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which we should apply now, namely, that the people "have a serious interest in the characters and conduct of the Judges and others, who are appointed to serve in high and important offices; and the individual men have a valuable property in their respective characters." It is the duty of the High Courts to set an example to all inferior tribunals; and I think we should follow the practice of the Courts [491] of Chancery and Queen's Bench for the reasons given by so great an authority as Story in s. 270 of his Equity Pleadings (8th ed.). He says: "Scandal is calculated to do great and permanent injury to all persons, whom it affects, by making the records of the Court the means of perpetuating libellous and malignant slanders; and the Court, in aid of the public morals, is bound to interfere to suppress such indecencies, which may stain the reputation and wound the feelings of the parties and their relatives and friends."

When a few months ago a petition of one Ganesh Sathe came before us in our revising jurisdiction, we informed the pleader that as it contained somewhat scandalous and irrelevant expressions concerning the Government and a District Magistrate, we declined to receive it until the scandalous matter was struck out.

The present petition is more objectionable, and being of opinion that we ought not to allow it to defile our records, we must reject it, and order its return to the prisoner.

Petition rejected.

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APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS v. FAKIRAPA AND OTHERS.* [23rd January, 1890.]

Criminal Procedure Code (Act X of 1882), ss. 235 and 239—Joinder of charges—Offences committed by different accused against different persons at different times—Joint trial—Charge.

If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned.

[492] A committing Magistrate is bound under ss. 222 and 223 of the Code of Criminal Procedure (Act X of 1882) to insert in the heads of charge sufficient particulars of time, place, person, and circumstance, as will give each of the prisoners notice of the matter with which he is charged.

The four accused, who were members of the Dharwar Police Force, were charged with ill-treating the complainant Hanma, his wife Rakhma, and his son-in-law Yellia during the course of a police investigation into a case of theft.

They were committed for trial for the following offences :—

(1) All the accused for an offence under s. 330, Indian Penal Code, the charge covering several acts of violence alleged to have been committed against Hanma during his confinement, which formed the subject of the second head of the charge.

(2) All the accused for an offence under s. 348, Indian Penal Code, committed against Hanma between the 5th and the 18th January 1889.

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* Criminal Appeal, No. 241 of 1889.

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(3) Accused Nos. 1 and 3 for an offence under s. 348, Indian Penal Code, committed against Rakhma on the 15th January 1889.

(4) Accused No. 3 for an offence under s. 330, Indian Penal Code, committed against Rakhma on the 14th January 1889.

(5) All the accused for an offence under s. 330, Indian Penal Code, committed against Yellia between the 15th and 23rd January 1889.

(6) All the accused for an offence under s. 348 committed against Yellia during the same period.

(7) Accused Nos. 1, 2 and 3 for an offence under s. 346, Indian Penal Code, committed against Yellia between 8th February and 9th March 1889.

The accused were committed to the Court of Session in two separate cases. The Sessions Judge tried both cases together under ss. 235 and 239 of the Code of Criminal Procedure (Act X of 1882), as the same four persons were accused in both cases and "were charged with different offences committed in what was virtually one transaction, namely, a police investigation into an alleged theft."

The accused were convicted of the offences charged, and sentenced to various terms of imprisonment.

Held, reversing the convictions and sentences, that the combination of the two cases necessarily prejudiced the accused by making it possible for the prosecution to bring forward a mass of evidence at the trial relating to many matters, some only remotely connected with relevant questions which must to some extent have had the effect of embarrassing and confusing the accused.

Held, also, that all the several acts of violence alleged to have been committed against Hanma during his illegal confinement could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against Rakhma at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of Rakhma by accused Nos. 1 and 3 on the 15th January a part of the transaction constituted by the hurt caused to her by accused No. 3 on the previous day. In the same way all acts of hurt caused to Yellia during [493] his first period of wrongful confinement would with the confinement form a part of the same transaction; but the second period of confinement, which is said to have commenced some time after the termination of the first period of confinement, would be a separate transaction.

