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not in accordance with the judgment. It is not for us to construe the relief granted by the decree, by reference to the particulars of the claim. These are required to be set forth in the decree, but it is also obligatory to set out clearly the relief granted or other determination of the suit. The decree which gave rise to the present suit does not fulfil these conditions, and as it is expressed, it is in my opinion nothing more than a money-decree against the defendant. I would therefore dismiss the appeal and affirm the judgment with costs.

STRAIGHT, J.—I entirely agree in the views of Mr. Justice Spankie, which are in accordance with the opinion I entertained in a case of a similar kind (1), involving like considerations, before Mr. Justice Oldfield and myself.

Appeal dismissed.

APPELLATE CRIMINAL.

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August

Before Mr Justice Straight.

EMPRESS OF INDIA *v.* BANNI.

Exposure of child—Culpable homicide—Act XLV of 1860 *(Indian Penal Code), ss.* 304, 317,

Where a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, *held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Indian Penal Code, but under s. 304 only.

ONE Banni exposed her infant child, which was in her sole care, in a certain place, with the intention of wholly abandoning it, and knowing that her act was likely to cause its death. The child died in consequence of the exposure. Banni was convicted by Mr. W. Tyrrell, Sessions Judge of Bareilly, on the 18th June, 1879, of an offence punishable under s. 317 of the Indian Penal Code, and also of an offence punishable under s. 304 of that Code, and was sentenced for the first mentioned offence to rigorous imprisonment for two years, and for the last mentioned offence to rigorous im-

(1) *Thamman Singh* v. *Ganga Ram, ante* p. 342.

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prisonment for the same period, such last sentence to take effect on the expiry of the sentence under s. 317. She appealed to the High Court.

The appellant was not represented.

STRAIGHT, J.—In disposing of this appeal, it is necessary I should correct a mistake of procedure into which, according to my judgment, the Sessions Judge has fallen, by making two convictions of the appellant for offences against ss. 304 and 317 of the Indian Penal Code, and passing sentence for each. As long as the child remained alive the charge under s. 317 of "exposure with intent to abandon" could have been properly sustained, and had Musammat Banni been tried before its death for this offence, she could rightly have been convicted, and as provided by the explanation at the end of s. 317 such conviction would have been no bar in the event of the child's death to a prosecution for culpable homicide. To give an analogous case, *A* commits an assault upon *B* and undergoes his trial for an assault before *B*'s death, which ultimately takes place in consequence of the injuries inflicted by *A*. *A*'s conviction for the assault is no bar to an indictment for manslaughter. But if before *A*'s trial *B* dies, then *A* must be tried for manslaughter, the lesser crime having merged into the greater, and the offence committed relating to one and the same transaction. In the present case when the child died the offence of Musammat Banni, under s. 317, became absorbed in the more serious charge of culpable homicide, and the unlawful act of exposure having directly caused the death, and being done with the knowledge it was likely to cause death, brought the accused within the operation of s. 304. It seems to me that the maxim "*nemo debet bis puniri pro uno delicto*" applies, and that in this case two separate sentences can no more be passed than they could for murder and wounding with intent to murder, where the death of the party attacked had taken place, and the death and the wounding involved one and the same transaction. The criminal exposure under s. 317 was the direct cause of the death of the child, and therefore the crime, instead of stopping at s. 317, death being caused, took the more serious shape under s. 304. It was of course perfectly proper to frame a charge upon s. 317, because had any question arisen about the cause of death being the

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exposure, the transaction would have resumed its character under s. 317. For the preceding reasons I therefore think it safer to quash the conviction and sentence upon s. 317, but agreeing as I do in the view taken as to the proper punishment for the conduct of the accused by the experienced Sessions Judge, I order that so far as the appeal against the conviction on s. 304 is concerned it be dismissed, and that the sentence in respect of the conviction on that section be increased to one of four years rigorous imprisonment.

CRIMINAL JURISDICTION.

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Before Mr. Justice Straight.

EMPRESS OF INDIA *v.* RAGHUBAR AND OTHERS.

Act X of 1872 *(Criminal Procedure Code), s.* 489—*Security for keeping the peace*—*Act XLV of* 1860 *(Penal Code), ss.* 503, 506—*Criminal intimidation.*

The words in s. 489 of the Criminal Procedure Code, "taking other unlawful measures with the evident intention of committing a breach of the peace," do not include the offence of intimidation by threatening to bring false charges.

Where therefore a person was convicted under ss. 503 and 506 of the Indian Penal Code of such offence, *held* that the Magistrate by whom such person was convicted could not, under s. 489 of the Criminal Procedure Code, require him to give a personal recognizance for keeping the peace.

THIS was a case referred to the High Court for orders under s. 296 of Act X of 1872 by Mr. R. G. Currie, Sessions Judge of Gorakhpur.

STRAIGHT, J.—The point here is whether upon a conviction under ss. 503 and 506 of the Penal Code, the accused person can be called upon, under s. 489 of the Criminal Procedure Code, to find recognizances with or without sureties to keep the peace. The defendants in the present case were convicted by the Magistrate of intimidating the complainant by threatening to bring false charges against him, and the question seems to be whether the words "taking other unlawful measures with the evident intention of committing a breach of the peace" can be said to include an offence of this kind. I do not think that the operation of s. 489 is limited to riot, assault, actual breach of the peace, or abetting the same, or unlawful assembly, but that it is intended to comprehend a wider range of offences, and it must be for the Magistrate or Court to decide in each case whether, from the nature of the charge upon