

Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition for special leave to appeal in the matter of Mac Crea v. The Queen-Empress, from the North-Western Provinces, Allahabad; delivered May 13th 1893.

Present :

THE LORD CHANCELLOR.

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

HON. GEORGE DENMAN.

[*Delivered by the Lord Chancellor.*]

THEIR Lordships are of opinion that leave to appeal ought not to be granted in this case.

The ground upon which leave is asked is that the Petitioner being indicted under the 511th section of the Indian Penal Code for an attempt to cheat, there was no evidence of an attempt to cheat, but only of preparation for such an attempt.

Section 511 provides that “ whoever attempts
“ to commit an offence punishable by this Code
“ with transportation or imprisonment, or to
“ cause such an offence to be committed, and in
“ such attempt does any act towards the com-
“ mission of the offence ” shall be punished in
the manner therein directed.

The facts are that the Petitioner had obtained, with a fraudulent intent, as must be taken to be the fact, after the finding of the Jury, Letters of Administration to be granted, which recited that a certain lost Government promissory note was the property of one Asad Ali, and that further he had with fraudulent intent sent those Letters of

“ 76660. 125.—6/93. Wt. . E. & S.

Administration to the Public Debt Office as the foundation for an application for payment of the money.

The learned Judge who tried the case laid down in his charge to the Jury that in order to convict the prisoner they must be satisfied, not only that he intended to cheat, but that he had done an act towards that cheating, and the learned Judge clearly had in view the distinction between preparation to commit an offence and acts done towards the commission of the offence.

The Jury found the Petitioner guilty. Their Lordships see no reason to believe that there was any misdirection on the part of the learned Judge, or that there has been a miscarriage of justice. But they do not desire to dispose of the Petition simply upon that ground. If there be any foundation for this application it rests upon this:—that the learned Judge did not in his charge to the Jury correctly construe the 511th section of the Penal Code, or that he left the case to the Jury when there was no evidence to go to the Jury. In their Lordships' opinion, if they were to sanction an appeal in the present case, it would be very difficult to refuse leave to appeal in all cases in which it could be established that there had been a misdirection by the Judge who tried the case. There are, no doubt, very special and exceptional circumstances in which leave to appeal is granted in criminal cases, but it would be contrary to the practice of this Board, and very mischievous, if any countenance were given to the view that an Appeal would be allowed in every case in which it could be shown that the learned Judge had misdirected the Jury.