira* and *Elliott*), for the accused.—As regards the first accused, the indictment charged him with an offence under sections 456 and 457 of the Penal Code, which relates to the uttering of forged valuable securities. The seven cargo boat licenses, whether issued in terms of the Ordinance 6 of 1865, sect. 23, or Ordinance 4 of 1900, sect. 5, are not valuable securities at all. Section 28 of the Penal Code defines a valuable security as a document whereby any legal right is created, extended, transferred, or extinguished, or whereby any person acknowledges that he lies under legal liability, or has a certain legal right. The documents in question do not come within this definition. They merely gave power to John Caderamen "to use the boat hereunder described for the purpose aforesaid (*i.e.*, for the conveyance of goods for hire) from the date hereof (31st March, 1899) until the 31st December, 1899." This did not create a legal right in John Caderamen. Even if it did, the documents were of no value whatever at the date of the alleged uttering, for the licenses were issued on the 31st March, 1899, and made available only up to 31st December, 1899. But the date of uttering is laid in the indictment as "the month of May, June, or July, 1900." During these months the licenses were of no authority whatever. They were then expired licenses. [Grenier, A. J.—But is it not too late now to urge this point? The objection should have been taken to the indictment when it was read to the accused.] This point has been specially reserved by the Judge, and cannot now be dismissed on the ground that the objection comes too late. Until the documents were produced at the trial and seen by counsel no objection could be taken. These documents are not valuable securities, but only time-expired licenses. It is submitted

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that section 459 of the Penal Code demands proof of the document being false before evidence of uttering it can be given. As to the document being false, there is nothing to show that any person has been injured by it. In Mayne's *Commentary*, section 463, it is stated, " there must be a possibility of somebody being injured, not deceived only," and there must be also an intent to defraud. *R. v. Tylney (Roscoe, 9th edition, 572); Queen v. Hodgson (25 L. J. M. C. 78).* No evidence has been led to show a possible injury to any person, or intent to defraud, on the part of the first accused. So far as regards the question whether a boat license can be decreed a valuable security, so as to render them punishable under section 456 of the Penal Code. This question affects not only the first accused but also the two others. The next question is whether, in view of section 132 of the Evidence Ordinance, Middleton, J., was right in allowing the evidence given by the third accused in the civil action to be read to the jury. The third accused deposed in the District Court as follows: " John Caderamen signed the documents and asked Bastian (the second accused) and me to sign as witnesses, and we did so." This, if admissible, implicates the third accused, but section 132 of the Evidence Ordinance provides that " a witness shall not be excused from answering any question, &c., in any civil or criminal proceeding upon the ground that the answer to such question may tend to criminate such witness," and that " no answer which a witness shall be compelled by the Court to give shall subject him to any prosecution or be proved against him in any criminal proceeding." It is submitted that the words " shall not be excused from answering any question " denote compulsion, and that, as the evidence of admission relied upon by the prosecution was given under compulsion, it was not admissible before the jury. In *Reg v. Gopal Das (I. L. R. 3 Madras 271)* the Madras High Court was divided in opinion as to the admissibility of the answer. Turner, C. J., and Innes and Kindersley, J. J., were of opinion that, when an accused person had made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement, if relevant, might be used against him on his trial on a criminal charge; but their colleagues, Kernan and Muttusamy Aiyar, J.J., were of a different opinion. In *Queen-Empress v. Ganu Sonba (I. L. R. 12 Bombay 440)* two Judges followed *Reg. v. Gopal Das*, but Birdwood, J., dissenting, stated, " the compulsion is operative, whether the witness asks to be excused or gives the answer without so asking." In this doubtful state of authorities in India, the Supreme Court of Ceylon should

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give its careful consideration to the question whether Middleton, J., was right in allowing the evidence given before the District Judge of Colombo to be read to the jury. The third and last question is, whether Middleton, J., should have allowed the case of the third accused to go to the jury. It is submitted that there was no evidence justifying that course. The fact that the third accused merely put his name on the back of the endorsement impugned is not evidence of abetment. *Reg. v. Kapurale* (*2 N. L. R. 330*).

