

## ORIGINAL CRIMINAL.

Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Bayley, and Mr. Justice Scott.

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February 18,  
19.

## QUEEN EMPRESS v. APPA' SUBHA'NA MENDRE.

*Charge—Meaning of the word “charge” in Criminal Procedure Code (X of 1882)—Addition of charge at trial—Altering charge—Substitution & charge—Omission to read and explain charge to prisoner.—Person committed “without a charge” under section 226 of Criminal Procedure Code—Meaning of the word “alter” in section 227—Meaning of the words “return of verdict” in section 227—Reference and Revision, Court of—Criminal Procedure Code (Act X of 1882), Secs. 226, 227, 228-230, 236, 237-434, 537—Practice—Procedure—Right to begin.*

A. was tried on a charge (1) of murder, (2) of abetting B. to commit the said murder. The jury, having considered their verdict, were asked by the Clerk of the Crown if they were agreed. The foreman replied that they were, and that their verdict was guilty, and when further asked he said “guilty of abetment, of abetment generally”. On the application of counsel for the prosecution a charge was then added of “abetment of murder committed by some person or persons unknown”. The additional charge was read aloud to the jury, but was not specially explained to the prisoner, nor was he called upon to plead to it. Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended, but he declined. The three charges (*i.e.*, the two original charges and the additional charge) were then read to the jury, who after deliberation returned a verdict of “not guilty” on charges Nos. 1 and 2, and of “guilty” on charge No. 3, *viz.*, of abetment of murder by a certain person or persons unknown. On the application of counsel for the prisoner the following points were reserved:— (1) whether, under the circumstances, the Court had power to add a new charge; (2) whether the verdict returned on the new charge was valid, the prisoner not having been called on to plead to it.

*Held* (SCOTT, J., *diss.*) that the Judge was wrong in framing a new charge in addition to the original charges. The error, however, was one of form and not of substance, and under section 537 of the Criminal Procedure Code (Act X of 1882) the Court declined to interfere with the conviction.

*Held*, also, that the power exercised by a Court sitting as a Court to decide questions of law reserved in criminal cases under section 434 of the Criminal Procedure Code (X of 1882) is the power of review, and the Court is a Court of Reference and Revision.

*Held*, also, that, having regard to sections 228, 229 and 230 of the Criminal Procedure Code, the charge of abetment of murder by B. might have been changed into one of abetment generally.

*Held*, also, that, in any case, the conviction was good under sections 236 and 237 of the Criminal Procedure Code. It was doubtful whether the evidence would establish the offence of murder, abetment of murder by B., or abetment of murder

by some one unknown. Even if there had been no charge properly framed, the Judge might, under section 237, have accepted the verdict returned by the jury and entered it on the record. The fact that the Judge framed a charge which, *ex hypothesi*, was beyond his authority, and accepted a verdict on that charge, did not affect the legality of the conviction.

*Held*, that the omission to read and explain the charge to the prisoner did not, under the circumstances, prejudice the prisoner, and was, therefore, immaterial.

In the Criminal Procedure Code generally the word "charge" is used as the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused. There is nothing in the Code to indicate that the word is to have a different construction in sections 226, 227 from what it has in other sections.

The words "without a charge" in section 226 of the Criminal Procedure Code (Act X of 1882) will properly apply, not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Session Judge or Clerk of the Crown may think the prisoner ought to be tried for.

If the word "alter" in section 227 is to be taken to include "addition", as it does in section 226, the addition permitted must be an addition to some specific charge in the nature of an alteration, and not the addition of a new charge.

The words "return of the verdict" in section 227 mean the return of the final verdict which the Judge is bound to record.

Where, on the application of counsel for the prisoner, a question of law has been reserved for the decision of the Court under section 434 of the Criminal Procedure Code (X of 1882), the prisoner's counsel has the right to begin.

**B. SCOTT, J.**—The test of the admissibility of proposed amendments to a charge is whether such amendment will prejudice the prisoner.

