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J.

notice instead of a summons that it was the intention of the legislature that the application when registered as a suit should be anything different from a suit under the Code so far as regards procedure in other matters. So also there being nothing repugnant in the subject or context of paragraph 21(2), it is reasonable to hold that 'decree' in that provision has the meaning set out in section 2(2).

The question is, however, not altogether free from doubt and the legislature might well intervene to make clear its intention in this regard.

Application dismissed.

REVISIONAL CRIMINAL

Before Jwala Prasad and Ross, J.J.

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Code of Criminal Procedure, 1898 (Act V of 1898), sections 227, 228, 229, 230, 231, 255, 256, 257 and 342—Alteration of or addition to charge—recall of prosecution witnesses—examination of the accused, whether necessary.

When, after the examination of the accused under section 342 of the Code of Criminal Procedure before being called upon to enter on his defence, an alteration is made in the charge, or a new charge is added, it is not incumbent upon the court to re-examine the accused under that section even though some of the witnesses have, after the alteration of or addition to the charge, been recalled under section 231 and examined with reference to such alteration or addition.

The facts of the case material to this report were as follows :—

The six petitioners were accused of rioting and of stealing certain gram and wheat which the servant of one Sant Lall was conveying on three carts and of

* Criminal Revision No. 506 of 1921.

causing hurt. The petitioners were all convicted, some under section 325 and others under sections 147 and 379, and sentenced to various terms of imprisonment.

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The examination and cross-examination of the witnesses for the prosecution was completed on the 24th May, 1921, and the charge was then framed. At this stage the accused persons were again offered an opportunity to cross-examine the witness but they declined. The accused persons were examined under section 342, Code of Criminal Procedure. The 11th June was fixed as the day on which they were to enter on their defence. On that day a charge under section 325 was added against one of the accused and the wording of the charge under section 147 was altered. The witnesses for the prosecution were then recalled and were cross-examined on the 17th June. On the 25th June, charges of previous convictions against two of the accused were framed and witnesses for the defence were examined and discharged.

H. L. Nandkeolyar, for the petitioners.

Manohar Lal, Assistant Government Advocate,
for the Crown.

JWALA PRASAD, J.—(After stating the facts and confirming the convictions his Lordship reduced the sentences and proceeded as follows):—Learned Counsel on behalf of the petitioners raised a law point founded on section 342 of the Criminal Procedure Code, urging that the entire trial was vitiated and that there should be a retrial. We have carefully examined this contention with the facts and circumstances and we are of opinion that there is no substance in it. The examination and cross-examination of the prosecution witnesses finished on the 24th May, 1921, and the charge was then framed. The accused were asked if they would cross-examine any of the prosecution witnesses after the charge but they declined and consequently they were called upon

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to enter on their defence fixing the 11th June. On the 11th June at the instance of the Public Prosecutor a charge under section 325 was added against one of the accused, Shamlal Kalwar, and the charge under section 147 was verbally altered. The prosecution witnesses were then recalled and were cross-examined on the 17th June. On the 25th of June, the previous convictions against two of the accused Shamlal and Brich Koeri were framed and five defence witnesses were examined on behalf of the defence and discharged. It is not disputed that the prosecution evidence then closed and the accused were called upon to enter on their defence on the 24th May, 1921, upon the charges that were originally framed. It is however contended that, after the alteration of the charge under section 147 and the addition of the charge under section 325 on the 11th June, the procedure under sections 255 to 257 of the Code of Criminal Procedure re-opened and the prosecution case therefore was closed on the 25th June, 1921, when the accused should have been examined, and the omission to do so contravened the mandatory provisions of section 342 of the Code. In my opinion sections 255 to 257 have no application to a case when a charge is altered or added. Section 342 has consequently no application when the accused were already called on to enter on their defence prior to the alteration or the addition of the charge. The procedure for the trial in regard to the alteration or addition of a charge is laid down in sections 227 to 231 of the Code. Section 228 empowers the Court to proceed with the trial as if the new or altered charge had been the original charge. Section 229 empowers the Court either to direct a new trial or to adjourn a trial for such period as may be necessary, if the Court be of opinion that the proceeding immediately with the trial is likely to prejudice the accused or the prosecution. Section 231 entitles the prosecutor and the accused to recall or summon or re-summon and examine with reference to the altered or added charge any witness who may have been examined and also to call any further witness.

whom the Court may think to be material. The addition or the alteration of a charge does not open up the trial from the beginning and the Court may immediately proceed with the trial if it is of opinion that there will be no prejudice to the accused. In order to safeguard the interests of the parties section 231 gives them the right to recall or resubmit any witness. The recalling of the prosecution witnesses for further cross-examination in the present case by the accused was evidently under this section. Under section 227 the added or altered charge has to be read and explained to the accused. These safeguards appear to have been deemed sufficient to protect the interests of the prosecution or the accused in the case. The trial as already observed does not commence *de novo*, so that if the accused had been already called upon to enter on their defence there is no further obligation upon the Magistrate to examine the accused under section 342 of the Code. Therefore, the authorities on the subject of which we are so well cognisant do not at all apply to the present case. The contention is therefore overruled.

ADAMI, J.—I agree.

Sentences reduced.

REVISIONAL CRIMINAL.

Before Jwala Prasad and Ross, J.J.

JAIPAL BHAGAT

v.

KING-EMPEROR.*

Extradition Act, 1903 (Act XV of 1903), sections 2, 7, 9, 10, 15 and 18 and Schedule III—Escaping from jail in Nepal—warrant issued by British Envoy to District Magistrate in British Territory for arrest of absconder, legality of—Power of High Court to interfere with action under illegal warrant.

Section 10 of the Indian Extradition Act, 1903, applies only if the warrant issued under section 7 is legal, but absconding

* Criminal Miscellaneous Revision No. 87 of 1921, against an order of F. G. Rowland, Esq., Sessions Judge of Muzaffarpur, dated the 6th September, 1921.

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