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THE KING *v.* KANJAMANADAN.

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Forgery—Indictment—Four counts of forgery at same time and place—Criminal Procedure Code, ss. 179 and 180 (1)—Offences charged not shown to be parts of same transaction—Misjoinder of charges—False entry of clerk in book kept by himself—Absence of evidence that entry was false—Penal Code, s. 453—"By the authority of a person"—Power of Supreme Court to amend indictment after verdict and to alter conviction—Criminal Procedure Code, ss. 171, 172, 355.

Where an indictment alleged more than three offences, but did not show on the face of it that they all formed one single continuous transaction,—

Held that it was not open to the prosecution to prove that they were all committed in one and the same transaction.

Where an indictment alleged forgery, but did not allege that the false document was made with the intention of making it to be believed that it was made by, or by the authority of, another,—

Held, that such indictment was bad.

Where upon a charge of forgery the evidence led disclosed that the entries were false, but did not show any intention on the part of the prisoner that the entries should pass as the act of any other person than himself,—

Held, that the offence of forgery was not committed.

LAYARD, C.J.—Section 453, clause 1, of the Penal Code, so far as it relates to a document executed by the authority of a person other than the person who wrote it; refers to a document made by one person as by the authority and according to the direction of another, and intended to pass as the act of the other; not to a document purporting merely to be made by one man by the order or authority of another for the use of that other.

MIDDLETON, J.—Forgery involves the representation that the thing written is the handiwork of some one other than the actual writer, or that it purports to be written as the act of another and so by his authority. It must appear on the face of it that it is intended to pass as the act of another person.

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Where a person who has authority to make entries in the account books of another person, subject to a certain procedure, makes an unwarranted entry in his books, he does not intend it to be believed that it was an entry made by any other person than himself, or as representing on the face of it as an authority given by any other person.

Where a jury has convicted on counts of an indictment which disclosed no offence according to law, the Supreme Court has no power to amend the indictment after verdict, nor, on a case reserved under the provisions of section 355 of the Criminal Procedure Code, to dissect the verdict of the jury and appropriate the finding of guilty to the amended counts.

AT the third criminal sessions, 1903, of the Supreme Court holden for the Western Circuit in Colombo the Commissioner of Assize, Mr. T. E. de Sampayo, reserved the following case for the consideration of a Full Bench of the Supreme Court:—

"On the 27th July, 1903, Andrew Benedict Kanjamanadan was indicted before me and a special jury on the following charges:—

"(1) That he did, on or about the 24th day of June, 1902, at Colombo, commit forgery, intending that the document so forged should be used for the purpose of cheating, to wit, by dishonestly and fraudulently making a false entry of Rs. 317.16 in the credit column of the current account of N. A. Abram Saibo & Co. in the No. 1 current account ledger of the National Bank of India, Limited, Colombo branch, and thereby committed an offence punishable under section 457 of the Ceylon Penal Code.

"(2) That he did, further, at the time and place aforesaid, commit forgery, intending that the document so forged should be used for the purpose of cheating, to wit, by dishonestly and fraudulently making a false entry of Rs. 1,682.84 in the credit column of the current account of P. Adam Saibo & Co. in the No. 1 current account ledger of the National Bank of India, Limited, Colombo branch, and thereby committed an offence punishable under section 457 of the Ceylon Penal Code.

"(3) That he did, further, at the time and place aforesaid, commit forgery, intending that the documents so forged should be used for the purpose of cheating, to wit, by dishonestly and fraudulently making in the current account balance book of the said bank the false entry of Rs. 5,512.08 in place of Rs. 15,512.08, the correct credit balance of the Troup estate account, and the false entry of Rs. 1,448.63 in place of Rs. 11,448.63, the correct credit balance of R. L. M. Brown's account, and did thereby commit an offence punishable under section 457 of the Ceylon Penal Code.

"(4) That he did, at the time and place aforesaid, fraudulently and dishonestly use as genuine the aforesaid forged documents, well knowing or having reason to believe at the time he did so that the said documents were forged, and thereby committed an offence punishable under section 459 of the Ceylon Penal Code.

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" On the indictment being read to the prisoner, Mr. Dornhorst, K.C., who appeared for him, took the preliminary objection that the indictment was bad, on the ground—

" (1) That it contained four charges, whereas under the Criminal Procedure Code, Section 179, no more than three charges are to be joined in the same indictment.

