

have availed himself of the services of some Court-officer, or directed it to be done by some independent person.

We next find that, instead of taking the opinion of each assessor, as is required by law, the Judge has received the opinions of all the assessors combined, as delivered through one of them whom he thus regards as the foreman of a jury.

We further observe that four other persons, who were under trial along with the appellants, were acquitted by the Sessions Judge at the termination of the evidence for the prosecution. The grounds on which the judgment of acquittal was based are, that the evidence of identification was unworthy of belief.

Under such circumstances it was the duty of the Judge, before passing judgment, himself to ask for and record the opinions of the assessors on that evidence. The Judge, however, has thought it unnecessary to do so, because he considers that there was "no evidence" against the accused, the fact being that there was evidence which the Judge thought unworthy of belief.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

SHEO SARAN TATO v. THE EMPRESS.*

Sentence—Penal Code (Act XLV of 1860), s. 75—Previous Conviction.

The object of s. 75 of the Indian Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient.

THIS was an appeal from the following finding and sentence of the Judge of Shahabad sitting with assessors on the 19th of March 1888:—

"The Court concurring with the assessors finds that the accused person Sheo Saran Tato is guilty as charged, namely, that he on or about the 18th day of February 1883, at Arrah, committed house-breaking by night with intent to commit theft, he having previously, that is to say on the 25th August 1874, been convicted of house-breaking by night in order to the committing of theft, such conviction not having been set aside

* Criminal Appeal No. 207 of 1883, against the order of J. Tweedie, Esq., Sessions Judge of Shahabad, dated the 19th March 1883.

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on appeal, and that he thereby committed an offence under s. 457 of the Indian Penal Code punishable under section 457 of the same; and under these sections the Court directs that the said Sheo Saran Tato be punished with rigorous imprisonment, which shall extend to four years from this date."

No one appeared to argue the case.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—There is no reason for questioning the correctness of the conviction of the appellant, and the sentence is not excessive. The appeal is, therefore, rejected.

We think it necessary, however, to notice a misconception of the object of s. 75, Penal Code, into which the Sessions Judge has fallen. He seems to think that on a second conviction of any of the offences specified in that section he is bound to pass sentence thereunder, and he accordingly observes that, although for the offence committed (s. 457), the prisoner would be liable to imprisonment for fourteen years, he would under s. 75 of the Penal Code, by reason of a previous conviction, be liable to imprisonment for only ten years. He then states that "it is for the prisoner's advantage, provided he is prepared to take his chance of transportation to admit a previous conviction." The object of s. 75 is to provide for an additional sentence, not for a less severe sentence on a second conviction. Recourse should not be had to s. 75 if the punishment for the offence committed is itself sufficient, and even then the Code of Procedure requires that the prisoner should be first convicted of that offence.

Appeal dismissed.

Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.

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CHAND KHAN v. THE EMPRESS.*

Appeal—Security for good behaviour—Code of Criminal Procedure (Act X of 1882), ss. 110, 118, 123.

No appeal lies to the High Court from an order passed by a District Magistrate under the provisions of s. 123 of the Criminal Procedure Code and on reference by the Magistrate confirmed by the Sessions Judge under the same section, requiring a person to be detained in prison, until he should provide security for his good behaviour.

*Criminal Appeal No. 253 of 1883, against the order of G. A. Grierson, Esq., Officiating Magistrate of Patna, dated the 20th April 1883.