The word "charge" is used in the Code both as indicating the whole series of counts or heads of charge, and also as indicating a charge of one specific offence. In section 227 it is used in the former sense.

The word "alter" in section 227 must be taken to be equivalent to the words "add to or otherwise alter" which are used in section 226, and, consequently, the addition of a new "head of charge" is an alteration within the meaning of section 227.

**CASE reserved under section 434 of the Criminal Procedure Code (Act X of 1882).**

On the 16th January, 1884, Appá Subhána Mendre and Rághu Sakhárám Vanjári were committed by the Presidency Magistrate (Patrick Ryan, Esq.) on the charge of the murder of one Rághu Bajába Khatkar on the 20th October, 1883. The charge and depositions were, in the usual course, sent to the Clerk of the Crown, by whom three other charges were drawn, *viz.*, (1) a

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charge of murder against both prisoners; (2) a charge against Appá of murder, and a charge against Rághu of abetment of the said Appá in committing the said murder; (3) a charge against Rághu of murder, and a charge against Appá of abetting the said Rághu in committing the said murder.

The prisoners were brought up for trial at the Criminal Sessions of the High Court on the 13th February, 1884, before Mr. Justice Scott. They were arraigned on the three last mentioned charges, and both claimed to be tried.

Thereupon the Hon. *F. L. Latham* (Acting Advocate General), who (with *Inverarity*) appeared for the prosecution, applied to the Court to tender a pardon, under section 337 of the Criminal Procedure Code (Act X of 1882), to Rághu Sakhárám (prisoner No. 2) on the conditions mentioned in the said section. The Court acceded to the application, and Rághu was removed from the dock. The trial of Appá was then proceeded with, and Rághu was examined as a witness for the prosecution. The circumstances which subsequently took place are set forth in the following case stated by Mr. Justice Scott:—

“After the two prisoners had been arraigned on the above charges on Wednesday, the 13th February, and had claimed to be tried, the Advocate General on behalf of the Crown asked the Court to exercise its discretionary power under sections 337 and 338 of the Code of Criminal Procedure, and to tender a pardon to prisoner No. 2 under the conditions prescribed by the law. The Judge acceded to the application, and accordingly granted a pardon to prisoner No. 2. Prisoner No. 2 was then removed from the dock, and was subsequently examined as a witness in the case.

“No application was made by the prosecution in the course of the case for any amendment of the charges.

“In his summing up the Judge explained to the jury the nature of the offence of murder and the offence of abetment, but he did not read the charges to them, nor did he tell them that the abetment charge was confined, as regards the person abetted, to prisoner No. 2.

“The Judge specially reminded the jury, as they were retiring for deliberation, that the prisoner was charged with ‘murder and abetment of murder,’ but he did not read to them the charges themselves.

“After deliberation the jury returned, and, when asked if they were agreed upon their verdict, the foreman said that they were, and that their verdict was guilty, and when further asked he said ‘guilty of abetment—of abetment generally.’

“The Judge did not accept this verdict. He explained to the jury the specific charges against the prisoner, and, after having done so, asked them, under section 304 of the Criminal Procedure Code, whether, in their consideration of the verdict, they had been under a misapprehension of what the real charges against the prisoner were. They replied that they had been under a misapprehension, and that they had supposed the charge of abetment was of a general character.

“The Judge then said he could not, under those circumstances, record the verdict, because it was not a verdict on the charges laid in the indictment. He said that it was necessary for him to explain the law again to the jury, and then he should ask them again to consider their verdict.

“At this point of the case the Advocate General applied to be allowed to add a charge of ‘abetment of murder committed by some person or persons unknown.’

“The Judge referred to section 227 of the Code of Criminal Procedure—‘any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Sessions or High Court, *before the verdict of the jury is returned.*’

“Under this section the Judge decided to allow this addition to be made. The additional charge was then framed, and read aloud to the jury. It was not specially explained to the prisoner by the Judge, as the prisoner was represented by counsel.

