on the ground of rise in price of the staple food crops simply because the tenants did not grow food crops upon the holding in dispute. In *Rajah Reshee Kesh Law* v. *Chintamani Dalai*(1) the question was expressly raised and decided by the Calcutta High Court and it was held that under similar circumstances the landlord was entitled to enhancement, and we find nothing in principle which could entitle the defendants to object to enhancement under section 30(*b*) of the Bengal Tenancy Act simply because they had converted the land into an orchard and because the landlord did not object to such conversion. In my opinion the decision of the learned Subordinate Judge on this point cannot be sustained. There does not appear to have been any dispute in the Court below as regards the rate of enhancement and, therefore, the decree of the Munsif allowing the enhancement will stand. The appellants are entitled to their costs throughout.

MACPHERSON, J.—I agree.

Appeals decreed.

REVISIONAL CRIMINAL.

Before Terrell, C. J. and Rowland, J.

BABU LAL MAHTON

v.

KING-EMPEROR.*

1929.

June, 24.
July, 2.

Autrefois convict—interruption of court's work and assault in court—summary punishment for interruption—subsequent trial for the assault—Penal Code, 1860 (*Act XLV of* 1860), *sections* 228 *and* 355—*Code of Criminal Procedure*, 1898 (*Act V of* 1898), *sections* 235, 236, 237, 403 *and* 480.

(1) (1922-23) 27 Cal. W. N. 962.

*Criminal Revision no. 311 of 1929, against a decision of R. B. Beevor, Esq., Additional Sessions Judge of Patna, dated the 16th March, 1929, upholding a conviction by Rai Bahadur Rameshwar Singh, Magistrate, 1st class of Patna, dated the 4th February, 1929.

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Where in the course of a trial a person shouted in the court and assaulted another person in the court and the magistrate acting under section 480 of the Code of Criminal Procedure, 1898, convicted and punished him under section 228 of the Penal Code, 1860, *held*, that such conviction was not a bar to the same person's subsequent trial and conviction under section 355 of the Penal Code for the assault, in a case instituted on complaint of the person assaulted, inasmuch as the magistrate who convicted him under section 228 had not, at that time, cognizance of the offence under section 355 and, therefore, was not, at that time, "competent to try the offence" under section 355, within the meaning of section 403(*4*) of the Code of Criminal Procedure.

Where the acts of an accused person constitute more than one offence, the trial and conviction of the accused in respect of one of such offences is not a bar to his subsequent trial and conviction of any other offence constituted by the same fact, provided that the court which tried the first offence was not, at the time of first trial, competent to try the offence subsequently charged.

Emperor v. *Jiwan*(1) and *Emperor* v. *Tikaram Sakharam* (2) approved.

Ganapathi Bhatta, In re(3), disapproved.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C. J.

K. P. Jayaswal (with him *S. P. Asthana* and *A. Burman*), for the petitioners.

Indu Bhusan Biswas, for the opposite party.

COURTNEY TERRELL, C. J.—The facts of this case are unusual but simple and they give rise to an interesting point of law.

On the 6th December, 1928, a Deputy Magistrate with first class powers was conducting a trial. The petitioner, Babu Lal Mohton, suddenly stood up in Court, shouted "Jai Mahabir" and beat one Ram Saran with a shoe. This conduct could be considered from two points of view. First, it was an offence

(1) (1915) I. L. R. 37 All. 107.
(2) (1915) 17 Bom. L. R. 678.
(3) (1913) I. L. R. 36 Mad. 308.

under section 228 of the Indian Penal Code, that is to say, it was an interruption to a public servant sitting in a judicial proceeding. It was also an offence under section 355 of the Indian Penal Code, that is to say, an assault with intent to dishonour Ram Saran. The presiding Magistrate, exercising his powers under section 480 of the Code of Criminal Procedure, punished him for the offence under section 228 of the Indian Penal Code by imposing a fine of Rs. 200 which was duly paid by the petitioner who accordingly purged himself of that offence. Thereafter the assaulted person Ram Saran filed a complaint in the Court of the Subdivisional Officer who took cognizance of the offence under section 355 and sentenced the petitioner to rigorous imprisonment for two years. This conviction and sentence were upheld on appeal by the Additional Sessions Judge and the petitioner now moves this Court in revision. His contention is, and has been throughout, that he is entitled to rely upon the plea of *autrefois convict* by reason of his conviction by the Magistrate under section 228 of the Indian Penal Code.