" (2) That the indictment disclosed no offence, inasmuch as the prisoner, being charged with making false entries in the books kept by himself, could not be said to have committed forgery in respect of those entries, the essence of the offence being the making or signing of a document purporting to be made or signed by another person.

" Mr. Van Langenberg, who appeared for the Crown, explained to me that all the acts of forgery were connected together, and were parts of the same transaction, and were done with the intention of committing one and the same fraud, and justified the indictment under section 180 (1) of the Code.

" I therefore over-ruled Mr. Dornhorst's first objection.

" With regard to the second objection, I over-ruled that also, as I was of opinion (1) that the question was a matter of evidence; and (2) that the account books in question, though kept by the prisoner, were the books of the bank; and if the prisoner made false entries therein with the intention of causing it to be believed that the entries were made by the authority of the bank when they were not so made, this fact would satisfy the requirements of the definition in section 453, paragraph 1, of the Ceylon Penal Code.

" The case then proceeded to trial, and the following facts were proved:—

" The prisoner, as clerk of the bank, kept (*a*) the No. 1 current account ledger and (*b*) the current account balance book, in which it was the duty of the prisoner, twice a month, to enter the balance of the accounts of customers whose names appear in the No. 1 current account ledger. Among the names appearing in the No. 1 current account ledger were those of N. A. Abram Saibo & Co., P. Adam Saibo & Co., R. L. M. Brown, and the Troup estate referred to in the various charges of the indictment. Under date 24th June, 1902, the prisoner made in the credit column of N. A. Abram Saibo & Co.'s account in the No. 1 current account ledger the entry ' by cheque Rs. 347.16,' and similarly in P. Adam Saibo & Co.'s account the entry ' by cheque Rs. 1,682.84.' These are the false entries alleged in the first two counts of the indictment.

" When a cheque is sent in to credit, it goes through the following process, according to the usual course of business at the bank:—

" The cheque goes to the assistant accountant, who marks it with the bank's stamp and sends it to one or other of three clerks;

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the clerk then registers it in a special book and makes out a credit slip containing particulars of the cheque; the cheque and credit slip go back to the assistant accountant, who sends on the credit slip (in the case of current account No. 1 ledger) to the prisoner, whose duty it is to enter from the credit slip the necessary credit in the account of the particular customer; the credit slip then passes on to another clerk, who also makes therefrom an entry in a book called the Current Account Register; the cheque and the credit slip are then filed in the office. It was proved that no such cheques as those entered in the prisoner's book or any credit slips relating thereto were in the office; that no such cheques were entered in any of the other books referred to; and that no such cheques or credit slips passed through the office according to the usual course of business. The only authority to the prisoner from the bank to enter in the No. 1 current account ledger any credits in the account of any customer was the credit slips which he would receive in the course of business above referred to. The prisoner had dealings with the said N. A. Abram Saibo & Co. and P. Adam Saibo & Co. in the way of paying in cheques (which these firms passed through their accounts in the National Bank of India) and drawing out moneys from time to time. On the 25th June, 1902, he so paid in to N. A. Abram Saibo & Co. a cheque for Rs. 317.16 and to P. Adam Saibo & Co. a cheque for Rs. 1,682.84. The representatives of these firms, who were called for the prosecution, deposed that these cheques were sent to the bank to their credit on the 25th June, 1902, but as to how and by whose hand they were sent there was no proof. The suggestion for the prosecution was that they were either taken to the bank by the prisoner himself or were intercepted by him and were thus prevented from being passed through the usual process at the bank. On the 25th June, 1902, these two firms drew upon the bank certain cheques, which were honoured, and for which they would not have had funds in the bank but for the credits given to them in the No. 1 current account ledger for Rs. 317.16 and Rs. 1,682.84 respectively, under date 24th June, 1902. The prisoner's accounts with these firms contain payments out to him or on his account on the basis of his being entitled as regards them to credit for the amount of the two cheques.

