witnesses were ignorant, illiterate people who could not distinguish one system from the other, and the evidence was on the whole such that the Court could not come to any satisfactory conclusion one way or the other. This being the case it was not, we think, wrong to infer that the law of the locality prevailed, and that the inference turned the scale in the plaintiff's favour.

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The case is quite distinguishable from those in which a person moving from one part of India to another, where a different law prevails, has been held to carry the personal law with him unless the contrary is shown. Here the parties are Hindus. It must be taken that they have adopted in its entirety one form or other of that law, and it being uncertain which form they adopted, it is not unreasonable to infer that they adopted the form which prevailed in he locality.

The trial has been protracted. There is no reason to suppose that if the parties were allowed to adduce further evidence, more light would be thrown upon the matter. It would be useless to remand the case in order that the Subordinate Judge might determine whether with reference to the facts any particular rule of succession had been established, because it is clear from his judgment that the evidence did not admit of his coming to any decision on the point.

The appeal is dismissed with costs.

Appeal dismissed.

C. D. P.

APPELLATE CRIMINAL.

Before Mr. Justice Prinsep and Mr. Justice Ameer Ali.

QUEEN-EMPRESS *v.* RAGHU NATH DAS.*

1893 *January* 16.

Joinder of charges—Criminal Procedure Code (Act X of 1882), ss. 233, 234, 235, and 557—Separate charges for distinct offences—Using forged documents—Charges for using eleven forged documents in three sets on three separate occasions.

The accused was charged with using as genuine eleven forged receipts which were put in by him in sets on three separate occasions, each set with a written statement in three suits pending against him. A charge was framed

* Criminal Appeal No. 808 of 1892, against the order passed by B. L. Gupta, Esq., Sessions Judge of Balasore, dated the 1st July 1892.

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against him in respect of the using of each set of receipts, and he was tried on those three charges and convicted and sentenced. On appeal it was contended that a separate charge should have been framed in respect of each of the documents, as the using of each document constituted a distinct and separate offence, and that consequently the trial was illegal and should be set aside, the accused having been tried for more than three offences in one and the same trial.

Held, that as the "using" charged was the putting in of each set of documents with the respective written statements in the three suits, and as there was nothing to show that any of the documents had been used at any other time, there was only one using in respect of each set of documents and that there was, therefore, no valid ground for questioning the conviction.

THE accused, Raghu Nath Das Mahapatra, a *surbarakar* or tenure-holder in the district of Balasore, was convicted under sections 471 and 467 of the Penal Code by the Sessions Judge of dishonestly using as genuine, *eleven* rent receipts or *powtis*, knowing them to be forged. The Sessions Judge at the trial grouped the receipts into three sets in the following manner: the *first* set embraced 3 receipts, exhibits "A," "B," and "C," which had been filed by the prisoner in suit No. 77 on the 26th of August 1891; the *second* set included 4 receipts, exhibits "M," "N," "O," "P," filed by him in suit No. 131 on the 28th August 1891; and the *third* set contained other 4 receipts, exhibits "Q," "R," "S," "T," filed also by him in suit No. 132 on the 29th August 1891.

The Sessions Judge, agreeing with the assessors, convicted the accused and sentenced him to one year's rigorous imprisonment and a fine of rupees 100 in respect of each set of receipts, and in default of payment to like imprisonment for a further period of three months; "or in all to rigorous imprisonment for a period of three years and to a fine of rupees 300, or in default to like imprisonment for a further period of nine months."

Against that conviction the accused appealed to the High Court upon numerous grounds which it is not material to notice, as the only question raised and argued on his behalf at the hearing of the appeal was that relating to the contention, that the trial had been irregularly conducted and was consequently illegal by reason of the accused having been charged with and tried for more than three offences in one and the same trial.

Mr. *W. R. Donogh* and Baboo *Gopi Nath Mukerji* for appellant.

The *Deputy Legal Remembrancer* (Mr. *Kilby*) for the Crown.

Mr. *Donogh*.—The appellant has been convicted under section 471 coupled with section 467 of the Penal Code of using as genuine *eleven* rent receipts found to be forged. He has not been actually convicted of forging them, but the Judge has very little doubt that he did either forge them himself, or have them forged. Three were used on one day, four on another, and the remaining four on a third. There is nothing to show that any one receipt was filed simultaneously with another. Therefore there are here eleven distinct offences, and according to section 233 of the Criminal Procedure Code there should have been a separate charge for each offence. This stands to reason because in respect of each document there must necessarily be a distinct defence. One might be forged and another not, so that the same defence could not be offered to all the documents in one group. According to section 233 each offence should be tried separately. The only exception to this is to be found in section 234, under which three of these offences might have been tried together, but no more. The intention of this very salutary rule was, no doubt, that an accused person might not be embarrassed in his defence by having to meet too many charges at one time. Section 235 contains the only exception to this provision. It provides for the trial of more offences than one if arising out of the same transaction. That might mean more than three. If the filing of each set of receipts constituted one transaction, then it was open to the Judge to try each set of offences separately, *i.e.*, the offences of filing A, B, and C together, or M, N, O, P together, or again Q, R, S, T together. Having taken up one set of offences he would not be at liberty to go further and add other charges, for he would thus transgress the rule contained in section 234 against the trial of more than three offences together. The trial, therefore, of eleven such offences would be a grave irregularity, and not only that, but an illegality sufficient to render the whole trial inoperative. See the *dictum* of Petheram, C.J. in the case of *In the matter of Luchminarain*(1). [PRINSEP, J.—It has been held otherwise by this Court. There is a conflict of opinion on that point.] It was held in *The*

(1) I. L. R., 14 Calc., 128.