It is a fundamental common law rule that no one may be punished twice for the same offence and this has long been held to mean that he may not be punished twice for the same acts or omissions irrespective of the exact terms of the charge, and that the test of similarity is whether or not the evidence to obtain a legal conviction on the first charge was in substance the same as that necessary to sustain the second charge. This is a common law rule which, subject to certain specific limitations, operates in India as well as in England. The specific statement of this rule together with its limitations is contained in section 403 of the Criminal Procedure Code which contains four sub-sections. These sub-sections deal with four kinds of cases:—

(*1*) deal with the case of one set of acts or omissions constituting one legal offence only,

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(2) deal with the case of one series of acts involving more than one offence,

(3) deal with the case of one set of acts constituting more than one legal offence,

(4) deal with a special case where a single act or set of acts has had a consequence unknown at or having occurred since the first trial.

Sub-section (1) is as follows:—

"A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237."

This is a special statement of the rule as applicable to circumstances in which only *one offence* has been committed. The phrase beginning with the words "nor on the same facts for any other offence" and having special reference to sections 236 and 237, also contemplates a case where the facts only justified conviction for one offence although other offences may have been charged, *ex abundante cautela* under section 236. The words "might have been charged" indicate that this sub-section is no extension of the common law rule and mean "might lawfully have been charged" under that section. But section 236 does not (as does section 235) contemplate a case in which the series of acts complained of may constitute more than one offence. In my opinion this sub-section has no application to a case like the present where more than one offence has been committed.

Under section 235, sub-section (1)

"If in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence,"

that is to say, if a person has performed a series of acts A, B, C, D, and if acts A, B, and C constitute one offence and acts B, C and D constitute another

offence, he may be charged with, and tried at one trial, for both of such offences. Sub-section (*2*) of section 403 limits or rather explains the common law rule as meaning that the acquittal or conviction for the offence constituted by acts A, B and C will not bar a subsequent trial in respect of the offence constituted by the acts B, C and D. The offences are distinct and the evidence necessary in the first case is different from the evidence necessary in the second. So that the common law rule is still maintained and is not interfered with by this sub-section. The sub-section has no application to the present case in which the entire series of acts constituted both offences.

It is unnecessary for the purposes of this case to consider sub-section (*3*). Sub-section (*4*) is a further explanation and limitation of the general common law rule and is as follows:—

"A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged."

It will be noted in the first place that the sub-section involves in itself that part of the common law rule according to which an accused cannot rely upon the pleas of *autrefois acquit* or *autrefois convict* unless the previous acquittal or conviction was arrived at by a competent tribunal. But a series of acts may constitute more than one offence and the sub-section says that a person acquitted or convicted of an offence may nevertheless be subsequently tried for any other *offence* constituted by the same acts if the Court by which he was first tried was not competent to try the *offence* with which he is subsequently charged. Therefore the common law rule has no application, if the first Court was not competent to try him for the *offence* subsequently charged notwithstanding that the acts constituting the two offences are identical. In my opinion the words "competent to try the offence" mean that in order to obtain the advantage

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of the common law rule the accused on the second occasion must shew that the former Court was in a position, had it so chosen, to try and acquit or convict the accused of the offence subsequently charged.

