The decree-holders appellants are entitled to the costs of this appeal, which are fixed at one gold mohur or Rs. 16.

TYRRELL, J.—I concur.

Appeal allowed.

APPELLATE CRIMINAL.

Before Sir John Edge, Kt., Chief Justice.

QUEEN-EMPRESS *v.* GIRDHARI LAL.

Act XLV of 1860 (*Penal Code*), *ss.* 24, 25, 218, 464, *clause* 3—*Forgery*—"*Dishonestly*"—"*Fraudulently*"—*Public servant framing incorrect record.*

A Treasury accountant was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances:—A sum of Rs. 500, which was in the Treasury and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the Treasury Officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the Treasury Officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs. 500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to.

Held, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention,—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that under these circumstances he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that therefore his guilt under s. 465 had not been made out, and the conviction under that section must be set aside.

Held also that the prisoner's intention in making the false reports was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, and that having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code.

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Held further that as the prisoner, who was a public servant, made these reports and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code.

THIS was an appeal from a judgment of Mr. A. Cadell, Sessions Judge of Aligarh, dated the 10th May, 1886, convicting the appellant of an offence under s. 465, and two offences under s. 218, of the Penal Code.

The appellant, Girdhari Lal, in August, 1882, was employed as Treasury Accountant in the Etah Collectorate. On the 19th August, 1882, a sum of Rs 500, "decree-money payable to Sewa Ram of Janera, pargana Marehra," was paid into the Treasury by one Balwant Singh, and the name of the depositor, the date of receipt, and the nature of the deposit, as quoted above, were duly entered opposite Deposit No. 214 in the Revenue Deposit Register of the Etah Treasury. This money, payable to Sewa Ram, was subsequently all drawn and paid away to persons other than Sewa Ram by means of three forged cheques or repayment orders $\frac{40}{1137}$, $\frac{70}{332}$, and $\frac{48}{1150}$. These payments were duly entered on the right-hand page for "details of repayment" of the Deposit Register already mentioned. These repayments appeared to have been made at the same time that the forged cheques were drawn and the money was paid. Cheque or repayment order No. 49 of Book 1137 was dated the 3rd July, 1884; cheque No. 70 of Book 332 was dated the 8th September, 1884; and cheque No. 48 of Book 1150 was dated the 30th January, 1885. Thus on the 30th January, 1885, the whole of Deposit No. 214, amounting to Rs. 500, and due to Sewa Ram, had been paid away to persons other than Sewa Ram or his representatives.

On the 20th April, 1885, another sum of Rs. 500 was paid into the Treasury, and was duly entered in the Revenue Deposit Register of that date as received from Muhammad Iltafat Husain, Vakil, decree-money, in re *Musammat Chunni* v. *Makbul Alam* of Salehpur, Rs. 500, Deposit No. 20.

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In the meantime, on the 30th June, 1884, Sewa Ram asked that intimation in respect of his money might be sent to the Munsif of Etah and the Subordinate Judge of Mainpuri; and after various formalities Rs. 500 were transferred to the Civil Courts. This case arose out of the manner this money was transferred.

With reference to this money, Puran Mal, sale-muharrir, made a report on the 23rd April, 1885, suggesting that the Rs. 500, which his own file showed to be due to Sewa Ram, should be transferred to the Civil Courts in certain proportions. Upon this followed the usual report from the appellant, the Treasury Accountant, dated the 25th April, 1885, that the Rs. 500, Deposit No. 214, paid in by Balwant Singh on the 19th August, 1882, stood at the credit of Sewa Ram in the Treasury as a revenue deposit. This report was in the handwriting of the appellant and was false.