“The application, no doubt, would have been more properly made at an earlier stage. But it seemed to be still in time within the meaning of the section, and the opinion expressed by the jury

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showed that its exclusion would have led to a clear failure in the administration of justice.

“The Judge then asked the counsel for the prisoner if under sections 228-9 he asked for a new trial on the charge as amended, and the reply was in the negative. But the counsel for the prisoner submitted that the point should be reserved, whether any amendment could now be made.

“The Judge then read to the jury the charges separately, including the additional charge, and asked them to consider their verdict.

“The jury after deliberation returned a verdict of not guilty on charges Nos. 1 and 2, and of guilty on charge No. 3 of ‘abatement of murder by a certain person or persons unknown.’

“The Judge under section 434 of the Code of Criminal Procedure reserved for the decision of the High Court the following questions of law:—

“(1) Had the Court power under section 227, in the circumstances hereinbefore related, to alter the indictment by the addition of the third charge upon which the jury have found the prisoner guilty?

“(2) Was the verdict returned on the third charge a valid one in presence of the fact that the prisoner was not specially arraigned upon it?

“Sentence was deferred until after the decision upon the points reserved.”

Hon. *F. L. Latham* (Acting Advocate General) and *Inverarity* for the prosecution.

*Kirkpatrick* for the prisoner.

*Latham* claimed the right to begin, citing *Reg. v. Navroji Dádábhai*<sup>(1)</sup>; *Reg. v. Pestanji Dinshá*<sup>(2)</sup>.

*Kirkpatrick, contra*, cited *Reg. v. Dayál Jairáj*<sup>(3)</sup>; *Imperatrix v. Pitámbur Jind*<sup>(4)</sup>.

(1) 9 Bom. H. C. Rep., 358.

(2) 10 Bom. H. C. Rep., 75.

(3) 3 Bom. H. C. Rep., Cr. Ca., 20.

(4) I. L. R., 2 Bom. 61; see also *Empress v. Moorga Chetty*, I. L. R., 5 Bom., 338.

SARGENT, C.J.—We think counsel for the prisoner should begin.

*Kirkpatrick* for the prisoner.—The first question is as to the meaning of the word “charge” in section 227. I submit it means, not the whole series of accusations on which the prisoner is tried taken collectively, but each separate paragraph by which the prisoner is accused of an offence. Each paragraph which describes and charges an offence is a “charge”. The use of the word throughout the Code shows this to be the meaning of the word: *e. g.*, sections 303, 236, 240. In England it has been held that each count of an indictment is a separate indictment in itself—*Latham v. Reg.*<sup>(1)</sup> The sections of the Code prior to section 226 deal with the charge to be drawn by the Magistrate. Section 226 gives the Court or Clerk of the Crown certain powers. These powers are clearly to be exercised before the trial (compare sections 7, 8 of Act X of 1875). Section 227 deals with the power of the Court after the trial has begun. This power is only to alter the charge or charges already existing. No new charge can be added. If a new charge could be added, provision would have been made for requiring the prisoner to plead to it, as is done with respect to the original charges by section 271. Section 227, however, only permits an *alteration*, and so it is only provided that the altered charge shall be read and explained to the prisoner.

Even the limited power to alter must be cautiously exercised—*Reg. v. Govindás Haridás*<sup>(2)</sup>. As to the power of amendment in England, see Archbold's *Criminal Pleadings* (17th ed.), p. 206 *et seq.* As to the time before which an amendment must be made, *R. v. Rymes*<sup>(3)</sup>. There is an Irish case *contra*—*R. v. Fullarton*<sup>(4)</sup>; but as to the relative authority in India of English and Irish cases, see *per* Latham, J., in *Merwánji Nowroji v. Ashábáí*<sup>(5)</sup>. Here there was not an alteration of an existing charge, but a new charge was added, and to this new charge the prisoner was not called on to plead. The former charges were retained, and a verdict taken on them—*Reg. v. Shek Ali*<sup>(6)</sup>.

