REVISIONAL CRIMINAL.

Before Mr. Justice Wazir Husan, Chief Judge and Mr. Justice A. G. P. Pullan.

1930 *August*, 15.

OUDH BAR ASSOCIATION, LUCKNOW, THROUGH THE PRESIDENT *in re*:

KING-EMPEROR (APPELLANT) v. MOHAN LAL SAKSENA AND ANOTHER, (COMPLAINANTS-RESPONDENTS).*

Indian Penal Code (Act XLV of 1860), sections 5 and 117—Indian Salt Act (XII of 1882), section 9, scope of—Abetment of an offence punishable under section 9 of the Indian Salt Act—Punishment under section 117 of the Indian Penal Code, legality of.

Where an act is an offence under a specific law and such an offence can also be punished under that sepecific law that law and not the general law would apply and this is the principle laid down in section 5 of the Indian Penal Code.

Therefore, the punishment under section 117 of the Indian Penal Code for abetment of an act which is an offence under the Indian Salt Act, 1882, and not an offence under the Indian Penal Code, is illegal for the reason that section 9 of the Indian Salt Act, 1882, prescribes specific punishment for the abetment of such an offence.

Section 9 clause (*c*) of the Indian Salt Act, 1882 defines abetment by referring to its definition in the Indian Penal Code and embraces all abetments whether aggravated or mitigated in their nature. The section does not provide for any exception in respect of such abetments as are provided for by section 117 of the Indian Penal Code and the punishment prescribed by the said section 9 is clearly punishment which is prescribed for all abetments of acts which are declared to be offences by the provisions of the Indian Salt Act, 1882. It follows that it is illegal to proceed under section 117 of the Indian Penal Code which allows a higher punishment for abetment of an offence for the punishment of which a lighter and separate penalty is provided by the provisions

*Criminal Revision No. 87 of 1930, against the order of Sheikh Mohammad Bashir Siddiqi, Magistrate, first class, Lucknow, dated the 14th of April, 1930.

of section 9 of the Indian Salt Act, 1882. *Raghubar Dayal* v. *King-Emperor* (1) and *The Queen* v. *Ramachandrappa* (2), distinguished.

Mr. *St. G. Jackson*, for the Oudh Bar Association.

The Government Advocate (Mr. *H. K. Ghose*), for the Crown.

HASAN, C. J. and PULLAN, J. :—This is an application presented by the President of the Oudh Bar Association, Lucknow, on behalf of that Association invoking the powers of this Court under section 439 of the Code of Criminal Procedure, 1898, in the matter of the conviction of Messrs. Mohan Lal Saksena and C. B. Gupta under section 117 of the Indian Penal Code read with section 9 of the Indian Salt Act, 1882, by a first class Magistrate of Lucknow under his judgment of the 14th of April, 1930. The two gentlemen mentioned above are members of the Oudh Bar Association. Accordingly in their interest the said Association passed a resolution at a special general meeting authorizing the president of the association to move this Court under section 439 of the Code of Criminal Procedure on the ground that the conviction was illegal for the reason that there was no evidence on the record to prove that Mr. C. B. Gupta did any overt act amounting to abetment of an offence against the Indian Salt Act, 1882, and also on the ground that neither Mr. C. B. Gupta nor Mr. Mohan Lal Saksena could legally be convicted and punished under the provisions of section 117 of the Indian Penal Code. Section 117 of the Code prescribes penalty of imprisonment of either description for a term which may extend to three years or with fine or with both and in the present case the two gentlemen abovenamed have been sentenced to 18 months' rigorous imprisonment each.

Besides these two gentlemen, who are members of the Oudh Bar Association as already stated, there

(1) (1903) 6 O.C., 153. (2) (1883) I.L.R., 6 Mad., 249.

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were six others who were convicted by the same judgment and sentenced to similar punishment under the same section of the Indian Penal Code. They are Shyam Sunder Nigam, Jai Dayal Avasthi, H. C. Bajpai, Shyam Sunder Qaisar, Imtiaz Ahmad Asharfi and Dr. Lakshmi Sahai.

On the merits of the case as a whole no distinction is possible between the case of one and any of the other convicted persons. It follows that if we feel convinced that this is a fit case in which we ought to interfere at all in the exercise of our jurisdiction under section 439 of the Code of Criminal Procedure, 1898, we must interfere in the matter of the conviction of all the eight persons.

On behalf of the Crown the learned Government Advocate has urged two main preliminary objections against the entertainment of this application. The first objection is that inasmuch as the convicted persons have not appealed from the order of conviction passed by the Magistrate, though in law they had a right to appeal, the present application is not maintainable having regard to the provisions of clause (5) of section 439 of the Code of Criminal Procedure. The second objection is that the Oudh Bar Association being no party to the case in which the order of conviction was made by the Magistrate has no *locus standi* to file the present application.