After this report was written, an order signed by the Treasury Officer for the transfer of the money was written on the 28th April, 1885, and cheque No. 45 of Book 1162 was drawn up by Puran Mal. As originally drawn the cheque related to the deposit of Rs. 500 made in favour of Sewa Ram on the 19th August, 1882. Babu Jainti Prasad, the Treasury Officer, went on leave on the afternoon of the 28th April, 1885, and did not return till the 28th July, 1885. In ordinary course the cheque should have been signed by the Treasury Officer that day or the next. No steps, however, were taken to present it to Babu Jainti Prasad's successor, and it was not presented until after the return of Babu Jainti Prasad on the 28th July, 1885. On that day a petition was presented by Ram Prasad Singh to the effect that his father, Sewa Ram, was dead, and asking that the Rs. 500 due in the case of Sewa Ram v. Phula Kuar might be given to him. The usual order was made by the officer acting for Babu Jainti Prasad for an office report. This was written by Puran Mal on the 3rd August, 1885, to the effect that applicant would get him money from the Civil Court. On the same date the appellant added a further report to the effect that this money was in the Treasury as a revenue deposit, but would be transferred to the Civil Court. This was followed by an order to the effect that no order could be given regarding applicant's right to the money, but that it was about to be sent to the Civil Court. This report by the appellant

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was false, as the whole of the money due to Sewa Ram had been entered as repaid as mentioned above.

On the 5th August the cheque No. 45 of Book 1162 was presented to the Treasury Officer, Babu Jainti Prasad, for signature, and was signed by him. It then had been altered so as to relate to the Rs. 500 deposited on the 28th April, 1885, in favour of Chunni Kuar.

The appellant was tried for forging this cheque No. 45 of Book 1162, and with preparing the two false reports mentioned above, marked at the trial as exhibits O and Q, and was convicted in respect of the first charge under s. 465 of the Penal Code, and in respect of the other two charges under s. 218.

It was contended on behalf of the accused before the Court of Session that to support the charge of forgery a dishonest or fraudulent intent must be proved; and to support the charge under s. 218 the intent of the accused to cause, or his knowledge that he was likely to cause, loss or injury to the public must be proved.

Upon this contention the Sessions Judge observed as follows:—

"To take the second and third charges first, I do not think it necessary to follow in detail the decisions which have been appealed to, because it is necessary to admit that the law has been framed and interpreted in a manner so favourable to persons in the position of the accused, that even if it were proved that he had written false reports by the hundred to conceal his own malpractices, he would not be liable under s. 218 of the Indian Penal Code, unless it could be shown that he intended to cause or knew it to be likely that he would cause loss or injury to some one. It has also been contended that as the main intention of the accused was to conceal his own fault, this is the only intention that should be looked to. But this seems to be going a good deal further than our lenient laws warrant, and it is necessary to decide whether in the case of the accused there was the intention of causing loss, or the knowledge that such loss or injury was likely to follow. In order to form a judgment on this point it is necessary to follow the dates of the different transactions:—

30th January, 1885.—The last portion of Sewa Ram's Rs. 500 was paid away.

20th April, 1885.—The payment of a sum of Rs. 500 rendered the temporary concealment possible.

23rd April, 1885.—Report by Puran Mal to the effect that Sewa Ram's Rs. 500 should be sent to the Civil Court.

25th April, 1885.—Report by Girdhari Lal to the effect that Sewa Ram's Rs. 500, which had been totally paid away, was still in deposit (revenue).

28th April, 1885.—Preparation of cheque in sale department with a view to transfer Sewa Ram's Rs. 500 to the Civil Court.

29th April, 1885, *to* *28th July*, 1885.—Absence of Babu Jainti Prasad, Deputy Collector, on leave.

3rd August, 1885.—Report by Girdhari Lal to the effect that Sewa Ram's Rs. 500 was still in the Treasury as a revenue deposit.

5th August, 1885.—Preparation of altered cheque and transfer of Rs. 500 due to Chunni Kuar to Civil Court deposit.

