

1929.

Present: Lyall Grant J.

KING v. MARTIN.

18—P. C. Tangalla, 22,795.

Verdict of jury—Application to amend—When a mistaken verdict may be corrected—Criminal Procedure Code, s. 249 (3).

Where application was made to the Judge at a trial before the Supreme Court, the day after the verdict of a jury was delivered, to question the jury in order to ascertain what the verdict was,—

Held, that under section 249 (3) a verdict can be amended only before or immediately after the verdict is recorded, i.e., before the jurors have left the Court and while they are still under the observance of the presiding Judge.

A PPLICATION to amend the verdict returned by a jury at a trial before the Supreme Court Criminal Sessions at Galle.

Wickremenayake, for accused.

Basnayake, C.C., for the Crown.

June 19, 1929. LYALL GRANT J.—

Counsel for the prisoner in this case represents that a mistake has happened in regard to the verdict of guilty on the second count, that is guilty of causing death by a negligent act, and that the jury did not intend to return this verdict. Section 249 of the Criminal Procedure Code provides that when by accident or mistake a wrong verdict is delivered the jury may before it is signed or immediately thereafter amend the verdict. The verdict returned by the jury yesterday was one of guilty on the second count, but apparently the foreman added the words, though I did not catch them, "not guilty of gross negligence." The verdict was entered by the Registrar as one of guilty on the second count, viz., causing death by a negligent act. This verdict was read out to the jury. None of them took exception to it and it was signed by the foreman. Immediately thereafter counsel for the defence addressed me suggesting that the verdict was mistaken and was not the verdict intended by the jury. I thereupon explained to the jury again that criminal negligence meant "gross negligence," a fact which I had made very plain in my original summing up, and asked them whether they meant to return a verdict attributing to the accused "gross negligence." The foreman consulted the

jurymen in my presence and said that their intention was to bring in a verdict of "gross negligence." By their silence the other jurymen who had discussed the matter with the foreman agreed. Counsel for the accused then addressed the Court in mitigation of sentence.

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Sentence was reserved for the following day, to-day, and the Court was adjourned.

I am now asked to reopen the question and again to ask the jury what verdict was intended. The law provides that the verdict may be amended by the jury either before it is signed or immediately thereafter, but I do not think that this provision can be extended to enable me on the following day to recall the jury and again to ask them what they meant by their verdict. It is possible that if the Crown were agreeable to such a course I might consider the question of taking it in order to ensure that no possible mistake has been made. But that position has not arisen, and I express no opinion on the question of what the Court would do should it arise on another occasion. Crown Counsel, as he is quite entitled to do, stands upon the verdict. He represents that the opinion of the jury now, after it has dispersed, may not be the same as the opinion of the jury before it dispersed. The section only allows the verdict to be altered if the mistake is immediately brought to the notice of the jury. I find in the comments to section 304 of the Indian Act given in *Sohni's Code of Criminal Procedure* that the law is set forth as follows:—"The section for an amendment of a wrong verdict delivered by accident or mistake clearly contemplates that such a verdict is amended only before or immediately after it is recorded; in other words, before the jurors have left the Court and while they are still under the observance of the presiding Judge. And the reason for this restriction is obvious, for once the jurors have left the Court they are liable to outside influence, and it would be in the highest degree dangerous thereafter to accept statements to modify the verdict." I agree with this interpretation of the section and I feel that it is not within my power to reopen the matter. The verdict of guilty, which was inquired into at the time, must stand.

Application refused.