" With regard to the third charge in the indictment, the proof was that under date 24th June, 1902, the prisoner had, in taking out the balances from No. 1 current account ledger into the current account balance book, entered F. L. M. Brown's credit balance as Rs. 1,448.63 instead of Rs. 11,448.63, and the Troup estate credit balance as Rs. 5,512.08 instead of Rs. 15,512.08, the true balances

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as appearing in the No. 1 current account ledger being the higher figures just mentioned, and the discrepancy thus being Rs. 20,000. On examination of the books it was found that there had been similar discrepancies to the extent of Rs. 18,000, alterations being made in the balances at one time of some customers and at another time of other customers. On the 24th June, 1902, the discrepancy was increased by Rs. 2,000, being the aggregate of the two cheques in question, and the case of the prosecution was that this discrepancy represented the total of the false credits from time to time entered by the prisoner in the No. 1 current account ledger, and that the alteration in the balances of R. L. M. Brown and the Troup estate on the 24th June, 1902, was made with the view of covering the false credits entered under the same date in the accounts of N. A. Abram Saibo & Co. and P. Adam Saibo & Co. in the No. 1 current account ledger, and of preventing the fraud being discovered when the current account balance book should be compared with the general ledger of the bank.

"The fourth charge related to the checking of the No. 1 current account ledger with the current account balance book. The system of checking then prevailing was for an European assistant accountant to call off the names of the customers from the No. 1 current account ledger and for the prisoner to call off the balances from the current account balance book, and in this manner these two books were checked on the morning of the 25th June, 1902, before the business of the day commenced; but the accused in reading from the current account balance book the balances to the credit of the customers at the end of the previous day did not read correctly the credit balances of 'R. L. M. Brown' and 'The Troup estate,' as therein appearing, but called off figures corresponding to the balances as appearing in the No. 1 current account ledger to the credit of those two accounts. The conduct of the prisoner in not calling off the actual figures in the current account balance book rendered the checking nugatory and prevented the discovery of the discrepancy, which if then discovered would in time have led to the detection of the false credits given to N. A. Abram Saibo & Co. and P. Adam Saibo & Co. in the No. 1 current account ledger.

Mr. Dornhorst, in addressing the jury on behalf of the prisoner, did not contest the facts proved by the prosecution, but, assuming the facts, contended in reference to the first two charges:—

"(1) That as the indictment gave particulars as to the manner in which the forgery was committed, viz., by making false entries in the ledger, the case failed unless the particulars as stated were proved; and

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" (2) That the evidence showed that the entries were not false but true, inasmuch as N. A. Abram Saibo & Co. and P. Adam Saibo & Co. had sent the cheques in question to the bank and were entitled to the credits entered in the ledger, though the prisoner might have broken the rules of the bank as to the course of the business in entering the cheques in the way he did.

" I told the jury that, even if there was an error in the indictment in the description of the manner in which the forgery was committed, they might convict on the indictment if they found that the prisoner had no authority from the bank to make the entries, and that he made them with the intention of causing it to be believed that they were made by the authority of the bank; and further, that the falseness of the entries should be judged, not from the point of view of the bank itself, that N. A. Abram Saibo & Co. and P. Adam Saibo & Co. were not entitled to be credited with the amount of the cheques sent in by them before the cheques were scrutinized and passed in the usual course of business or were properly realized in the case of cheques payable by other banks, and that, if the prisoner made the credit entries in question without credit slips coming to him after the cheques had gone through the usual process, the entries would be false entries and the particulars in the indictment would be proved.

" The jury found the prisoner guilty on all the counts of the indictment.

" Mr. Dornhorst then moved in arrest of judgment on the following grounds:—

" (1) That the indictment did not disclose the offence of forgery as defined in the Ceylon Penal Code, for the reasons already submitted by him at the outset of the case, viz., that the false document must be a document purporting to be signed or made by a person other than the person charged, and that a clerk in making false entries in a book kept by himself cannot be said to make a false document.

" (2) That the evidence adduced in the case did not support a charge of forgery as defined in the Ceylon Penal Code, for the same reason as that stated above under ground No. 1.

" (3) That, even assuming that a false entry by a clerk in a book kept by himself could constitute forgery, the evidence proved that the entries in question were true entries, as already contended by him before the jury.

" (4) That there was a misjoinder of charges in the indictment in contravention of section 179 of the Criminal Procedure Code, as argued by him at the outset in his objections to the indictment, and that being so, the trial was illegal and the conviction bad.

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" (5) That my directions to the jury to the effect that they might convict even if the actual manner in which the forgery was committed was different from the particulars given in the indictment, and that they might so convict if they found that the prisoner made the entries without authority, intending it to be believed that he had such authority, were misdirections.

" I sentenced the prisoner to rigorous imprisonment for a term of three years on each of the charges, and I reserved and hereby refer the above questions of law for the decision of the Supreme Court, under the provisions of section 355, sub-section (1), of the Criminal Procedure Code."

The case was argued before Layard, C.J., Wendt, J., and Middleton, J., on the 7th, 10th, and 11th August, 1903.