(1) 9 Cox, C. C., 516.

(4) 6 Cox, C. C., 194.

(2) 6 Bom. H. C. Rep., Cr. Ca., 76.

(5) I. L. R., 8 Bom. 1 at p. 11.

(3) 3 C. & K., 326.

(6) 5 Bom. H. C. Rep., Cr. Ca., 9.

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Assuming there was only an "alteration", yet the altered charge was not read and explained as required by the section<sup>(1)</sup>. Further, if it were only an "alteration", it was not allowable under section 227, as the verdict had been returned. Granted that a verdict given by a jury by mistake may be altered, and that the ultimate verdict given when the misapprehension of the jury is corrected is to be regarded as the verdict (see Archbold's Criminal Pleadings, p. 166, 17th ed.). In this case the mistake was not that of the jury. They gave their verdict when they returned to the jury box, and they adhered to it. That verdict was ultimately accepted and recorded. The verdict was in no way altered, but the record was altered to suit the verdict. Section 304 does not apply to such a case. In *Reg. v. Meany*<sup>(2)</sup> Pollock, C. J., speaks of the jury having "returned a verdict", although that verdict was afterwards altered. *A fortiori*, the verdict in this case which was not altered must be held to have been "returned" when first pronounced by the foreman of the jury. Section 227 means that no alteration is to be made after the views of the jury are disclosed. It cannot mean that no alteration should be made after the ultimate verdict is given; for, then, the provision as to reading and explaining the alteration to the accused would be absurd. When the ultimate verdict is given, his fate is irrevocably decided, and there could be no object in reading and explaining the altered charge to him.

Hon. F. L. Latham (Acting Advocate General) for the prosecution.—Although in the Code the word "charge" is sometimes used as equivalent to the word "count" in England, yet in the majority of the sections it is used comprehensively, and indicates the entire series of offences with which the prisoner is accused. Section 554 directs that the form in schedule V to the Code shall be used, and in the schedule we find there are "charges with one head" and "charges with two or more heads". In this case the charge had several heads; but, taken all together, they constituted the 'charge'. The same ambiguity in the use of the word existed in the previous Codes (Act X of 1872, and the Code (Act XXV) of 1861). The word is used in its comprehensive sense in section 226. In that section the word "otherwise" shows that an addition is regarded

(1) I. L. R., 5 Cal., 826.

(2) Leigh and Cave's Cr. Ca. Res., 213.

as an alteration. That being so, the word "alter" is sufficient in section 227, and the alteration there permitted includes an addition. The three subsequent sections in which also the word "alter" is used, corroborate this view. Here the charge was altered by an addition.

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This alteration was made in time, as it was made before the return of the verdict. The verdict at first brought in by the jury was a verdict upon a head of charge not existing, and, therefore, was no verdict. The return of a verdict means the return of an *effectual* verdict. It is the duty of the Judge to see that the jurors know what they are doing in giving their decision, and he may question them for that purpose—Archbold's Criminal Pleadings (17th ed.), p. 166; *Reg. v. Meany*<sup>(1)</sup>; sections 303 and 304.

We admit that the omission to read and explain the altered charge to the prisoner was an irregularity. But it was immaterial, and did not prejudice him, and is, therefore, covered by section 537. This section applies to this Court, as in deciding a case reserved it is exercising the powers of a Court of Revision.

Under section 237 the Judge might have convicted the prisoner of the offence of abetment, although he was not charged with it, inasmuch as it was an offence with which he might have been charged in the alternative under section 236. That view is confirmed by section 403: see *Reg. v. Govind Bábli*<sup>(2)</sup>. If, then, this Court is of opinion that the Judge had no power to add the new charge under section 227, it may now, under section 434, enter a verdict of guilty upon it. Where the Judge could have done this without a charge, the prisoner cannot be regarded as prejudiced by the addition of a charge. But the question of prejudice does not arise, as sections 228, 229 recognize the fact that such an alteration may prejudice the prisoner, and confides to the Judge, who tries him, the power of dealing with that matter.