[R., 16 B. 414 (425); 29 B. 449 (453)=7 Bom. L.R. 527=2 Cr. L.J. 480; 28 C. 104 (107); 31 C. 1053 (1055); 25 M. 61 (72) (P.C.)=3 Bom. L.R. 540=5 C.W.N. 866=28 I.A. 257=11 M.L.J. 233=8 Sar. P.C.J. 160; 33 M. 502=11 Cr. L.J. 258=5 Ind. Cas. 847=20 M.L.J. 220=7 M.L.T. 299=(1910) M. W.N. 65; 11 A.L.J. 188=14 Cr. L.J. 116=18 Ind. Cas. 676; 14 Bur. L.R. 242 (247)=8 Cr. L.J. 497=4 L.B.R. 294; 4 Cr. L.J. 420=2 N.L.R. 147 (148); 8 Cr. L.J. 191=1 S.L.R. 73 (78) (Cr.); 10 M.L.J. 147 (168) (F.B.); 83 P.L.R. 1901; Rat. Unr. Cr. Cas. 659 (664).]

APPEAL from the convictions and sentences recorded by Dr. A. D. Pollen, Additional Sessions Judge of Dharwar.

The four accused were, respectively, a chief constable, a head constable, and two police constables of the Dharwar Police. The charges against them were that during a police investigation into a case of theft they ill-treated and wrongfully confined one Hanma, his wife Rakhma, and his son-in-law Yellia, with the object of extorting confessions from them and recovering the stolen property.

The accused were charged with the following offences:—

(1) All the four accused persons were charged with an offence under s. 330, Indian Penal Code, committed against Hanma, the charge covering several acts of violence alleged to have been committed against Hanma during his illegal confinement, which formed the subject of the second head of charge.

(2) All the accused with an offence under s. 348, committed against Hanma between the 5th and 18th January, 1889.

(3) Accused Nos. 1 and 3 with an offence under s. 348, committed against the deceased Rakhma, wife of Hanma, on the 5th January, 1889. 1890 JAN. 23.

(4) Accused No. 3 with an offence under s. 330, committed against the deceased Rakhma on the 14th January, 1889. APPELLATE

(5) All the accused with an offence under s. 330, committed against Yellia in the interval between the 15th and the 23rd January, 1889. CRIMINAL.

(6) All the accused with an offence under s. 348, committed against Yellia during the same period. 15 B. 491.

(7) Accused Nos. 1, 2 and 3 with an offence under s. 346, committed against Yellia between the 8th February and 9th March, 1889.

The Magistrate committed the accused to the Court of Session **[494]** in two separate cases. The Sessions Judge tried both cases together on the following grounds :—

" The Court decides under ss. 235 and 239 of the Criminal Procedure Code to try the cases Nos. 29 and 30 jointly, as the same four persons are accused in both cases, and are charged with different offences committed in what was virtually one transaction, namely, a police investigation into an alleged theft at Badugiri. The offences are alleged to have been committed against the members of one family, two of whom figure as complainants. The evidence, moreover, in one case dovetails into the evidence in the other, and the whole evidence is so connected that it must be considered in its entirety before the complete history of the transaction can be grasped."

The Sessions Judge convicted the accused under ss. 330, 346 and 348 of the Indian Penal Code, and sentenced them to various terms of imprisonment.

Against these convictions and sentences accused Nos. 2 and 3 appealed to the High Court.

Phirozshah Mervanji Mehta (with him *Narayan Ganesh Chandavarkar*), for the accused.—The accused were prejudiced by the manner in which two distinct cases were tried together as one case. Different offences are alleged to have been committed at different places, at different times, and by different accused persons. All these offences cannot form the subject of one inquiry and one trial : see s. 233 of the Criminal Procedure Code (Act X of 1882). Section 239 of the Code does not apply to the present case. Nor does s. 235. The acts alleged against the accused do not constitute one transaction. The mass of evidence produced by the prosecution in respect of the different offences alleged to have been committed by the different prisoners has weighed unduly with the Sessions Judge. The conviction should, therefore, be quashed and a re-trial ordered.

