APPELLATE CRIMINAL.

Before Mr. Justice Broomfield and Mr. Justice Sen.

DAGDU GOVINDSHET WANI (ORIGINAL COMPLAINANT), APPLICANT *v.* PUNJA VEDU WANI AND OTHERS (ORIGINAL ACCUSED), OPPONENTS.* 1936 *September* 3

Criminal Procedure Code (Act V of 1898), sections 350, 250—Warrant case—Trial, when said to commence—Magistrate framing charge—Transfer of case—Another Magistrate commencing trial de novo*—Frivolous or vexatious charge—Magistrate's order for payment of compensation to accused—Legality of.*

The "trial" of a criminal case means the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case.

For the purposes of section 350 of the Criminal Procedure Code, 1898, a trial cannot be said to commence only when a charge is framed. The trial covers the whole of the proceeding in a warrant case. Hence, when a warrant case is transferred from the Court of one Magistrate to that of another after a charge has been framed, it is open to the latter to hear the case *de novo*, and he is not bound to recommence the proceeding from the stage of the charge.

Gomer Sirda v. *Queen-Empress*,[1] *Sahib Din* v. *The Crown*,[2] *Fakhruddin* v. *The Crown*,[3] and *Labhsing* v. *Emperor*,[4] followed.

Sriramulu v. *Veerasalingam*[5] and *Ramanathan Chettiar* v. *King-Emperor*,[6] dissented from.

It would be competent for the Magistrate, who heard the case *de novo*, although another Magistrate who dealt with the case had framed the charge, to pass an order under section 250 of the Criminal Procedure Code, 1898, on the ground that the complaint was false and vexatious.

CRIMINAL APPLICATION for Revision against an order passed by P. N. Moos, Sessions Judge, Nasik, dismissing an appeal against the order passed by G. V. Tongaonkar, Resident First Class Magistrate, Manmad.

Compensation under section 250 of the Criminal Procedure Code.

*Criminal Application for Revision No. 227 of 1936.

(1) (1898) 25 Cal. 863.
(2) (1922) 3 Lah. 115.
(3) (1924) 6 Lah. 176
(4) (1934) 35 Cr. L. J. 1261
(5) (1914) 38 Mad. 585.
(6) (1922) 46 Mad. 719.

1936

DAGDU v. PUNJA VEDU

Dagdu (complainant) alleged that there was a dispute between him and his neighbour regarding the boundary line between their fields and in consequence of which the accused Punja and six others assaulted him and forcibly carried him away with the intention of flinging him into a well. He accordingly filed a complaint charging them with the offences under sections 147 and 352 of the Indian Penal Code, 1860. The complaint was filed in the Court of the First Class Magistrate at Nandgaon. On September 14, 1935, the Magistrate framed a charge against the accused. On September 30, 1935, the accused applied for transfer to the District Magistrate who referred the case for trial to the Resident First Class Magistrate at Manmad. The latter tried the case from the beginning and discharged the accused under section 253 of the Criminal Procedure Code. On the same date the Magistrate called upon the complainant to show cause why he should not be directed to pay compensation to the accused under section 250 of the Criminal Procedure Code for making a false and vexatious complaint. The complainant showed cause in his written statement. The Magistrate directed him to pay Rs. 25 to each of the accused as compensation under section 250 of the Criminal Procedure Code.

The order was confirmed on appeal by the Sessions Judge of Nasik.

The complainant applied in revision to the High Court.

A. A. Adarkar, for the applicant.

K. B. Sukhtankar, with *Joshi & Co.*, for the opponents accused.

Dewan Bahadur P. B. Shingne, Government Pleader, for the Crown.

BROOMFIELD J. The question in this case is as to the legality of an order under section 250 of the Criminal Procedure Code for payment of compensation to the accused

1936

DAGDU v. PUNJA VEDU

Broomfield J.

by the complainant on the ground that the complaint was false and vexatious. The illegality is alleged to consist in the fact that the Magistrate who made the order heard the case *de novo* and discharged the accused, although another Magistrate who first dealt with the case had framed a charge. This is said to be contrary to the terms of section 350 of the Code.

