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pure and simple, it was for possession subject to payment of the sum deposited and to an order by the court directing the mortgagee to receive the same. The decree passed is an anomalous one and not in strict conformity with the provisions of the Transfer of Property Act. No doubt, as the learned District Judge remarks, this is due to the fact that the said Act had only recently come into force and the courts were not fully acquainted with its provisions. No period is fixed within which the sum of Rs. 45-8 is to be paid to the mortgagee and nothing is said as to the possible effect of non-payment. At the same time the decree as it stands is not one for possession pure and simple, and cannot be treated as such. The relief sought is thus described :—"That after payment of Rs. 45-8 due on account of the mortgage in respect of the plaintiff's share, one-half share in the mortgaged property hereinafter specified be redeemed and possession thereof delivered to the plaintiff." It is provided that a decree "for redemption of the mortgage" is passed in favour of the plaintiff. The mere omission of the court to fix a time for payment does not seem to us to bring this case outside the principle already laid down.

We accordingly dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

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January 19.

Before Mr. Justice Tudball.

EMPEROR, *v.* SHEO SARAN LAL. *

Criminal Procedure Code, sections 233—236, 239—*Misjoinder of charges—Illegality—Act No. XLV of* 1860 (*Indian Penal Code*), *sections* 408 *and* 467.

The accused was charged and tried at one and the same trial for three offences under section 408 of the Indian Penal Code committed within a period of one year, and three offences of forgery under section 467 of the Code and was convicted and sentenced in respect of all the six offences.

Held that this was an illegality not covered by section 537 of the Code of Criminal Procedure. *Subrahmania Ayyar* v. *King Emperor* (1) followed. *In re Bal Gangadhar Tilak* (2) referred to and discussed.

IN this case one Sheo Saran Lal, clerk of the Kasia Co-operative Bank in the district of Gorakhpur, was charged with and

* Criminal appeal No. 799 of 1909, from an order of F. D. Simpson, Sessions Judge of Gorakhpur, dated the 14th of July 1909.

(1) (1901) I. L. R. 25 Mad., 61. (2) (1908) I. L. R., 33 Bom., 221.

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tried for, at the same trial, three offences under section 408 of the Indian Penal Code and three offences of forgery under section 467 of the Code. He was convicted of and sentenced for all six offences. It was found that he had embezzled three separate sums of money paid in by three depositors, and had in each case given a receipt upon which he had forged the signature of the Manager of the Bank. In appeal from the order of the Sessions Judge the question arose whether the whole trial was not illegal.

Mr. *A. H. C. Hamilton*, for the appellant.

Mr. *R. Malcomson* (Assistant Government Advocate), for the Crown.

TUDBALL, J. :—The appellant Sheo Saran Lal was the clerk of the Kasia Co-operative Bank in the Gorakhpur District in the year 1898. He has been charged and tried at one and the same trial for three offences under section 408 of the Indian Penal Code, and three offences of forgery under section 467 of the Indian Penal Code. He has been convicted and sentenced in respect of all the six offences. The case against him is that three different persons seeking to deposit money in the Bank, gave over certain sums to him, which he embezzled, and for which he gave receipts in his own handwriting, forging thereon the signature of the Manager of the Bank. The primary question arises as to whether the trial of the accused at one trial in respect of six offences is or is not an illegality, under the circumstances of the case. Section 233 of the Criminal Procedure Code lays down a distinct rule that there shall be a separate charge for every distinct offence and that every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239. Section 234 lays down that when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with and tried at one trial for any number of them not exceeding three. Offences of the same kind are defined as offences which are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