Rámanáthan, S.-G., for the Crown.—The fact that the indictment mentions section 456 does not render the verdict bad under section 459. The indictment does not in the body of it refer to "valuable securities." The conviction is good under section 459, which refers to the use of false "documents," and it is open to this Court to award sentence under section 454. But the conviction is not bad under section 456. The first accused was in possession of the boats, which possession, known to the Master Attendant, was nine points of the law. With possession of the boats, the first accused took the licenses, purporting to be endorsed, to the Master Attendant, and demanded the registration of the boats in his own name as owner. The licenses having been put forward to back his title, it did not matter whether they were time-expired or not; and as the licenses created a right in favour of John Caderamen to use the boats in the harbour of Colombo, such licences were "valuable securities." The first accused, by means of a forged endorsement on those licenses, tried to persuade the Master Attendant that he was entitled, as *de facto* possessor of the boats and endorsee of the late John Caderamen, to be the owner of them. The first accused thus intended to defraud and to injure the rightful heirs of the deceased Caderamen. He was therefore rightly convicted under section 459. The evidence against the third accused was sufficient to justify his case going to the jury. He is proved to have signed his name as a witness to the forged endorsement some time after the 26th April, 1900, because Mr. L. B. Fernando deposed to the jury that he had a conversation with the first accused on the 26th April, 1900, in the course of which the latter stated that the deceased John Caderamen had offered to transfer the boats to him before the 11th April, but he had told the deceased that there was no hurry then, and what was he to do now? This statement of the first accused made to Mr. L. B. Fernando on the 26th April, 1900, showed that the forgery was committed some days after the death of John Caderamen. If the third accused signed as a witness after the death of John Caderamen, he could have done so only for a fraudulent purpose. As regards the admissibility of

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the third accused's admission made before the District Court, the majority of the Indian Judges were in favour of receiving the evidence.

Cur. adv. vult.

16th September, 1902, MONCREIFF, A.C.J.—

The three accused were tried and convicted at the third Colombo Criminal Sessions, 1902. They were afterwards sentenced, the first accused to five years' rigorous imprisonment, the second to three years' simple, and the third to three years' rigorous imprisonment. At the trial the Judge reserved the following questions:—

(1) Whether he was right in allowing the evidence given by the third accused in the civil action to be read to the jury, taking into consideration the terms of section 132 of the Evidence Ordinance?

(2) Whether he was right in holding that there was some evidence to go to the jury which would support the indictment as laid against the third accused?

(3) Whether, as regarded all three accused, a boat license could be deemed a valuable security, so as to render them punishable under section 456 of the Ceylon Penal Code?

The charge against the first accused was that of fraudulently and dishonestly using as genuine, by uttering to the Chief Clerk of the Master Attendant, seven cargo boat licenses drawn in favour of John Caderamen, and purporting to be endorsed by him in favour of the first accused, knowing the endorsements to be forged; and of having thereby committed an offence punishable under sections 459 and 456 of the Ceylon Penal Code. The second count charged the second and third accused with aiding and abetting the first accused, by attesting the forged signature of John Caderamen on the boat licenses. The offence charged is that defined in section 459, which is to this effect:—

"Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document." In my opinion it was intended to charge the first accused with having made use of valuable securities, with the further intention that if the prosecution failed to prove that the documents used were valuable securities, it would still be open to the jury to convict the accused of using "documents." Section 459 makes use of the words "any document," and it provides no punishment; the punishment for the offence set out in the section is the punishment provided for forging such document. But the mention of sect. 456 in the first count indicates

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that the prosecution intended to prove an offence which would be punishable under section 456. That section deals with the forging of a special class of documents, including valuable securities, and provides a special punishment, which may extend to twenty years rigorous imprisonment; the punishment for simple forgery is provided in section 454, and extends only to five years' rigorous imprisonment. The latter section is not mentioned in the indictment, but—in my opinion—if it be found that the documents used in this case were not valuable securities, it was open to the jury to find the accused guilty in respect of "documents," and for the Judge to sentence them under section 454.

