

## APPELLATE CRIMINAL.

1909.  
October 29.*Before Mr. Justice Richards.*

EMPEROR v. SALIM-ULLAH KHAN.\*

*Criminal Procedure Code, sections 234, 235, 537—Act No. XLV of 1800 (Indian Penal Code), section 477A—Charge—Misjoinder of charges—Illegality.*

Where a person who was sent up for trial under section 477A of the Indian Penal Code was charged with having wilfully altered and mutilated certain accounts between the years 1907 and 1909, and the evidence showed that the subject-matter of the charge was practically five series of entries in certain sets of books, it was held that the charge so framed was bad, and the defect could not be remedied by section 537 of the Code of Criminal Procedure. *Subrahmanya Ayyar v. King-Emperor* (1) and *Queen-Empress v. Mati Lal Lahiri* (2) referred to.

THIS was an appeal by one Salim-ullah Khan from a conviction under section 477A of the Indian Penal Code and a sentence of four years' rigorous imprisonment. At the hearing it was submitted by the Assistant Government Advocate (Mr. W. K. Porter) for the consideration of the Court that the charge (the material portions of which are set forth in the judgment below) was incorrectly framed, and that, having regard to the ruling of the Privy Council in *Subrahmanya Ayyar v. King-Emperor* (1) and of the Calcutta High Court in *Queen-Empress v. Mati Lal Lahiri* (2), section 537 of the Code of Criminal Procedure could not be prayed in aid, but that the conviction and sentence would have to be set aside and a re-trial ordered.

Mr. G. W. Dillon, for the appellant, replied on the preliminary objection.

The following judgment was delivered.

RICHARDS, J.—The appellant was charged and convicted under section 477A, Indian Penal Code. The charge is in the following terms:—"That you, between 1907 and 1909, being a clerk of the Canal Department, wilfully altered and mutilated the accounts which were in your possession, &c. Section 233 of the Code of Criminal Procedure provides that for every distinct offence of which any person is accused there shall be a separate

\* Criminal Appeal No. 585 of 1909, from an order of L. Marshall, Sessions Judge of Mainpuri, dated the 17th of July, 1909.

(1) (1901) I. L. R., 25 Mad., 61. (2) (1899) I. L. R., 26 Calc., 500.

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charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239. In the present case the accused, according to the evidence, is charged with making five series of alterations. Under section 234, the accused might have been tried at one trial for three offences, but they must have been committed within the space of twelve months from the first to the last. It cannot be contended that section 235 applies, or the provisions of section 236 or section 239. In the case of *Subrahmaniam Ayyar v. King-Emperor* (1) it was held by the Privy Council that the joining of charges contrary to the provisions of the Code of Criminal Procedure was not merely an irregularity which could be remedied by section 537. In the case of *Queen-Empress v. Muti Lal Lahiri* (2) a Bench of the Calcutta High Court held that a charge framed as the present charge was quite irregular. It seems to me under the circumstances that I have no option except to direct a retrial of the case. A proper charge must be framed in accordance with the Code of Criminal Procedure. It should be borne in mind that I do not decide that evidence of the alleged falsifications other than those actually charged is inadmissible. I accordingly set aside the conviction and sentence passed on the appellant and direct that the Sessions Judge of Mainpuri do proceed as soon as he reasonably can to re-try the appellant after framing charges. I further direct that the appellant may be admitted to bail upon giving security to appear at his trial to the satisfaction of the District Magistrate.

(1) (1901) I. L. R., 25 Mad., 61.      (2) (1899) I. L. R., 26 Cal., 560.