We are of opinion that both these objections should be overruled. As regards the first objection clause (5) of section 439 bars entertainment of proceedings by way of revision at the instance of the party who could have appealed but has not appealed. The proceedings now before us have not been initiated by a party who could have appealed but has not appealed. Clause (5) therefore has no application to this case. It cannot be doubted that section 439 of the Code of

Criminal Procedure, 1898, invests the High Court with jurisdiction of revisional natural in cases in which it may deem fit in the exercise of its own discretion to call for the record of a case or which has been reported for orders or which otherwise comes to its knowledge. The section further authorizes the High Court to exercise all or any of the powers conferred on a court of appeal by sections 423, 426, 427 and 428 of the Code of Criminal Procedure and this is the jurisdiction which the present application seeks to invoke.

In the present case we are of opinion that the Oudh Bar Association have acted rightly in the discharge of their duty as such an association to watch and protect the privileges and liberty of its members which they are entitled to enjoy under the laws of the country. We think therefore that the present application has been laid before us by the president of the association not in any frivolous spirit or officious interference with the administration of justice but with a high sense of responsibility. The president has himself argued the application before us not on the ground that he has a right to do so but that as the president of the association it was his duty to bring to the knowledge of this Court that an illegality has been committed by a subordinate court in the exercise of its jurisdiction under the Indian Penal Code and under the Indian Salt Act, 1882. What we have said above answers the second objection also.

The first ground on which the application was argued before us is, as we have already said, that there is no evidence on the record to establish the offence of abetment within the meaning of the Indian Penal Code of the commission of an offence under the Indian Salt Act, 1882, against C. B. Gupta. This ground must be rejected at once. There is evidence on the record and the learned Magistrate has accepted it as true. We see no reason to disagree with the

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finding of the learned Magistrate in the matter of the trustworthiness of the evidence.

The second ground of the application is more serious and covers not only the cases of Mohan Lal Saksena and C. B. Gupta but also of all those convicted persons whose names we have already mentioned. The learned Magistrate has convicted them under section 117 of the Indian Penal Code read with section 9(*a*) and (*b*) of the Indian Salt Act, 1882, and has sentenced each of the eight persons to rigorous imprisonment for 18 months. The argument presented before us is that punishment under section 117 of the Indian Penal Code for abetment of an act which is an offence under the Indian Salt Act, 1882, and not an offence under the Indian Penal Code, is illegal for the reason that section 9 of the Indian Salt Act, 1882, prescribes specific punishment for the abetment of such an offence.

We are of opinion that the argument is right and must be accepted. So much of section 9 of the Indian Salt Act, 1882, as bears on the question under consideration may be reproduced here:—

"Whoever commits any of the following offences (namely):

(*a*) does anything in contravention of this Act or of any rule made hereunder;

(*b*) evades payment of any duty or charge payable under this Act or any such rule, or

(*c*) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of any of the offences mentioned in clauses (*a*) and (*b*) of this section, shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both."

It was not disputed by the learned Government Advocate that doing anything in contravention of the Indian Salt Act or of any rule made thereunder was not a separate offence under the Indian Penal Code nor is it contended that abetment of an act in contravention of the Indian Salt Act or of any rule made thereunder is a separate offence under the same Code. But sentence under section 117 of the Indian Penal Code could be passed even in respect of abetment of an offence which is committed not only under the Indian Penal Code but also under any law of the country. In the present instance that law is to be found in the Indian Salt Act, 1882, and if the matter had stood there we think there could be no question that these eight persons were rightly punished under section 117 of the Indian Penal Code: but the matter does not rest there, for section 9 of the Indian Salt Act, 1882 not only makes an act done in contravention of the Act or abetment of the same act an offence but it also prescribes the penalty for such an offence. If we accept the argument of the learned Government Advocate the result will be that a specific offence prescribed as such by a special Act only would be capable of being punished under both the provisions of the Indian Penal Code and the provisions of the Indian Salt Act, 1882, or under either or them. We are unable to construe law in such a manner as would produce such a result. The learned Government Advocate placed before us the decision in *Raghubar Dayal* v. *King Emperor* (1), by a Bench of the late Court of the Judicial Commissioner of Oudh. That decision however does not seem to be in point. In that case a person was tried on a charge under section 81 of the Indian Registration Act, 1877, and was acquitted on the ground that it was not proved that he knew that it was likely that he would cause injury to

(1) (1903) 6 O.C., 153.

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any one by his act. He was subsequently tried and convicted on a charge under section 197 of the Indian Penal Code. The learned Judges held that the plea of bar arising out of the previous acquittal was a valid plea and that the accused could not subsequently be tried and convicted on a charge under section 197 of the Indian Penal Code. They further held that under section 26 of the General Clauses Act where an act or omission which constitutes an offence under two or more enactments the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence and that it did not prevent the application of the first sub-section of section 403 of the Code of Criminal Procedure.

