APPELLATE CRIMINAL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

EMPEROR *v.* SHERUFALLI ALLIBHOY.*

1902. *November* 27.

Criminal Procedure Code (Act V of 1898), sections 234 and 235—Number of charges—Same transaction.

The fact that offences are committed at different times does not necessarily show that they may not be so connected as to fall within section 235 of the Criminal Procedure Code (Act V of 1898). The occasions may be different, but there may be a continuity and a community of purpose. The real and substantial test by which to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action.

The accused was tried at one trial for three offences: (1) for having in his possession on the 9th October, 1902, certain stencil plates for the purpose of counterfeiting Hubbock and Company's trade-mark on two kegs of paint (section 485 of the Indian Penal Code), (2) for having, on or about the 7th October, 1902, sold 12 kegs of paint to which a counterfeit trade-mark was affixed (under section 486 of the Indian Penal Code), and (3) for having in his possession for sale on or about the 9th October, 1902, certain kegs of paint purporting to be Hubbock's paint having a counterfeit trade-mark (under section 486). He was convicted and separately sentenced for such offences. He appealed, contending that the trial was illegal, inasmuch as he had been charged at one trial with offences which were not connected together so as to form the same transaction, under section 235 (1) of the Criminal Procedure Code (Act V of 1898).

Held, dismissing the appeal, that the trial was not illegal. There was a community and also a continuity of purpose in the possession and the sale—the possession of the instruments was the cause, the possession of the kegs and their sale the effect, and both the possession and the sale had one intention and aimed at one result, namely, that of deceiving buyers into purchasing what was not the genuine article of Hubbock and Company.

APPEAL from a conviction and sentence recorded by J. Sanders Slater, Chief Presidency Magistrate of Bombay.

The accused was charged at one trial with the three following offences, viz.:

(1) having in his possession on the 9th October, 1902, certain stencil plates for the purpose of counterfeiting Messrs. Hubbock

* Criminal Appeal No. 393 of 1902.

1902.

EMPEROR v. SHERUFALLI.

& Co.'s trade-mark on kegs of paint (section 485 of the Indian Penal Code);

(2) with selling on the 7th October, 1902, 12 kegs of paint bearing a counterfeit trade-mark (section 486 of the Indian Penal Code); and

(3) with having in his possession for sale on 9th October, 1902, a certain number of kegs of paint bearing a counterfeit trade-mark (section 486 of the Code).

The Magistrate convicted the accused on each charge, and sentenced him on the first to eighteen months' rigorous imprisonment, and on each of the others to one year's rigorous imprisonment. The sentences were ordered to run concurrently.

The accused appealed, contending, *inter alia*, that he had been illegally tried at one trial for three separate offences, those charged in the first two charges being punishable under different sections of the Indian Penal Code and having (as alleged) taken place at different dates, and that the acts which were alleged to constitute the two offences did not form part of the same transaction.

Strangman (with Messrs. *Payne, Gilbert, Sayani and Moos*) for the accused.

Scott (Advocate General) and *Lowndes* (with Messrs. *Crawford, Brown & Co.*) for the complainant.

CHANDAVARKAR, J.:—The petitioner, Sherufalli Allibhoy, was tried before the Chief Presidency Magistrate, Bombay, on three charges: firstly, under section 485 of the Indian Penal Code, having in his possession on the 9th October, 1902, certain stencil plates for the purpose of counterfeiting Messrs. Hubbock & Co. Limited's trade-mark on two kegs of paint; secondly, under section 486 of the Indian Penal Code, having on or about the 7th October, 1902, at Bombay, sold two kegs to which a counterfeit trade-mark was affixed without taking reasonable precautions, &c.; thirdly, under section 486 of the Indian Penal Code, having in his possession for sale on or about the 9th October, 1902, certain kegs of paint purporting to be Hubbock's paint, having a counterfeit trade-mark. The Magistrate convicted the petitioner on each of the charges and sentenced him to eighteen months'

1902.

EMPEROR v. SHERUFALLI.

rigorous imprisonment on the first and to one year's rigorous imprisonment on each of the other two charges. He also directed the sentences to run concurrently. The petitioner now appeals against the convictions and sentences.

