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 v.  
 SECRETARY  
 OF STATE  
 FOR INDIA

We, therefore, hold that there is no jurisdiction and we dismiss this appeal with costs.

HARINGTON J. I agree.

J. C.

*Appeal dismissed.*

Attorneys for the appellants : *B. N. Basu & Co.*

Attorney for the respondent : *Kesteven.*

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### ORIGINAL CRIMINAL.

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*Before Mr. Justice Carnduff.*

EMPEROR

v.

JIBAN KRISTO BAGCHI.\*

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 Dec. 9.

*Charge—Misjoinder of charges—Joint trial on charges of criminal breach of trust and falsification of accounts committed in separate transactions—Criminal Procedure Code (Act V of 1898), ss. 233, 234 and 235—Penal Code (Act XLV of 1860), ss. 408 and 477A.*

A charge of criminal breach of trust of a sum of money can be tried under s. 235(1) of the Criminal Procedure Code, at the same time, with one of falsification of accounts made to conceal the act of misappropriation as part of the same transaction; and two unconnected charges of falsification may be tried at one trial under s. 234; but a charge of criminal breach of trust cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a separate transaction.

*Kasi Viswanathan v. Emperor (1) and Subrahmania Ayyar v. King Emperor (2) followed.*

THE prisoner was tried at the Fifth Criminal Sessions of the High Court under ss. 408 and 477A of

\* Original Criminal Case No. 8 of 1912 (5th Sessions).

(1) (1907) I. L. R. 30 Mad. 328. (2) (1901) I. L. R. 25 Mad. 61;  
 L. R. 28 I. A. 257.

the Penal Code. He was a gomastha in the employ of the firm of Manik Lal Chuckerbutty and Sree Kristo Chuckerbutty carrying on a business in silk cloth at Baranasi Ghose's Street in the town of Calcutta. In August 1910 he was placed in charge of the firm and conducted its business. Later on, in October 1911, Sree Kristo, the proprietor of the firm, who usually resided in the district of Murshidabad, came down to Calcutta and called upon the prisoner for the accounts of 1317 B. S. The books were examined, and it was then discovered that the cash was short by Rs. 2,291 odd. The prisoner, on being questioned with regard to the deficiency, was alleged to have admitted the misappropriation of the amount and to have made an entry to that effect in the account-book. The charges framed against him at the trial were as follows :—

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“(i) That he, on the 1st November 1910, in Calcutta, being then employed as a gomastha, ... and having been entrusted in such capacity over property to wit, Rs. 3,600 as. 3 ... committed criminal breach of trust in respect, of Rs. 500, punishable under s. 408 I. P. C.

(ii) That he, on or about the time and in the place aforesaid, ... wilfully and with intent to defraud falsified the cash-book of the firm by entering therein Rs. 3,600 as. 3, under date, 1st November 1910, as paid to Girdhari Mandal, whereas the sum paid was Rs. 3,100 as. 3, and thereby committed an offence under s. 477A I. P. C.

(iii) That he, on or about the 9th February 1911, in Calcutta, ... wilfully and with intent to defraud falsified the cash-book by showing a total therein of Rs. 1,720-9-6, whereas it should have been Rs. 2,220-9-6, and thereby committed an offence punishable under s. 477A I. P. C.”

The third head of charge related to an act of misappropriation distinct from that which formed the subject of the first count.

*Mr. E. P. Ghosh*, for the prisoner, objected to the last count as bad for misjoinder with the first: *Kasi Viswanathan v. Emperor*(1).

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*Mr. Nisith Sen*, for the prosecution. It has been the practice of this Court to try such charges together. But I leave the matter in your Lordship's hands.

CARNDUFF J. The accused has been arraigned on three charges, and, on his behalf, *Mr. Ghose*, citing *Kasi Viswanathan v. Emperor* (1), has objected to the joinder. The objection must, I think, prevail.

The first charge is that, on the 1st November, 1910, the accused committed criminal breach of trust, punishable under section 408 of the Indian Penal Code, in respect of a sum of Rs. 500 entrusted to him by his employer.

The second is that he, on the same day, falsified his employer's cash-book by making an incorrect entry regarding the said Rs. 500, so as to cloak the breach of trust referred to in the first charge, and thus committed an offence punishable under section 477A of the Indian Penal Code as amended by section 4 of the Criminal Law Amendment Act, 1895.

The third charge is that, on the 9th February, 1911, he again falsified his employer's cash-book by showing the total on the credit side as less by Rs. 500 than he ought to have shown it, and so committed another offence punishable under section 477A of the Penal Code.

At first sight the second falsification, described above, looks as if it also had been done to conceal the earlier breach of trust charged. But it transpires, and it has been admitted by the learned counsel for the prosecution, *Mr. Sen*, that it is so, that, although there is a similarity as to the amount dealt with, the second falsification alleged had nothing whatever to do with the alleged breach of trust of the 1st November and the first falsification charged. Indeed the sum of Rs. 500,

said to have been embezzled in November had, it is conceded, been, so to speak, restored by means of a credit entry in the cash-book made before the second sum of Rs. 500, referred to in the third charge, is supposed to have been embezzled; so that there is no connection between the third charge on the one hand and the first and second on the other.

In these circumstances, I am of opinion that there is a misjoinder which offends against the express provision, of the Code of Criminal Procedure, 1898, and would, as held by the Judicial Committee in the well known case of *Subrahmania Ayyar v. King-Emperor* (1), vitiate the trial.

No doubt the first and second of the charges laid could lawfully be tried together by virtue of the provision of section 235, sub-section (1), of the Criminal Procedure Code; for the alleged embezzlement of the 1st November, 1910, and the falsification cloaking it, would seem to have been so connected together as to form the same transaction. In truth, the alleged breach of trust was apparently effected by means of the alleged falsification.

Again, the second and third charges, each being in respect of an offence punishable under section 477A of the amended Penal Code, are obviously made triable together by section 234 of the Criminal Procedure Code.

But although the first and the second charges could properly be tried together, and the second and the third charges could likewise be joined at one trial, *non constat*, as it seems to me, that all three are triable simultaneously. The joinder of the three at one trial must (see section 233 of the Criminal Procedure Code) be brought within the scope of either section 234, or section 235, or section 236, or section 239 of the Code,

(1) (1901) I. L. R. 25 Mad. 61 : L. R. 28 I. A. 257.

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and I can find nothing in any of those sections to justify the joinder of the third charge with the first. *Ergo*, the first charge cannot be tried along with the third, and either the first or the third must go.

I may add that I have examined a number of precedents in this Court, and find that in one instance, in August, 1902, an accused person was charged on six counts with three separate embezzlements under section 408 of the Penal Code and with three corresponding falsifications under section 477A, and was convicted on each count. But the point now raised was apparently not then taken; and in August last, when a prisoner was committed for three different acts of criminal breach of trust and also for forgery and falsification in connection with one of the three, the charges of forgery and falsification were withdrawn by the prosecution. It can hardly, therefore, be said that the view I have taken is opposed either to practice or to authority in this Court, while it is in consonance with the ruling of the Madras High Court relied upon by Mr. Ghose.

My decision being in Mr. Ghose's favour, his suggestion that I should reserve the point under clause 25 of the Letters Patent of 1865, need not, of course, be considered.

E. H. M.