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possession of such property." It has not been proved in this case, and indeed it has not been asserted, that the applicant took possession with intent to commit an offence, or with the intent to intimidate, or insult or annoy the party in possession. The applicant is zamindar of the property in question, and he alleges that he took possession on the abandonment of the land by his tenant. His intention possibly was to obtain possession contrary to law, but this of itself would not constitute criminal trespass. Proof of an intention to commit an offence or to intimidate, insult or annoy was necessary. There was no evidence of any such intention, or from which such an intention might be reasonably inferred. The facts are dissimilar from those in *King-Emperor* v. *Nandan* (1) to which I have been referred. An unlawful act is not necessarily an offence (see section 40 of the Indian Penal Code), and an intention to commit an unlawful act, not being one of the acts mentioned in section 441, does not render the accompanying trespass criminal trespass. The order therefore of the 24th of January, 1903, affirmed in appeal on the 23rd of February, 1903, is set aside, and the fine, if paid, must be refunded.

APPELLATE CRIMINAL.

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September 4.

Before Sir John Stanley, Knight, Chief Justice.

EMPEROR *v.* FATTU AND OTHERS.*

Criminal Procedure Code, section 233—Charge—Charge not distinguishing separate offences alleged against accused—Charge held to be bad in law.

Certain persons, who were alleged by the prosecution to have committed three, if not four, separate dacoities in the course of the same night, were charged to the effect that they on or about the 12th December at Dabri "committed dacoity and therefore committed an offence punishable under section 395 of the Indian Penal Code."

Held that the charge ought to have specified each alleged dacoity separately, and that in the form in which it was drawn it was not merely irregular but bad in law; and a new trial was ordered. *Subrahmania Ayyar* v. *King-Emperor* (1) referred to.

THE appellants in this case were convicted by the Sessions Judge of Naini Tal of the offence of dacoity under section 395

* Criminal Appeal No. 561 of 1903.

(1) Weekly Notes, 1902, p. 42. (2) (1901) I. L. R., 25 ad., 61.

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of the Indian Penal Code. They appealed to the High Court from jail. The case for the prosecution was that the appellants with others had looted the houses of three, if not four, persons on the night of the 12th of December 1902, namely, the houses of Musammat Bhaggu and Musammat Badamo and also the house of Timbhu and Nanhe. The charge framed against the accused was that they on or about the 12th of December, at Dabri "committed dacoity, and therefore committed an offence punishable under section 395 of the Indian Penal Code. On the appeal to the High Court it was objected that this charge was not merely defective but bad in law, and that it was necessary that for each separate dacoity a separate charge should be framed.

The appellants were not represented.

The Government Pleader (Maulvi *Ghulam Mujtaba*) for the Crown.

STANLEY, C.J.—This is an appeal against the conviction of the appellants on a charge of dacoity under section 395 of the Indian Penal Code, and in respect to one of the appellants also under section 397 of the Code. The learned Sessions Judge in framing the charges against the accused appears to have altogether disregarded the provisions of section 233 of the Code of Criminal Procedure. That section expressly provides that for every distinct offence of which any person is accused there shall be a separate charge. The case for the prosecution is that the appellants with others looted the houses of three persons, if not four, on the night of the 12th of December, 1902, namely, the houses of Musammat Bhaggu and Musammat Badamo and also the house of Timbhu and Nanhe. The charge framed against all the accused was that they on or about the 12th of December, at Dabri "committed dacoity, and therefore committed an offence punishable under section 395 of the Indian Penal Code." As regards one of the appellants, Guddi, a charge under section 397 was added. The offences proved against the appellants were distinct offences, in respect of which there should have been separate charges. It may be said that the offences being committed on one and the same night formed one series of acts, so connected together as to form the same transaction, and therefore

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the accused were properly charged with and tried at one trial for each offence under the provisions of section 235 of the Criminal Procedure Code. Even if this be so, the Court should have complied with the provisions of section 233 and framed a separate charge for each offence. Their Lordships of the Privy Council have held in the recent case of *Subrahmania Ayyar* v. *King-Emperor* (1) that the disregard of the express provisions of section 233 and 234 of the Code of Criminal Procedure was not a mere irregularity, such as could be remedied by section 537, but was altogether illegal. The ruling of a Full Bench of the Calcutta High Court in the matter of *Abdul Rahman* (2) was dissented from. Having regard to this ruling of their Lordships, the Court is bound to set aside the convictions and sentences passed on the appellants and to direct a retrial. Accordingly the appeals are allowed and the convictions and sentences of the appellants Fattu, Guddi and Kesri are set aside, and their retrial by the learned Sessions Judge in accordance with law is directed.

Before Sir John Stanley, Knight, Chief Justice.

1903
August 18.

EMPEROR *v.* TIKA.*

Act No. XLV of 1860 *(Indian Penal Code), sections* 109, 366—*Kidnapping from lawful guardianship—Kidnapping not a continuing offence—Abetment.*

One Musammat Chunia by making certain false representations to the mother of Jiwania, a married girl of eleven years of age, induced her to part with the custody of her daughter. Chunia took the girl away from her own village to a neighbouring village, where she was joined by one Tika. Thence Chunia and Tika took the girl about with them from place to place making unsuccessful attempts to dispose of her in marriage, until they were arrested by the chaukidar of Tiabpur, on his being informed that an attempt had been made to sell the girl in that village. Upon these findings Chunia was convicted of the offence punishable under section 366 of the Indian Penal Code and Tika of abetment of that offence, following the ruling in *The Queen* v. *Samia Kaundan* (3). On appeal to the High Court, that of Chunia was summarily rejected. As to Tika it was *held*, dissenting from *The Queen* v. *Samia Kaundan* and agreeing with the view taken in *Queen Empress* v. *Ram Sundar* (4) and *Rakhal Nikari* v. *Queen Empress* (5),

* Criminal Appeal No. 434 of 1903.

(1) (1901) I. L. R., 25 Mad., 61. (3) (1876) I. L. R., 1 Mad., 173.
(2) (1900) I. L. R., 27 Calc., 839. (4) (1896) I. L. R., 19 All., 109.
(5) (1897) 2, C. W. N., 81.