appellant. In this view I am supported by a ruling of the Madras High Court in *Sundara* v. *Subbana* (1), where Collins, C. J., and Muttusami Ayyar, J., concurred in holding that, under s. 206 of the Civil Procedure Code, the Court has power to amend its decree by bringing it into conformity with the judgment after such decree has been confirmed on appeal. This view of the law was accepted by Oldfield and Brodhurst, JJ., in Misc. No. 213 of 1886, *Mohan Lal* v. *Lachmi Prasad* (2), decided on the 22nd December, 1886.

The amendment was, therefore, properly made and has caused no failure of justice.

I dismiss this appeal with costs.

Appeal dismissed.

CRIMINAL REVISIONAL.

1887
September 8.

Before Mr. Justice Mahmood.

QUEEN-EMPRESS *v.* JAGJIWAN AND OTHERS.

Summary trial—Complaint including charge not summarily triable—Summary jurisdiction not necessarily ousted thereby—Criminal Procedure Code, s. 260.

The mere circumstance of a complaint charging an accused person with offences not summarily triable along with other offences so triable would not necessarily oust the summary jurisdiction of a Magistrate under s. 260 of the Criminal Procedure Code. Whether a complaint affords sufficient grounds for a summary trial, or requires a trial according to the ordinary procedure, must be left in a great measure to the discretion of the Magistrate, exercised with due care according to judicial methods with reference to the circumstances of each case. *Ramchunder Chatterjee* v. *Kanhye Laha* (3), *Chunder Seekor Sookul* v. *Dhurm Nath Tewaree* (4), *Beputoolla* v. *Najim Sheikh* (5), and *Empress* v. *Abdool Karim* (6) referred to.

THE facts of this case, which was a reference under s. 438 of the Criminal Procedure Code, are stated in the judgment of Mahmood, J.

MAHMOOD, J.—In this case one Musammat Sheo Kumari, a Hindu widow, whose husband died in 1885, filed a complaint in the Court of the Joint Magistrate on the 25th March, 1887, alleging that certain acts were committed by the accused on the previous day, and that those acts amounted to offences under ss. 322, 448,

(1) I. L. R., 9 Mad. 354.
(2) Not reported.
(3) 25 W. R. Cr. 19.
(4) 1 Calc. L. R. 434.
(5) 2 Calc. L. R., 374.
(6) I. L. R. 4 Calc. 18.

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and 382 of the Indian Penal Code. In the petition of complaint no reference was made to any other offence, and the Joint Magistrate thereupon dealt with the case as falling under ss. 323 and 448 of the Indian Penal Code, and, as such, he tried the case summarily under s. 260 of the Criminal Procedure Code, and, holding that the evidence for the prosecution was untrustworthy, dismissed the complaint. The offences to which those two sections of the Indian Penal Code relate are triable summarily under s. 260 of the Criminal Procedure Code, under clauses (*c*) and (*h*) respectively, and there can, therefore, be no question that the action of the Magistrate to this exent was not illegal. As to the remaining section 382 of the Indian Penal Code, under which the accused had been charged by the complainant, it seems to me enough to say that the facts as stated in the complainant's petition of the 25th March, 1887, themselves fell short of showing any such offence as is contemplated by that section, and the Magistrate was, therefore, right in not charging the accused under that section.

It then appears that the prosecutrix, Musammat Sheo Kumari, preferred an application for revision to the learned Sessions Judge on the 25th June, 1887, asking for interference under ss. 435 and 438 of the Criminal Procedure Code, and in that petition the main contention was that the complaint amounted to a charge of offences under ss. 147, 451, 452, and 382 of the Indian Penal Code, and that the action of the Joint Magistrate in trying the case summarily was, therefore, illegal. This contention appears to have been accepted by the learned Sessions Judge, who, acting under s. 438 of the Criminal Procedure Code, has referred this case for the exercise of the revisional powers of this Court. It appears from the learned Judge's order of the 11th August, 1887 that he was labouring under a misapprehension in thinking that the prosecutrix's complaint of the 25th March, 1887 made any mention of ss. 147, 451 and, 452 of the Indian Penal Code; and although s. 382 of that Code was mentioned in the complaint, it is clear to me that the facts stated in the petition of complaint itself would furnish no foundation for a charge under that section. The mistake as to the sections under which that charge was brought appears to be shared by the Joint Magistrate in the explanation which he has submitted in conformity with the rules of this Court, and he

seems to think that charges under ss. 147, 451, and 452 formed part of the original charge brought by the complainant against the accused.