Primâ facie, the trial of the accused in respect of six offences at one and the same trial, although they may have been committed

within the space of 12 months, contravenes the rule laid down in section 233, even when read with section 234. It has been argued, however, that section 235, clause (1), must be read with section 234, and that the three offences mentioned in the latter section must be deemed to include all the offences committed in three similar transactions such as are contemplated by section 235, clause (1); in other words, if an accused person goes through three similar transactions within the period of twelve months, committing in each transaction the same series of offences, he can be tried at one and the same trial on account of all offences committed in the course of the three transactions, even if they total more than three. I am of opinion that this would be too great an extension of the exception mentioned in section 234. A point connected with these sections came before the Bombay High Court in the case of *Bal Gangadhar Tilak* (1). The judgment in that case makes no reference whatever to clause (1), section 235. Clause (2) of that section and sections 237 and 239 were considered, no doubt, but the present point was not before that Court, and in my opinion, clause (1), section 235, and section 234 must be mutually exclusive. Even at the trial of *Bal Gangadhar Tilak*, the prosecution was restricted to three offences, although there were two similar transactions, in each of which two similar offences had been committed, and the accused had been committed for trial in respect of all four offences. To hold that section 234 covered all offences committed in the course of three similar but separate transactions when the number of offences was more than three would, in my opinion, be straining the language of the section beyond all bounds. Even in the trial of *Bal Gangadhar Tilak* the Bombay Court did not go to this extent, and in my opinion the trial of the present appellant in respect of six offences, three of embezzlement and three of forgery, is an illegality, as was laid down in the case of *Subrahmania Ayyar*(2).

In this view I think it would be improper to go into the merits of the case. I, therefore, admit the appeal, set aside the convictions and sentences and order the retrial of the appellant

(1) (1908) I. L. R., 33 Bom., 241. (2) (1901) I. L. R., 25 Mad. 61.

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on the charges preferred against him, in accordance with law. It will be open to the Sessions Judge to divide the trial into two or three trials as he may think fit.

Appeal allowed.

[See also *Emperor* v. *Mata Prasad*, I. L. R., 31 All., 351, and *Emperor* v. *Salim-ullah*, I. L. R., 32 All., 57—Ed.]

REVISIONAL CIVIL.

1910
January 20.

Before Mr. Justice Sir George Knox and Mr. Justice Richards.

GOSWAMI SRI RAMAN LALJI MAHARAJ (OBJECTOR), *v.* BOHRA DESRAJ, (OPPOSITE PARTY).*

Act No. XII of 1887 (*Bengal, N.-W. P. and Assam Civil Courts Act*), *section* 21—*Act No. VII of* 1870, (*Court Fees Act*), *section* 11—*Valuation of suit —Appeal—Jurisdiction.*

So long as there has been no order accepted by the plaintiff to make good a deficiency in court fees, the original value assigned by the plaintiff must be taken as the value of the suit for the purpose of regulating the jurisdiction of the appellate court; but when there has been such an order made and accepted by the plaintiff, from that moment the value of the suit must be taken as being in accordance with the fee actually paid by the plaintiff. *Ijjatulla Bhuyan* v. *Chandra Mohan Banerjee* (1) followed. *Madho Das* v. *Ramji Patak* (2) distinguished.

THE facts of this case were as follows:—

One Desraj brought a suit for recovery of Rs. 1,945 on a hypothecation bond and offered to redeem prior mortgages, if the prior mortgagees proved their debt. The decree was however passed on a compromise conditioned on redemption of prior mortgages amounting to Rs. 15,700 and payment of requisite court fees. The applicant was to pay the mortgage money by instalments. The judgment-debtor did not pay the decretal amount; the decree-holder applied under section 89, Transfer of Property Act, to have the order made absolute. The judgment-debtor filed an objection. The Subordinate Judge disallowed it and made the order absolute. The unsuccessful objector filed an appeal before the District Judge, who returned the memorandum of appeal to be presented in the High Court.

Pandit *Mohan Lal Sandal*, for the applicant:—The original valuation of the suit being about Rs. 2,000, the court of the District Judge was competent to hear the appeal. He referred to

* Civil Revision No. 44 of 1909.

(1) (1907) I. L. R., 34 Calc., 954. (2) (1894) I. L. R., 16 All., 286.