[3 Mad. 351.]

APPELLATE CRIMINAL.

The 3rd August, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE INNES.

Mutirakal Kovilagatha Rama Varma Raja.....(Prisoner) Appellant.

versus

The Queen.*

Sessions trial—Conviction upon added charge of distinct offence not supported by evidence before Magistrate quashed.

R having been committed by a Magistrate for trial by a Sessions Court on a charge, under Section 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty, on his trial, to the charge on which he was committed.

Upon the application of the Public Prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge, under Sections 109 and 201 of the Penal Code, of abetting C, a female co-prisoner charged with having assisted in burying the body of the murdered person, required R to plead to the charge and, having tendered a pardon to and examined C as a witness, convicted and sentenced R to 2 years' rigorous imprisoment:

Held that, as there was no evidence before the Magistrate to support the charge against R framed by the Sessions Judge, the action of the Judge was *ultra vires* and the conviction on the added charge illegal. *Held* also that inasumch as the Sessions Judge considered R more culpable than C, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an inquiry as to whether there was ground for a more serious charge against R.

Semble: The object of restricting a Sessions Court from taking cognizance of any offence (except as provided in Sections 455,† 472,‡ 474§ of the Criminal Procedure Code), unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary inquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him and enables him to make his defence.

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* Appeal No. 201 of 1881 against the sentence passed by J. W. Reid, Sessions Judge of North Malabar, dated 15th February, 1881.

†[Sec. 455:—If a single Act or set 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 person may be charged with having committed any such offence; 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.]

Where it is doubtful what offence has been committed.

‡[Sec. 472:—A Court of Session may charge a person for any such offence committed before it or under its own cognizance, if the offence be triable by the Court of Session exclusively, and may commit or hold to bail and try such person upon its own charge.

Power of Court of Session as to such offences committed before itself.

In such case the Court of Session shall have the same power of summoning, and causing the attendance at the trial of any witnesses for the prosecution or for the defence as is vested in a Magistrate by this Act.

Such Court may direct the Magistrate to cause the attendance of such witnesses on this trial.]

§[Sec. 474:—In any case triable by the Court of Session exclusively, any Civil Court, before which such offence was committed, may, instead of sending the case for inquiry to a

Power of Civil Courts to complete investigation and

THE facts and argument in this case appear in the judgment of the Court (TURNER, C. J., and INNES, J.).

[352] *L. Gordon* for the Appellant.

Judgment:—On the 12th January 1881 a murder was committed at *Mundakara* Deshom. In the course of an investigation by the Police, it became apparent that a woman named *Chiruthayi* had assisted in burying the body, and that the appellant had been aware of the commission of the offence and had refrained from giving information respecting it. The Magistrate held an inquiry and committed *Chiruthayi* for trial by the Court of Session on a charge under Section 201* and the appellant on a charge under Section 202† of the *Indian Penal Code* of having intentionally omitted to give information of the murder.

When the trial in the Sessions Court commenced, the appellant pleaded guilty to the charge on which he had been committed. The Judge had already tried and convicted an accused person of the murder, and, in the course of that trial, circumstances had come to his knowledge which led him to think the appellant should be tried on a charge under Sections 109‡ and 201, and that his gulit was relatively greater than that of the woman

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commit to Court of Session.

Magistrate, complete the inquiry itself, and commit or hold to bail the accused person to take his trial before the Court of Session.

For the purposes of an inquiry under this section, the Civil Court may exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be deemed to have been held by a Magistrate.

If a Civil Court sends a case for inquiry and commitment to a Magistrate he is bound to receive and dispose of it; but if a Civil Court makes a commitment it shall complete the inquiry itself.]

Causing disappearance of evidence of an offence committed, or giving false information touching it, to screen the offender.

* [Sec. 201:—Whoever, knowing orhaving reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment

If a capital offence.

of either description for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with transportation for life,

If a punishable with transportation.

or with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment for any term not extending to ten years shall be punished with imprisonment of the description provided for the offence, for a term

If punishable with less than ten years' imprisonment.

which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.]

Intentional omission to give information of an offence, by a person bound to inform.

† [Sec. 202:—Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with inprisonment of either description for a term which may extend to six months, or with fine, or with both.]

Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

‡ [Sec. 109:—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation:—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.]

