

1921.

Present : Shaw J.

THE KING *v.* CHANDRASEKERA.

57—*D. C. (Crim.), Chilaw, 3,443.*

Cheating—Deception need not be by express words—Conduct—Inducement to deliver need not be wholly due to the deceit—Penal Code, s. 398.

A gave a cheque to the accused for money borrowed by him, and made accused understand that he had no money in the Bank. In a few days the accused knowing that the cheque would not be met on presentation endorsed the cheque and gave it to B to cash it at C's boutique. The accused did not accompany B. B made C understand that it was a good cheque, and said that he would be responsible if it was not met.

Held, in the circumstances that the accused was guilty of cheating.

To constitute cheating it is not necessary that the deception should be by express words or visible representation. It may be equally practised by conduct employed in the transaction itself.

The inducement to deliver need not have been wholly due to the deceit independent of other auxiliary causes.

The accused by endorsing the cheque and giving it to be cashed made a representation it was a good cheque. Although B said that he would be personally responsible if the cheque was not met, none the less C was paying the money on account of the cheque itself.

THE facts appear from the judgment.

Pereira K.C., for the appellant.

Illangakoon, C.C., for the Crown.

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April 25, 1921. SHAW J.—

The accused has been convicted of cheating. The indictment against him charges that he did deceive one Rawther by falsely representing to him that one Rasaratnam had sufficient funds at the Bank of Madras to meet a cheque for a sum of Rs. 500, and he did thereby dishonestly induce Rawther to deliver to a man Stephen Perera on his behalf the sum of Rs. 500. The facts as found by the District Judge appear to be shortly as follows: Rasaratnam had borrowed from the accused a sum of Rs. 300, and he gave him a cheque for Rs. 500 on the understanding that the cheque should not be presented, and on the statement by Rasaratnam to the accused that he had no money in the Bank of Madras to meet a cheque if it was presented. The accused within a few days after receiving the cheque goes and negotiates with a Mr. Ranasinghe for the purchase of a valuable estate belonging to that gentleman. He drives off to see the estate in a car with the son of Ranasinghe and a man named Stephen Perera, who is an associate of the accused, and probably a person who was acting with him in the fraud that was committed. On the way the car was stopped at the boutique of a man named Rawther at Chilaw, who appears to have been accustomed to cash cheques. The cheque which had previously been endorsed by the accused was handed to Stephen Perera and Ranasinghe to be taken into the boutique for the purpose of inducing Rawther to cash it. The accused himself prudently remained in the car outside. The cheque was presented to Rawther by Ranasinghe, who told him that he understood that it was a good cheque, and said that he would be responsible if it was not met. Thereupon Rawther cashed the cheque, and the money was taken out and handed to the accused, who was sitting in the car. When the cheque was presented for payment at the Bank of Madras it was dishonoured. The Judge has convicted the accused, and sentenced him to six months' rigorous imprisonment. Objection is taken to the conviction on the ground that the offence of cheating has not been made out against the accused. In my opinion the decision of the District Judge is correct. The offence of cheating is defined by section 398 of the Penal Code: "Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person is guilty of cheating." It is said that there is no evidence of cheating in this case, because there is nothing to show that the accused himself made any direct representation to Rawther. It is also said that the evidence shows that

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Rawther was, in fact, not induced to do what he did by any representation made by the accused, but was induced to pay the money in consequence of Ranasinghe, whom he knew, saying that he would be responsible if the cheque was not met. The construction of this section does not appear to have come before in our Courts, but it has been dealt with in a good many cases in India under the similar section of the Indian Code. Gour in section 3331 points out that it is not necessary that the deception should be by express words or visible representation. But it may be equally practised by conduct employed in the transaction itself. In the present case the accused by endorsing the cheque and giving it to the people who were accompanying him for the purpose of getting it cashed by Rawther was in my view making a representation that it was a good and valid document, and that so far as he knew it would be met in the same way as any other commercial document of this sort. If he knew, as it is found that he did, that the cheque would not be met on presentation, he was guilty, in my opinion, of misrepresentation to Rawther by endorsing the cheque and getting it cashed by him. With regard to the other point I have mentioned, the witness Rawther says that he cashed the cheque because Ranasinghe whom he knew promised to be responsible if the cheque was not met. But none the less Rawther was paying the money on account of the cheque itself. He was not lending money to Ranasinghe, but he was cashing the cheque because the person he knew told him that it was a good cheque, and that he would be responsible for it. It was none the less, however, paying the money for the cheque. It has been held in India that the inducement need not have been wholly due to the deceit independent of other auxiliary causes. It was so held in England by Bevil C.J. in a case reported in *12 Cox 451* referred to by Gour on the Criminal Law of India, section 3332. In my opinion the offence of cheating is made out, and the appeal is dismissed.

Appeal dismissed.