It has been contended before us that the words "competent to try" are merely indicative of the rank of the tribunal, that is to say that if the former tribunal had legal power to try offences of that class, the conditions of the sub-section are fulfilled, although the former tribunal might not have been able in the circumstances to have acquitted or convicted the accused of the offence subsequently charged. Some colour is given to this contention by certain decisions of the Madras High Court, and I refer particularly to the judgment in the case of In re *Ganapathi Bhatta*(1). In this case the accused had been tried and acquitted of an offence under section 211 of the Indian Penal Code. He could have been charged on the same facts by the Magistrate at the same trial with an offence under section 182 if the required sanction had then been available. Later he was, after the necessary sanction had been obtained, charged under section 182 and he pleaded *autrefois acquit* under section 403 of the Criminal Procedure Code. It was contended for the prosecution that since at the time of the first trial no sanction had been given for a charge under section 182, the Court was not "competent to try" him under that section. The High Court held that sanction was only a condition precedent to the institution of proceedings under section 182 and that it was the duty of the prosecution to have obtained it before the former trial in which event both sections could have been used. In these circumstances the Court held that the words "competent to try" in sub-section (4) referred to the jurisdiction of the tribunal, which was complete, to deal with an offence under both sections, the absence of the sanction not affecting the competence of the tribunal. In my opinion the words "competent to try" are equivalent to "in a legal position to have

(1) (1913) I. L. R. 36 Mad. 308.

tried and acquitted or convicted." That is to say, they refer narrowly to the legal position of the Court at the time of the former trial in relation to the particular offence committed by the accused and not broadly to the jurisdiction of the Court with regard to the class of offence in general. No other reading of these words is in harmony with the general common law doctrine of which a particular aspect only is set forth in the sub-section and the broader reading would produce an unreasonable anomaly. For it would absolve the plea from the common law test of its validity, that is to say, an enquiry whether the accused had been put in peril in respect of the offence. The Madras decision merely states that in fact the accused had already been in peril of conviction under section 182 of the Indian Penal Code. But decisions in the Allahabad and Bombay High Courts [see for example *Emperor* v. *Jiwan*(1)] lay down that the necessary sanction being a condition precedent to a trial under section 182, the accused in such circumstances had never been in peril in respect of the offence subsequently charged. In my opinion the latter view is correct and the Madras decisions were wrongly decided. In *Emperor* v. *Tikaram Sakharam Kasar*(2) the accused had been tried and acquitted for offences under sections 366, 368 and 376 of the Indian Penal Code. There had been no complaint by the husband of the woman. He was again convicted, on the same facts, at the complaint of the husband, of an offence under section 498. It was held that a complaint by the husband being a condition precedent to the Court's jurisdiction to try under section 498, the former Court not only did not in fact try the offence under section 498 but was in law incompetent to try that offence and the subsequent conviction was good.

In this case the Magistrate had no cognizance of the offence under section 355 and, therefore, in the absence of this condition precedent, was incompetent

(1) (1915) I. L. R. 37 All. 107.
(2) (1915) 17 Bom. L. R. 678.

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to try the petitioner for it. Consequently the petitioner was never in peril of punishment and cannot rely on the plea of *autrefois convict*. I agree with the decisions of the Magistrate and the Sessions Judge and would dismiss this petition. But in the matter of the sentence I am of opinion that it is far too severe and I would reduce it from two years to six months' rigorous imprisonment.

ROWLAND, J.—I have had the privilege of seeing the judgment of the learned Chief Justice and I concur in the proposed order. The ground for revision is thus stated in the application:—

"For that the incident being one and the same and the accused having been sentenced to pay a fine of Rs. 200, the second trial under section 355, I. P. C., is barred by section 403 of the Criminal Procedure Code."

Sub-section (*1*) of section 403 which alone imposes a statutory prohibition on a second trial has been set out in full in the judgment of the learned Chief Justice who has demonstrated that it does not apply to the facts of this case. There being no other statutory provision in bar of the second trial, the applicant has not made out that the trial is barred by section 403.

As regards section 403(*4*) I agree with the learned Chief Justice that the High Courts of Bombay and Allahabad in the decisions cited have correctly stated the law.

Conviction upheld.

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APPELLATE CRIMINAL.

Before Terrell, C. J. and Rowland, J.

BHIKARI PATI

v.

KING-EMPEROR.*

Approver—statement made in committing court retracted in Session Court—Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 288.

*Reference under section 374 of the Code of Criminal Procedure (with Criminal Appeal no. 75 of 1929) made by D. E. Reuben, Esq., I.C.S., Sessions Judge of Cuttack, in his letter no. 440-Cr., dated the 23rd March, 1929.