Dornhorst, K.C. (with him *H. Jayawardene*), for the accused.— The indictment discloses no offence, because making a false entry in one's own book is not a forgery under the definition of it in the Penal Code, section 457. In a simple case of theft or the like only theft need be mentioned, but in a complex charge, like that of forgery or cheating, the mode of forgery or cheating should be specified, and then no other mode can be proved. The charge against the prisoner is an aggavated form of forgery. Mayne explains that when the intention is to use the forgery for the purpose of cheating there must be proof first of the forgery and then its fraudulent use. The indictment is bad because it does not specify the intent, which is an essential ingredient in the charge. It has been held that a false entry is forgery if made in a book kept by someone else. (*Starling, p. 576.*) In India a special enactment, Act No. 3 of 1895, founded on *38 and 39 Vict., chap. 24*, specially makes it an offence to make false entries in books kept by oneself. *Queen-Empress v. Kunji Nayah* (*I. L. R. 12, Madras, 114*). In this case the book was the accused's own, but kept by the complainant. Thambyah's *Ceylon Law Review, p. 91*, and *Re Jaggan Lall* (*7 Calcutta, 355*). A man cannot forge unless he makes a signature (*3 N. L. R. 330*). The Judge directed the jury to convict the prisoner on the indictment as it stood, if they found that the accused had purported to act with authority, while he really had no authority. The indictment contains eight charges, and is so mixed up that the Judge would not even amend it (*5 Allahabad, 221*). It has not been proved here that anybody was defrauded. The indictment averred forgery in a particular way. The Commissioner of Assize directed the jury that they might convict on a forgery perpetrated in some other way. He was in error there. A verdict of guilty on the indictment as it stands, but on facts not specified in the indictment,

is illegal. The Commissioner committed the fault of misdirection [Layard, C.J.—How many parties are necessary for a forgery?] There must be somebody whose handwriting is imitated in order to lead someone else to believe that somebody made it. A must forge an entry in B's book usually written by B in order to make C believe that B did it and not A. There must be three parties to a forgery to constitute forgery. A cannot make a false entry in his own book. [Layard, C.J.—The Indian Act requires only two people.] Just so. If the prisoner moved this Court for a *habeas corpus* writ, the Court would look into the indictment only, and if the indictment did not disclose an offence, he would be entitled to a discharge, without reference to what the jury had found. Section 179 provides that there should be a separate charge for every distinct offence not exceeding three. But the indictment sets out four offences under one section, and four more offences under another section. This is a clear misjoinder, (*I. L. R. 25, Madras, p. 61.*) There appear to have been four forgeries here, but they were not acts in a series under section 180, but each was a different offence (*79 Law Times Reports, 740*).

Van Langenberg (with him *H. J. C. Pereira*), for the Crown, addressed the Court on the facts, and contended the different forgeries were all linked together so as to form one transaction, namely, to defraud the bank of Rs. 2,000, therefore section 180 applies. [Layard, C.J.—The principal offence is defrauding, and yet the prisoner has not been charged with it, nor does it appear that the main object of all the forgeries was to *commit one fraud.*] We have shown the main object in the evidence led. [Layard, C.J.—Where does it appear in the indictment? If it is not in the indictment, what is your authority for omitting it?] It is submitted the offence is forgery because the accused made a false document in that he dishonestly and fraudulently made a document with the intention of causing it to be believed that such document was made with the authority of a person, by whose authority he knew it was not made. The intent was to make the bank believe that the entries were made with the authority of the bank's accountant so as to pay out Saibo's cheques, but he had not the authority of the credit slip, which is his only authority to make the entries in question. The person "made to believe" was the accountant. *Queen-Empress v. Kunji Nayah* (*12 Madras, 115*) is not a case in point. There the accused wrote something different from that which he was authorized to write. There was no question of his acting without authority. In Cronenberg's *Notes to the Indian Penal Code* will be found a case in which a person who made entries in

