

Nov. 8, 1910

[IN REVISION.]

Present : Middleton J.

VELAIDEN v. ZOYSA *et al.*

P. C. Colombo, 24,284.

Binding over to keep the peace—Members of opposing factions cannot be bound over in the same proceeding—Criminal Procedure Code, ss. 81, 184, and 425.

A breach of the rule of law that two accused members of opposing factions in a riot, or two persons accused of giving false evidence in the same proceeding, must be indicted and tried separately is not a mere irregularity which can be cured by section 425 of the Criminal Procedure Code. It is an illegality which invalidates the proceedings.

Members of two opposing factions cannot be bound over to keep the peace under section 81 of the Criminal Procedure Code in the same proceeding.

THE facts appear sufficiently from the judgment.

H. A. Jayewardene, for the petitioners.

Cur. adv. vult.

November 8, 1910. MIDDLETON J.—

In this case the first accused applied in revision to set aside an order made under section 81 of the Criminal Procedure Code binding him over to keep the peace for six months.

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The ground relied upon is that he was charged, together with persons of an opposing party, with whom he was at enmity, in one proceeding, and the cases of *Subramania Ayyar (Appellant) v. The King Emperor (Respondent)*¹ and *Kamal Narain Chowdhury and another v. The King Emperor*² were cited in support.

In the former case the Privy Council held that disobedience to express provisions as to a mode of trial could not be regarded as a mere irregularity, and that such a phrase as irregularity is not appropriate to the illegality of trying an accused person for many different offences at the same time, and those offences being spread over a larger period than by law could have been joined in the same indictment. The foundation of the decision is the rule of law that only three offences of the same kind committed within the space of one year may be charged together in one indictment to be found in section 234 in the Indian Criminal Procedure Code and section 179 of the Ceylon Criminal Procedure Code.

By analogy a breach of the rule of law derived from the examples (d) and (e) to section 184 of the Criminal Procedure Code, that two accused members of opposing factions in a riot, or two persons accused of giving false evidence in the same proceeding, must be indicted and tried separately, is argued not to be a mere irregularity, and not to be cured under section 425 of the Criminal Procedure Code.

Proceedings of the kind now in question have, under section 87 (2), to be conducted like summary trials, and the examples I have cited would apply. It is difficult I think to say, upon the ruling of the Privy Council, that what has occurred here is a mere irregularity curable under section 425 of the Criminal Procedure Code. The inconvenience, if not the impracticability, of it is evident in connection with the examination and cross-examination of their respective witnesses if tried together.

I must, therefore, quash the order made by the learned Police Magistrate, but in consideration of what he states in his letter to the Registrar and of the murder referred to in the case, with leave to the Police to renew the proceedings against the first accused to obtain an order under section 81, if they deem it advisable in the interests of peace and order to do so.

Proceedings quashed.

¹ (1902) I. L. R. 25, Mad. 61.

² 5 C. L. J. 231.