Chiruthayi. When, therefore, the Public Prosecutor applied to him to add a charge under Sections 109 and 201, *Indian Penal Code*, he, under protest on the part of the appellant, framed the charge against the appellant and required him to plead to it. He then tendered a pardon to *Chiruthayi*, and, having examined her as a witness, on her evidence convicted the appellant on the added charge as well as on the charge of which the appellant had pleaded guilty, and he sentenced him to two years' rigorous imprisonment. He did not record a separate sentence in respect of each charge.

There was no evidence taken by the Magistrate which would have supported the charge against the appellant under Sections 109 and 201, *Indian Penal Code*. On appeal it is contended that the Judge had no power to add the charge under Sections 109 and 201, *Indian Penal Code*. Except in the case of certain offences committed before it or under its own cognizance (*Criminal Procedure Code*, Sections 435, 472 and 474) a Court of Session cannot take cognizance of any offence unless the accused person has been committed by a Magistrate, &c.

[353] The object of this restriction was peresumably to secure, in the case of a person charged with a grave offence, a preliminary inquiry which would afford him the opportunity of becoming acquainted with the circumstances of the offence imputed to him and enable him to make his defence. A Court of Session has power to amend or alter a charge on which an accused person has been committed at any time before the verdict of the jury is delivered or the opinion of assessors expressed.

It has also power, when the accused has been committed without a charge at all, or upon a charge, which the Court, upon a reference to the proceedings before the committing Magistrate, considers improper, to draw up a charge for any offence which it considers proved by the evidence taken before the committing Magistrate. In the case under appeal, the accused was committed on a charge which, in reference to the proceedings before the Magistrate, the Judge has not held to be an improper charge. On this charge, without alteration or amendment, the Judge convicted the appellant. The Judge did not amend or alter the original charge nor supply a charge provable by the evidence taken by the Magistrate; he added a charge of an offence which, although it arose out of the same circumstances, was distinct from that for which the accused had been committed to take his trial, and inasmuch as the charge so added could not be supported by the evidence taken by the Magistrate, a witness not examined at the inquiry by the Magistrate was for the first time examined in the Sessions Court, and, on her evidence alone, the Judge has convicted the appellant on the charge added by him.

The action of the Judge in adding the charge must be pronounced *ultra vires* and as this is not a mere error of procedure but an improper assumption of jurisdiction, the conviction on the added charge must be quashed, and the sentence reduced to rigorous imprisonment for six months.

The course the Judge might, without impropriety, have taken, in the view he entertained of the relative guilt of the persons committed to him, was to have postponed the trial of the present appellant and have sent the record of the trial for murder to the committing officer and have suggested to him to consider whether there were or were not grounds for inquiring into a charge against the appellant of a more serious character than that on which he had been committed.

NOTES.

[See the cases of (1892) 15 Mad. 352 and (1894) 22 Cal. 50 where the convictions of approvers not committed to the Sessions were set aside. As regards the power to add charges see (1884) 8 Bom. 200.]

[354] APPELLATE CRIMINAL.

The 4th August, 1880.

PRESENT.

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Elavarisu Vanamamalai Ramanuja Jeeyarsvami.....Petitioner

versus

Vanamamalai Ramanuja Jeeyar,.....Counter-Petitioner.*

Criminal Procedure Code, Chapters XXXIX and XL—Disputed possession—Riot imminent —Abstention from a certain act.

Where a dispute arises as to the right to the possession of lands and buildings, a Magistrate, if he considers a collision between the parties and a serious breach of the peace imminent, may properly proceed under Chapter 39 instead of Chapter 40 of the Criminal Procedure Code. If the Magistrate had jurisdiction, the proceedings, not being judicial, cannot be revised by the High Court.

An order to abstain from interference with a temple and its property is an order to abstain from a "certain act" within the meaning of Section 518 of the Criminal Procedure Code.

ON the 26th October 1880 the Acting Head Assistant Magistrate of *Tinnevelly*, after considering various Magisterial orders, Police reports, and complaints by and against the parties concerned in these proceedings, recorded the following order :—

"It seems to me that unless some steps are taken at once by the authorities in this district, a serious riot will take place at *Nanguneri*. It is with great reluctance the Acting Head Assistant Magistrate feels it his duty to interfere with the rights or interests of private persons. There are, however, occasions on which it is the duty of the Magistrate to interfere. I believe this is one of them.

