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the 1st opponent, or if he refused to accept it, that substituted service should be effected. The 1st opponent accepted service of the notice. But that cannot be taken as service on opponent No. 3 who has not been proved to have been living with opponent No. 1 at the time. It is quite possible that if opponent No. 1 had not accepted service, then substituted service, according to the provisions of the Code, would have been effected. Then opponent No. 3 would be bound by it. But all that we have before us is that notice was served on some one who did not represent the 3rd opponent. Therefore he cannot be considered as being bound by the decision in the matter. That is sufficient to dispose of the appeal, because, in my opinion, it is perfectly clear the appellants cannot take advantage of the wrong procedure which was adopted by the Court in order to put money in their pocket which really belonged to their judgment-debtor. What would have happened if an out-sider had purchased the decree is a question which need not be gone into. The appeal is dismissed with costs.

FAWCETT, J. :—I concur.

*Decree confirmed.*

J. G. R.

### CRIMINAL REFERENCE.

*Before Mr. Justice Shah and Mr. Justice Crump.*

EMPEROR v. ALIBHAI ABDUL\*.

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*Criminal Procedure Code (Act V of 1898), section 345—Compounding of offences—Composition with one accused does not mean acquittal of others.*

The compounding of an offence with one out of many accused has not the effect of acquittal of the remaining accused persons between whom and the complainant no satisfactory settlement has been arrived at.

\* Criminal Reference No. 39 of 1920.

*Chandra Kumar Das v. The Emperor*<sup>(1)</sup>, dissented from.

*Muthia Naick v. The King-Emperor*<sup>(2)</sup>, followed.

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 EMPEROR  
 v.  
 ALIBHAI  
 ABDUL.

THIS was a reference made by C. H. Blathwayt, District Magistrate of Kaira.

Two persons were charged with an offence punishable under section 498 of the Indian Penal Code. The complainant compounded with accused No. 2 and presented a *rajinama* to the Court, whereupon accused No. 2 was acquitted under section 345 of the Criminal Procedure Code. The case next proceeded against accused No. 1 alone; but it resulted in his discharge. As the complaint was found to be frivolous, the complainant was ordered to pay Rs. 30 as compensation to accused No. 1 under section 250 of the Criminal Procedure Code.

The District Magistrate of Kaira being of opinion that all proceedings after accepting the composition against accused No. 2 were illegal, referred the case to the High Court, on the following grounds :—

“Under section 345, Criminal Procedure Code, the composition should be for the offence as a whole. A complainant cannot compound an offence as regards one accused and claim to proceed against the other. The Second Class Magistrate should have accepted composition of the whole offence staying all further proceedings against the accused.”

The reference was heard.

There was no appearance for the parties.

*S. S. Patkar*, Government pleader, for the Crown.

CRUMP, J.—This is a reference from the District Magistrate of Kaira recommending this Court to set aside an order passed under section 250 of the Code of Criminal Procedure directing compensation of Rs. 30 to be paid to accused No. 1 in the case on the ground that the complaint was frivolous and vexatious. It appears that the complaint in this case was originally lodged

(1) (1902) 7 C. W. N. 176.

(2) (1917) 41 Mad. 323.

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against three persons. Process was issued against two of them and as regards accused No. 2 the complainant presented an application for compromise and an order was made acquitting that accused under section 345 of the Code of Criminal Procedure. The case proceeded against accused No. 1 alone with the result that has already been stated.

The District Magistrate bases his recommendation upon the ground that where there are more than one person against whom a complaint has been made, the offence cannot be compounded as regards one such person only. Our attention has been invited to a decision (*Chandra Kumar Das v The Emperor*<sup>(1)</sup>) which supports this view. There is on the other hand a reported decision of the Madras High Court (*Muthia Naick v. The King-Emperor*<sup>(2)</sup>) in which the contrary view is taken. In my opinion the view of the Madras High Court is correct. The policy of the Legislature is that in the case of certain minor offences, where the interests of the public are not vitally affected, the complainant should be permitted to come to terms with the party against whom he complains and those offences are specified in section 345 of the Code of Criminal Procedure. There is nothing to my mind in the words of the section itself which supports the view taken by the Calcutta High Court. I do not think that the word "offence" necessarily connotes all the offenders, that is to say, all the persons against whom the complaint is made. It appears to me that the offence for the purposes of this section is the offence of each offender. A composition is an arrangement or settlement of differences between the injured party and the person against whom the complaint is made, and it may well happen that where there is more than one

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such person, a satisfactory settlement may be possible with one of them and may not be arrived at with another. It would be easy to quote instances in which this might be the case, and as I read the section, there is nothing to prevent such a composition with one accused, nor is there any reason why that composition should necessarily have the effect of an acquittal in the case of another accused as between whom and the complainant no satisfactory settlement has been arrived at, nor is there anything in the policy of the Legislature to which I have alluded which points to any such intention. It would indeed, in my opinion, be inconvenient if such an interpretation were adopted and that is a further reason for following the decision of the Madras High Court on this point.

For these reasons, therefore, I am of opinion that the point of law upon which this reference is based is not a good point of law and therefore it follows, as that is the only point before us, that the order of compensation which we are asked to set aside was a proper order and should be maintained.

I would, therefore, discharge the rule and return the proceedings with these remarks.

SHAH, J.—I concur. I desire to add that in view of the difference of opinion between the two High Courts on this point I have felt some difficulty in coming to a conclusion in this case. On general consideration it seems to me that there is much to be said in favour of either view; but on the whole I am satisfied that the correct view of section 345 is the one which has been taken by the Madras High Court in *Muthia Naick v. The King-Emperor*<sup>(1)</sup> and which has been accepted by my learned brother.

*Rule discharged.*

R. R.

<sup>(1)</sup> (1917) 41 Mad. 323.