APPELLATE CRIMINAL.

Before Mr. Justice Wilkinson and Mr. Justice Shephard.

1888.
Sept. 11.

MADURAI *in re.**

Penal Code, ss. 426, 477—Destruction of promissory note—Offence not triable by Magistrate, but by Sessions Court only.

P. M. was convicted by a magistrate under s. 426 of the Indian Penal Code on a charge of mischief by tearing up a promissory note for Rs. 20:

Held, that the offence charged fell under s. 477 of the Penal Code and was therefore triable by a Sessions Court only.

APPLICATION under ss. 435 and 439 of the Code of Criminal Procedure to quash the sentence of Colonel McDonald Smith, Chief Presidency Magistrate, in calendar case No. 12102 of 1888.

The facts and arguments necessary for the purpose of this report appear from the judgment of the Court (Wilkinson and Shephard, JJ.).

Mr. *Wedderburn* for petitioner.

The Public Prosecutor (Mr. *Shaw*) for the Crown.

Alagasingarachari for the complainant Chinnasami.

JUDGMENT.—The complaint against the accused is that he tore in pieces a promissory note which the complainant, having come to demand payment, had put into the hands of the accused. The Chief Presidency Magistrate has found the accused guilty and convicted him of an offence punishable under s. 426 of the Indian Penal Code. It is objected on behalf of the accused that, having regard to the complaint and the evidence in support of it, the Magistrate ought to have treated the case as one in which an offence punishable under s. 477 was charged and ought, in his view of the evidence, to have committed the case for trial, having himself no jurisdiction to try a charge under that section.

We are of opinion that the objection is well founded. The destruction or attempted destruction of such an instrument as a promissory note is, by s. 477 specifically made an offence which is triable by the Session Court only. With evidence of such an offence before him, the Magistrate ought, we think, to have

* Criminal Revision Case No. 433 of 1888.

committed the case. *Empress* v. *Paramananda*(1). The Magistrate refers us to a case reported in Weir's Criminal Rulings, page 259, where it is held that because the evidence may be sufficient to support a charge of robbery with violence or other circumstances of aggravation so as to bring the case within s. 394 or 397 of the Indian Penal Code, the jurisdiction which the Magistrate has under the general s. 392 is not necessarily ousted. The present case, however, is different. The distinction between s. 426 and s. 477 is of a different character. Mischief done by a particular means or to particular things is in several cases treated as a specific offence and in some cases, *e.g.*, those of mischief by fire and mischief by destroying a light-house, the offence is triable only by the Court of Session. When there is evidence of such an offence having been committed, the Magistrate cannot, we think, disregard the fact that the mischief was committed in a particular way or to particular property, as he might disregard the circumstances of aggravation which convert a case which would otherwise be simple robbery into robbery with violence. We may also refer to the later ruling reported in page 701 of Weir's Criminal Rulings as showing that the Magistrate is not justified in assuming jurisdiction, when the evidence plainly points to a more serious offence of the same genus without his jurisdiction. Exception was also taken to the judgment of the Magistrate, on the ground that he had misunderstood the evidence of the defence witnesses in supposing that they had been called to prove an *alibi*. However, it is unnecessary to make any observation on this point, because for the reason already stated we think the case is one in which the Magistrate ought, if he thought a *primâ facie* case made, to commit accused for trial at the sessions. We must set aside the conviction and sentence and direct the Chief Presidency Magistrate to rehear the case, examining such witnesses as the parties may produce, and dispose of the case according to law.

(1) I.L.R., 10. Cal., 85.