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mention of a principal debt towards which the payment was made. It would appear to me, therefore, that it was sufficient to prove that the payment was noted in the handwriting of the defendant and it was not necessary to prove besides anything more than that the payment was intended to be a part-payment of the principal sum demanded from the defendant. It was not necessary, that is to say, to have a description of the principal debt also noted in the handwriting of the defendant. The demand, therefore, for the balance due upon this debt of Rs. 1,350 odd was, in my opinion, saved from the bar of limitation by the provisions of section 20 of the Indian Limitation Act.

There ought, therefore, in my opinion, to be a decree in favour of the payee as proposed for Rs. 1,197 principal with interest at 6 per cent. from the date of suit till payment with costs from the defendant in all Courts.

Decree set aside.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Hayward.

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EMPEROR *v.* MOHIDIN WALAD KARIM AND OTHERS (ACCUSED).*

Criminal Procedure Code (Act X of 1882), section 16—Rules 1, 2, 4† of the rules framed for the guidance of Special Magistrates' Bench in the Municipal

* Criminal Application for Revision No. 221 of 1919.

† The rules run as follows :—

1. The Bench may try any case triable by a Third Class Magistrate.

2. The Bench shall ordinarily consist of three Special Magistrates, but may consist of two only, if not more than that number are present on any day fixed for a sitting of the Bench. If on any such day more than three Special Magistrates are present, the names of the three who are to sit shall be drawn by lot in open Court.

The Special Magistrates may arrange themselves for sitting in rotation or otherwise as may be convenient.

4. If for any cause it is found necessary to adjourn the hearing of a case after the evidence has been partly taken, the trial must be completed before the same Magistrates who commenced it, or must be held afresh before a different set of Magistrates.

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District of Satara—Bench of three Magistrates commencing a trial—Absence of one Magistrate—The remaining two Magistrates hearing the rest of the case—Trial illegal.

A bench of three Special Magistrates heard the prosecution evidence; but owing to the absence of one of the Magistrates, the remaining two went on with the trial, heard the defence evidence, and convicted and sentenced the accused. A question having arisen whether the trial was void in view of Rule 4 of the rules for the guidance of the Special Magistrates' Bench,

Held, that the trial was void, inasmuch as it contravened the provisions of Rule 4.

THIS was an application under criminal revisional jurisdiction against convictions and sentences passed by a Bench of Magistrates, Second Class, Satara City, confirmed, on appeal, by M. A. Phanse, Sub-Divisional Magistrate, First Class, at Satara.

The accused were placed for trial before a Bench of Special Magistrates at Satara on charges punishable under sections 325 and 147 of the Indian Penal Code.

The Bench consisted at first of three Magistrates, who heard the prosecution evidence. One of the Magistrates was thereafter absent; and the remaining two Magistrates went on with the trial, heard the defence evidence, and convicted and sentenced the accused.

The convictions and sentences were confirmed, on appeal, by the Sub-Divisional Magistrate.

The accused applied to the High Court.

G. S. Rao, for the accused.

S. S. Patkar, Government Pleader, for the Crown.

SHAH, J.:—The petitioners before us in this case were tried by a Bench of Second Class Magistrates on a charge of grievous hurt under section 325, Indian Penal Code. The prosecution evidence was heard by three Magistrates and the defence evidence was heard by only two

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out of the three with the result that the decision was given by the two Magistrates who had heard the case throughout. The Magistrates in question are appointed for the District of Satara, and the Rules regulating the constitution of the Bench of Magistrates are to be found in the Notification of 30th October 1885 at page 1262 of the Bombay Government Gazette for 1885, Part I. These Rules were framed under section 16 of the Criminal Procedure Code of 1882 and are still in force.

The petitioners were convicted by the Bench of Magistrates on the 13th of May 1919. They appealed to the District Magistrate, and it was urged on their behalf that the whole trial was void as it was contrary to the said Rules in so far as only two Magistrates finished the trial though it was commenced by a Bench of three Magistrates. The appellate Court held that the trial was valid. In the result the convictions of the present petitioners were confirmed.

They have presented an application to this Court, and it is urged that the trial is void as it contravenes the Rules. It is provided by these Rules that the Bench may try any cases triable by a Third Class Magistrate, and that if for any cause it is found necessary to adjourn the hearing of a case after the evidence has been partly taken the trial must be completed before the same Magistrates who commenced it or must be held afresh before a different set of Magistrates. In the present case the trial was not completed before the same Magistrates who commenced it. It was not held afresh before a different set of Magistrates, but it was continued and finished by two out of the three Magistrates who constituted the Bench in the first instance. It is clear that the trial in this case contravenes the provisions of Rule 4, and that it is void on that ground. It is urged, however, that under the

Rule it is open to hold a fresh trial before a different set of Magistrates and as Rule 2 allows that any two persons appointed as Honorary Magistrates may constitute a Bench, in the present case the two Magistrates who continued the trial may properly be deemed to have substantially complied with the Rule as they had heard the whole case from the beginning to the end. It is further urged that the accused has not been prejudiced in any way and that it must be treated merely as an irregularity and not an illegality vitiating the trial. I am, however, unable to accept these contentions as sound. In my opinion there is no substantial compliance with the provisions of the Rule which directs in the alternative that the trial should be held afresh before a different set of Magistrates. It could not be said that when the two Magistrates continued the trial, heard the defence evidence and decided the case they held the trial afresh or that they constituted a different set of Magistrates at the time. I do not say that those two Magistrates could not have constituted a different set of Magistrates within the meaning of the Rule but in fact they could not be said to have done so with reference to the case. In fact they simply continued the part-heard case in the absence of their colleague. It is also difficult to say that there was no prejudice to the accused. But it seems to me that apart from any prejudice to the accused where such a Rule affecting the constitution of the Bench has not been complied with the trial cannot be treated as valid. There is a further objection that the charge under section 325, Indian Penal Code, though not triable by a Third Class Magistrate, has been tried by the Bench of Second Class Magistrates in spite of Rule 1 which provides that the Bench may try any case triable by a Third Class Magistrate. This objection was not taken in the lower Courts. On the information we have on the present record we see no answer to this

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objection which affects the jurisdiction of the trial Magistrates It is enough, however, for the purposes of this case to hold that the trial held is invalid on the first ground. The convictions and sentences must be set aside and the fine, if paid, refunded.

Having regard to the period of imprisonment already suffered by the petitioners as also to the circumstances of the case generally I do not think that we need direct any further proceedings against the petitioners.

HAYWARD, J. :—I agree. It is provided by Rule 2 that a trial should be by a Bench of two where it is not possible to obtain three Magistrates. But it is provided by Rule 1 that a trial once commenced must be ended before the same Magistrates. The meaning of this seems to me to be not before two only but before the same three Magistrates. The only alternative provided is a fresh trial before another set of Magistrates. If the Rules result in inconvenience then the remedy seems to me to be revision of the Rules. They are old Rules of 1885 and differ materially from the more recent Rules prescribed for the Benches of Magistrates in Poona and Bombay. There was also another difficulty that the trial of an offence of grievous hurt was not triable by this particular Bench which only had authority to try cases triable by Third Class Magistrates. The conviction and sentence must be set aside as proposed by my learned brother.

Rule made absolute.

R. R.