John Caderamen died on the 24th April, 1900. I am satisfied from the evidence that after his death the first accused caused transfers to be drawn up on the back of seven boat licenses which had belonged to his brother John. These licenses were in the house of the first accused, where the deceased had his office. The endorsements purported to effect transfers signed by John Caderamen in favour of Nicholas Caderamen. They were dated the 10th April, 1900, and were witnessed by two persons, purporting to be the second and third accused. As I believe that the transfers were executed after the death of John Caderamen, it is clear to me that the second and third accused, if they are the persons who witnessed the transfers, fully understood the nature of the transaction. The first accused apparently thought that by these endorsements the boats were transferred to him, for he tried to have the licenses renewed, and in order to do so endeavoured to persuade the Master Attendant that he was the owner of his late brother's property. In this he was not successful. If he had succeeded, his name would have been entered in the Master Attendant's books and in the new licenses as owner. In fact the licenses did not carry with them the ownership of the boats. They were only licenses for boats, the numbers of which are specified therein along with the name of the owner. They carried only a right to use them, provided the holder of them had at his disposal the boats bearing the numbers in each license. If these licenses were valid, they were documents which by virtue of the endorsements purported to confer a legal right upon the first accused. The transfers purported to give the transferee a right to use the licenses. But it is said that the licenses were on the face of them invalid, because they were only good to the end of December, 1899, from which date they had been of no force or effect. It was therefore argued that, whatever they may have been during the period for which they were given, they had ceased to be valuable securities months before the transfers were

written on the back of them. An accused is not permitted to escape from the offence charged in this case on the mere ground that the documents in question are defective. It is enough if the documents upon the face of them sufficiently resemble the kind of document aimed at to deceive persons using ordinary observation. But he is entitled to escape the provisions of section 456, if it appears that the documents are not such as to impose upon the persons to whom it is likely that they may be uttered. In this case the Master Attendant could not possibly have been imposed upon by the transfer of licenses which on the face of them had expired some months before. These documents therefore were not valuable securities, and the accused cannot be punished in accordance with the terms of section 456, but he may be punished under section 454. As I read the verdict of the jury and interpret it in the light of the indictment, they found the first accused guilty in respect of valuable securities. That they could only with justice be allowed to do subject to a reservation of the point, because the boat licenses were not valuable securities. But the jury found enough—apart from that question—to complete the offence specified in section 459, and made punishable under section 454 of the Penal Code.

It was urged on behalf of the third accused that the only evidence against him was the evidence which he himself gave in the civil case, and which the Judge allowed to be read to the jury. It was said that that evidence should not have been admitted, because the third accused in the civil case was giving evidence under compulsion. Section 132 (1) of the Evidence Ordinance provides that a witness shall not be "excused from answering any question as to any matter relevant to the matter in issue"; it was urged that consequently all evidence is given under compulsion. It appears that, under the corresponding section of the Indian Code, the Full Court of Madras by a majority was of opinion that that view was not correct. (*R. v. Gopal Das, I. L. R. 3 Madras 271.*) That decision has been followed in other cases, and I have no doubt of its correctness. It is clear from the use of the word "compel" in sub-sections (2) and (3) that the Legislature meant by compulsion the course taken by the Judge with regard to a witness who either refuses to answer questions, or asks to be excused from answering. It did not mean that a witness who gives his evidence without objection and without any pressure on the part of the Judge is under compulsion. In my opinion the evidence was properly admitted.

The conviction, therefore, of the accused being confined to the offence specified in section 459 and punishable under

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section 454 of the Penal Code, I assent to the reduction of sentence proposed in the judgment of my brother Middleton.

MONCREIFF, A.C.J.

MIDDLETON, J.—

The main point for our decision in this case was whether a boat license can be deemed a valuable security. Under section 23 of Ordinance No. 6 of 1865 no boats can be used for transferring cargo or passengers in the ports of this Island without a license under the hand of the Master Attendant. Such boats have to be numbered, kept seaworthy, and their tindal and boatmen are to a considerable extent under the authority and control of the Master Attendant. In return they practically have the monopoly of the passenger and cargo traffic in the harbours, their only competitors being the ships' boats. The boat licenses in this case must have been issued under that Ordinance, as they expire in the face of them on the 31st December, 1899, and the Boats Ordinance, No. 4 of 1900, did not come into force till 21st March, 1900. The issue of such a license to a boat would therefore give the owner of the boat a legal right to share in the monopoly of landing cargo and passengers, and would, in my opinion, " create a legal right " within the meaning of section 28 of the Penal Code so as to make an unexpired boat license a valuable security.