"2. It appears in the year 1878 the elder Jeeyar of *Nanguneri* Matam, who has control over extensive estates in the Nanguneri and other taluks, was very ill and believed to be on the point of death. He then nominated one Gopala Ayyangar, who is now known as the younger Jeeyar, to be his successor.

* Petition 821 of 1880 (146 of 1881) against the Proceedings of F. H. Hebbert, Acting Head Assistant Magistrate of Tinnevelly, dated 26th October 1880.

† [Sec. 518 :—A Magistrate of the District, or a Magistrate of a division of a District, or any Magistrate specially empowered, may, by a written order, direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate considers that such direction is likely to prevent, or tend to prevent

Magistrate may issue orders to prevent obstructions, danger to human life, or riots.

obstruction, annoyance or injury, or risks of obstruction, annoyance or injury, to any persns lawfully employed,

or danger to human life, health or safety, or a riot or an affrany.

Explanation I :—This section is intended to provide for cases where a speedy remedy is desirable and where the delay, which would beoccas ioned by aresort to the procedures contained in section five hundred and twenty one and the next following sections, would, in the opinion of the Magistrate, occasion a greater evil than that suffered by the person upon whom the order was made, or would defeat the intention of this chapter.

Explanation II ;—An order may, in cases of emergency or in cases where the circum-

"3. This younger Jeeyar asserts that the whole property was made over to him, and the management of the pagoda and charity were put in his hands The management is not in his hands, as he himself personally admitted.

[355] "4. For some years he, as a matter of fact, received 700 rupees per annum.

"5. This year in August he emerged from a village in the *Ambasamudram* Taluk, where he had resided in obscurity, and proceeded to *Nanguneri*, accompanied by a band of Maravars, with the avowed object of taking the management of the temple and charity into his hands.

"6. The Police are afraid a breach of the peace will occur. There can be no doubt there are two strong parties formed.

"7. The chief danger will occur in October and November, when the Kar rents are to be collected.

"8. Each party will attempt to collect the rents from the opposite and riots are certain to be the result.

"9. I think, on the information at present received, the younger Jeeyar appears to be in the wrong and should go to a Civil Court.

"10. In the present I consider it is necessary that, until a decision of a competent Court be passed in his favour, the younger Jeeyar be ordered to abstain from in any way interfering with the management, worship, or administration of the *Nanguneri* Matam and its appurtenant estates, and I hereby do order him so to abstain.

"11. This order will be submitted to the District Magistrate for his information and approval.

"12. I am clearly of opinion that in the words of Section 518 a resort to procedure contained in Section 521 and the next following sections would occasion a greater evil than that suffered by the person upon whom the order is made, and that it would defeat the intentions of Chapter XXXIX of the *Criminal Procedure Code*."

The younger Jeeyar thereupon presented a petition to the High Court under Section 297 of the *Criminal Procedure Code*, praying that the order might be quashed as illegal.

Mr. *Norton* and *Sadagopachari* for the Petitioner.

Notice was served on petitioner on 10th October to show cause why he should not enter into a bond to keep the peace. The case was adjourned till the 28th, and on the 26th the Magistrate proceeded to the mutt, took a deposition from petitioner, and passed an order purporting to be under Section 518 of the *Criminal Procedure Code*. No notice was served under Section 518 which deals with quite a different matter.

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stances do not admit of the serving of notice, be passed *ex partee*, and may in all cases be made upon such information as satisfies the Magistrate.

Explanation III:—An order may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Explanation IV:—Any Magistrate may recall or alter any order made under this section by himself or by his predecessor in the same office.]

[356] The proceedings purport to be passed under Section 518, but in effect the order is an order under Section 530. If it is an order under Section 518, the Court may interfere under Section 15 of the *Charter Act*, 24 & 25 Vic., Ch. 104. (INNES, J.—I always understood that section to refer to administrative proceedings.) The Full Bench ruling in the case of *Chunder Nath Sen* (I. L, R. 2 Cal. 293) is an authority for the Court's interference, if the circumstances call for it, under the *Charter Act*. There was no necessity for proceeding under Section 518. Mere anticipation of riot, without grounds, is not enough. If this order is in effect an order under Section 530, which it appears to be—for the question is as to the possession of the temple property and not about a nuisance—no written statement has been taken from the parties, nor has evidence as to possession, as required by that section, been recorded. Lastly, the order is too wide and indefinite. Section 518 refers to abstention from a *certain act*.

