Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of N. A. Subramania Iyer, Appellant, v. the King-Emperor, Respondent, from the High Court of Judicature, Madras; delivered 2nd August 1901.

Present at the Hearing:
THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.

[*Delivered by the Lord Chancellor.*]

In this case the Appellant was tried on an indictment in which he was charged with no less than forty-one acts, these acts extending over a period of two years. This was plainly in contravention of the Code of Criminal Procedure, Section 234, which provided that a person may only be tried for three offences of the same kind if committed within a period of twelve months. The reason of such a provision which is analogous to our own provisions in respect of embezzlement is obviously in order that the jury may not be prejudiced by the multitude of charges and the inconvenience of hearing together of such a number of instances of culpability and the consequent embarrassment both to Judges and accused. It is likely to cause confusion and to interfere with the definite proof of a distinct offence which it is the object of all criminal procedure to obtain. The policy of such a provision is manifest and the necessity

17468. 125.—8/1901. [47]

of a system of written accusation specifying a definite criminal offence is of the essence of criminal procedure.

Their Lordships think that the course pursued and which was plainly illegal cannot be amended by arranging afterwards what might or might not have been properly submitted to the jury.

Upon the assumption that the trial was illegally conducted it is idle to suggest that there is enough left upon the indictment upon which a conviction might have been supported if the accused had been properly tried. The mischief sought to be avoided by the statute has been done. The effect of the multitude of charges before the jury has not been averted by dissecting the verdict afterwards and appropriating the finding of guilty only to such parts of the written accusation as ought to have been submitted to the jury.

It would in the first place leave to the Court the functions of the jury and the accused would never have really been tried at all upon the charge arranged afterwards by the Court.

Their Lordships cannot regard this as cured by Section 537.

Their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity. 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 longer period than by law could have been joined together in one indictment. The illustration of the section itself sufficiently shows what was meant.

The remedying of mere irregularities is familiar in most systems of jurisprudence but it would be an extraordinary extension of such a branch of administering the criminal law to say that when the Code positively enacts that such a trial

as that which has taken place here shall not be permitted that this contravention of the Code comes within the. description of error, omission, or irregularity.

Some pertinent observations are made upon the subject by Lord Herschell and Lord Russell of Killowen, 4 Law Rep. App. Cases 494 (1894). Where in a civil case several causes of action were joined Lord Herschell says that "if "unwarranted by any enactment or rule it is "much more than an irregularity," and Lord Russell of Killowen in the same case says, "Such "a joinder of Plaintiffs is more than an irregu-"larity, it is the constitution of a suit in a way "not authorised by law and the rules applicable "to procedure."

With all respect to Sir Francis Maclean and the other Judges who agreed with him in the case of *Abdur Rahman and Keramat*, 27 I.L.R., Calcutta Series 839, he appears to have fallen into a very manifest logical error in arguing that because all irregularities are illegal as he says in a sense and this trial was illegal that therefore all things that may in his view be called illegal are therefore by that one adjective applied to them become equal in importance and are susceptible of being treated alike. But this trial was prohibited in the mode in which it was conducted, and their Lordships will humbly advise His Majesty that the conviction should be set aside. Their Lordships will make no order as to costs.