All I have now to consider is whether the circumstances of the case require me to interfere in revision under the powers vested in this Court by s. 439 of the Criminal Procedure Code. In deciding this question, I have felt some difficulty at the outset as to whether the mere circumstance that the prosecutrix, in preferring her complaint of the 25th March, 1887, included a charge under s. 382 of the Indian Penal Code, is a circumstance which by itself ousts the summary jurisdiction of the Joint Magistrate under s. 260 of the Criminal Procedure Code. The learned Judge has expressed the view that the decision of the question whether a complaint is or is not summarily triable is to be regulated by the complaint itself. The learned Sessions Judge observes:—"The charge may be exaggerated, but the law does not allow the Magistrate to pre-suppose this in order that he may try the case summarily."

This view seems to be to some extent in accord with the rulings of the Calcutta High Court in *Ramchunder Chatterjee* v. *Kanhye Laha* (1), *Chunder Seekor Sookul* v. *Dhurm Nath Tewaree* (2) *Reputoolla* v. *Najim Sheikh* (3), and *Empress* v. *Abdool Karim* (4). The facts of those cases are, however, distinguishable from those of this case now before me. In the last-mentioned ruling the learned Judges in expressing their opinions laid down the rule that if a charge of an offence "not triable is laid and sworn to, the Magistrate must proceed with the case accordingly, *unless* he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed."

I agree in the rule so laid down, but I must say that I am not prepared to hold that the mere circumstance of a complaint charging an accused person of offences not summarily triable would oust the summary jurisdiction of a Magistrate under s. 260 of the Criminal Procedure Code. It is far from being an uncommon circumstance that complainants, either *bonâ fide* suffering from a grievance or out of ill-will towards the accused, exaggerate the heinous-

(1) 25 W. R. Cr. 19.
(2) 1 Calc. L. R. 434.
(3) 3 Calc. L. R. 374.
(4) I. L. R. 4 Calc. 18.

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ness of the facts complained of; and if I were to hold that the terms of the complaint are in themselves conclusive to decide the question as to whether the case might be summarily tried or not, I should virtually be holding that the summary jurisdiction can be evaded at the choice of the complainant. In this class of cases no hard-and-fast rule can be laid down, and much depends upon the facts and circumstances of each individual case. The Criminal Procedure Code has empowered Magistrates, under certain limitations, to decline to proceed with a complaint; and even in cases not summarily triable, it is only when a Magistrate sees sufficient ground for proceeding against the accused that a charge is framed. This, speaking in general language, is the effect of ss. 210 and 254, Criminal Procedure Code, and I think that whether a complaint does or does not afford sufficient grounds for a summary trial, or requires a trial under the ordinary procedure, is a question which must be left in a great measure to the discretion of the Magistrate, which discretion of course must be exercised with due care and caution according to judicial methods, with reference to the circumstances of each case. In this case, the facts as stated by the complainant might possibly have fallen under s. 147, 451, or 452 of the Indian Penal Code, none of which offences was summarily triable. But before the Magistrate could charge the accused under those sections, he would have to satisfy himself that there was ground for proceeding under any of those sections. The Magistrate, in the present case, does not appear to have rejected any evidence for the prosecution, and his judgment shows that he disbelieved the entire evidence adduced on behalf of the prosecution. Under these circumstances, I do not think that the case requires any interference in revision. I therefore decline to interfere. The record will be returned.

Application rejected.

1887
September 16.

Before Mr. Justice Mahmood.

QUEEN-EMPRESS *v.* WAZIR JAN.

Personating public servant—Extortion—Several offences—Conviction for each offence proved necessary—Separate sentences—Sentence necessary upon each conviction—Act XLV of 1860 (*Penal Code*), *ss.* 71, 170, 383—*Criminal Procedure Code, ss.* 35, 235.

Where more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether