1874.

Ravji Náráyan v. Krishnaji Lakshman.

extent had an interest in appealing, and had been treated by the plaintiff, who had made him a party-defendant to the suit as having an interest, and further that, if it were necessary this Court was prepared to adjourn the hearing in order to permit Rango (who most probably had purchased as a trustee for Rávji) to be made a party to the appeal as co-appellant, the respondent's pleader declined to persist in his objection.

[APPELLATE CRIMINAL JURISDICTION.]

July 30.

REG. v. CHOUTHMAL LACHHIRÁM.

Cotton Frauds (Bombay) Act XI of 1863 Sec. 2.

Ginning together two varieties of cotton which had been mixed before constitutes "mixing" within the meaning of Section 2 of Bombay Act IX. of 1863.

THIS was an application for the exercise of this Court's extraordinary jurisdiction. The accused was convicted by the Second Class Magistrate of Khandesh of dishonestly mixing cotton of two different varieties in one bale, and sentenced to suffer one month's rigorous imprisonment and pay a fine of Rs. 150. In appeal this sentence was enhanced to two months and a fine of Rs. 300.

The application was heard by WEST and NANABHAI, JJ.

Shantáram Narayan for the applicant.

Dhirajlal Mathuradas, Government Pleader, for the Crown.

The facts appear sufficiently from the following judgment delivered by

WEST, J. :—The accused has been convicted of the offence of mixing dishonestly two different varieties of cotton in one bale; and the only question for decision, which requires any serious remarks, is whether the accused is found to have done any act which constitutes a "mixing" within the meaning of the Bombay Act IX. of 1863, Section 2. Mixing, like adulteration, admits of almost infinite degrees, and if, after a partial mixing operation by one person, there

is a further mixing by another, the latter is responsible as well as the former, although, had the several acts been all done by one and the same hand, they would have coalesced so as to form but a single offence. This seems to be the true ground on which to put such cases as *Crepps* v. *Durden* (*a*), but it does not affect the liability of each of several successive offenders against the same law.

It has been contended that the mixing here was not carried out by the accused, but had been so effected before the cotton came into his hands. He cleaned it, it is said, as it came to him, but this was not "mixing." We are of a different opinion. Ginning the two varieties together was mixing them more intimately than before, and so indeed as to be practically inseparable, which before they were not.

If each of several persons through whose hands a quantity of Hinganghat cotton passes adds Varadi cotton to it each infringes the law by mixing different varieties in one bale. And similarly, notwithstanding a previous rough mixture, the cotton dealer, by ginning two varieties together, blends them more closely, and thus commits an additional act directly against the direction of the law.

It seems admitted that cotton of different varieties ginned together was put into one bale. Thus the physical act required under the Act was completed. As to the question of intention, the Magistrate has recorded a distinct finding against the accused. He has found that he intended to sell the cotton as cotton of higher quality. We are unable to say that the finding is not supported by evidence. We must, therefore, uphold the conviction.

As to the punishment also, we think it is not excessive. The offence found proved is of graver moment than an ordinary fraud, as the Legislature has thought fit to provide against it specially, and when established it must be visited with an appropriate penalty. The conviction and sentence will, therefore, stand unaltered.

Petition rejected.

(*a*) 1 Smith L. C. 666.