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Empress v. *Uttom Koondoo* (1) that such an irregularity would not be fatal unless it had occasioned a failure of justice, but it appears that this case was referred to and considered in *Luchmi-narain's case*.

It has been held that irregularities of this kind cannot be cured by section 537, Criminal Procedure Code. [See *Queen-Empress* v. *Chandi Singh* (2).] The object of this section, which is practically the same as section 283 of the Code of 1872, is to remedy defects of a formal character only and not serious irregularities of such a nature; *Regina* v. *Divá Dayal* (3).

In any event it would be proper in this case to limit the trial to the first set of offences and to set aside the convictions and sentences in respect of the others as was done in the case of *The Empress* v. *Uttom Koondoo* (1).

The Deputy Legal Remembrancer.—It is proved that each set of documents was filed by the accused with a written statement, on a separate day, in a separate suit. The using of each set was one transaction, one using. The offence in regard to each document of a set is a part of the offence of using the set, and all the documents of one set being used at the same time for the same purpose in one transaction, the accused cannot be punished more severely for using all than for using one of the documents of the set (section 71, Penal Code). Nor can the user of any one of the documents of a set be considered as a distinct offence within the meaning of section 233 of the Procedure Code from the user of any other document of that set. It would be as incorrect to make a separate charge for using each document of the set as it would be to charge a thief in separate charges for stealing each of the various coins in a purse taken from a man's pocket. The argument that the accused might have a separate defence in regard to each document is of no weight. Constantly cases occur of jewellers' shops being broken into and large quantities of valuables taken belonging to many different people, and as constantly the thieves make different defences for the different articles found with them. But where there is one transaction, one act of stealing,

(1) I. L. R., 8 Calc., 634. (2) I. L. R., 14 Calc., 395.
(3) 11 Bom. H. C., 237.

the taking of each separate article is not and could not be treated as a distinct offence.

The opinion expressed in the case of *In the matter of Luchminarain* (1) as to what might have been the result if the Judges had found the facts differently was not necessary to the decision of the case and does not agree with the decisions in *Mamu Miya* v. *The Empress* (2), *Empress* v. *Sreenath Kur* (3), and *Queen-Empress* v. *Fakirapa* (4). The facts of the case of *The Queen-Empress* v. *Chandi Singh* (5) are entirely different from those of the present case, different persons having been tried in one trial for clearly distinct offences committed at different times.

The judgment of the High Court (PRINSEP and AMEER ALI, JJ.) was as follows:—

The only point raised by the learned Counsel for the appellant is as to the form of the trial, having regard to the charges and to the findings of the Court convicting the appellant on all those charges. The appellant was charged with having fraudulently and dishonestly used as genuine certain documents which he knew or had reason to believe to be forged documents. These documents were put in by him together with a written statement in each of three suits purporting to show that the sums of money for which he was being sued were not due to the plaintiff. It has been contended that a separate charge should have been made for each one of the documents, and that consequently the trial must be set aside as contrary to law and within the terms of the precedent quoted to us. The three sets of documents were proved at the trial to have been put in in each suit simultaneously, together with a written statement in the particular case, and these are the "usings" charged. There is nothing to show that any of them were used at any other time. We think, therefore, that the Sessions Judge has rightly held that there was only one using in respect of each set of documents. Consequently we see no valid ground for questioning the correctness of the conviction. We observe that no objection on this ground was taken at the trial in the Sessions Court. We think

(1) I. L. R., 14 Calc., 128.
(2) I. L. R., 9 Calc., 371.
(3) I. L. R., 8 Calc., 450.
(4) I. L. R., 15 Bom., 491 (501).
(5) I. L. R., 14 Calc., 395.

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it unnecessary to consider the other point raised by the learned Counsel for the appellant which proceeds on the assumption that the charges related to more than three particular offences. The appeal is therefore dismissed.

Appeal dismissed.

H. T. H.

CIVIL RULE.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Beverley, and Mr. Justice Ghose.

1892 *August* 9.

ABDUL GANI (OBJECTOR, PETITIONER) *v.* A. M. DUNNE, RECEIVER OF THE ESTATE OF SATYA GHOSAL BAHADUR (DECREE-HOLDER) AND OTHERS (AUCTION-PURCHASERS) AND ANOTHER (JUDGMENT-DEBTOR) (OPPOSITE PARTIES).*

Civil Procedure Code (Act XIV of 1882), *s.* 311—*Objection to sale by person claiming to be the real owner—Decree—Benamidar, decree against—Sale in execution of decree, application to set aside.*

Per PETHERAM, C.J. and GHOSE, J. (BEVERLEY, J. dissenting). Where immoveable property has been sold in execution of a decree against the ostensible owner as his property, a person claiming to be the beneficial owner is entitled to come in under s. 311 of the Code of Civil Procedure and object to the sale.

Asmutunnissa Begum v. *Ashruff Ali* (1) followed.

SHEIKH ABDUL GANI, the objector, in his petition to the High Court, stated that he and his brother, Abdul Aziz Meah, purchased *taluk* Jimina in execution of a decree for arrears of rent in the *benami* name of Kali Prosunno Ghose, a servant of theirs, and continued in possession of the *taluk* on payment of rent to A. M. Dunne, Esq., Receiver of the estate of Satya Ghosal Bahadur and others; that the said Receiver obtained a decree for arrears of rent against the said Kali Prosunno, and in

* Civil Rule No. 458 of 1892, against the order of A. E. Staley, Esq., District Judge of Backergunge, dated the 5th of February 1892, affirming the order of Baboo Saroda Prosad Bose, Munsif of Perozpore, dated the 7th of December 1891.

(1) I. L. R., 15 Calc., 488.