

1879

EMPRESS OF
INDIA
v.
THOMPSON.

trate and committed to the Sessions Court, by which the accused was convicted and sentenced to one year's rigorous imprisonment. He appealed to the High Court against the conviction and sentence. After the conviction the husband and wife had been living together, and the husband at the hearing of the appeal asked permission of the Court to be allowed to compound the offence.

Mr. *Leach*, for the prisoner.

The judgment of the Court, so far as it is necessary for the purposes of this report, was as follows :

OLDFIELD, J.—Since the conviction by the Sessions Judge the complainant has taken his wife back to live with him, and has asked this Court to be allowed to compound the offence, a sanction which cannot be given at this stage of the proceedings, but looking to the existing relations between the parties and the fact that the prisoner Thompson has been in custody since the 5th May, the Court is of opinion that the punishment already undergone will suffice, and his release is directed.

Appeal allowed.

FULL BENCH.

1879
September 2.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.

EMPRESS OF INDIA v. MANGU AND OTHERS.

Act X of 1872 (Criminal Procedure Code), ss 272, 297—Arrest pending Appeal.

When an appeal has been preferred under s. 272 of Act X of 1872 the High Court may order the accused to be arrested pending the appeal.

ONE Mangu and six others had been tried on charges of culpable homicide, not amounting to murder, and voluntarily causing grievous hurt, by the Sessions Judge of Saháranpur and acquitted. The Local Government appealed to the High Court against the judgment of acquittal. After the admission of the appeal, the Junior Government Pleader applied for the arrest of the accused pending the appeal. The application was made to Straight, J., who referred the same to the Full Bench of the Court for disposal.

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*), in support of his application, referred to *Queen v. Gobind Tewari* (1). He further contended that the arrest sought for was only as a means to compel the attendance of the persons accused before the Court. The admission of the appeal revives the charge.

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The following judgments were delivered by the Full Bench :

STUART, C. J.—I concur in the opinion expressed by Mr. Justice Oldfield. I also agree with Mr. Justice Straight in holding that under s. 297 of the Criminal Procedure Code the re-arrest of the accused for the purpose of the appeal may be made.

SPANKIE, J.—On the point submitted to us, I accept the ruling in *Queen v. Gobind Tewari* (1), and approve the argument of the Legal Remembrancer in support of his contention that the Court had power to order the arrest of the accused. I observed at the hearing of argument in this case that if the contention quoted in the case referred to above could not be maintained, the High Court, under s. 297 of the Criminal Procedure Code, in any case coming to its knowledge, might, if it appeared that there had been a material error in any judicial proceeding of any Court subordinate to it, pass such judgment, sentence or order thereon, as it thought fit. It is not provided that the order passed should be final, and it might be one preliminary to a judgment in appeal. I do not, however, insist upon this view. I may observe that the draft Bill of the Criminal Code as amended—s. 427—expressly gives the power to the High Court to order the arrest of the accused person when an appeal is presented to it under s. 417, which corresponds with s. 272 of the current Code, except as to this power of arrest. The ruling, too, of the Calcutta Court referred to above (1) is cited as the marginal note to s. 427, and the proposed section is the same as para. 3 of s. 168 of Act IV of 1877, “The Presidency Magistrates Act,” by which the High Court may order the accused person to be arrested, committed to prison, or held to bail, when the public prosecutor appeals on behalf of the Local Government against an acquittal, dismissal, or discharge.

OLDFIELD, J.—I concur in the view taken by the learned Judges of the Calcutta High Court in *Queen v. Gobind Tewari* and others (1).

(1) I L. R., 1 Calc., 281.

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The admission of an appeal revives the proceedings against the accused person who has been acquitted, and the Appellate Court, which has power, under s. 272 of the Criminal Procedure Code, to pass such judgment, sentence or order, as may be warranted by law, can, I apprehend, under the powers so conferred, compel the appearance of the accused person before it, and order his arrest.

STRAIGHT, J.—At the hearing of this reference I entertained some doubt as to the power of this Court, upon the admission of an appeal under s. 272 of the Criminal Procedure Code, to order the re-arrest of the person or persons who had been acquitted. I am not altogether clear upon this point now, despite the reasoning of the case (1) quoted by Mr. Justice Oldfield, but I may refrain from coming to any determinate opinion as to that, seeing that under the proposed new Code of Criminal Procedure such difficulty cannot recur. Moreover, I think, that under s. 297, it having come to the notice of this Court that the accused were improperly discharged, an order may be issued for their arrest. Let the Magistrate, therefore, arrest the accused, and keep them in custody till the appeal is disposed of.

Application allowed

APPELLATE CIVIL.

1879
July 8.

Before Mr. Justice Oldfield and Mr. Justice Straight.

THAMMAN SINGH (PLAINTIFF) v. GANGA RAM AND OTHERS (DEFENDANTS)*

Decree—What it is to contain—Act X of 1877 (Civil Procedure Code), s. 206.

The plaintiff sued on a bond in which real property was hypothecated. In his claim the property hypothecated was detailed, and the property itself was impleaded as a defendant, and he obtained a decree in the following terms: "Decree for plaintiff in favour of his claim and costs against defendant" Held that the decree was to be regarded as simply for money and not for enforcement of lien.

THIS was a suit by the plaintiff for possession of one biswa zemindari share in mauza Kaili, in pargana Badaun, by setting aside

* Second Appeal, No. 115 of 1879, from a decree of Maulvi Zain-ul-ab-din, Subordinate Judge of Shahjahanpur, dated the 14th November, 1878, affirming a decree of Rai Raghu Nath Sahai, Munsif of Eastern Badaun, dated the 5th August, 1878.

(1) I. L. R., 1 Calc., 281.