Shantaram Narayan, Government Pleader, for the Crown.—Illustration(*g*) to s. 235 of the Code of Criminal Procedure (Act X of 1882) furnishes a case parallel to the present. The several offences alleged against the prisoners constitute one and the same transaction. They were committed during the **[495]** course of the same police investigation, and the reasons given by the Sessions Judge for the amalgamation of the two cases are just and proper. Even if the course adopted by the Sessions Judge be held to be irregular, the irregularity is not such as to justify this Court in reversing the convictions and ordering a re-trial—*Empress of India* v. *Murari*(1), and *Queen-Empress* v. *Juala Prasād* (2).

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(1) 4 A. 147. (2) 7 A. 174.

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JUDGMENT.

BIRDWOOD, J.—The four accused persons, who are members of the police force, were committed for trial in two separate cases, which were tried together by the Court of Session as the different offences with which the accused were charged were committed during the same police investigation into an alleged theft.

The Sessions Judge relied on ss. 235 and 239 of the Code of Criminal Procedure (Act X of 1882) in making the order for combining the cases; and the first question which arises in connection with the present appeal by two of the accused persons is, whether they and the two persons who were tried with them were, as contemplated in s. 239, accused "of different offences committed in the same transaction," or, as is otherwise expressed in s. 235, of different offences committed "in one series of acts so connected together as to form the same transaction." The word "transaction" is not defined in the Code; but the "illustrations" of paragraph I of s. 235 refer either to cases where the different offences, which may be tried together, form parts of one continuous series of acts, as where grievous hurt is caused in rescuing a person from lawful custody; or a house is broken into with a certain criminal intent, which is also accomplished, (see illustrations (*a*), (*b*), (*c*)); or to cases where several distinct offences are committed at the same time, as where a man has in his possession several counterfeit seals and intends to commit a forgery with each of them; or threatens more persons than one at the same time with injury to their persons with intent to cause them alarm; (see illustrations (*d*), (*g*), (*h*)); or else to cases where, though an interval of time may elapse between the several offences, the same specific criminal intent is common to them all, as in illustrations (*e*) and (*f*). [496] The illustrations of s. 239 may also be referred to. Illustration (*a*) shows that two persons accused of the same murder may be tried together. Illustration (*b*) is a case of a robbery alleged to have been committed by two persons, in the course of which one of them commits a murder. The two offences are regarded as having been committed in the same transaction, and can, in India, be tried together, though they could not be so tried in England, where different felonious acts can be charged in the same count only if they are all parts of the transaction "constituting the offence charged;" so that if a man commits a murder and robs his victim, he "cannot be charged in the same indictment with murder and robbery" (Stephen's Digest of the Law of Criminal Procedure, p. 153). In indictments for burglary, however, the breaking and entering with intent to commit a felony and the commission of the felony may be charged in the same count: (*Ib.*). Illustration (*c*) of s. 239 refers to two persons charged with a theft, one of whom is accused of committing, "in the course of the same transaction," two other thefts. Here the word "transaction" is used in a restricted sense and seems to apply only to the theft jointly committed by the two persons and the circumstances attending it. The word is used in a similarly limited sense in illustration (*a*) of s. 6 of the Indian Evidence Act I of 1872. Though it is used in a more general sense in the remaining illustrations of that section, it would, I think, be an undue straining of the law to apply s. 239 of the Code of several different thefts committed on different days and at different places by different members of a gang of thieves, who were all out on the same marauding expedition. Such a case would go far beyond illustration (*c*) of s. 239. Of course these illustrations are not exhaustive. Yet they

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furnish some indication of the presumable intention of the Legislature. They seem to show that a wider discretion is given to the Courts in British India than in England as regards the trial of more offences than one at one trial; yet it may well be doubted whether it was ever intended that s. 235, paragraph I, and s. 239 of the Code should be applied, except in such cases as illustrations (*e*) and (*f*) of s. 235, to cases where the alleged criminal acts are separated by distinct intervals of time **[497]** or place, and must be proved by distinct evidence. I will not say that members of a police force who had conspired to maltreat suspected persons in the course of an investigation, could, in no circumstances, be dealt with under the provisions of the Code now under consideration for a series of oppressive acts of which they were guilty in the prosecution of their common object; but in all such cases it would be necessary to consider carefully whether the alleged acts were, as a matter of fact, so connected together in one series as to form essentially and strictly the same transaction. In any case, if either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending, by its mere accumulation, to induce an undue suspicion against the accused, then, in any such case, the propriety of combining the charges might well be questioned.

