*Before Mr. Justice Pratt and Mr. Justice Brett.*

1900.
*Nov.* 12.

KARU KALAL (PETITIONER) *v.* RAM CHARAN PAL (OPPOSITE PARTY). *

*Criminal Proceedings—Irregularity in Proceedings—Misjoinder of parties—Joint-trial on charges of Theft and Receiving stolen property—Code of Criminal Procedure (Act V of 1898), ss. 233, 239 and 537—Penal Code (Act XLV of 1860), ss. 381 and 411.*

*L K* and *J* were tried jointly and convicted. *L* under s. 381 of the Penal Code of stealing tea in the possession of his master, *K* and *J* under s. 411 of the Penal Code of dishonestly retaining some stolen tea which they had received from *L*. It was contended that the joint trial of a person charged under s. 411 of the Penal Code with a person charged under s. 381 of the Penal Code was necessarily void and the conviction bad. *Held* that a misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider whether, under the terms of s. 537 of the Code of Criminal Procedure, it has in fact occasioned a failure of justice. *Bishnu Banwar* v. *Empress* (1) referred to. *In the matter of Abdur Rahman* (2) and *Kali Prosad Mahisal* v. *Queen-Empress* (3) followed.

THE complainant, Ram Charan Pal, who was the manager of the Getelsudh Tea Garden received information that his servant Latna Lohar had stolen tea from a godown. Upon receiving this information the complainant placed a basket of tea in the godown and found next morning that some of the tea had been taken away. He thereupon sent a letter to the police charging Latna Lohar with theft of the tea, and two other persons, the petitioner, Karn Kalal and Jaglal Bania, who were shopkeepers in the neighbourhood of the tea garden with dishonestly receiving the stolen tea. The police searched the houses of the two shopkeepers, and recovered some tea which was kept concealed in a covered basket. The three accused persons were tried jointly by the Deputy Magistrate of Ranchi, and on the 28th June 1900 were convicted—Latna Lohar under s. 381 of the Penal Code, and sentenced to two months' rigorous imprisonment, the petitioner

* Criminal Revision, No. 769 of 1900, made against the order passed by Babu Harai Pada Bhuttacharji, Deputy Magistrate of Ranchi, dated the 28th of June 1900.

(1) (1896) 1 C. W. N., 35.
(2) (1900) I. L. R., 27 Calc., 839.
(3) *Ante* p. 7.

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and Jaglal Bania under s. 411 of the Penal Code, and fined Rs. 10 each, in default twenty days' rigorous imprisonment. No objection to the joint trial was taken before the trying Magistrate.

Babu *Atulya Charan Bose* for the petitioner.

1900, NOVEMBER 12. The judgment of the Court (PRATT and BRETT, JJ.) was delivered by

PRATT, J.—The petitioner was with another person convicted under s. 411, Indian Penal Code, of dishonestly retaining some stolen tea which they had received from one Latna, who was tried jointly with them, and convicted of an offence under s. 381, Indian Penal Code.

It is urged that the joint trial of a person charged under s. 411 with a person charged under s. 381 is necessarily void, and the conviction bad. The case of *Bishnu Banwar* v. *Empress* (1) seems to support this contention. It has, however, been very recently held by a Full Bench in *In the matter of Abdur Rahman* (2) that misjoinder of charges is not fatal to the proceedings, but that it is an irregularity which requires that the Court should consider whether, under the terms of s. 537, Criminal Procedure Code, it has in fact occasioned a failure of justice. The same rule must, we think, be applied in a case of misjoinder of parties like the present one.

No objection to a joint trial appears to have been taken before the trying Magistrate. The evidence was that Latna was seen handing the stolen tea to the co-accused only a few hours after the theft. So that having regard to this fact, and to the explanation at the end of s. 537, Criminal Procedure Code, we are unable to see how the joint trial can have occasioned a failure of justice.

The view of the law we here give is the same as was taken by Prinsep and Handley, JJ., in the case of *Kali Prosad Mahisal* v. *Queen-Empress* (3).

In the result we direct that the rule be discharged.

D. S. *Rule discharged.*

(1) (1896) 1 C. W. N., 35.
(2) (1900) I. L. R., 27 Calc., 839.
(3) *Ante* p. 7.