But in the case before us the boat licenses bore on the face of them words showing that they expired on the 31st of December, 1899, and the use of them by the accused must have occurred subsequently to that date.

I think that when they were used it is clear they were not valuable securities within section 28 of the Penal Code. The test seems to be under the English Law, whether the instrument appears to be such as probably might impose upon persons to whom it was likely to be uttered as a true instrument of the denomination mentioned in the indictment. (*R. v. Wall, 2 East P.C.*)

If we apply this test to these licenses the answer must, I think, be that they would not impose on such persons, inasmuch as it appeared on the face of them that they had expired. I think, therefore, in this case that the boat licenses cannot be deemed to have been valuable securities or documents purporting to be valuable securities.

The next question is whether I was right in allowing the evidence given by the third accused in the civil action to be read to the jury, taking into consideration the terms of section 132 of " The Evidence Ordinance, 1895. " Looking at the wording of the sub-sections (2) and (3), the decision of the majorities in the Indian Courts in the cases of *Reg. v. Gopal Das (3 Madras 271)*,

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and in *Queen-Empress v. Ganu Sonba* (*12 Bombay 440*), I am of opinion that I was right in admitting the evidence in question in this case. I am still also of opinion that I was right in holding that there was sufficient evidence to go to the jury as regards the third accused; as, if the evidence given by him in the civil action was admissible, there was then the evidence of Fernando and the Master Attendant's clerk as regards the first accused's conduct and acts which would, in my opinion, have a distinct bearing on the circumstances under which he (3rd accused) alleged he had attested these documents. In my opinion the jury in this case laid little or no stress on the fact as to whether these documents were valuable securities or not. That is a question only which affects the punishment, and the indictment in this case did not aver they were valuable securities, but that the offence alleged against the accused was punishable under section 456. In my opinion the jury based their finding on the belief that these endorsements had been fraudulently and dishonestly made and witnessed, and the documents used, with a view to put the first accused in the position of *prima facie* owner of the boats against the persons entitled under the last will of John Caderamen, and their finding was virtually without reference to the question whether the documents were valuable securities or not. Under the circumstances of the case, I think it would not be in the interests of justice if this Court held that, as on the law these documents were not valuable securities, therefore these men are entitled to be acquitted. In my opinion the order which justice requires, and which we have power to make, is that the accused should be deemed to be guilty under section 459 as punishable under section 454 of the Code, and I would therefore adjust the sentence according to the maximum penalty under section 454, and sentence the first accused to three years' rigorous imprisonment; the second accused to two years' simple imprisonment; and the third accused to two years' rigorous imprisonment.

GRENIER, A.J.—

The late John Caderamen, who was a Proctor practising in the District Court of Colombo, and who died on the 24th April, 1900, was, amongst other property, possessed of seven cargo boats, for which he held licenses from the Master Attendant. At the time of, and before his death, these licenses were in the custody of the first accused, who was his elder brother. In May, June, or August, 1900,—there seems to be some uncertainty about the time, the first accused took these seven licenses to the Master Attendant's clerk, J. M. Perera, and requested a transfer to his own name.

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At the time he so produced these licenses they bore the following endorsement: "Transferred to N. Caderamen; John Caderamen."

J. M. Perera did not accede to the first prisoner's request, and, apparently on a later occasion, the first prisoner produced a will executed by John Caderamen in 1889 as sufficient authority for the transfer, when Perera told him he had knowledge of a later will. I have stated these facts as they disclose the way in which these endorsements, which are alleged to have been forged, first came to the knowledge of Perera, and through him presumably to the persons beneficially interested in the estate of the late John Caderamen.

Subsequently, in some proceedings before the Additional District Judge, Mr. Dias, in cases Nos. 14,502 and 14,542, which were consolidated, all the three prisoners were examined as witnesses, and gave evidence to the effect that the endorsements on the boat licenses were, in point of fact, made by the late John Caderamen, and that the second and third prisoners attested his signature.