The fact that the first false report followed so closely the payment of the money due to Chunni Kuar, and still more that the second false report of the 3rd August so immediately preceded the transfer of that money—only one day having intervened—seems to justify the conclusion that both false reports were made with the intention of making use of the Rs. 500 due to Chunni Kuar to fill the place of the Rs. 500 due to Sewa Ram, which had already been disposed of. The effect of this accused must have known would be to render the prompt payment of Chunni Kuar's money impossible, and that person must now trust to a civil suit for her remedy or appeal to the justice of Government. And even if the money is eventually recovered, Chunni Kuar has suffered wrongful loss, for, according to s. 24 of the Indian Penal Code, 'a person is said to lose wrongfully when such person is kept out of any property, as well as when such person is wrongfully deprived of property.' It must therefore be decided that Chunni Kuar has suffered wrongful loss by the transfer of her money, which in consequence of such transfer has been, as is shown by exhibit T, partially made over to Sewa Ram's representatives. And even if principal and interest should eventually be refunded

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by Government, the wrongful loss will only be transferred to Government."

The accused appealed to the High Court.

Pandit *Ajudhia Nath* (with him Babu *Jogindro Nath Chaudhri*) for the appellant. The conviction under s. 465 of the Penal Code is bad. "Forgery" means the making of a "false document" (s. 463), and the false document must be made "fraudulently or dishonestly" (s. 464). "Dishonestly" means with the intention of causing wrongful gain to one person or wrongful loss to another (s. 24), and "fraudulently" implies an intent to defraud (s. 25). Here it is not contended that the appellant, assuming him to have made the alterations in the cheque, did so with the intention of causing wrongful gain to any person: it is said that his intention was to cause wrongful loss. But the evidence shows no such intention on his part. His intention, assuming for the sake of argument that the act is proved, was merely to conceal the previous withdrawal of the Rs. 500 standing at Sewa Ram's credit. Such an intention is not fraudulent or dishonest within the meaning of s. 464: *Queen* v. *Jungle Lall* (1), *Queen* v. *Lal Gumul* (2), *Queen-Empress* v. *Fateh* (3), *Queen-Empress* v. *Jiwanand* (4), and *Queen-Empress* v. *Shankar* (5).

Further, the conviction under s. 218 is also bad. That section applies only to a public servant who is charged "as such public servant" with the preparation of the record or other writing which he is said to have framed incorrectly. Here there is no evidence that the appellant was charged with the preparation of the reports dated the 25th April and 3rd August, 1885, respectively, or that the preparation of such reports was one of his duties. He therefore did not prepare them "as such public servant" within the meaning of s. 218. *Queen-Empress* v. *Mazhar Husain* (6) is in point.

The *Offg. Public Prosecutor* (Mr. *A. Strachey*) for the Crown. The conviction is good, because the appellant, in altering the

(1) 19 W. R., Cr. 40.
(2) N.-W. P. H. C. Rep., 1870, p. 11.
(3) I. L. R., 5 All. 217.
(4) I. L. R., 5 All. 221.
(5) I. L. R., 4 Bom. 657.
(6) I. L. R., 5 All. 553.

cheque, acted dishonestly and fraudulently within the meaning of ss. 24 and 25 and 464 of the Penal Code. His intention must be inferred from the nature of his act, and from his knowledge of its natural consequences. The inevitable consequence was that when Musammat Chunni Kuar applied for payment of the Rs. 500 due to her, she would certainly be delayed and might conceivably fail altogether in obtaining it. Her right to such payment, instead of being recognised as of course, would be disputed, and her success might be contingent upon the result of a suit for recovery of the money. Under the last sentence of s. 24 of the Penal Code, this amounts to "wrongful loss" being caused to Chunni Kuar. This being the necessary consequence of his act, the prisoner must be presumed to have intended it. His position in the Treasury and his knowledge of the course of business therein make it certain that, when he altered the cheque so as to transfer Chunni Kuar's Rs. 500, he knew that her subsequent application for payment of the same would be delayed if not defeated. If he knew that, this would be the result he intended.

