

APPELLATE CRIMINAL.

1881
October 26.*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

EMPRESS OF INDIA v. MURARI.

Joinder of charges—Offences of the same kind committed in respect of different persons—Act X of 1872 (Criminal Procedure Code), ss. 452, 453.

M was accused of cheating *G* on two different occasions and also of cheating *K* on a third occasion. The three offences were committed within one year of each other; and *M* was charged and tried at the same time for the three offences. *Held* that such joinder of charges was irregular, inasmuch as the combination of three offences of the same kind, for the purpose of one trial, can only be, where such offences have been committed in respect of one and the same person, and not against different prosecutors, within the period of one year, as provided in the Criminal Procedure Code.

MURARI was tried by Mr. R. S. Aikman, Magistrate of the first class, at one and the same time on the following charges under s. 417 of the Penal Code, *viz.*, (i) that he, on or about the 22rd day of April, 1880, at Agra, by pledging a box as containing ornaments of the value of Rs. 140, knowing the same to contain only mud, cheated one Khunni Lal; (ii) that he, on or about the 5th day of August, 1880, at Agra, by pledging a box as containing gold ornaments, knowing the same to contain only pieces of stone, cheated one Giasi; and (iii) that he on or about the 11th day of August, 1880, at Agra, by pledging a box as containing gold ornaments, knowing the same to contain only pieces of stone, cheated the said Giasi. He was convicted by the Magistrate on all three charges. It appeared that criminal proceedings against Murari were instituted on the complaint of Giasi. The offence he had committed in respect of Khunni Lal came to light in the course of the police inquiry, which followed on that complaint; and proceedings in respect of that offence were commenced on the police report. On appeal by Murari the Sessions Judge set aside the conviction in respect of the offence against Khunni Lal on the ground, amongst others, that Khunni Lal had not made a complaint, but had merely been a witness for the prosecution in the case of Giasi. The Local Government appealed to the High Court, contending that the police report gave the Magistrate jurisdiction in the matter of the offence against Khunni Lal, and a complaint was not necessary.

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EMPERESS OF
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The *Junior Government Pleader* (Babu Dwarka Nath Banarji),
for the Local Government.

The respondent was not represented.

The judgment of the Court (STRAIGHT, J., and TYRRELL, J.)
was delivered by

STRAIGHT, J.—It was perfectly competent for the Magistrate to prefer the charge in respect of Khunni without any formal complaint being made, and he rightly did so. But he was in error in disposing of it in one and the same trial with the case in which Giasi was the prosecutor. The combination of three offences of the same kind, for the purpose of one trial, can only be, where they have been committed in respect of one and the same person, and not against different prosecutors, within the period of twelve months, as provided by the Criminal Procedure Code. As the trial of Murari for the offence against Khunni was therefore in our opinion irregularly held, we shall not disturb the Judge's order; nor do we think it necessary to direct any further proceedings on that charge. Looking at the evidence, it is obvious that the convict is a very dangerous and mischievous person, and fully deserves the measure of punishment inflicted upon him by the Magistrate. We therefore direct that upon each of the convictions for cheating Giasi, which must be recorded under s. 420, Indian Penal Code, the sentence upon Murari be enhanced to eighteen months rigorous imprisonment, or three years in all. The fines are hereby remitted.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

EMPERESS OF INDIA v. GAYADIN AND ANOTHER.

Appeal by Local Government from judgment of acquittal—Act X of 1872 (Criminal Procedure Code), s. 272.

It is not because a Judge or a Magistrate has taken a view of a case in which the Local Government does not coincide, and has acquitted accused persons, that an appeal by the Local Government must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by s. 272 of the Criminal Procedure Code. The doing so should be limited to those instances, in which the lower Court has so obstinately blundered and gone wrong, as to produce a result mischievous at once to the administration of justice and the interests of the public.

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November 12.