

ENGLISH LAW.—

III In (1898) Q. B. 56 it has been pointed out that in dealing with *breaches of duty* it is *not enough* in order to displace the contention that the action is founded on *tort* to aver that the duty in the last resort arose out of some contract:—(1898) 1 Q. B. 56.

Bombay High Court was holding the same view:—(1894) 19 Bom. 165, (188). But now as the above Art. 31 has been introduced, the period of limitation is only one year while under Art. 115, the period was three years.

IV. COMMON CARRIERS.

Owners of sea-going merchant ships are common carriers though not so defined in Act III of 1865:—3 Mad. 107; 26 Bom. page 573.

V. NON-DELIVERY OF GOODS NOT NECESSARILY LOSS OF GOODS:—
(1885) 12 Cal. 477.]

[3 Mad. 112.]

APPELLATE CRIMINAL

The 22nd February, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE KINDERSLEY.

Tarada Baladu

versus

The Queen.*

Criminal Procedure Code, Act X of 1882, Section 328—*New trial.*

The power given by the Criminal Procedure Code to a Magistrate to pronounce a judgment upon evidence partly recorded by his predecessor and partly by himself does not extend to a Sessions Judge.

THIS was a referred trial in which the prisoner appealed. He was not represented at the hearing of the appeal.

The Court (TURNER, C.J. and KINDERSLEY, J.) delivered the following

[113] Judgment:—The trial of this case was commenced before Mr. *Happell*, officiating Agent, and with one exception all the witnesses were

* Criminal Appeal 886 of 1880 from the sentence of J. H. Garstin, Agent to the Governor of Port St. George at Vizagapatam, in Cal. Case 40 of 1880.

† [Sec. 328:—Whenever any Magistrate, after, having heard part of the evidence in a case, ceases to exercise jurisdiction in such case and is succeeded by another Magistrate who has and who exercises jurisdiction in such case, such last named Magistrate may decide the case on the evidence partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and commence afresh :

Provided that the accused person may, when the second Magistrate commences his proceedings, demand that the witnesses shall be re-summoned and reheard, in which case the trial shall be commenced afresh :

Provided also that any Court of appeal or revision, before which the case may be brought, or in cases tried by Magistrates subordinate to the Magistrate of the District, the Magistrate of the District, without appeal.

May set aside any conviction, passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or Magistrate is of opinion that the accused person has been materially prejudiced thereby ; and may order a new trial.]

examined. The case was adjourned and endeavours were made to obtain the presence of persons named by the accused as witnesses. During the adjournment Mr. *Garstin* resumed his appointment, and having examined one fresh witness concluded the trial.

We are compelled to pronounce the proceedings void. It is only in view of the necessarily frequent changes in the office of Magistrate the *Criminal Procedure Code* provides specially that a Magistrate may pronounce judgment on evidence partly recorded by his predecessor and partly by himself, but there is no such provision in the case of Sessions Judges.

The conviction must be set aside and a new trial directed.

[3 Mad. 113.]

APPELLATE CIVIL.

The 1st March, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

Chedumbara Pillai.....(Defendant), Appellant

versus

Ratna Ammal.....(Plaintiff), Respondent.*

Civil Procedure Code. Section 258—Satisfaction of decree not certified.

An adjustment of a decree not certified to the Court by either party within the time limited by law, cannot be recognized as a bar to execution.

IN this case the plaintiff, as judgment-creditor, sent her agent to bid at an execution sale of property of the defendant. The agent, upon condition that one *Mutturama Pillai* would satisfy plaintiff's debt, did not bid. *Mutturama* bought the property without competition for Rs. 945, and gave the agent a promissory note for Rs. 1,500 in favour of plaintiff, to be deposited with one *Govindasami* till plaintiff certified satisfaction to the Court, and, upon default, to be returned to *Mutturama*. Plaintiff declined to take the promissory note and put her decree in execution against the defendant.

[114] No application was made to the Court by plaintiff or defendant under Section 258 of the *Civil Procedure Code*.

The Munsif held that plaintiff had waived her right against the defendant under the decree through the conduct of her agent.

The District Judge set aside this order as the alleged adjustment was not certified to the Court.

Defendant appealed.

A. *Ramachandrayyar* for the Appellant.

T. *Rama Rau*, for the Respondent.

The Court (INNES and KERNAN, JJ.) delivered the following

Judgment:—The adjustment alleged is not admitted by the decree-holder, and the facts found by the Munsif negative the statement of the judgment-debtor that any adjustment took place.

* C.M.S.A. 658 of 1880 against the order of F. H. Woodroffe, District Judge of North Tanjore, reversing the order of the District Mansif of Shiyali, dated 25th April 1880.