[EDGE, C. J.—I do not think that was his intention. I think that the possible loss to Chunni Kuar was not in his mind at all at the time when he altered the cheque. His intention was merely to conceal the fraud which had already been committed in the payment of Sewa Ram's Rs. 500 to other persons. That is not the kind of intention which s. 463 refers to.]

That no doubt was also his intention, but a more immediate intention is not inconsistent with a more remote one. He in fact intended both results. He must have expected both consequences as necessarily resulting from his acts, and intention is nothing more than the expectation of particular consequences at the moment of action. "The only possible way of discovering a man's intention is by looking at what he actually did, and by considering what must have appeared to him at the time the natural consequence of his conduct."—Stephen's *History of the Criminal Law*, vol. ii, p. 111. This agrees with Austin's analysis of "intention," which has been generally accepted. No doubt a common notion prevails that there is something more in intention than the expectation of consequences at the moment of action. This, however, is not correct.

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[EDGE, C. J.—The question is always one of the evidence in the particular case. I think you should distinguish between what a man would have in his mind if he adverted to the matter, and what he actually has in his mind. If the appellant had adverted to the matter, he probably must have known that his act would lead to delay in the payment of Chunni Kuar's money to her, but you must show that this consequence was actually in his mind, and was the actual intention with which he acted. No jury would find that the appellant intended to cause loss to Chunni Kuar.]

It must be presumed not only that the appellant knew what were the natural consequences of his act, but also that what he knew was present to his mind. The nature of the presumption of an "intent to defraud" in cases of forgery is shown in Stephen's *Digest of the Criminal Law*, art. 355. This intent is not disproved by showing that the principal object of the prisoner was his own or some other person's advantage, and not loss to the prosecutor. It is proved by showing that he intended "to deceive in such a manner as to expose any person to loss or the risk of loss."—Stephen's *History of the Criminal Law*, vol. iii, p. 187. See also vol. ii, p. 122.

[EDGE, C. J.—With great respect for Mr. Justice Stephen, I do not remember any case in which his *History* has been cited in a Court of Justice.]

It was cited as an authority in *Queen* v. *Dudley and Stephens* (1) before the Court for Crown Cases Reserved, both in the argument and in the judgment.

The cases referred to on the other side are distinguishable. In most of them there were not sufficient grounds for supposing that there was any knowledge on the prisoner's part that loss or risk of loss was a probable result. They prove only that mere deceit is not fraud.

The conviction under s. 218 is also good. *Queen-Empress* v. *Parmeshar Dat* (2) applies.

[EDGE, C.J.—You need not argue that point.]

Bábu *Jogindro Nath Chaudhri*, in reply.

(1) L.R., 14 Q. B. D. 273. (2) *Ante*, p. 201.

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EDGE, C.J.—The prisoner in this case has been convicted of offences described in two sections of the Indian Penal Code, namely, s. 465 and s. 218. Against these convictions he has preferred this appeal, and in order to deal with the same, it will be convenient if I deal first with the conviction under s. 465 for forgery. It appears to me that the offence, if committed, comes under the third clause of s. 464 of the Penal Code. It is clear that an offence under s. 464 cannot be made out unless the act was dishonestly or fraudulently done; and in order to see how these words are to be construed, it is necessary to refer to ss. 24 and 25 of the Indian Penal Code. S. 24 defines the word "dishonestly" as follows:—"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly." S. 25 in like manner defines "fraudulently" thus:—"A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise."

Here, in the arguments which have been addressed to me, it has not been suggested that the prisoner made the alterations in the cheque to cause wrongful gain to any one, but it is contended that he did it to cause wrongful loss.

Mr. *Strachey*, the acting Government Prosecutor, contends that the prisoner's intention was to cause wrongful loss to Musammat Chunni Kuar by delaying the payment of the Rs. 500 due to her. The question of intention is one for a jury or for a Judge sitting as a jury. Of two probable intentions, the one immediate and more probable and the other remote and less probable, I do not think we should attribute to the prisoner the remoter intention.