The Crown presented an indictment against the prisoners, charging them as follows:—

"(1) That on or about the months of May, June, and July 1900, at Colombo, you, Nicholas Caderamen, did fraudulently and dishonestly use as genuine by uttering to one J. Mathew Perera, Chief Clerk to the Master Attendant in Colombo, seven documents, to wit, seven cargo boat licenses drawn in favour of one John Caderamen, and purporting to be respectively endorsed by him in your favour, which endorsements you knew to be forged, the same bearing date the 31st March, 1899, and numbered 735, 755, 803, 761, 819, 835, and 795, respectively, and you have thereby committed an offence punishable under sections 459 and 456 of the Ceylon Penal Code.

"(2) That on or about the month of April, 1900, at Colombo, you, Bastian Caderamen (No. 2 accused) and Mandalige Hugo Perera Guneratne (No. 3 accused), did aid and abet the said Nicholas Caderamen to commit the said first-mentioned offence of fraudulently using as genuine the said seven cargo boat licenses drawn in favour of the said John Caderamen, and purporting to be endorsed by him to the said Nicholas Caderamen, numbered 735, 755, 803, 761, 819, 835, and 795, respectively, by attesting as witnesses to the forged signature of the said John Caderamen, deceased, on each of the said documents respectively, knowing at the time you so attested the said signatures that the same were respectively forged, and you have thereby committed an offence punishable under sections 459, 456, and 102 of the Ceylon Penal Code."

No objection was taken to the indictment on any ground; the prisoners pleaded to it, and, in the result, the jury found them all

guilty. At the close of the case for the prosecution, however, it would appear that the counsel for the third accused submitted there was no case to go to the jury on the indictment as laid against his client, objection having been previously taken to the reception of the evidence given by the third prisoner in the consolidated civil cases, to which I have already referred. The learned Judge thought there was some evidence which the jury might consider and, accordingly, allowed the case to go. Even at this stage I do not find that any objection was taken to the indictment, that it was not supported by the evidence, or that it was at variance with it, but I understand that counsel for the third prisoner addressed the jury generally on the law and facts, and contended that the boat licenses could not be deemed " valuable securities " so as to make the accused punishable under section 456 of the Penal Code.

It is manifest, therefore, that the learned Judge's attention was first pointedly drawn to the question whether, as a matter of law, the boat licenses could be deemed " valuable securities " or not, after the conviction of the prisoners. I apprehend that on this point, as on the other point in regard to the reception of the evidence given in the civil cases, the learned Judge should have been addressed before the case went to the jury and his ruling obtained. However, this was not done, and on the learned Judge consenting to reserve the question in regard to the boat licenses, the counsel for the other two accused promptly, and for the first time, raised the same point.

The case now comes before us upon three questions, which were reserved by the learned Judge. I answer the first and second questions in the affirmative. I think that the evidence given by the third accused in the civil action was rightly admitted by the Judge, and that there is nothing in the terms of section 132 of the Evidence Ordinance which operated against its admissibility. The effect of this section was discussed in the case of *The Queen v. Gopal Das* (*I. L. R. 3 Madras 271*), and the question whether certain evidence had been properly admitted under this section was referred to a Full Bench of five Judges, and a majority of three held that the deposition had been properly admitted, because it was made voluntarily and without compulsion on the part of the Court. The facts were these. A suit was brought under the summary procedure described by chapter 39 of the Civil Procedure Code upon a promissory note executed jointly by A and his son B. B filed an affidavit and obtained leave to defend, and gave evidence at the trial on his own behalf B was subsequently tried for forging his father's signature, and

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the affidavit and depositions of B were admitted in evidence against him. A majority of the Judges held that the depositions had been properly admitted, and the Full Bench held that the affidavit, too, had been properly admitted. To my mind both the affidavit and the depositions were made voluntarily and not under compulsion, and I can see nothing in the disagreement by the Bench beyond an attempt by the minority to draw a very subtle and indefinite distinction between evidentiary materials of a closely cognate nature, adduced, under almost similar conditions as regards their voluntary character. We were asked by Mr. Pereira to adopt the view taken by this minority of the Madras High Court, and hold that the evidence objected to by him was inadmissible. Personally I would prefer to side with the majority, especially where the strong inclination of my own opinion is that the evidence in question was admissible under section 132. The ruling in this case of *The Queen v. Gopal Das* was followed in the case of *Queen-Empress v. Samy Appa* (*I. L. R. 15 Madras 63*), and the Calcutta High Court in the case of *Digenbar Holder v. Mohan Sardar* approved of the ruling in the cases of *The Queen v. Gopal Das* and *Queen-Empress v. Ganu Sonba*. It is abundantly clear, therefore, that protection is afforded only to answers which a witness has objected to give, or which he has asked to be excused from giving, and which he has then been compelled by the Court to give. The whole effect of these decisions is very aptly summed up in Mr. Field's note to section 132 of the Indian Act. He says: "The result of these cases is that a witness is protected against the consequences of what he may say whilst under examination, but if he wishes to prevent his statements from being used against him as evidence of an offence previously committed, he must object to reply, and only answer on being compelled by the Court."