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a ledger in his own custody was held guilty under section 464 of making false entries in his own book. [Middleton, J.—It must mean that the forged entry purported to be written by some person other than the person who really wrote it. All the entries here are made by himself, not by some other person.] He wrote it himself, purporting to write it himself, and also purporting to have authority for writing it, whereas he had none. The latter part of the forgery section makes this a forgery. Under section 468 of the Indian Code, Agnew gives a case where a person was convicted of falsifying entries in a book kept by him to deceive his employer. [Wendt, J.—That is not so. There the book was the cashier's book, temporarily in the accused's custody, and the accused made entries in it purporting that they were made by the cashier, to deceive the employer. There were three persons there, and that case is one of real forgery.] [Layard, C.J. —When accused made his entries he purported to say this: These entries are made by me in the book kept by me.] But the books are not the accused's books, but the bank's, and the accused purported to have authority for the entry. [Layard, C.J.—He is not charged on the indictment with making entries without authority, nor is there proof that he represented the entries were made by anyone else than himself.] Accused was not misled by want of allegation as to authority. If the Court thinks that no forgery has been committed, it is open to it to convict him of cheating. In Caderaman's case (*6 N. L. R., p. 67*) this was done. [Middleton, J.—There this Court found the accused guilty of a lesser offence than was charged, but here cheating and forgery are quite distinct. One offence cannot be substituted for another.] The Supreme Court has power under section 355 to make such order as justice requires. The indictment may be amended and the finding of guilty appropriated to the counts of the amended indictment.

Dornhorst, K.C., in reply.

Cur. adv. vult.

28th August, 1903. LAYARD, C.J.—

The first objection taken by prisoner's counsel is that the indictment contravenes the provisions of section 179 of the Criminal Procedure Code, as it alleges more than three offences. On the face of it, it admittedly discloses more than three offences. Counsel for the Crown, however, relies on sub-section (1) of section 180 of the Criminal Procedure Code, and argues that the offences were committed by the prisoner in one series of acts so connected together as to form one transaction, and that consequently under the provisions of that section all the offences alleged can be tried

on the same indictment. There is nothing in the indictment itself to show that the charges are founded on one single continuous transaction. On the contrary, the indictment alleges more than three offences, and I do not see how the prosecuting counsel can be allowed to say on presenting such an indictment to the court, " The indictment, it is true, alleges more than three offences; I am going to prove, however, they were all committed by the prisoner in one and the same transaction ". The Crown, where the charge is founded on one single transaction, should first ascertain the offence committed by such transaction and make it the first count in the indictment, and then add counts setting out the several other offences committed by the prisoner in that transaction. The indictment on the face of it should conform to the provisions relating to the joinder of charges contained in chapter XVII. of the Criminal Procedure Code.

I have so far assumed that the several counts of the indictment do disclose that the prisoner has committed offences. If we examine, however, more carefully the counts in the indictment, they are lamentably deficient. A glance at the first three counts shows how carelessly they have been drawn. I will, however, pass over that and assume that the several counts properly set out that the prisoner committed forgery, to wit, by making certain false documents, intending that the documents so forged should be used for the purpose of cheating some named individual, and thereby committed an offence punishable under section 457. To establish the charge of forgery it is necessary to show that the accused has produced something which is a false document within the meaning of section 453. A person can only commit forgery when he has made a false document within the meaning of that section. That section does not enact that a person who enters a false entry in a book thereby makes a false document. What it does enact, among other things, is that a person is said to make a false document who fraudulently or dishonestly makes a document, or part of a document, with the intention of making it to be believed that such document, or part of a document, was made by, or by the authority of, a person by whom or by whose authority he knew it was not made. To be a false document, therefore, within the meaning of that section, is something more than a more false entry. The document must have been made with the intention of making it to be believed that it was made by, or by the authority of, another. There is no allegation in the counts in the indictment that the false documents mentioned were respectively made with any such intention. In fact, the indictment does not show on the face of it that any forgery was committed.'

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The prisoner's counsel, however, has raised another very important question as to whether, even if the indictment was good and properly alleged a forgery, the evidence in this case disclosed that the prisoner had been guilty of the offence of forgery. The facts proved appear to be that the prisoner's duty was to enter in the accounts kept by himself of certain customers of the bank only such credits as he was specially by credit slips authorized to enter. In contravention of such duty he made the false entries mentioned in the indictment, never having received any credit slips to support them. The entries complained of do not profess to have been made by any other than the prisoner himself, and the fault he has committed is that, being only authorized to make proper entries, he has made false ones. Each entry on the face of it purports to have been made by himself of his own free will, and does not purport to have been made under the authority of any one else. No one reading the document alleged to be forged would assume that in making the entry he professed more than that he had made it himself in the due course of business. In order that a document should be a false document within the meaning of section 453 it must appear that it was made with the intention of inducing the belief that such document was made by, or by the authority of, one who did not make it or give such authority. There is nothing on the face of the entries complained of to make it appear that the writing was made under the authority of any one else than the prisoner. I understand clause 1 of section 453, so far as it relates to a document executed by the authority of a person other than the person who wrote it, to refer to a document made by one person as by the authority, and according to the direction, of another, and intended to pass as the act of the other, not to a document purporting merely to be made by one man by the order or authority of another for the use of that other.