The first point raised before us in support of the appeal is that the trial was illegal and must be quashed, because the Magistrate charged the petitioner at one trial with offences which were neither of the same kind, under section 234, nor connected together so as to form the same transaction, under sub-section 1, section 235 of the Code of Criminal Procedure. Mr. Strangman, who has appeared for the petitioner and argued the appeal, conceded that if the offences of which his client has been convicted could be regarded as arising out of the same transaction, the point raised by him should fail. His argument is that they do not arise out of the same transaction, because the first charge related to having had possession on the 9th of October, 1902, of instruments for counterfeiting, whereas the second charge related to a sale on the 7th October, 1902, of certain counterfeit articles—that, in other words, as the two offences related to two different occasions, they could not be regarded as "one series of acts so connected together as to form the same transaction." Briefly put, the argument makes time the test, and the sole test, for determining whether two or more offences arise out of one and the same transaction. But, in my opinion, there is no principle on which we can hold that, merely because an offence is committed at one time and another offence is committed at another, they should be regarded as not falling within the category of offences contemplated by sub-section 1 of section 235 of the Code of Criminal Procedure, whatever in other respects be their interrelation or interdependence. Some of the illustrations to the sub-section in question serve to throw light on its real meaning. Illustration (*c*) says :

A entices *B*, the wife of *C*, away from *C*, with intent to commit adultery with *B*, and then commits adultery with her. *A* may be separately charged with and convicted of offences under sections 498 and 497 of the Indian Penal Code.

Here the enticing away and the adultery take place on different occasions, but the two acts are connected together, because there is not only continuity of time but also continuity of purpose in

1902.

EMPEROR v. SHERUFALLI.

them, and, therefore, they are connected together so as to form the same transaction. Illustration (*f*) says:

> *A*, with intent to cause injury to *B*, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial *A* gives false evidence against *B*, intending thereby to cause *B* to be convicted of a capital offence. *A* may be separately charged with and convicted of offences under sections 211 and 194 of the Indian Penal Code.

Here, again, the occasions when the two offences were committed were different; but there was a continuity and community of purpose. The real and substantial test, then, for determining whether several offences are connected together so as to form the same transaction depends upon whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action. A mere interval of time between the commission of one offence and another does not by itself necessarily import want of continuity, though the length of the interval may be an important element in determining the question of connection between the two. For instance, in *Queen Empress* v. *Vajiram*[1] proximity of time, combined with the case as to intention and similarity of action and result, was held to bring several offences as to several fraudulent transfers of property within the meaning of the words "same transaction" in section 235 of the Code of Criminal Procedure.

Judged by these considerations, the present case must be held to fall distinctly within the scope of sub-section 1 of that section. The petitioner sold a number of kegs having a counterfeit trade-mark of Hubbock's on the 7th of October, 1902; on the 9th October he was found in possession of more kegs of the same description and of instruments for counterfeiting them. There was a community and also continuity of purpose in the possession and the sale—the possession of the instruments was the cause, the possession of the kegs and their sale the effect; and both the possession and the sale had one intention and aimed at one result, of deceiving buyers into purchasing what was not the genuine article of Hubbock. There was, therefore, no illegality in the trial.

(1) (1892) 16 Bom. 414.

1902.

EMPEROR v. SHERUFALLI.

Passing on to the merits, the main facts of the case relied upon by the prosecution and found proved by the Chief Presidency Magistrate on the evidence have not been challenged before us by Mr. Strangman in arguing the appeal; but the plea advanced in support of the petitioner's innocence is that he had taken charge of the shop where the counterfeit articles were found only six months before the finding. But no evidence was adduced before the Magistrate to prove that plea and to prove that the instruments for counterfeiting had been kept in the shop without his knowledge by his deceased partner and uncle. In the absence of such evidence the Magistrate was right in giving effect to the evidence of the prosecution and attaching no weight to the unsubstantiated statement of the petitioner. As to the sentence which is complained of as excessive and severe, we do not think that it errs at all on the side of severity, considering the nature of the offence and the necessity, in public interests, of protecting commerce from fraudulent dealings. We dismiss the appeal.

ASTON, J.:—I concur in the view that the possession up to 9th October, 1902, of stencil plates for the purpose of counterfeiting Messrs. Hubbock & Co.'s trade-mark, the possession for sale up to 9th October, 1902, of goods marked with the counterfeit trade-mark, together with the sale on or about the 7th October of certain kegs marked with the counterfeit trade-mark, were parts of "one series of acts so connected together as to form the same transaction," and the offences charged in respect of each of these acts could, therefore, under section 235 of the Criminal Procedure Code, be tried at the same trial. On the merits the guilt of the appellant is, I think, established by clear evidence, and there is no ground for reducing the sentences.

Appeal dismissed.