In this case I find that the third accused did not give his evidence under compulsion, that he never objected to reply, and only answered when the Court compelled him to do so, and I therefore agree with the learned Judge that the evidence was admissible. It is, I may add, rather a remarkable commentary upon the objection taken to the admissibility of the evidence so far as regards this prisoner, that the first and second prisoners adopted the statements made by them in the consolidated cases as their version of the transaction.

Having thus found against the third prisoner on the first question, we have to determine whether the learned Judge was right in holding that there was some evidence to go to the jury which would support the indictment as laid against the third prisoner.

Now, it is plain that if there was no evidence to go to the jury the learned Judge would have acted under section 234 of the Criminal Procedure Code and directed the jury to return a verdict of " not guilty. " In considering this question, therefore, we feel this difficulty, that we cannot place ourselves in the position of the jury and say what parts of the evidence upon which the case was left to them weighed with them in the verdict they gave. That there was some evidence to support the indictment as against the third prisoner appears clear from the way in which the second question reserved has been formulated. The evidence against him, therefore, so far as this Court is concerned, must be gathered from the depositions made by the third prisoner in the consolidated cases. Those depositions having been rightly admitted. The third prisoner, by his own admission, has committed himself to the position that John Caderamen made these endorsements on the back of the boat licenses, and that he attested them as one of the witnesses. Either this statement is true or it is false. If, as the jury found, John Caderamen did not make these endorsements, then it necessarily follows that the third prisoner's statements are false. The question then naturally arises: If the third prisoner attested certain documents which he knew contained forged endorsements, did he do so innocently or ignorantly as was suggested, or was he aware that the documents were intended to be used fraudulently and dishonestly? That the third prisoner knew very well to what use these documents were going to be put, or would be put, is, I think, perfectly clear from his own evidence, where he says: " I went there quite casually as usual. I then found John, Nicholas, one of Nicholas's sons, and Bastian in the office room. I went in there myself, and was offered a seat and sat down. They were talking about some Boat Company matters. Nicholas then produced some papers, and his son was asked to write something on the back of them. John said, ' I cannot attend to these affairs. Once before I was called a boatman. I must transfer these over to my elder brother. ' This remark was made in reply to a question from me: ' Sir, why? are not these boats yours? Last time also the license was taken in your name. Why do you want to transfer them? ' As the boy wrote out each endorsement, John signed them and asked Bastian and me to sign them, and we did so. "

It is absurd to suppose that the third prisoner thought that the first prisoner would put these documents into his pocket and make no use of them whatever. The inference is a reasonable one, and the jury, I take it, drew the same inference—that in attesting these documents as a witness he helped, or, in the language of

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the indictment, " aided and abetted " the first prisoner to commit the offence of fraudulently using as genuine the said licenses. A man who aids or abets another in the commission of an offence like this, which, by reason of its secrecy, is very often difficult to detect, does not go about publicly with his principal, when that principal ventures out to make use of forged documents. It was not to be expected that the third prisoner would have accompanied the first prisoner to the Master Attendant's Office, and thus openly show himself a confederate of the first prisoner in this transaction. The third prisoner gave no evidence on his own behalf explanatory of the circumstances proved against him, and which *ex facie* were not of an innocent or exonerating, but of quite a contrary, character; and I therefore think that the evidence that was left to the jury was sufficient in law to justify their verdict. In dealing with this part of the case, I have felt throughout that I have, in a great measure, placed myself in the position of the jury on a question of fact, which was essentially within their province, but, as the point has been submitted, I have no hesitation in finding as I have done. The jury, I have no doubt, weighed the evidence very carefully, considered everything that was addressed to them by the prisoner's counsel, and then came to the conclusion they did.