*Kirkpatrick* in reply.—In the majority of the sections the word "charge" is used as equivalent to "count". This is also shown by the illustrations. By section 226 the Court is given power before

(1) Leigh and Cave's Cr. Ca. Res., 213.

(2) 11 Bom. H. C. Rep., 278.

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the trial to "add or otherwise alter" the charge. 'If it was intended to give the same powers to the Court in the course of the trial, the same words would have been used in section 227.

In the present case the Judge evidently thought the addition of a charge prejudiced the prisoner, for he gave his counsel the option of a new trial. That offer was refused, because the verdict given by the jury was virtually an acquittal of the prisoner on the charges on which alone he had been tried. A verdict of acquittal on those charges was subsequently actually recorded. The charge on which he was convicted was one on which he was not tried. Sections 236 and 237 do not apply to the present case. They apply only where the facts are ascertained, but the nature of the offence established by those facts is doubtful—*Queen v. Jamurha* <sup>(1)</sup>. Here, however, the doubt is as to the facts. The question is—did the prisoner abet Rághu, or did he abet persons unknown? These two abetments are distinct offences and must be separately charged. These two charges suggest wholly different facts, and need different evidence to meet them. *Reg. v. Chand Nur* <sup>(2)</sup> shows that the Judge could not have proceeded under section 237, and have found the prisoner guilty of abetment without a separate charge. This Court, therefore, cannot now enter such a verdict as has been suggested. It would not do so in any case without having the evidence before it. This Court cannot be regarded as a Court of Reference or Revision so as to enable it to apply section 537. That is an expression applied to the Court when exercising certain defined powers: see Letters Patent, 1865, cl. 28; Criminal Procedure Code (of 1882), sec. 439; Civil Procedure Code (XIV of 1882), chap. xlvi. In deciding a point reserved, the Court is not exercising any of these powers.

*Cur. adv. vult.*

26th February. SARGENT, C. J.—The questions of law which we have to determine were reserved and referred for the decision of this Court under section 434 of the Criminal Procedure Code (Act X of 1882) at the last Criminal Sessions by Mr. Justice Scott, the presiding Judge. The reference is as follows:—[His Lordship read the reference set forth above, and continued:—]

(1) 7 N. W. P., 137.

(2) 11 Bom. H. C. Rep., 240.

Section 227, under which the additional charge was framed, provides "that any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned, or the opinions of the assessors are expressed." It was contended for the prisoner that by the term "charge" is meant the statement, as provided by section 221, of a specific offence, and that the power "to alter a charge" does not, therefore, give the power to the Court to frame a new charge in addition to the original charges. On the other hand it was argued for the prosecution that the term "charge" is used generically as the aggregate of all the separate offences for which the prisoner is being tried; but that, even assuming the term "charge" to be used in the specific sense contended for on behalf of the prisoner, the power to "alter" must be deemed to be as large as in the preceding section 226, where the language used is "add to or otherwise alter the charge". Now, I think, that an examination of the sections of the Code commencing with section 210, which directs the Magistrate "to frame a charge describing with what offence the accused is charged" down to the close of chapter xxiii, which deals with the procedure at the trial (leaving out of consideration for the moment the cognate sections from 226 to 231), can leave no doubt, if not upon the language of each section, at any rate upon the sections construed as a whole, that the framers of the Criminal Procedure Code of 1882 used the term charge throughout as the statement of a specific offence. Nor was the Advocate General able to point any passage in the Code in which the term necessarily had a larger meaning, except the heading to the Form No. 28 of the second schedule to the Code, where the term "charge" is undoubtedly used as containing several heads of offences,—an exception which cannot outweigh the conclusion to be drawn from the body of the Code itself.

