

and the same offence as shown by the illustration (a) of that section. Nor do the cases before us fall either under cl. III of s. 235 of the Code of Criminal Procedure or s. 72 of the Indian Penal Code.

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On comparing s. 235 with the corresponding section of the former Code of Criminal Procedure, it will be observed that the rules for assessing punishment, which cls. II and III of s. 454 contained, are omitted in the present Code, and illustrations (b) and (c) of s. 235, cl. I of the present Code appeared in the former Code as illustrations of s. 454, cl. III. This modification clearly indicates an intention on the part of the Legislature to provide, by s. 235, rules of criminal pleading only and to leave the rules for assessing punishment to be found in s. 71 or 72 of the Indian Penal Code and s. 35 of the Code of Criminal Procedure. The ruling in *The Queen v. Noujan* had reference to the provisions of the former Code of Criminal Procedure, and it is no longer applicable. I do not, however, desire to be understood as saying that it may not usefully be kept in view for the purpose of seeing that the aggregate sentence is not excessive or unnecessarily severe.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

HAYES *in re.**

Jurisdiction of High Court—Foreign Jurisdiction Act, 1879, ch. II—European British subjects in Bangalore—Justices of the Peace for Mysore.

1888.
July 27,
August 1.

* The Civil and Military Station of Bangalore is not British territory, but a part of the Mysore State, and the Code of Criminal Procedure is in force therein by reason of declarations made by the Governor-General in Council in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, 1879.

Justices of the Peace for the State of Mysore are also Justices of the Peace for Bangalore, and both the Civil and Sessions Judge and the District Magistrate of Bangalore being such Justices of the Peace, are, by virtue of s. 6 of the said Act, subordinate to the High Court at Madras.

APPLICATION to the High Court under s. 526 of the Code of Criminal Procedure for the transfer of a criminal case from the Court of the District Magistrate of the Civil and Military Station

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of Bangalore to the Court of one of the Presidency Magistrates at Madras.

The facts necessary for the purpose of this report appear sufficiently from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

Mr. *Hayes* for petitioner.

Laing for defendants.

JUDGMENT.—This is an application under s. 526 of the Criminal Procedure Code for the transfer of a criminal case pending in the Court of the District Magistrate of the Civil and Military Station of Bangalore. One Mr. Hayes filed a complaint in the said Court under s. 500 of the Indian Penal Code against (i) the editor and managing proprietor and publisher of the *Bangalore Spectator*, and (ii) against the joint-proprietor and publisher of the *Bangalore Spectator*. Both the accused are European British subjects. It appears the complaint has reference to matters connected with the Municipality of Bangalore, and that the District Magistrate is also the President of the Municipality. It is further alleged for the complainant and admitted for the accused that the Magistrate may probably be cited as a witness in the case. Affidavits are also filed to show that the Magistrate himself expressed a wish that the case might be removed from his Court. We consider, therefore, that it is expedient to transfer the case to some other magistrate competent to try European British subjects and having jurisdiction as a first-class Magistrate in the Civil and Military Station of Bangalore. The next question we have to consider is whether we may transfer the case either to the Civil and Sessions Judge for the station of Bangalore or to the Assistant Resident of Mysore. In this connection three points are urged for the accused, viz., (i) that the Civil and Military Station of Bangalore is not British territory; (ii) that the Code of Criminal Procedure is in force there in common with other Acts by virtue of declarations made by the Governor-General in Council in exercise of the powers conferred upon him by Act XXI of 1879, and (iii) that those who are appointed Justices of the Peace for the State of Mysore under the said enactment are also Justices of the Peace for the station of Bangalore. We are of opinion that the contention is well founded. We see no reason to doubt that the station of Bangalore is foreign territory. That it was so prior to 1881 was already

decided by this Court in *Regina v. Shallard*(1). In 1881 when the State of Mysore was transferred by the Governor-General in Council to His Highness the Maharaja of Mysore, the whole province of Mysore was transferred, and the Civil and Military Station of Bangalore was not specially excluded. The instruments of transfer, however, provided for the establishment of British cantonments in the State of Mysore, for the Maharaja granting free of all charge such lands as may be required for such cantonments and for renouncing all jurisdiction within the lands so granted. (*Mysore Blue Book*, page 193.) On the 19th May 1881, the Maharaja of Mysore assigned the Civil and Military Station of Bangalore to the British Government and renounced the exercise of all jurisdiction within the said station with effect from the 25th March 1881. (See Notification, *Mysore Gazette*, Part I, No. 8, page 25, of 21st May 1881.) It is clear then that the station of Bangalore is part of the State of Mysore, assigned by the Maharaja to the exclusive management of the British Government, and in which the Maharaja renounced the exercise of all jurisdiction. Nor is there any reason to doubt that the Code of Criminal Procedure and other Acts of the Legislative Council are in force in the station of Bangalore by virtue of declarations made from time to time by the Governor-General in Council under Act XXI of 1879. Thus on 3rd March 1883 Act X of 1882 was introduced into Bangalore with the exception of so much of it as applies (i) to the Courts of Presidency Magistrates, (ii) to Justices of the Peace, (iii) to European British subjects, and (iv) to the High Courts of Judicature established under 24 and 25 Viet., ch. 104. (*Gazette of India*, Part I, page 137, of 3rd March 1883.) Again on the 7th August 1883 the Governor-General in Council published a list of Acts declared applicable to Bangalore Civil and Military Station, and the notification published in the *Gazette of India*, Part I, page 332, of the 11th August 1883, announced that the declaration was made under ss. 4 and 5 of Act XXI of 1879 (The Foreign Jurisdiction and Extradition Act, 1879). Further it is clear that the jurisdiction which Justices of the Peace exercise over European British subjects in the Civil and Military Station at Bangalore depends upon their appointment for that station and upon Act XXI of 1879 and

(1) 2 M.H.C.R., 444.

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upon the enactments extended by the Governor-General in Council under the authority conferred upon him by the Foreign Jurisdiction Act.

Accordingly on the 21st July 1881 ten persons were appointed to be Justices of the Peace in the State of Mysore under s. 6 of Act XXI of 1879. (*Gazette of India*, Part I, page 296, of the 23rd July 1881.) On the 3rd January 1884 the Assistant Resident was similarly appointed a Justice of the Peace. The District Magistrate before whom the complaint of Mr. Hayes is now pending, and the Civil and Sessions Judge to whose file its transfer is suggested, were appointed to be Justices of the Peace in the State of Mysore on the 22nd March 1884 and on the 14th October 1884 respectively. (*Gazette of India*, Part I, pages 124 and 360.) Though they are all appointed Justices of the Peace in the State of Mysore, they are Justices of the Peace also for the Civil and Military Station of Bangalore, which is included in and part of that State as already stated. It is conceded by the counsel for the complainant that no other construction is possible, for there would be no Justice of the Peace at all for the station of Bangalore if it were not taken to be included in the words "In the State of Mysore."

The conclusion we come to is that the Civil and Sessions Judge, as well as the District Magistrate, of the Civil and Military Station of Bangalore are appointed Justices of the Peace, by virtue of their offices, in the said station for the State of Mysore, which includes the Civil and Military Station of Bangalore; that by virtue of s. 6 of Act XXI of 1879, they are also magistrates of the first class, and that both their Courts are subordinate to this Court under the same enactment.

We order, therefore, that the complaint of the petitioner now pending in the Court of the District Magistrate of Bangalore Civil and Military Station be transferred from his file to that of the Civil and Sessions Judge of that station.