The evidence here discloses that the entries were false, but does not show any intention on the part of the prisoner that the entries should pass as the act of any other person than himself. I cannot hold, therefore, that the entries are documents made by the prisoner with the intention denoted by clause 1 of section 453, and consequently the prisoner has not committed, in my opinion, the offence of forgery.

Further, no authority has been cited to us to show that the making of a false entry in a book kept by a person, in contravention of his duty, would amount to making a false document within the meaning of clause 1 of section 453.

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The Indian cases to which we have been referred, on the contrary, seem to decide that an entry made under such circumstances would not amount to a forgery. In the matter of *Juggan Lall* (*7 Cal. L. R., p. 356*), the accused made a false entry of rent received in a book kept by him for the purpose of informing the collector as to the rents which had been paid into the collectorate. It was proved that the prisoner's duty in keeping such book was only to make therein such entries as he was authorized by written warrants to do, and that he had never received any such written authority to make the entry which he did make. The Calcutta Court in appeal held that, as the entry did not profess to be made by any other than the prisoner himself, he had not committed the offence of forgery; consequently, he could not be convicted under section 466 of the Indian Penal Code. Again, in the case of *Queen-Empress v. Kunji Nayah* (*12 I. L. R., Madras, 115*), where the prisoner, having been requested to make an entry in a book of account to the effect that he was indebted to the complainant in a certain sum of money, instead of making such entry, entered in a language not known to the complainant that this sum had been paid to complainant, it was held that the prisoner had not committed the offence of forgery. The Judges pointed out that there was nothing on the face of the entry in the complainant's book to make it appear that the writing was made or authorized by him, the entry not being signed by the complainant and containing no indication that he acknowledged it as his own statement. The entry, therefore, they say, was not made by the prisoner with the intention denoted by the 1st clause of section 464 of the Indian Penal Code (which is the same as clause 1 of section 453 of our Code).

I understand counsel for the Crown to argue, even if this Court should find, (1) that there has been a misjoinder of charges, (2) that the indictment on the face of it discloses no offence, and (3) that the evidence does not disclose the offence of forgery, still this Court, in view of certain provisions of the Criminal Procedure Code, and of the section of that Code under which this Court is now acting, can make such alteration in the conviction as justice requires and convict the prisoner of some offence other than the one he has been charged and tried for. First, he urges that, even if there was an error in stating the offence or the particulars required by law to be stated in the charge, under section 171, no omission to state the offence or these particulars shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission. That

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simply means no such error shall be regarded as material during the course of the trial unless the accused was misled, and consequently section 172 provides that the Supreme Court may alter the indictment for the purpose of correcting any error or omission at any time before verdict, but not after verdict, so as to enable the jury to bring in a verdict of guilty or not guilty of an offence known to the law. In the present case the jury have convicted on counts of an indictment which, as I have said before, discloses no offence according to our law, and we have no power to amend the indictment after verdict. The Commissioner in charging the jury appears to have overlooked the fact that the indictment on the face of it did not disclose the offence of forgery, for the only error he mentioned to them was an error in describing the manner of committing the forgery. The jury gave a general verdict convicting on the indictment as presented, and it is impossible to say whether, in view of the Commissioner's charge, they were not left under the impression that in every case a false entry made for the purpose of cheating was a forgery.

Counsel for the Crown further argues that, even admitting the indictment is bad in having contravened the provisions of the Criminal Procedure Code—which provides that every separate offence shall be charged and tried separately, except that three offences of the same kind may be tried together in one charge if committed within the period of one year, and is not saved by the provisions of section 180, which enacts that, if in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence—still, under the provisions of section 355 of the Criminal Procedure Code, this Court on a case reserved can make such order as justice requires, and entirely disregard all the provisions of the law as to the mode of trial to be observed. That is to say, that we are to hold that a trial which has been conducted in a manner explicitly prohibited by Statute Law is a legal trial. We are, however, it appears to me, bound by the ruling of the Privy Council in the case of *Subrahmanian Ayyar v. King-Emperor* (*38 I.L. R., Madras Series, p. 61*). There the appellant was tried and convicted on one indictment charging more than three offences in contravention of section 234 of the Indian Criminal Procedure Code, from which our section 178 has been taken. On a case reserved and heard by the Full Court of Madras it was held by the majority of the Judges of the High Court of Madras that the indictment was bad for misjoinder, but it was open to them to strike out one of the counts, rejecting the evidence

