the decision of the Sub-Divisional Magistrate, acquit the accused and order that the fine, if paid, be refunded.

Re VENKATA-SUBBAYYA.

K.R.

OLDFIELD AND SESHAGIRI AYYAR, JJ.

APPELLATE CRIMINAL.

Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.

Re VENKATAKRISHNAYYA AND ANOTHER (ACCUSED NOS. 4 AND 5).*

1916. October 17 and 24.

Criminal Procedure Code (Act V of 1898), sec. 413—Joint trial of several accused—Appealable sentence on some and non-appealable sentence on others—No right of appeal for the latter—Section 408 of Criminal Procedure Code, no guide to the interpretation of section 413 of Criminal Procedure Code.

Section 413 of Criminal Procedure Code prohibits an appeal by a person against whom a non-appealable sentence has been passed even though appealable sentences have been passed against others jointly tried with him.

Though for convenience a joint trial of several accused persons under certain circumstances is allowed, on conviction each accused must be deemed to have been convicted in a separate case of his own for the purposes of section 413 of Criminal Procedure Code.

The analogy of section 408, Criminal Procedure Code, cannot be extended to section 413 of Criminal Procedure Code.

PIGGOT, J.'s view in *Emperor* v. *Lal Singh* (1916) I.L.R., 38 All., 395, not followed.

Palani Koravan v. *Emperor* (1907) 17 M.L.J., 248, distinguished.

Reg. v. *Muliya Nana* (1868) 5 Bom. H.C.R., 24 (Cr. C.) and *Reg.* v. *Kalubhai Meghabhai* (1870) 7 Bom. H.C.R., 35 (Cr. C.), referred to.

It does not follow as a matter of course that because some of the accused tried along with others are acquitted on the merits on appeal by them, others should necessarily have the benefit of the finding of the Appellate Court.

Citation of the rulings of the Chief Court of Burma disallowed.

CASE taken up by the High Court to revise the order of acquittal by H. R. BARDSWELL, the Sessions Judge of Kurnool, in Criminal Appeals Nos. 41 and 42 of 1916, preferred against the conviction of the Joint Magistrate of Nandyal in Calendar Case No. 4 of 1916.

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* Criminal Revision Case No. 558 of 1916.

Re VENKATA-KRISHNAYYA.

In this case five people were accused and tried jointly. The Joint Magistrate of Nandyal convicted third and fourth accused of offences under sections 193, 465 and 471 of Indian Penal Code and first, second and fifth accused of abetment of the same, and accorded to accused Nos. 1 to 4 appealable sentences and sentenced fifth accused to a fine of Rs. 50. Accused Nos. 1 to 4 preferred appeals to the Sessions Court of Kurnool and the Sessions Judge disbelieving the story of the prosecution as regards all the five accused acquitted these four. Accused No. 5 preferred a separate appeal to the Sessions Court (No. 42 of 1916) and the Sessions Judge acquitted him on the merits, holding at the same time that he had a right of appeal as others sentenced with him and who had appealed were accorded appealable sentences. The High Court called for the records being of opinion that the action of the Sessions Judge in interfering on the appeal of the fifth accused was illegal.

E. R. Osborne, the acting Public Prosecutor, for the Crown.

The fifth accused in respect of whom this reference was made, neither appeared in person nor was represented.

The following order of the Court was delivered by

OLDFIELD AND SESHAGIRI AYYAR, JJ.

OLDFIELD AND SESHAGIRI AYYAR, JJ.—The point for decision is whether an appeal lies to the Sessions Judge or the District Magistrate at the instance of a person against whom a non-appealable sentence has been passed, on the ground that appealable sentences have been passed against others jointly tried with him. Section 413 of the Code of Criminal Procedure speaks of an "appeal by a convicted person in *cases* in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only." The argument is, that if in the case there is an appealable sentence against any one, the whole case is appealable. In our opinion, although for the sake of convenience, the Code, under certain restrictions, provides that there can be a joint trial, it must be taken that there is a separate case as against each of the accused dealt with in the joint trial. Therefore the reference in section 413 to a case is not to what in ordinary language is regarded for statistical and other purposes as one case, but to the adjudication as against each of the accused. There can be no question that each of

the convicted accused is entitled to prefer a separate appeal. There can be a number of appeals in that way. The moment that sentences are passed against each of the accused, the one case is split up into a number of cases within the meaning of section 413 of the Code.