Now, in the present case, the four accused persons were arraigned on the following heads of charge:—(1) all the accused for an offence under s. 330 of the Indian Penal Code (Act XLV of 1860) committed against the complainant, Hanma, in the interval between the 5th and 18th January, 1889; (2) all the accused for an offence under s. 348 committed against Hanma during the same period; (3) the accused Nos. 1 and 3 for an offence under s. 348 committed against the deceased Rakmava on the 15th January, 1889; (4) the accused No. 3 for an offence under s. 330 committed against the deceased Rakmava on the 14th January, 1889; (5) all the accused for an offence under s. 330 committed against the complainant, Yellia, in the interval between the 15th and 23rd January, 1889; (6) all the accused for an offence under s. 348 committed against Yellia during the same period; (7) the accused Nos. 1, 2 and 3 for an offence under s. 346 committed against Yellia between the 8th February and 9th March, 1889. The first head of charge really covers several acts of violence alleged to have been committed against Hanma during his illegal confinement, which forms the subject of the second head of charge. All such acts could, I think, be rightly regarded as constituting a single **[498]** transaction. But the act of violence said to have been committed against Rakmava at a different place cannot be regarded as a part of that transaction. Nor is the wrongful confinement of Rakmava by the accused Nos. 1 and 3 on the 15th January a part of the transaction constituted by the hurt which was caused to her by the accused No. 3 on the previous day. Again, all acts of hurt caused to Yellia during the first period of wrongful confinement would, with the confinement, be a part of the same transaction. But the second period of confinement, which is said to have commenced sometime after the termination of the first period of confinement, would be a separate transaction. It appears, therefore, that the first two heads of charge related to a single transaction. The fifth and sixth heads also related to another single transaction. The third, fourth and seventh relate severally to separate transactions. The several hurts, as I have said,

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caused to Hanma could be tried together; but they ought to have been charged specifically, not generally. The same remark applies to the several hurts said to have been caused to Yellia which form the subject of the fifth head of charge.

I think, moreover, that the combination of the two cases by the Sessions Judge has necessarily prejudiced the accused; for it has made it possible for the prosecution to bring forward a mass of evidence at the trial, relating to many matters, some of which were only remotely connected with relevant questions. The effect must have been to embarrass and confuse the accused to some extent. The omission to specify, in the first head of charge, the several hurts caused to Hanma and in the fifth head the several hurts caused to Yellia must also have added to the difficulty of the accused in making their defence. Again, the accused were not improbably prejudiced by the refusal of the committing Magistrate to summon Mr. Scannell as a witness for the defence. His name was included in the list given in by the accused. It was intended to show by his evidence that some of the principal witnesses for the prosecution had made statements to him contradictory of statements made before the committing Magistrate. His evidence could only be refused if tendered for the purpose of vexation or delay or of defeating the ends of justice (see s. 216 of the Criminal Procedure Code (Act X of 1882)); but it was clearly for no such **[499]** purpose that the accused wished to summon him, and their application should have been granted.

The convictions recorded against the accused No. 2, Fakirapa, and No. 3, Ravji bin Sakharam, must be reversed, and a new trial ordered on amended charges in separate cases according to law.

Accused Nos. 1 and 4 have not appealed to us, and are said to have absconded before the trial was completed.

JARDINE, J.—This case has come before us on appeal of two of the prisoners—No. 2 Fakirapa, and No. 3 Ravji. They and two other accused persons were committed for trial by the Court of Session by Mr. Ramchandra Bapuji, a Magistrate of the first class in the district of Dharwar, on two commitments. In the first commitment all four were charged, under s. 330 of the Indian Penal Code, with causing hurt to one Hanma for the purpose of constraining him to restore property, and under s. 348 with wrongfully confining him for that purpose. The date is stated as between the 5th and 18th January, 1889, and the place Badugiri. Prisoner No. 1, the Chief Constable Bindo, and prisoner No. 3, Ravji, were also charged with the offence, under s. 348, as regards Rakmava, the wife of Hanma, on or about the 15th January, 1889, at Badugiri, and prisoner No. 3, under s. 330, with hurting her on or about the 14th January on the way from Solarkop to Badugiri.