Passing thence to the consideration of the sections from 226 to 231, the question on the construction of those sections would appear to be whether there is anything in their language or in the nature of their provisions which require the term "charge" to be construed in a different sense from that in which it is used in the other sections amongst which they are found. It was

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said, indeed, by the Advocate General that the construction the prosecution contended for was necessary in order that section 226 might confer on the Session Judge and the Clerk of the Crown the same powers, that they could exercise under section 446 of Act X of 1872 and sections 7 and 8 of Act X of 1875, and which powers, as the present Code is a consolidating Act, it was to be presumed it was intended to re-enact. Those sections gave the Session Judge and Clerk of the Crown power, whenever the prisoner is committed upon a charge which they consider improper, to draw up a charge for any offence which they consider to be proved by the evidence taken before the committing Magistrate. It was urged that section 226, taking "charge" in its specific sense, would only give this power when the prisoner was committed without a charge at all. But it is to be remembered that the words "at all", which are found in the above sections in both of the Acts of 1872 and 1875, are omitted in section 226 of this Act; and the words "without a charge" in section 226 of the Act of 1882 will properly apply, not only to the case in which there is "no charge at all", but also to the case in which there is "no charge" in respect of such offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for. The language of the Acts 1872 and 1875 does not assist in construing the word charge in the present Act. The language of the former Criminal Procedure Code of 1872 supports the argument in favour of the restricted construction equally as that of the present Act; and though the language of the High Court Act of 1875 is not so conclusive, it is quite consistent with that meaning. Lastly, we should have expected to find the words "the charge" used in place of the words "any charge" in section 227 had the intention been to use "charge" in the sense of "indictment". We think, therefore, that there is nothing in the Code to justify the term "charge" having a different meaning given to it in sections 226 and 227 from what it has throughout the other sections of the Code.

It was said, however, that, assuming "charge" to relate to a specific offence, the term "alter" in section 227 ought to be taken in the same sense as it is used in section 226 as including "addition". That may be so, but in that case it must, we think, be an

addition to some specific charge in the nature of an alteration, and not the addition of a new charge; or else why was the power limited to "altering", and no power given to frame new charges as in section 226? Upon the whole we think that, upon the proper construction of this Code, "charge" is used in section 227 as the statement of a specific offence, and that the learned Judge was wrong in framing a new charge in addition to the original charges.

The error, however, would appear to be one of form and not of substance. We cannot doubt, having regard to sections 228, 229 and 230, that the charge of abetment of murder by the second prisoner might have been changed into one of abetment generally. In *Reg. v. Govinda Bábli* <sup>(1)</sup>, which was a case under the Act of 1872 decided by West and Nánábhái, JJ., the Sessions Judge had substituted a charge of abetment of murder for a charge of murder, and it was assumed that it could be done,—the only question being whether the trial ought to have proceeded forthwith. Assuming it to have been an error of form, and not of substance, we are inclined to think that section 537 would justify our not interfering with the conviction; for we cannot admit, as was contended for the prisoner, that section 537 does not apply to the Court sitting to hear a reference under section 434. The power which this Court exercises is that of review, as expressly stated in section 434, and the Court is a Court of Reference and Revision, and is treated as such, as appears from the heading of chapter xxxii.

It was further urged that the jury had returned their verdict when the new charge was framed, and that the learned Judge, therefore, acted without jurisdiction. We think, however, that by "verdict" must be understood the final verdict which the Judge would be bound to record. No such verdict had been returned when the Judge proceeded to frame the new charge. It is plain that the jury had misunderstood the charge on which they had to find, and that a proper occasion arose for the exercise of the power given to the Judge by section 303 to ask the jury "such questions as are necessary to ascertain what their verdict is". In *Reg. v. Sustirám* <sup>(2)</sup> Phear, J., when discussing section 263 of the Code of 1872,

(1) 11 Bom. H. C. Rep., 278.

(2) 21 W. R. Cr. Rul., at p. 2.

