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have been given, but here no particulars are given which would go beyond the description "the whole of the debtors' property."

For these reasons I think that the judgment of the Subordinate Judge was right, and that of the District Judge was wrong. His judgment will, therefore, be reversed, and that of the Subordinate Judge restored with costs, both in this Court and in the Court below.

T. A. P. *Appeal allowed.*

CRIMINAL MOTION.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

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November 23.

IN THE MATTER OF LUCHMINARAIN, PETITIONER.*

Criminal Procedure Code (Act X of 1882), *ss.* 234, 537—*Charge of three offences of the same kind—Irregularity occasioning a failure of justice.*

An accused was charged with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the Savings Bank under three separate accounts.

The third of these charges related to the misappropriation of Rs. 195 composed of two separate sums of Rs. 150 and Rs. 45, alleged to have been misappropriated on the 16th and 25th November respectively. These sums the accused in his statement at the trial stated he had paid over on those dates to the depositor, and produced an account book showing entries of such payments on those dates. This statement was proved to be untrue, and the accused was convicted.

On an application to quash the conviction on the ground that the trial had been held in contravention of s. 234 of the Code of Criminal Procedure, *Held*, that the entries in the account books did not clearly show that the misappropriation of the sum of Rs. 195 took place on two dates, or consisted of two transactions, the entries having been made for the purpose of concealing the criminal breach of trust; and that under the circumstances the criminal breach of trust with regard to the Rs. 195 was really one offence and could be included in one charge.

Semble (*Per* PETHERAM, C.J.)—That if a man were tried for four specific offences of the same kind at one trial, such a procedure would not be merely

* Criminal Motion No. 450 of 1886, against the order passed by H. W. Gordon, Esq., Sessions Judge of Sarun, dated the 26th of July 1886, modifying the order passed by A. L. Clay, Esq., Officiating District Magistrate of Sarun, dated the 10th of June 1886.

an irregularity which could be cured by s. 537 of the Code, but a defect in the trial which would render the whole trial inoperative, unless possibly it could be cured by some subsequent proceeding by striking out some portion of the charge.

ONE Luchminarain Doss, a savings bank clerk in the Chupra Post Office, was charged before the Officiating District Magistrate of Chupra with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the savings bank under three separate accounts.

The charge sheet comprised only three counts, but the third count which related to the misappropriation of a sum of Rs. 195, belonging to one Narain Dass, comprised two separate items of Rs. 150 and Rs. 45, alleged to have been criminally misappropriated by the accused on the 16th and 25th November 1885 respectively. It appeared from entries made in the handwriting of the accused, that he had paid the sum of Rs. 195 to the depositor on two different occasions, and this was so stated by the prisoner at the trial. The circumstances relating to the withdrawal of the sums of Rs. 150 and Rs. 45 from the deposit account of Narain Dass were so closely interwoven and connected together that in trying the accused on a charge regarding either of these sums, it was next to impossible to adduce evidence which did not bear upon the withdrawal of the other.

The Magistrate held that the statement made by the accused as to the payment of the sum of Rs. 195 to the depositor was untrue, and finding the accused guilty, sentenced him to an aggregate punishment of six years' rigorous imprisonment, and to pay a fine of Rs. 600, or in default to undergo 18 months additional rigorous imprisonment.

The prisoner appealed to the Sessions Judge, who found the charges to have been clearly proved, holding that, although the third count embraced two distinct offences and made up, with counts one and two, four separate offences all of the same kind, yet the circumstances of the withdrawal of the two sums of Rs. 150 and Rs. 45 (composing the third count) were so interwoven together that if the prisoner had been specifically charged with misappropriating either the Rs. 150 or the Rs. 45, the evidence for the prosecution would have been precisely the same as was taken on the third

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count, and that therefore the prisoner had not been prejudiced in his defence so as to cause a failure of justice, although the proceedings of the Magistrate on this point might have been irregular; he therefore declined to direct a new trial on that account, having regard to s. 537 of the Criminal Procedure Code, and to the ruling of *The Empress* v. *Uttom Koondoo* (1), and dismissed the appeal. But found that the sentence passed by the Officiating District Magistrate was illegal as he had exceeded the power conferred on him by s. 35, cl. (*b*) of the Criminal Procedure Code, and, therefore, reduced the sentence to one of rigorous imprisonment for one year and four months, and to a fine of Rs. 200, on each of the three counts, or in default to four months' additional rigorous imprisonment, or in all to four years' rigorous imprisonment, and to a fine of Rs. 600, or in default to one year's additional rigorous imprisonment.