On the second commitment all four were charged, under ss. 330, and 348, with hurt and wrongful confinement of Yellia, the son-in-law of Hanma, at Badugiri between the 15th and 23rd January, 1889; and the prisoners Nos. 1, 2 and 3 with wrongful confinement of Yellia under s. 346 at Badugiri and other places between the 8th February and 9th March, 1889.

The Additional Sessions Judge tried all the four prisoners at one trial on the two commitments, with slight alteration in the words of the heads of charge. His order was as follows:—

"The Court decides, under ss. 235 and 239 of the Criminal Procedure Code, to try the cases Nos. 29 and 30 jointly, as the same four persons are accused in both cases and are charged with different offences committed in what was virtually one [500] transaction, namely, a police investigation into an alleged theft at Badugiri. The offences are alleged to have been committed against the members of one family, two of whom figure as complainants. The evidence, moreover, in one case dovetails into the evidence in the other, and the whole evidence is so connected that it must be considered in its entirety before the complete history of the transaction can be grasped."

The Additional Sessions Judge convicted all the four on both heads of charge about Hanma; acquitted of the wrongful confinement of Rakmava; convicted prisoner No. 3 of the hurting of Rakmava; convicted all four as regards Yellia under ss. 330 and 348, and prisoners Nos. 1, 2 and 3 under s. 346.

Mr. Phirozshah Mehta, who has appeared for the appellants, has argued that the two commitments should have been tried separately, and that the trial of them together was illegal. He has also argued that his clients were prejudiced by that procedure; the evidence of witnesses as regards several of the offences about which the Judge convicted is, he said, apparently contradictory and discrepant, and admitted by the Judge to be untrustworthy. The minds of the Judge and Assessors he averred must have been prejudiced against the prisoners by the cumulative effect of testimony relating to many different offences, but as to each amounting not to proof, but only to grounds of suspicion; the convictions, said the learned counsel, really rest on a total of suspicions about several offences and not on proof of each offence on which there has been conviction, even when there has been no clear finding; and, therefore, he urged to the Court that the conviction should not be allowed to stand, but be quashed as contrary to law and justice.

The contention relates to the part of chap. XIX of the Criminal Procedure Code which deals with joinder of charges. The rule is found in s. 233 : "for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately :" see *Re Noujan*(1). Exceptions are made of the cases mentioned in ss. 234, 235, 236 and 239. In the present case the only sections which, I think, [501] need be construed are those mentioned by the learned Judge, and discussed by the learned counsel, *viz.*, ss. 235 and 239. The question is whether the Judge is right in treating all the offences charged as forming the "same transaction," in the sense in which these words are used in these sections. After two arguments I am of opinion that the hurting of Rakmava and the wrongful confinement of Yellia in February and March were not part of the "same transaction," as the hurting of Hanma and Yellia and the wrongful confinement of Hanma and Yellia. The identity of circumstances impaired by the differences of time, place and persons present. The fact that all the offences charged are said to have occurred in one police investigation conducted by the prisoners is, in my opinion, a very artificial bond of union. This investigation was conducted, it appears, at different times by different policemen tried at this trial; they did not act all four together. A reference to Taylor on Evidence (4th ed.), s. 307 to s. 309, or to 3 Russell on Crimes (5th ed.), p. 368, helps us to understand what is meant by the same or one entire transaction. In the cases cited in s. 309 of Taylor on the doctrine of election the existence of concurrence or proximity

(1) 7 M.H.C.R. 375.

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of time appears to have been the general criterion as to whether several felonies could be tried at the same trial.