The second case which the learned Government Advocate placed before us is *The Queen* v. *Ramachandrappa* (1). In that case it was held that the provisions of section 174 of the Indian Penal Code are not in conflict with the special provisions of sections 15 and 16 of Regulation IV of 1816 (Madras) and that the accused could be charged and tried under the provisions of section 174 of the Indian Penal Code. This decision only amounts to this that where an act is an offence under the provisions of two enactments which are not in conflict with each other prosecution may be resorted to under either of the enactments. It will be seen that the *ratio decidendi* of that case was that the act in respect of which the accused in that case was prosecuted was an offence both under the Indian Penal Code and the special Regulation of 1816 while in the present case, as we have already stated, it is agreed on both sides that the act for the abetment of which these persons were convicted is not a separate offence under the Indian

(1) (1883) I.L.R., 6 Mad., 249.

Penal Code but it is an offence exclusively under the Indian Salt Act, 1882. It is to the former class of cases to which the provisions of section 26 of the General Clauses Act apply, but the present case is of the latter class.

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Before the passing of the Indian Salt Act, 1882, acts which are made offences by the provisions of that Act were not offences under any other law of the land and we have already said that they were not and are not in themselves offences under the Indian Penal Code. Such acts were made offences and punishable as such under a special enactment that is the Indian Salt Act, 1882, and the principle of interpretation of statutes in such circumstances is *generalia specialibus non derogant*. If therefore an act which is an offence under any other act but no penalty is prescribed thereby could be punished under the provisions of section 117 of the Indian Penal Code this particular offence could not be so punished because the special enactment also prescribes a specific penalty for such an offence; in other words, where an act is an offence under a specific law and such an offence can also be punished under that specific law that law and not the general law would apply, and this is the principle laid down in section 5 of the Penal Code.

It was argued by the learned Government Advocate, and seems to have been argued on behalf of the prosecution in the court of the learned Magistrate, that section 117 of the Indian Penal Code deals with such offences of abetments as are aggravated in their nature and therefore the special penalty provided by section 9 of the Indian Salt Act, 1882, is not the penalty for an abetment of such a nature. This argument clearly ignores the language of section 9 of the Indian Salt Act, 1882. Clause (*c*) of that section defines abetment by referring to its definition in the

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Indian Penal Code and embraces all abetments whether aggravated or mitigated in their nature. The section does not provide for any exception in respect of such abetments as are provided for by section 177 of the Indian Penal Code and the punishment prescribed by the said section 9 is clearly punishment which is prescribed for all abetments of acts which are declared to be offences by the provisions of the Indian Salt Act, 1882. It follows that it is illegal to proceed under section 117 of the Indian Penal Code which allows a higher punishment for abetment of an offence for the punishment of which a lighter and separate penalty is provided by the provisions of section 9 of the Indian Salt Act, 1882. It seems to us that the argument of the learned Government Advocate, if carried to its extreme logical conclusions, would reduce the law in this respect to an absurdity. According to that argument a person may be punished for abetment when it is of an aggravated character under section 117 of the Indian Penal Code and he may also be punished under section 9 of the Indian Salt Act, 1882, for the same abetment because the aggravated form of it undoubtedly includes the mitigated form. To avoid such an absurd result we must construe the two enactments in the light of the maxim quoted above, that is, where there is a special law making a particular act an offence and providing penalties for such an offence the general law must be held to be inapplicable. We therefore hold that the conviction of these eight persons and the sentences passed on each under section 117 of the Indian Penal Code was illegal. We set aside those convictions and sentences.

But as on merits we are in agreement with the learned Magistrate that an offence under section 9 of the Indian Salt Act, 1882, has been committed by

these persons they are liable to be punished as provided for by that section. We accordingly set aside the conviction and sentences passed by the learned Magistrate under section 117 of the Indian Penal Code and convict each of the eight abovenamed persons under section 9(*c*) of the Indian Salt Act, 1882, and sentence each of them to rigorous imprisonment for a term of six months which is the maximum punishment permitted by that section.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan, Chief Judge and Mr. Justice A. G. P. Pullan.

SYED IRSHAD AHMAD (PLAINTIFF-APPELLANT) v. MUSAMMAT SAIDUNNISA (DEFENDANT-RESPONDENT)*

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Civil Procedure Code (Act V of 1908), *section* 11—Res Judicata—*Redemption suit—Decree in a redemption suit declaring only the mortgagor's right of redemption, the amount of mortgage money and the property mortgaged —Subsequent suit for possession by redemption, whether barred by* res judicata.

The question whether a decree in a redemption suit operates as *res judicata* in a subsequent suit for redemption is always one of the interpretation of the decree in the previous suit. Where the decree in the previous suit only declared the plaintiff's right of redemption, the amount of the mortgage money and the property mortgaged it must be held that the decree did not provide by its own terms for the contingency of the extinction of the relationship of the mortgagor and the mortgagee and of the right to redeem but reserved to the mortgagor the liberty to seek relief thereafter for redemption and to the mortgagee for sale or foreclosure as the case may be in a manner and at a time permitted by law and the subsequent suit would not be barred by the rule of *res judicata*.

*Second Civil Appeal No. 47 of 1930, against the decree of Mirza Munim Bakht, Subordinate Judge of Malihabad at Lucknow, dated the 29th of October, 1929, confirming the decree of M. Yaqub Ali Rizvi, Munsif of Havali, Lucknow, dated the 30th of August, 1928.