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with regard to it, and to deal with the evidence as to the remaining counts of the indictment. The High Court consequently did this and upheld the conviction on one count only. The prisoner appealed to the Privy Council. The Lord Chancellor, in delivering the judgment of the Privy Council setting aside the judgment of the Madras High Court and the conviction of the prisoner, pointed out that the indictment was bad and plainly contravened the provision of the law which provided that a person can only be tried for three offences. He showed the reasonableness of such a provision, and added, " The policy of such a provision is manifest, and the necessity of a system of written accusation specifying a definite criminal offence is of the essence of criminal procedure." Their Lordships of the Privy Council stated that they thought the course followed by the High Court of Madras was plainly illegal, and that after verdict in revision the High Court cannot amend the indictment by arranging afterwards what count might or might not have been properly submitted to the jury. They further held that the trial having been illegally conducted, the High Court of Madras could not dissect the verdict of the jury afterwards and appropriate the finding of guilty only to such part of the indictment as that Court thought ought to have been submitted to the jury.

We are asked in this case to pursue the course followed by the Madras High Court, and to dissect the verdict of the jury, and to act in contravention of the judgment of the Privy Council, and to hold that a trial which has been conducted in a mode prohibited by law was a legal trial, and to uphold a conviction obtained by the Crown on an admittedly bad indictment and on one disclosing no legal offence. I cannot see my way to do so.

To sum up, in my opinion, for the reasons given in the early part of this judgment, the indictment was bad on the face of it. Assuming the indictment, however, did properly allege the offence of forgery, I think the evidence did not disclose the commission of such an offence by the prisoner.

I would set aside the conviction and quash the indictment and all subsequent proceedings thereon.

WENDT, J.—I concur.

MIDDLETON, J.—

This was a case reserved for the consideration of this Court under section 355 of the Criminal Procedure Code. The prisoner was found guilty on three counts for forgery, intending the document forged should be used for the purpose of cheating,

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under section 457 of the Ceylon Penal Code, and on a fourth count for fraudulently and dishonestly using as genuine the said documents, knowing them to be forged, under section 459 of the Ceylon Penal Code.

It appeared that the prisoner was the clerk keeping what is called the No. 1 current account ledger and the current account balance book in the National Bank of India, and it was his duty to enter in his current account ledger such sums as appeared on slips sent to him from the accountant to the credit of the respective current accounts kept in his books, also to debit these accounts with cheques drawn against them, to write under the head of balance in a separate column the balance amount of debit or credit of the current account, and also to enter these balances in the current account balance book.

Practically the only authority for making any entry in his ledger was the slip initialled or signed by the accountant. The current account balance book was entered up twice a month, except in June and December, when it was checked for the half-yearly balances.

On 24th June, 1902, the prisoner's current account ledger and balance book were checked, and it is alleged for the prosecution that after the checking the two entries mentioned in the first second, and third counts were made by the prisoner either on the morning of the 25th June or on the evening of the 24th, but both under date 24th June.

The theory of the prosecution was that the accused on that date intended to steal a sum of Rs. 2,000, and that, having up to that date falsified his accounts to the extent of Rs. 18,000 by his manipulation of the figures in the current account ledger and balance book, he tried to cover the abstraction, but in effect left the apparent deficit due to the bank of Rs. 20,000.

The jury found him guilty on each count in the indictment and he was sentenced to three years' rigorous imprisonment on each count to run concurrently.

On application by counsel for the defence certain points were reserved by the learned Commissioner who tried the case for the consideration of this Court under section 355 of the Criminal Procedure Code.

To my mind the first and most important question is whether the accused by making the false entries in his books committed the offence of forgery as it is defined under sections 452 and 453 of the Penal Code.

The committing of forgery involves a making of false documents, and the way in which a false document may be made

is set out under section 453 in three sub-sections, of which it is admitted that the first is the only one which can be deemed applicable to this case.

Now, under that sub-section a person is said to make a false document who dishonestly or fraudulently makes part of a document with the intention of causing it to be believed that such part of a document was made by the authority of a person by whose authority he knows that it is not made. It is contended here by counsel for the prosecution that these entries were made by the accused with the intention of causing it to be believed that they were made by the authority of the official of the bank who was charged with the duty of vouching the payment slips as a warrant to the accused to make entries in his books therefrom, and it was argued that this being so the definition in this respect is complied with.