In the present case it is to be borne in mind that the trial of all the charges together, even though some of the accused were not accused of particular charges, was held by the learned Judge to be justified under the *exceptions* to the general rule contained in s. 233 of our Procedure Code. It is reasonable, therefore, and, especially as we have to deal with the argument about the appellants having been prejudiced, it is right, that we should look at the reasons for the rule and see whether they apply to the present case. Our rule is based on the practice established by the Judges in England, which practice departed from the common law. The subject is treated in the House of Lords in *Castro* v. *The Queen* (1). The rule was that any number of felonies and any number of misdemeanours might be tried together. At p. 244 of the report Lord Blackburn says: "There was no legal objection to doing this; it was frequently not fair [502] to do it, because it might embarrass a man in the trial if he was accused of several things at once, and frequently the mere fact of accusing him of several things, was supposed to tend to increase the probability of his being found guilty, as it amounted to giving evidence of bad character against him." Lord Blackburn goes on to express an opinion that even in misdemeanours a Judge might on application apply the doctrine of election. "I think that, if the Judge, upon an application made to him, had been satisfied that to try the man for several misdemeanours together would work injustice to the prisoner, he had a perfect right to say, 'I will not work this injustice by trying them together, let us diminish them in number and try a reasonable number and no more.' "

As pointed out in Taylor on Evidence, the doctrine of election is closely connected with that about the admissibility of collateral facts, which, though not in issue, may be relevant under s. 6 of the Indian Evidence Act, if they "form part of the same transaction." In the paucity of reported decisions of Indian cases about election, I will now refer to some of these on collateral facts, which, as it happens, justify Taylor's remark, and are in harmony with the reasons for the humane rule restricting the number of charges given by Lord Blackburn in the House of Lords. I may refer to *Reg* v. *Parbhudas* (2), a fully argued case, where Mr. Justice West gives a full and lucid exposition of s. 14 of the Indian Evidence Act; to *Empress* v. *M. J. Vyapoory Moodeliar* (3), also fully argued, where that section was considered; and to *Manu Miya* v. *The Empress* (4), where Lord Blackburn's reasoning is discussed, and the danger of prejudice to the prisoner pointed out. Another reason for referring to these cases is that the learned counsel for the appellants urges that inadmissible evidence has been received about grossly indecent assaults alleged to have been committed on Harnava and Manava, the daughters of Hanma, and of assault on Advya, these offences not having been charged in the trial. I am of opinion that part of this evidence was relevant to some of the charges; *e.g.*, Harnava being called as an eye-witness of the [503] hurt said to have been inflicted on Hanma at the Ishwar temple accounts for her presence by saying that she was taken there then to be indecently assaulted; and Hanma deposes to have seen that indecent assault when he was himself being maltreated. But that evidence of indecent assault of Harnava was not relevant, in my

(1) L. R. 6 App. Cas. 229 (244, 245). (2) 11 B. H. C. R. 90.
(3) 6 C. 655. (4) 9 C. 371.

opinion, to the charges of hurt to Rakmava at a different time and place, and of wrongful confinement of Yellia, in February and March, at different places. Yet it is reasonable to suppose that it must have influenced the Judge and the assessors in their opinion on all the charges; and this is substantially equivalent to saying that the prisoners have been prejudiced, and that there has been wrong joinder.

There is, however, another reason for believing that the prisoners have been prejudiced. The Court took evidence of at least three different hurts committed on Hanma on different days—first, it would seem when he was trampled on, next when at the temple of Ishwar he was beaten in presence of Harnava when she was indecently assaulted, and, thirdly, three days after Rakmava's death, when he says he was fastened down with pegs, and Mukya Mahar rubbed dung on him. The evidence of Yellia also asserts at least three separate maltreatments of Yellia at Badugiri, the two first commencing with a beating in a water-course, the other occurring near a fig tree. It is thus clear, and I think the whole record shows it, that under the heads of charge about hurt to these men, the Court was really trying three distinct offences of hurt inflicted on Hanma and three on Yellia. I have looked carefully through the opinions of the assessors and the judgment of the Court to ascertain which of these six offences were held proved. But I find no distinct opinion or verdict, only a general finding, that Hanma and Yellia had been hurt by the prisoners, and on this the convictions and sentences are passed.