The argument of the learned advocate for the applicant is that in a warrant case—and this was a warrant case—the proceedings are only an inquiry until the charge is framed and the trial only commences after the charge. Therefore, he says, if a charge has been framed and the trying Magistrate is succeeded by another Magistrate, the latter cannot recommence the proceedings from the beginning; he can only re-commence the trial, i.e., re-commence the proceedings from the stage of the charge. For this proposition he relies on *Sriramulu* v. *Veerasalingam*.[1] That was a case on section 437 of the Code. The question before the Court was whether the District Magistrate had power to order further inquiry, which he can do only if there has been an order of discharge and not an order of acquittal. The Court held that if there has once been a charge framed there can be no order of discharge, only an order of acquittal. That finding might be accepted without necessarily making any difference to the present case, since an order under section 250 for compensation may be made as well after an order of acquittal as after an order of discharge. However, I do not suggest that *Sriramulu* v. *Veerasalingam*[1] can be distinguished. There is no doubt that the Court did take the view that in a warrant case the trial only commences from the framing of the charge and that view has been taken in other Madras case, e.g., *Ramanathan Chettiar* v. *King-Emperor*.[2] But, according to my experience

[1] (1914) 38 Mad. 585.

[2] (1922) 46 Mad. 719.

1936

DAGDU v. PUNJA VEDU

Broomfield J.

of the administration of criminal justice in this Presidency, which is not inconsiderable, the Courts here have always accepted the definition of trial which has been given in *Gomer Sirda* v. *Queen-Empress*,(1) that is to say, "trial" has always been understood to mean the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and defence, if the accused be defended, present in Court for the hearing of the case.

A different view from that taken in Madras has been taken by the Lahore High Court in *Sahib Din* v. *The Crown*,(2) where it has been held that for the purposes of section 350 of the Code a trial cannot be said to commence only when a charge is framed. The trial covers the whole of the proceedings in a warrant case. This case was followed in *Fakhruddin* v. *The Crown*(3) and the same view has been taken by the Judicial Commissioner's Court in Sind in *Labhsing* v. *Emperor*.(4) With all deference to the learned Judges of the Madras High Court we prefer the view which has been taken in these cases and hold that there is no substance in Mr. Adarkar's main contention.

He has also taken the point that the provisions of the second clause of section 250 have not been complied with. That clause requires that the Magistrate shall record and consider any cause which the complainant may show against the order of compensation. It appears, however, that the Magistrate has sufficiently complied with the law. The complainant's statement has been recorded in his own words. The only reasons he gave were that his complaint was true and that the accused are related to each other. He also produced a written statement of his reasons. There is no ground for supposing that these reasons were not considered

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1936

DAGDU v. PUNJA VEDU

Broomfield J.

by the learned Magistrate whose judgment explains clearly why it was that he held the complaint to be false and vexatious. We think there is no substance in this contention nor in the further contention that the complaint cannot be said to be false because on the first hearing of the evidence two witnesses were found to support the complaint. The Magistrate's order was confirmed on appeal by the Sessions Judge. There are no legal grounds on which we feel called upon to interfere in revision.

We discharge the rule.

Rule discharged.

J. G. R.

ORIGINAL CIVIL.

Before Mr. Justice B. J. Wadia.

THE CALICO PRINTERS ASSOCIATION LIMITED (PLAINTIFFS) *v.* GOSHO KABUSHIKI KAISHA LIMITED (DEFENDANTS).*

1935
September 25

Indian Patents and Designs Act (II of 1911), section 53—Piracy of registered design—Remedy of aggrieved party—Right to recover actual damages or lump sum damages prescribed under the Act—Alternative claim—Plaintiffs' liability to elect remedy.

The Patents and Designs Act is an Act the provisions of which are exhaustive both as regards the rights of parties whose registered designs have been pirated and as to their remedies. Section 53 of the Act deals with piracies of registered designs, and the remedies given by sub-section (2) of that section are disjunctive and not cumulative. A person claiming reliefs under section 53 (2) of that Act must elect between the two distinct remedies provided therein, viz., (1) an account of the profits made by the defendant by the use of the plaintiffs' design by way of damages, or (2) the payment of a sum of Rs. 1,000 which is the maximum amount recoverable for the piracy of one registered design. The plaintiffs must make this election before the defendants are called upon to file their written statement.

SUIT for an injunction and for damages under section 53 of the Patents and Designs Act for piracy of a registered design. The Calico Printers Association Ltd. (plaintiffs) were the registered proprietors under the Patents and

*O. C. J. Suits Nos. 1141 of 1935 and 979 of 1935.