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which corresponds with section 303 of the present Code, says "the questions which were put by him (meaning the Judge) were rightly put by him within the discretion vested in him by section 263. This being so, there was no verdict delivered, and there could be no verdict recorded until the last of the questions had been answered."

It was also contended that the omission on the part of the Judge to read and explain the alteration to the prisoner, as required by section 227, was an error which could not be rectified by section 537. We do not think, however, that under the circumstances this omission could have prejudiced the prisoner. He was defended by a very competent counsel, who was asked whether he wished for a new trial, and declined it, which he would not have done had he thought that the case could have been made to assume a different aspect as regarding the new charge from what it already presented.

Lastly, we are of opinion that, in any case, the conviction is good under sections 236 and 237<sup>(1)</sup>. In the present case it was doubtful whether the evidence convicting the prisoner with the offence would establish the offence of murder, abetment of murder by the second prisoner, or of murder committed by some one unknown. He might have been charged with having committed all or any of these offences, as, indeed, he was of two of them, and, therefore, even assuming that there was no charge properly framed, the learned Judge might, under section 237, have accepted the verdict returned by the jury and entered it on the record. This course was held to be the proper one in the cognate case arising on section 238 in *The Government of Bengal v. Maháddá*<sup>(2)</sup>. The fact that the

(1) Section 236.—If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged, in the alternative, with having committed some one of the said offences.

Section 237.—If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

(2) 5 Beng. L. R., 872.

learned Judge did not accept it at once, but framed a charge which, *ex hypothesi*, was beyond his authority, and accepted their verdict on that charge, cannot affect the legality of the conviction. He was none the less convicted of an offence with which he might have been charged under section 236 before the trial, and of which he was found guilty by the jury at the trial. We must, therefore, answer the first question in the negative, and the second in the affirmative, and direct that sentence be passed on the prisoner.

BAYLEY, J.—I concur in the judgment of the Chief Justice.

SCOTT, J.—I have come to the same conclusion as the learned Chief Justice and Mr. Justice Bayley; but, as I am at variance with them in my interpretation of section 227, I think it my duty to state my reasons on that point.

But before examining that point in detail I will refer to the spirit of the sections in the Criminal Procedure Code relating to "the charge" as explained by their framer, Mr. Justice Stephen, in his *History of Criminal Law*: He says (Vol. III, p. 337,) in a note on sections 221-240 of the present Code: "I drew these sections in the Code of 1872. They are re-enacted with little alteration", and then he goes on: "The provisions relating to 'charges' are intended to provide that '*the charge*' shall give the accused full notice of the offence charged against him, but that the only result of any defect in '*the charge*' shall be an amendment in terms as to delay, or a new trial if the accused seems to have been misled."

It is quite clear from this passage that the intention of the Legislature was to permit all amendments which would not prejudice the prisoner in his defence. In other words, prejudice to the prisoner was intended for the future to be the test of admissibility or rejection of proposed amendments.

Now, to examine the meaning of the word "charge" as used in section 227. May it cover a series of counts or heads of charge, or does it refer only to the charge of one specific offence? The word seems to be used in the Act in both those senses. Schedule V of the Act, which gives various forms of charges, shows clearly that one charge may consist of a series of heads or counts.

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Section 271 says that "at the commencement of the trial 'the charge' shall be read out to the prisoner, and he shall plead to 'the charge.'" Section 308 says that "in case of the discharge of the jury, if the Judge does not think there should be a re-trial, he shall make an entry to that effect on 'the charge'", and, again, section 310 speaks of that part of "the charge" which states a previous conviction.

But my view of the meaning of the word "charge" in this section 227 does not depend merely on my own interpretation. It is also supported by decided cases.

