1913.

Present: Lascelles C.J.

THE KING *v.* MENDIS.

36—D. C. (Crim.) Galle, 13,809.

Trial—Joinder of charges—Accused tried on three separate indictments at one trial—Illegal—Criminal Procedure Code, ss. 180 and 425.

The accused was tried at one trial on three indictments containing five charges. The first indictment charged the accused (*a*) under section 208 of the Penal Code with having falsely charged one Aron Mendis before a police sergeant on November 26 at Ambalangoda, and (*b*) under section 180 with having given false information to the same police sergeant at the same time and place. The second indictment charged the accused (*a*) under section 208 with having falsely charged Aron Mendis before a Sub-Inspector of Police at Bentota on November 27, and (*b*) under section 180 with having given false information to the same Sub-Inspector at the same time and place. The third indictment charged the accused under section 190 with having given false evidence before an Inquirer in certain inquest proceedings held at Ambalangoda on November 29.

Held, that the trial of the accused on these separate indictments at one trial was illegal and fatal to the conviction.

THE facts are set out in the judgment.

H. J. C. Pereira (with him *Sampayo, K.C.*, and *Allan Drieberg*), for the accused, appellant.—The accused was tried at one trial on three indictments containing in all six counts. This is illegal, and is fatal to the convicton. Counsel cited *The King v. Kanjamanadan*,[1] *Subrahmanian Ayer v. King Emperor*.[2]

Garvin, Acting S.-G., for the Crown.—There was nothing to prevent all the five counts in the three separate indictments being, included in one indictment. The accused could have been tried at one trial on all the five counts in that case. See section 180 of the Criminal Procedure Code.

If the accused could have been tried at one trial on all the counts, the mere fact that the counts are contained in three and not in one indictment does not make any difference. The accused did not object to his being tried on all counts at one trial. It would seem that counsel on both sides agreed to this procedure. The irregularity—even if it be one—is not fatal to the conviction.

Cur adv. vult.

[1] *(1903) 7 N. L. R. 52.*

[2] *I. L. R. 38 Mad. 61.*

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This is an appeal against the conviction of the accused on the ground of misjoinder of charges. The facts on which the prosecution depends are simple enough, but for some reason the case has been thrown into confusion by the filing of no less than three indictments containing in the aggregate five counts. Why three indictments were prepared and signed at all is difficult to say, but it cannot have been the intention of the Crown Counsel that they should be tried simultaneously. The first indictment charges the accused (*a*) under section 208 of the Penal Code with falsely charging one Aron Mendis before a police sergeant at Ambalangoda on November 20, and (*b*) under section 180 of the Penal Code with giving false information to the same police sergeant at the same time and place. The second indictment charges the accused (*a*) under section 208 with falsely charging Aron Mendis before a Sub-Inspector of Police at Bentota on November 27, and (*b*) under section 180 with giving false information to the same Sub-Inspector at the same time and place. The third indictment charges the accused under section 190 of the Penal Code with giving false evidence before an Inquirer in certain inquest proceedings held at Ambalangoda on November 29. There is no objection, as regards joinder of counts, to any one of these indictments, but by some blunder, which has not been explained, the accused was tried simultaneously on all indictments and was convicted on all the charges in each of the indictments.

There is no provision in the Criminal Procedure Code which allows such proceedings. It was suggested by the Acting Solicitor-General that the charges all related to acts so connected together as to form the same transaction, and that the joinder of these counts was justifiable under section 180 (1) of the Criminal Procedure Code. But even if the acts charged are of this character, the section contemplates their being included in one and the same indictment, and there is nothing in that section or elsewhere in the Code to authorize the inclusion of these counts in three separate indictments and the simultaneous trial of the indictments. That the procedure is highly irregular there can be no doubt. The only question is whether the irregularity is fatal to the conviction, or whether it is cured by section 425 of the Criminal Procedure Code. On principle as well as on authority I am clearly of opinion that the course which has been taken in this case is more than a mere irregularity. The Court, in purporting to try these three indictments together, did that which it had no jurisdiction to do. *Vide* the decision of the Privy Council in *Subrahmanian Ayer v. King Emperor*,[1] where it was held that the inclusion in an indictment of a greater number of counts than that allowed by law was not a mere irregularity but was fatal to the conviction.

[1] *I. L. R. 38 Mad. 61.*

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Further, it is impossible to hold that the accused was not prejudiced by the course taken. His position is obviously worse than it would have been had he been tried on any one of the indictments. That this is so is apparent by comparing the position in which the accused would have been if he had been tried on one indictment only with that in which he was placed at the trial. If, for example, only for giving false evidence at the inquest, he would obviously have been in a better position than he was when two other indictments were before the Court charging him with having made false statements about the same matter on four different occasions.

In my opinion, the simultaneous trial of these three indictments is a fatal irregularity, and I set aside the conviction and acquit and discharge the accused.

Set aside.