In my opinion his intention was to conceal a fraud which had been previously committed. A sum of Rs. 500, due to Sewa Ram, and after his death to his representative, had been fraudulently withdrawn. Sewa Ram's representative had applied for payment, and it became an immediate consideration how to provide for this Rs. 500. The only way was to have another Rs. 500 ready. We find that two reports (which will be referred to presently), dated the 25th April and 3rd August, 1885, represented that Sewa Ram's money was in deposit. Ought I to infer from this that Girdhari

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Lal's object and intention was to cause wrongful loss to Musammat Chunni Kuar? No doubt had the amount of the cheque been paid to Sewa Ram's representative, it would probably have caused a loss to her by causing the payment to her to be delayed. I cannot conceive that that was his intention. The intention was to stave off the evil day when the fraudulent withdrawal of Sewa Ram's money should be found out. That is not the intention referred to in s. 24. Although the act might have caused loss, the intention in reference to this cheque was to meet the claim of the representative of Sewa Ram. Under these circumstances, in my opinion, it cannot be said that the prisoner acted "dishonestly" within the meaning of s. 24. Then did he act "fraudulently" within the meaning of s. 25? He may have known that the probable consequence of his act would be to delay payment of the money due to Musammat Chunni Kuar, but it cannot be said that his intention was to defraud. Any loss that the Government could sustain had already been sustained by the fraudulent withdrawal of Sewa Ram's money. S. 464 of the Penal Code, therefore, which may be read as part of s. 465 under which the prisoner has been convicted, is not made out; and I must allow the appeal in this respect, and so far set aside the conviction and sentence.

Now we come to the other part of this case, namely, the prisoner's conviction and sentence in respect of the second and third charges under s. 218 of the Penal Code. This section reads as follows:—"Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public, or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, &c."

The first argument addressed to me by Pandit *Ajudhia Nath* for the prisoner was that this section did not apply, because he contended the prisoner Girdhari Lal did not frame the writing, the subject of the charge, "as such public servant." Now we find the prisoner, who was a public servant in fact, making these

two reports, and assuming to make them in due course and as a part of his duty; and, in fact holding out these reports as reports which were made by the proper officer. There is also the fact that when the two witnesses from the office were being examined, no question was put to them which suggested that it was not the prisoner's business to make these reports. From all this I am bound to infer that the prisoner made the reports because it was his business to do so; and as nothing was elicited from the two witnesses to the contrary, I hold there was evidence that he made these two reports as a public servant within the meaning of s. 218.

It is then urged that, allowing that he made these false reports as a public servant, he did not make them with intent to cause loss. How far this contention can avail the prisoner will be seen. When Sewa Ram's representative applied to have the sum standing to his credit paid, there was an officer of the Government Treasury to whom the prisoner was subordinate named Jainti Prasad. This officer called for a report, and Girdhari Lal made the first of these reports to the effect that there was a sum of Rs. 500 standing to the credit of Sewa Ram. The report is dated the 25th April, 1885. The two witnesses above referred to were asked what the report meant, and they said that it meant that this sum stood in deposit to Sewa Ram's credit, and Girdhari Lal did not say at his trial, though every opportunity was given him, that the report had any other meaning. It is only here that it is suggested that the report does not mean what until now it has been taken to mean. Was it a false report, or was it incorrect, to his knowledge? It is asserted that he looked at one side of the account only, and therefore reported incorrectly: but for myself I do not believe he was misled. With what intention then did he make that report? If he had had no intention to defraud or deceive any one, he could, within a week, have caused Musammat Chunni Kuar's money to be transferred to the Civil Court deposit, instead of waiting until the Treasury Officer, Babu Jainti Prasad, had returned to his duties. Now Jainti Prasad was not a person, as it appears to me, who looked carefully into the papers put before him. He left on the 28th April, and returned to his duties on the 28th July, 1885. His place was filled during that time