Section 227 corresponds to section 10 of the previous Act for the High Court (Act X of 1875), which says: "The Court may, at any stage of the trial, amend or alter 'the charge', and the general Criminal Procedure Code of 1872 contains the same provision. Under the Act of 1872 there are decisions on all fours with the present case. In *R. v. Govind*<sup>(1)</sup> an amendment substituting the abetment of murder for the offence of murder was made, and was not only approved, but it was also held that the original and amended charges were so closely related that the trial could be proceeded with forthwith. This case, therefore, is an authority for the substitution of one charge for another, as being within the meaning of the words "amend or alter the charge". The limitations or amendments placed by the Judges in that case are—(1) that the substituted charge must be related to the same transaction, and (2) that the prisoner must not be prejudiced in his defence.

But it is argued that, although a *substitution* of a head of charge is admissible, an *addition* of a head is not admissible. I am unable to follow that argument. It seems to me that an addition comes within the spirit of the Act as much as a substitution, always provided that it arises out of the same transaction, and its introduction does not prejudice the prisoner. This seems to be the view of the High Court of Madras. In the case of *M. K. Rámá Varma v. The Queen*<sup>(2)</sup> the Sessions Judge had added a charge of abetment after the trial had commenced, and although his action was held to be *ultra vires*, it was so held on the sole

(1) 11 Bom. H. C. Rep., 278.

(2) I. L. R., 3 Mad., 351.

ground that the charge added could not be supported by the evidence taken before the Magistrate. It appears clearly from the judgment of the Court that the Judge could have either "amended or altered the original charge," or "could have supplied a charge," provided it was "provable by the evidence taken by the Magistrate."

Now in the present case the charge added *was* provable by the evidence taken by the Magistrate—in fact no other was offered. The addition made, therefore, would seem admissible on the authority of this Madras case.

But I also agree with the learned Advocate General in thinking that such an addition as was made in the present case is not only within the spirit of the Code, but is also within its express terms. Sections 226, 227, 228 must, I think, be read together in order to arrive at their true meaning<sup>(1)</sup>. The words "add to" or "*otherwise* alter" in section 226 show that the word "alter" was intended to include "an addition". If it does not, then the adverb "*otherwise*" is a mere meaningless interpolation.

The general word "alter" instead of "add to or otherwise alter" is used in section 227. But section 228 refers to the "alteration" made under section 226 or section 227, thus clearly showing that the construction must be made of all the three sections together. I think, therefore, the word "alter" and the word "alteration" must, in order to give the full meaning to these sections, be taken to be equivalent to the words "add to or

(1) Section 226.—When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Section 227.—Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned, or the opinions of the assessors are expressed. Every such alteration shall be read and explained to the accused.

Section 228.—If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecution in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

1884

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otherwise alter." It follows as a logical consequence that an addition is as much within the meaning of the Code as a substitution.

I am of opinion, therefore, firstly, that the construction I placed upon section 227 of the Criminal Procedure Code is warranted by the words of the section construed according to their plain and grammatical meaning; and, secondly, that when read in the light thrown upon the section by the words of its author, Mr. Justice Stephen, my construction only gave to the section the effect that was intended by the Legislature.

In all other respects I fully concur with the learned judgment delivered by the Chief Justice.

### APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice Scott.

QUEEN EMPRESS v. PARSHRAM RA'YSING.\*

1883  
November 29.

*False evidence—Police investigation—Judicial proceeding—Code of Criminal Procedure, Act X of 1882, Secs. 155 and 161—Indian Penal Code, XLV of 1860, Sec. 193.*

Section 161 of the Code of Criminal Procedure, Act X of 1882, makes it obligatory on a person examined in the course of a police investigation under chapter xiv to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture,) and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of a judicial proceeding under section 193 of the Indian Penal Code.

THIS was an appeal against the sentence of rigorous imprisonment for three months passed by M. B. Baker, Session Judge of Khândesh, on conviction of intentionally giving false evidence in a stage of a judicial proceeding under section 193 of the Indian Penal Code.

The facts and the grounds of conviction appear from the following judgment recorded by the Court of Session :—

"The accused is charged on an alternative charge with giving false evidence in a judicial proceeding, under section 193, Indian Penal Code. He claims to be tried.

\* Appeal, No. 185 of 1883.