I think, however, this is not the meaning of the sub-section. In my opinion the theory of forgery there involves the representation that the thing written is the handiwork of some one other than the actual writer, or that it purports to be written as the act of another, and so by his authority. It must appear on the face of it that it is intended to pass as the act of another person. The examples under the sub-section seem to me to support this construction.

To my mind, where a person who has authority to make entries in the account books of another person subject to a certain procedure makes an unwarranted entry in his books, he does not intend it to be believed that it was an entry made by any other person than himself, or as representing on the face of it an authority given by any other person, which is, I think, the meaning to be given to the words " by the authority of a person " in the sub-section.

If we give the words the meaning contended for by Mr. Van Langenberg, every clerk who makes an unauthorized entry of his own in his employer's books with a fraudulent intent would be a forger.

Such offences must be extremely common, but counsel was unable to put before us any reported case, either in the Indian or our own Courts, in which false entries of this description have been charged in the indictment as forgeries. In our Code there is no provision made for the punishing of persons charged with the falsification of accounts, nor was there in the Indian Code until section 477 A was enacted some few years back. This section is a reproduction in slightly varied phraseology of *38 and 39 Vict. cap. 24 s. 1.* It seems to me, therefore, that both the English and

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Indian Legislatures found it necessary to provide for the specific punishment of acts of the description charged here. If the making of false entries by a clerk in the books of his employer with a fraudulent intent were punishable in India or England as forgeries, it would not be necessary to legislate in the way alluded to, and there would certainly be some case to be found in which it had been held that such acts were forgeries.

It is contended by counsel for the prosecution that the acts charged in the indictment are so connected together as to form the same transaction, and that therefore it is permissible to charge them in one indictment under section 180 of the Criminal Procedure Code.

When the objection was taken that more than three offences of the same kind were charged in the indictment no evidence had been given, and there was nothing on the indictment other than the allegation of time and place to show that these acts were a series forming one transaction. It was stated, however, by counsel there was evidence to show that together they constituted an act of misappropriation of the bank's funds on a certain date, brought about by means of the alleged forged entries; if this were so, there was a transaction which constituted an offence, and I think that it might have been charged as a specific count in the indictment. Had this been done and the forgeries subsequently charged in separate counts, it would have been apparent on the record that they were acts in a series so connected together as to form the same transaction, and to my mind the indictment, assuming the false entries to be forgeries, would have been unobjectionable on this ground.

As an example, I would take the case of a riot and the series of acts which are so connected together as to constitute it. These acts by themselves would in each case probably constitute a separate offence, and justice would require that they all should be so charged, and there might be more than three of them. If, however, the riot was not charged and the series of separate acts were, there would be nothing to show on the indictment that they formed one transaction, and in my opinion they might be objected to if they exceeded three in number under section 179.

I think, therefore, as there is in this case some evidence on the face of the indictment to show this series of false entries was not so connected together as to form one transaction, inasmuch as the third count contains an allegation of entries in a book other than that mentioned in the first and second counts, that this indictment would be *prima facie* objectionable under section 179. It might, however, have been amended by the addition of the count I have before mentioned. The third and fourth counts are also

objectionable, inasmuch as they contain allegations—the third of two offences and the fourth of four offences.

Objections have also been taken to the form of the first three counts in the indictment on the ground that, even if the alleged making of false entries constituted forgery, they did not disclose offences under section 457.

I am inclined to think, assuming the making of false entries constituted forgery, that the particulars given in these counts were reasonably sufficient to give the accused notice of the matters charged against him; although I think that it was possible that the particulars after the words " to wit " might perhaps have been more extended.

In my judgment the conviction of this man should be set aside on the ground that he has been tried on an indictment which discloses no offence according to law.

I think that the matter should be left to the Attorney-General to determine upon what other charges the accused should be tried. I do not think it would be right or within our province, acting under section 355 of the Criminal Procedure Code, to look at the evidence and see what, if any, offence is disclosed, and thereupon to find a verdict for an offence against which the accused has not had the opportunity of defending himself. From the facts disclosed upon the argument and by the Commissioner in the case it would appear that justice may require that the accused should be re-tried for some offence. I would therefore leave it to the Attorney-General to determine what offence should be charged against him.