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by another officer. The cheque, which was prepared on the 28th April, was not put before the officiating officer. Instead of putting it before this officer, Girdhari Lal waits; and why does he do that? The reason for delay no doubt was because the prisoner knew that Babu Jainti Prasad was a person who did not carefully look at the papers he signed. Does not this show intention? In August, 1885, he makes another incorrect report. He again reported that Sewa Ram's money was in deposit. He must have had some intention; and now what was his intention? I have no moral doubt that what he wanted and what was in his mind was to stave off the evil day of the discovery of the previous fraud, and to save himself or the actual perpetrator of that fraud from legal punishment, and for that purpose and with that intention he made these false reports. I come to the conclusion therefore that the prisoner did frame those reports in a manner which he knew to be incorrect, with intent within the meaning of s. 218 of the Penal Code.

It only remains to consider whether the punishment awarded by the lower Court for the two offences under s. 218 is sufficient. I think not. The Sessions Judge has convicted the prisoner of three charges. The conviction and sentence for forgery has been quashed here, and the convictions under s. 218 of the Code sustained.

The Sessions Judge passed two sentences of three months' rigorous imprisonment in respect of the latter offences. If I allow these sentences to stand, they would not, in my opinion, adequately represent the punishment that should be awarded for these two offences of which the prisoner has been found guilty. It has been very ably urged by the prisoner's junior counsel, Babu *Jogindro Nath Chaudhri*, that I ought to consider his youth, his loss of all chance of future Government employment, and the time that this case has been under investigation. I do not know what the prisoner's age may actually be. His age, as shown on the record, was 29 years, and he was apparently of sufficient age to be intrusted with the duty of an accountant, and as to the argument of loss of employment and loss of social position, it is sufficient to say that had Girdhari Lal not been of good character he would not have been employed and trusted by his superiors as he is

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shown to have been, and would not have had the opportunity of perpetrating the offences. Under these circumstances the sentences passed by the lower Court in respect of the second and third charges must be increased as follows:—Six months' rigorous imprisonment and a fine of Rs. 500 in respect of the second charge and conviction; in default of payment of the fine, six months' rigorous imprisonment in addition. In respect of the third charge, six months' rigorous imprisonment to commence at the expiry of the sentence in respect of the second charge. This will make altogether twelve months' rigorous imprisonment and Rs. 500 fine, and in default of payment of the fine, six months' rigorous imprisonment in addition.

Before Sir John Edge, Kt., Chief Justice.

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QUEEN-EMPRESS *v.* KHARGA AND OTHERS.

Sessions Court—Addition of charge triable by any Magistrate—Power of Sessions Judge to add charge and try it—Criminal Procedure Code, ss. 28, 226, 236, 237, 537.

Subject to the other provisions of the Criminal Procedure Code, s. 28 gives power to the High Court and the Court of Session to try any offence under the Penal Code; and the provision it contains as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session.

Three persons were jointly committed for trial before the Court of Session two of them being charged with culpable homicide not amounting to murder of *J*, and the third with abetment of that offence. At the trial, the Sessions Judge added a charge against all the accused of causing hurt to *C*, and convicted them upon both the original charges and the added charge. The assault upon *C* took place either at the same time as or immediately after the attack which resulted in the death of *J*.

Held that the case did not come within the terms of s. 226 of the Criminal Procedure Code, and the adding of the charge was an irregularity which was not covered by ss. 236 and 237, those sections having no application to such a state of things; but that inasmuch as the Sessions Judge was addressed by the pleader who appeared for the accused, and heard all the objections raised, and witnesses might have been called for the defence upon the added charge, the provisions of s. 537 were applicable to the case.

Held also that the Sessions Judge had power, under s. 28 of the Code, to try the charge, assuming that he had power to add it.

THESE were appeals from a judgment of Mr. A. Cadell, Sessions Judge of Aligarh, dated the 23rd June, 1886, convicting the appel-