This disposes of the first and second questions which affect the case of the third prisoner only.

As regards the third question, a good deal of argument was addressed to us, and I think there can be no doubt that a boat license does not come under the description of the term " valuable security " as defined in section 28 of the Penal Code. I cannot see that any legal right is created by a document of this character, which is simply a license to use a boat in the harbour of Colombo for a certain definite period. These boat licenses expired on the 31st December, 1899, and it was not till May, June, or August, 1900, that the prosecution alleges that they were produced to the Master Attendant's clerk by the first prisoner. The illustration to section 28 contains the obvious case of a bill of exchange, which contains an endorsement by which the right to the bill is transferred to any person who may become the lawful holder of it. No cases analogous to the case of a boat license were cited to us, and I do not think we would be justified in including a document of this character in the term " valuable security. "

How does this affect the third question that was referred? It was contended for the prisoners that if a boat license is not a " valuable security " the prosecution entirely falls to the ground,

in that the indictment alleges that the prisoners were punishable under section 456 of the Ceylon Penal Code, in which the term " valuable security " occurs. It was said that the intention of the Crown was, by the insertion of section 456 in the indictment, to describe these boat licenses as " valuable securities, " and it was urged that if they were not " valuable securities " they were not punishable under section 456.

The Solicitor-General, without abandoning the position that he took up that these documents were " valuable securities, " contended that even if they were not to be considered as such, the conviction was good as a conviction under section 454. It is therefore necessary to examine the indictment as presented by the Crown. The first charge is under sections 459 and 456. Section 459 runs as follows: " Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document. "

This section is a general one, and does not describe any particular kind of document as sections 455 and 456 describe, but mentions " any document, " and the latter part of section 459, I take it, refers to the punishment prescribed in each of the three sections 454, 455, and 456 for the offence of forgery of the description given respectively in sections 452, 455, and 456.

Now, the term " document " is defined by section 27 of the Penal Code, and denotes " any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of these means, intended to be used, or which may be used as evidence of that matter. "

Next, to ascertain the meaning of the term " forgery " we have to go to section 452, which says: " Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract or with intent to commit fraud, or that fraud may be committed, commits forgery, " and section 453 says: " A person is said to make a false document, who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed. "

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It goes without saying that the boat licenses in question with the forged endorsements on the back of them fall within the description given of a false document, and are documents within the meaning of section 459. These are the documents which the first prisoner is alleged to have fraudulently and dishonestly used as genuine, knowing the same to be forged, and in respect of which the jury by their verdict found that they were made use of with the intention of defrauding those entitled in law to the estate and effects of the late John Caderamen.

Does, therefore, the fact of the indictment mentioning section 456, as the section under which the offences charged are punishable as regards all the prisoners, necessarily imply that they must be punished under this section, and under no other?

I do not think so, for not only do the charges in the indictment say that the prisoners have committed an offence punishable under section 456, but also under 459, that is, that they are punishable in the same manner as if they had forged such documents. If, therefore, these documents are not "valuable securities," and the prisoners are not punishable under section 456, they are clearly liable to be punished under section 454, which prescribes the punishment for a case of this description. I do not think that it was essentially necessary that the indictment should have made specific reference to section 454. On an indictment charging a prisoner with murder, it has always been considered open to the jury to find the prisoner guilty of the lesser offence of culpable homicide not amounting to murder, or even of the offence of voluntarily causing grievous hurt. Cases have gone to the jury over and over again on the presiding Judge's direction to this effect, and by a parity of reasoning I cannot see any real ground of objection to the conviction in this case. It was enough that the jury found by their verdict that the first prisoner fraudulently and dishonestly used these false documents, knowing them to be forged, and the second and third prisoners aided and abetted him in the commission of the said offence. At best the objection is so purely technical, that I refuse to entertain it in the interests of justice. I fail to see in what way the substantial rights of the prisoners have been prejudiced. A conviction under section 454 differs, as regards the term of imprisonment, from a conviction under sections 455 and 456; and all the prisoners have been sentenced within the term of imprisonment prescribed by section 454.

In my opinion, the conviction was right and must be affirmed.