I am of opinion that the committing Magistrate ought, at the time of making out the commitments, to have put to himself definitively the question whether, as regards each of those six or more hurts, there were sufficient grounds for committing the different prisoners for trial. He was bound under ss. 222 and 223 to insert in the heads of charge sufficient particulars of [504] time, place, person and circumstances as would give each of the prisoners notice of the matter with which he was charged. The Sessions Judge ought before commencing the trial to have rendered the charges more explicit, and specially before ordering a joinder of the two commitments. Section 233 is clear that for each distinct offences there must be a separate charge. Had the proper course been adopted, it is probable that the evidence about assaults on Harnava, Monova and Advya would have been less bulky, as it would have been restrained within the limits of its connection with specific acts charged as offences. The findings that Hanma and Yellia were maltreated by the prisoners seem to me, in the absence of findings of any specific illtreatment, to be based really on suspicion. It may be that the committing Magistrate did not think the prisoners, or all of them should, have been put on their trial for all the different hurts in evidence. If so, he should have made his meaning clear, and by specifying the particular hurts he committed them to be tried for, he would have reduced the length of the trial and the embarrassment of the prisoners. I am the more led to make these observations, because the learned Judge shows in his judgment that he did not believe in the truth of the circumstances of date and of the presence and absence of prisoner No. 1 narrated by Hanma, and that he also doubted much of what the women testified. It is, therefore, clear that the want of definite specification in the heads of charge exposed the prisoners to the chance of conviction of some offence, different to that for which they were being tried; for it is possible that the Judge held the particular hurts deposed to by Hanma and identified as to times, places and circumstances

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by his testimony, not proved, and at the same time held proved some other hurts to him neither identified by his testimony nor by notifying particulars in the charge. It is obvious also that, unless the legal procedure is properly followed, the end of criminal procedure, *i.e.*, the punishment of crime, will not be attained. The Magistrates should be encouraged to ascertain the fact of a particular offence and to collect evidence thereof before commitment; and not to expect convictions at the Sessions on a vague and multifarious evidence, causing suspicion of several offences, but yielding [505] proof of none. The error to which a wrong procedure might lead the Court is similar to that of a Judge who in a suit for debt does not find any of the items proved, but yet holds the debt to be proved on the same evidence.

I am of opinion that it would be prejudicing the two prisoners who have appealed, if we determined the facts on the record of the trial; and I do not think we ought to acquit them, as the Judge and the assessors found them guilty, and the record does not show that they objected to the misjoinder at the trial, or asked for specification in the charges of hurt: see *The Queen* v. *Stroulger* (1). The proper course, and to which Mr. Phirozshah Mehta assents and the Government Pleader does not object, is to set aside the convictions and sentences of these two appellants and to direct that they be tried anew by the Court of Session. The charges relating to Hanma, to Rakmava and to Yellia should be matter of separate trials. The Sessions Judge should ascertain from the prosecution which of the particular hurts they elect to proceed upon, and the proper heads of charge should be framed. It may be assumed that any charges which cannot be supported by *prima facie* evidence will not be pressed, and especially after the strictures passed by the Judge on some of the evidence before him. The prisoners should be given opportunity to meet the charges, and allowed to give in fresh lists of witnesses.

Convictions and sentences quashed, and re-trial ordered.

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15 B. 505.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* SARYA.* [18th February, 1890.]

Jurisdiction—Appeal to the High Court—Scheduled District (Act XIV of 1874)—Act XI of 1846—Rules framed under s. 3 of Act XI of 1846—Rule 44—Appeal.

The accused were convicted under s. 201 of the Indian Penal Code (Act XLV of 1860) of an offence committed in the village of Gulamba, in the Mehwas Estate of Nal, in the Khandesh District, and sentenced by the Agent to the [506] Governor each to suffer rigorous imprisonment for five years. The Agent tried the case under the rules framed under Act XI 1846.

The accused appealed to the High Court under Rule 44 of the rules framed under s. 3 of Act XI of 1846 (2).

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* Criminal Appeal No. 21 of 1890.

(1) L. R. 17 Q. B. D. 327.

(2) *Vide Bombay Government Gazette* for 1855, pp. 1342—1346.

Rule 44 provides as follows:—"The Sadar Faujdari Adalat shall be empowered to call for the Agent's proceedings in any case on petition being made to that Court by any party against whom a sentence may have been passed by the Agent, and the Sadar Court may thereafter proceed according to the provisions of s. 4 of Act XI of 1846."