The prisoner applied to the High Court under the revisional sections of the Criminal Procedure Code, and obtained a rule calling upon the Crown to show cause why the order made in the case should not be set aside.

The *Deputy Legal Remembrancer* (Mr. *Kilby*) who appeared to show cause, contended that the third count could not be split up so as to form two distinct offences.

And even supposing it to be so considered, the irregularity could be cured by s. 537 of the Code, the prisoner not having been prejudiced in his defence.

Baboo *Umbica Charan Bose, contra,* contended that the trial was bad in law under s. 234 of the Code of Criminal Procedure; that the offences charged against the prisoner being in respect to different sums of money belonging to different persons, he should not have been tried and convicted on one trial; and that this irregularity had materially prejudiced him in his defence; he further contended that the sentence passed was too severe.

The order of the Court (PETHERAM, C.J., and BEVERLEY, J.) was delivered by

PETHERAM, C.J.—In this case, the prisoner, who was a clerk in the Post Office Savings Bank, has been charged and tried for

(1) I. L. R., 8 Calc., 635.

embezzling various sums of money which were deposited by various depositors in the same bank, and the present application is really an application upon a rule which has been obtained to quash the whole proceedings on the ground that the trial is illegal, because the prisoner has been tried for four offences of the same kind at the same trial, whereas under s. 234 of the Code of Criminal Procedure he could only be tried for three such offences.

It is clear from the terms of that section that a man can only be tried for three separate offences of the same kind at the same trial, and, speaking for myself, I think that if a man were tried for four specific offences at one trial, it would not be merely an irregularity which could be cured by s. 537 of the Code, but a defect in the trial which would render the whole trial inoperative, unless it were cured by some subsequent proceeding by striking out some portion of the charge, and as to the propriety and legality of such a proceeding we do not at present express any opinion.

The first question is whether the prisoner was tried for more than three distinct offences. The charges in respect of which the trial took place were charges for embezzling the money of the Post-Master-General, the money having been deposited in his hands, and he being the person responsible for it. What appears to have been proved was that the prisoner was the man whose duty it was to receive deposits and make payments, and also to enter in the books of the Post Office, and also in the pass books supplied to the customers, the amounts received by the Post Office and the amounts paid out by him. In some way or other suspicion arose and enquiries were made, and as the result of those enquiries it was ascertained that this man's cash was short by a certain sum of money. Having found out that, the next thing to be done was to enquire what had become of it, and it does appear from the books kept by him that this deficiency was in respect of the accounts of three depositors. Those depositors' accounts showed that they had received particular sums of money, but on an enquiry being made from the depositors it was found that they had not received them, and the inference was that the cash of the prisoner being short by those amounts, and the depositors not having received them, those sums were embezzled by him.

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As to two of the depositors, the entries made in the books of the prisoner were entries of sums which were alleged to have been paid by him on one particular date, but that is not made out, the fact being that the money having been embezzled by him, the entries were made by him on that particular date for the purpose of concealing the embezzlement, but in the case of these depositors, no question arises as to their being more than one offence, and there is no ground for suggesting that more than two offences were committed.

In respect of the third depositor, the amount was short by Rs. 195; that is the amount by which his cash would be short, and is the amount which he says he has not received. The first step to be taken in regard to that was to examine the books which were kept by him in order to see what had become of the money, and that appears in his own hand an entry which shows that he paid the money to this depositor on two different occasions, and he says so in his statement. The statement that he paid the money is proved to be untrue, and is a statement which was made to conceal the fraud and the embezzlement of the money of which he had been guilty.

Then the question arises does the entry clearly show that the embezzlement of this sum of Rs. 195 took place on two dates and consisted of two separate transactions, so that it was an offence on which the man would have to be charged on two charges. But the offence is an offence of embezzling the sum of Rs. 195; so far as we know, it may have been embezzled at one and the same time, and the only use of the two false entries was to make them part of the evidence in the general charge of embezzlement. Under these circumstances I am of opinion that the embezzlement of the Rs. 195 was really one offence and could be included in one charge, and though it covers the two entries it is not shown that it was two offences.

Under these circumstances, I do not think it is shown that the prisoner was tried for more than three offences in one trial, and that there is any ground for saying that the trial was illegal and therefore the rule must be discharged.

T. A. P. *Rule discharged.*