PIGGOTT, J., has taken the view in *Emperor* v. *Lal Singh*(1), that if there is a single appealable sentence in the case, the whole case is appealable. The learned Judge refers to section 408 of the Code. The operative portion of that section provides that each of the *persons* convicted by an Assistant Sessions Judge shall have a right of appeal to the Court of Session. Proviso (*b*) says that if a sentence of or more than four years is passed in the case, the appeal shall lie to the High Court. It is noteworthy that, whereas the operative portion speaks of *persons*, the proviso speaks of cases. It was held in *Palani Koravan* v. *Emperor*(2) that when any one of the accused jointly tried with others is sentenced to imprisonment for four years, the appeal in the case of all the accused would lie to the High Court. The case, although decided long ago, has not been ordered to be reported in the authorized reports. However that may be, we do not think the same considerations apply to section 413. We are not prepared to extend the analogy of section 408 to section 413 as PIGGOTT, J., has done.

Some rulings of the Chief Court of Burma were sought to be quoted before us. This Court has consistently refused to allow such cases to be quoted; and we think it is a wholesome rule.

In Bombay, it has always been held that only persons on whom appealable sentences are passed, have the right of appeal: see *Reg.* v. *Muliya Nana* (3) and *Reg.* v. *Kalubhai Meghabhai* (4).

In this Presidency also, the practice has been the same. We see no reason to depart from it now. The matter should be dealt with by the Legislature, if so advised.

We are, therefore, of opinion that the procedure of the Sessions Judge is wrong. On looking into the record, we think that the accused should be discharged. At the same time, we must point out that it does not follow as a matter of course, that

(1) (1916) I.L.R., 38 All., 395.
(2) (1907) 17 M.L.J., 248.
(3) (1868) 5 Bom. H.C.R., 24 (Cr.C.).
(4) (1870) 7 Bom. H.C.R., 35 (Cr.C.)

RE. VENKATA-KRISHNAYYA.

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because some of the accused tried along with others are acquitted on the merits, others should necessarily have the benefit of the finding of the Appellate Court.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Abdur Rahim, Mr. Justice Oldfield, Mr. Justice Srinivasa Ayyangar and Mr. Justice Phillips.

1916. September 13 and 25 and November 27 and 30.

KUNHALLOOR PUTHIA VEETTIL RAYARAPPA ATIOTI (FIRST DEFENDANT'S LEGAL REPRESENTATIVE), APPELLANT,

v.

VATHUKOILOTH PARKUM PUNISSERI KELAPPA KURUP AND THREE OTHERS (PLAINTIFFS NOS. 1 AND 2 AND DEFENDANTS NOS. 12 AND 58), RESPONDENTS. *

Malabar compensation for Tenants' Improvements Act (Madras Act I of 1900), sec. 19—Claim, subsequent to Act—Contract before the Act fixing rate of compensation, enforceability of.

Contracts entered into between a Malabar tenant and his landlord before the 1st January 1886, according to which compensation is payable at certain rates therein specified are valid and binding, whether the rates are more or less favourable to either party than the rates prescribed by the Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900); and when the question of the rate of compensation comes up for determination at a date after the introduction of the Act, it is not open to either party to the contract to elect to have the rates fixed according to the Act in preference to the rates mentioned in the contract.

Koshikot Sreemana Vikraman v. *Modathil Ananta Patter* (1911) I.L.R., 34 Mad., 61, *Paru Amma* v. *Kunhikandan* (1913) I.L.R., 36 Mad., 410 and *Kochu Rabia* v. *Abdurahman* (1915) I.L.R., 38 Mad., 589, overruled.

SECOND APPEAL against the decree of D. RAGHAVENDRA RAO, the Subordinate Judge of North Malabar, in Appeal No. 370 of 1912, preferred against the decree of L. R. ANANTANARAYANA AYYAR, the District Munsif of Badagara, in Original Suit No. 714 of 1910.

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* Second Appeal No. 838 of 1914 (F.B.).