Mr. *Wedderburn* and *Terenaranachari* for the Counter-Petitioner.

If the order is under Section 518 this Court cannot interfere, because Section 520 declares the proceedings not to be judicial. The order was passed on 26th October. The Magistrate from Police reports (information which satisfied him—*see* Explanation II to Section 518) apprehended a serious riot when the Kar rents were to be collected in that and following month; this being so, the order cannot be said to have been passed without jurisdiction, and the ruling of the Full Bench in *Chunder Nath Sen's* case is applicable. The order is not illegal, as in the case of *Gopi Mullick* v. *Taramoni Chowdrain* (I. L. R., 5 Cal., 7), for it has only a limited operation as to time, and the act from which petitioner is to abstain is clearly defined.

The **Judgment** of the Court (INNES and MUTTUSAMI AYYAR, JJ.) was delivered by

Innes, J.—We had some doubt at first, arising out of the argument, whether the Magistrate was authorized to act under Chapter 39, *Criminal Procedure Code*, in such a case as this, which appeared to be one in which the procedure prescribed by Chapter 40 would more properly have been adopted. But, on consideration, we think that the Magistrate was not debarred by the nature of the dispute as to the right to possession **[357]** of lands and buildings, from acting under Chapter 39, so soon as it appeared to him that the attitude of the petitioner was such as to occasion an apprehension of a collision of the two parties in which a breach of the peace of a serious character was imminent. Orders properly passed under this chapter are not revisable by the Courts, as such orders are expressly declared to be not judicial proceedings, which alone are revisable under Section 297 of the *Code of Criminal Procedure*: and, as the intention of the Legislature to exempt such orders from revision is thus declared, it is difficult to understand what power of interference the Court could have under Section 15 of the *Charter Act*.

All that the High Court can do is to see that the Magistrate had jurisdiction to pass the order under Section 518. If he had, there is no power of interference. It was contended that there was no such emergency as to call for an order under Section 518, and that the order was bad as being not confined to a prohibition of one act but extended to several acts. We think we must take the recitals of the order itself in paragraphs 5, 6, 7 and 8 as sufficient to show that the Magistrate *bona fide* believed, from information before him, that the danger of a disturbance through the action of the petitioner was imminent. It is not necessary that the information on which he acted should be on record. The circumstances on which a

Magistrate is required to act under this section are frequently such that action must be taken immediately upon oral information, and the circumstances which are on record in this case up to the 18th September would satisfy us, if this were necessary, that, on the 26th October, when the Magistrate passed his order, there may still have been danger of such a breach of the peace as the Magistrate says he was informed by Police and Magisterial authorities was to be apprehended immediately. We do not think the order too extensive. In effect it requires petitioner to abstain from interference with the mutt and the property appertaining to it—an order which is an order to abstain from a "certain act" within the meaning of the section.

As the order is one properly passed under Section 518, we are of opinion that it is not revisable, and we dismiss the petition.

Ordered accordingly.

NOTES.

[The change in the wording of the Cr. P. C. of 1882 on this point was considered in (1895) 19 Mad. 18=5 M. L. J. 249. *See* also (1895) 18 Mad. 402.]

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[358] APPELLATE CIVIL.

The 9th September, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND

MR. JUSTICE INNES.

Venkatachellam Chetti.....(Plaintiff) *versus* Audian.....(Defendant).*

Patta for one fasli to remain in force until another is granted, rent reserved being over 50 rupees—Registration Act of 1877, Section 17, Clause— Exemption by local Government.

Leases for a term not exceeding five years, with a rent reserved not exceeding 50 rupees, being exempted by the local Government from registration.

Held that a patta for one fasli to remain in force until another patta is granted, with a rent reserved of 110 rupees, did not fall within the exemption.

Held also that such a patta was a lease for a term exceeding one year and not a lease for a year, and therefore subject to the general provision of clause (*d*), Section 17, of the Indian Registration Act, 1877.

IN this case plaintiff sued to recover Rs. 49-15-11, after deducting Rs. 60-2-4 relinquished, being arrears of melvaram due for Fasli 1287 (1878), from defendant as tenant of certain lands, alleging tender of a patta for that fasli and refusal by the defendant to accept it.

The defendant denied the tender and contended that the pattà should have been registered before tender.

* Referred Case 10 of 1881, stated by T. A. Kristnasami Ayyar, District Munsiff of Shivaganga.