

## KING v. DORASAMY.

1905.

January 20.*D. C., Kandy (Criminal), 1,635.*

*Criminal Procedure Code, s. 179 (1)—Accusation of offences committed during a period exceeding twelve months—Joinder of three charges in one indictment.*

Where a person has been brought before the Police Court and accused of offences of the same kind which from the first to the last were alleged to have been committed during a period of about four years,—

• *Held*, that under section 179, sub-section 1, of the Criminal Procedure Code, such person could be indicted and tried for three of the said offences committed within a period of twelve months.

THE accused in this case was indicated before the District Court of Kandy on an indictment which charged him with three offences of the same kind, namely, criminal breach of trust, punishable under section 391 of the Penal Code. The offences were alleged to have been committed on the 24th August, 24th December, and 28th December, 1903. In the Court below the prosecuting counsel, in reply to a question by the counsel for the defence, stated that the defalcations commenced in 1900, and the first witness for the prosecution stated as follows: "I told the Magistrate I had discovered defalcations to the extent of Rs. 20,000 or Rs. 25,000. That I said the first day I went before him. My complaint to him was that accused misappropriated Rs. 20,000. That amount comprised defalcations covering a period of about four years." Objection was taken for the defence that, in the face of the facts admitted by counsel and stated by the witness, it was illegal to try the accused at one and the same trial for the three offences of which he was charged in the indictment.

The District Judge made the following order: "I over-rule the objection taken to the indictment. As I read section 179 (1) of the Criminal Procedure Code it modifies section 178, which requires there should be a separate trial for every distinct offence, by allowing three charges of three distinct offences of the same kind and committed within one year of each other to be tried at the same time. It merely restricts the number of offences at one trial."

The accused was ultimately convicted.

On appeal the consideration of the above objection was reserved for a Court of three Judges. The case was argued on 20th January, 1905, before Layard, C.J., Moncreiff, J., and Grenier, A.J.

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*Walter Pereira, K. C.* (with him *Savundranayagam*), for accused, appellant.—The rule laid down by the Criminal Procedure Code is that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately. There are a few exceptions, and the exception with which they were then concerned was that provided for by section 179, sub-section 1. The words have to be carefully considered to get at the meaning of the provision. The sub-section ran thus: "When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with and tried at one trial for any number of them not exceeding three, and in trials before the Supreme Court or a District Court such charges may be included in one and the same indictment." This section, it must be remembered, was taken over from the old Criminal Procedure Code, under which a charge had to be framed by the Police Court embodying the offence of which the accused person was accused by the prosecutor. The word "accused" is used in the section in contradistinction to the word "charged". Clearly, it is used to indicate the accusation under section 148, and it is only when the offences covered by that accusation fall (from the "first to the last") within a period of twelve months that three may be chosen out of them, and the accused charged therewith and tried by the Police Court or before the District Court or Supreme Court at one trial. In other words, there must be a certain category out of which the three offences have to be drawn, namely, offences covered by an accusation, and which from the first to the last fall *within* a period of twelve months. There is no such category in the present case. Here, the offences of which the accused person was originally accused extended *over* a period of twelve months, and the inclusion of three offences in one indictment in such a case was not justified by section 179, sub-section 1. The reason for the law may possibly be that in the case of alleged offences evolved out of transactions covering a long series of years the accused may be embarrassed by having to defend himself against three charges at one trial, inasmuch as the defence in the case of each charge may involve the consideration of events during so many years. If, as contended by the other side, the Legislature intended that any three offences of the same kind might be included in one indictment, provided they were alleged to have been committed within a period of twelve months, the Legislature would have expressed itself in plain language to that effect. The wording of section 5 of 24 and 25 Vict. ch. 96 may be compared: "It shall be lawful to insert several counts in the same

indictment against the same person for any number of distinct acts of stealing not exceeding three which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them." The words of the section in question of our criminal procedure were quite different, and, it is submitted, conveyed only the meaning contended for. If this contention is right, there was no mere irregularity, but an illegality which, as held by the Privy Council in the case of *Subramanian v. King-Emperor* (I. L. R. 38, Madr. 61), vitiated the conviction.

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*Dornhorst, K.C.* (with him *Bawa* and *Van Langenberg*), for respondent.—The High Court of Madras has held that, where an accused person had been accused of nine offences, he might be charged under three indictments, each including three offences committed within the space of twelve months. That is justified by the section of our Code under consideration, and all that it really requires is that the three offences of which the accused person is ultimately charged should from the first to last cover a period not exceeding twelve months.

20th January, 1905. LAYARD, C.J.—

The point which has been reserved for the decision of the Full Court is—to state it as precisely as I can—whether when a person has been brought before the Police Court, and, in the course of the Police Court proceedings, there appeared to be evidence to show that the person has committed more offences than one of the same kind during a period exceeding twelve months, such person can be charged at the instance of the Attorney-General and tried in a Superior Court for three offences admittedly committed within the space of twelve months.

In my opinion he can be so indicted by the Attorney-General, in view of the provisions of section 179, sub-section 1. I read the section as meaning that, when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to last of such offences, he may be indicted by the Attorney-General for any three of such offences, though there may be evidence or material before the Police Magistrate to show such person has been accused of offences other than those appearing in the indictment outside the period of twelve months in which the offences on which he is charged in the indictment had been committed. It was not intended by the Legislature to enact that no person could be indicted for three offences of a similar kind if it appeared in the course of the proceedings in the Court

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*January 20.* committed other offences of a like nature. The language of  
LAYARD, C.J. section 179, sub-section 1, is such as to show that the intention of  
the Legislature was to extend the powers of any Court to try  
persons for more offences than one of the same kind, where such  
offences were committed within the space of twelve months, and  
to limit the number of the offences to be tried in such a case  
to three.

The appeal must be dismissed.

MONCREIFF, J.—Agreed.

GRENIER, A.J.—Agreed.

