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January. They were received at the District Magistrate's office on the 2nd of February. The trying Magistrate has held that the book must be deemed to have been published as soon as it was issued from the press, by which he apparently means as soon as the process of printing had been completed. I do not agree with this pronouncement on the definition of what constitutes publication. The word "publication" is, however, not used in clause (*a*), section 9 of the Act. The words used are "delivered out of the press," and it seems to me that this cannot be held to be equivalent to "printed." The work of printing might be completed before any copy were actually delivered out of the press. When a sheet has been printed, it does not constitute a book; it needs to be folded, corrected and bound before it can take the form of a book, and this process had not been completed on the dates shown in the Magistrate's judgement, viz., 8th, 11th and 15th of December. The book does not appear to have been delivered out of the press until January, and there was, therefore, no offence under clause (*a*), section 16 of Act XXV of 1867. In these circumstances, I accept the application, and order that the conviction and sentence of fine be set aside. The fine, if paid, will be refunded.

Application allowed.

Before Mr. Justice Kendall.

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Criminal Procedure Code, section 256—Failure to comply with the provisions of—Irregularity in procedure.

The provisions in section 256, Code of Criminal Procedure, are not provisions relating to the mode of trial, and failure to follow those provisions strictly amounts to no more than an irregularity in procedure, and would not be a ground for setting

* Criminal Revision No. 589 of 1926, from an order of H. Beatty, Sessions Judge of Moradabad, dated the 13th of July, 1926.

aside the conviction, unless the irregularity had occasioned a failure of justice.

Subrahmania Ayyar v. *King-Emperor* (1), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Babu *H. P. Sen*, for the applicants.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

KENDALL, J. :—This is an application in revision against the appellate order of the Sessions Judge of Moradabad, confirming the order passed against the applicants by the Magistrate under section 110 of the Code of Criminal Procedure. The main argument which has been addressed to me in support of the application relates to the omission of the trying Magistrate to inform the applicants that they could resummon the witnesses for the prosecution for cross-examination at the next hearing. The facts are that the witnesses for the prosecution were examined on the 10th of May, and cross-examined the same day, and the accused (applicants) also made their statements on the same day. On that day the accused were not represented by counsel. There was a subsequent hearing on the 19th of May, on which day the accused were represented by counsel. All that happened then was that the witnesses for the defence were examined. It is maintained that under section 256, Code of Criminal Procedure, the Magistrate was required to record his reasons in writing if he permitted the accused to cross-examine the witnesses for the prosecution forthwith; and that his failure to do so amounts to an illegality and not a mere irregularity. The decision of their Lordships of the Privy Council in *Subrahmania Ayyar* v. *King-Emperor* (1) was referred to in this connexion.

(1) (1901) I.L.R., 25 Mad., 61.

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It is perfectly true that their Lordships have decided that disobedience to an express provision as to the mode of trial is not a mere irregularity but an illegality, which will vitiate the proceedings. In the present case there has been disobedience to an express provision of law—at any rate it has not been pointed out to me that the Magistrate recorded reasons and I cannot find that he did. The provisions in section 256, Code of Criminal Procedure, however, are not provisions relating to the mode of trial, and it would be wrong in my opinion to hold that failure to follow those provisions strictly amounts to more than an irregularity in procedure. It appears to be clear enough that the accused did not wish to re-summon any witness, for, when they were represented by counsel on the 19th of May, the witnesses were not re-summoned, as I have no doubt they would have been had any application been made on behalf of the accused. There has been no failure of justice on account of the irregularity.

Apart from this point, there is little to be said. The Magistrate heard the evidence on both sides, and he called on the applicants to execute bonds after being satisfied by evidence of general reputation that such a course was necessary. Both he and the learned Sessions Judge believed the witnesses for the prosecution. It has been pointed out that the police have admitted that they only opened history-sheets for these applicants quite recently, and that the applicants after being suspected in a dacoity case had been released a few days before the present proceedings were instituted. It appears, therefore, that the police having failed to obtain sufficient evidence against the accused in a definite case, fell back on a second line of attack and caused proceedings under section 110 to be undertaken against them. It is possible, however, that the

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accused were suspected in the dacoity case on account of their general reputation, and it is on account of their general reputation that they have been required to furnish bonds. The mere fact that these proceedings followed so quickly on their release from the dacoity proceedings is not necessarily proof that the evidence for the prosecution was not given in good faith.

For these reasons the application is dismissed.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

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MADAN LAL AND ANOTHER (PLAINTIFFS) *v.* JANKI PRASAD AND OTHERS (DEFENDANTS).*

Act No. VII of 1913 (*Indian Companies Act*), *section* 4—*Unregistered association of more than twenty persons—Illegal partnership—Suit for partition.*

No suit will lie for the partition of the assets of an unregistered partnership consisting of more than twenty persons. *Mewa Ram* v. *Ram Gopal* (1), followed. *Greenberg* v. *Cooperstein* (2), distinguished.

THE facts of this case sufficiently appear from the judgement of the Court.

Dr. *Surendra Nath Sen*, for the appellants.

Dr. *Kailas Nath Katju*, for the respondents.

LINDSAY and SULAIMAN, JJ. :—This is a plaintiffs' appeal arising out of a suit for partition of a ginning factory and press. The plaintiffs alleged that they were share-holders in this ginning factory and press to the extent of 5/72. They admitted that this partnership had been declared to be invalid, inasmuch as it consisted of more than twenty members. Nevertheless they asked for the relief mentioned above.

* First Appeal No. 412 of 1923, from a decree of Kashi Nath, Subordinate Judge of Bulandshahr, dated the 16th of July, 1923.

(1) (1926) I.L.R., 48 All., 735. (2) (1926) 1 Ch., 657.