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THE MAT-  
TER OF THE  
PETITION OF  
MR DAYAL.

the Code. This subordination will not of course enable the Sessions Court to exercise any powers over the Magistrate's Court other than those allowed by the Code. The learned Judges who decided *Imperatrix v. Padmanabh Pai* (1), and who have taken a contrary view to the one I have expressed, seem to consider that the Legislature intended that the sanction contemplated should be given by the Court before which the offence was committed or by the Appellate Court or the High Court, in fact that the Legislature intended to recognise a subordination of the Magistrates' Courts to the Sessions Court, within the meaning of s. 468, but they consider that, in face of the express provisions in s. 37 applied to s. 468, they cannot give effect to a possible intention of the Legislature. For my part, I think that the law as it stands and the intention of the Legislature are not irreconcilable.

My answer to the reference is that the Sessions Court has power under s. 468 to sanction the prosecution.

## APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Spinkie.

AHMAD BAKHSH (DEBENDANT) v. GOBINDI (PLAINTIFF).\*

Act VIII of 1871 (*Registration Act*), s. 17—*Mortgage—Registration*.

The obligors of a bond for the payment of money charging land agreed to pay the principal amount, Rs. 93, within six months after the execution of the bond, and to pay interest every month on the principal amount at the rate of two per cent., and that in the event of default of payment of the interest in any month, the whole amount mentioned in the bond should become due at once. There was no stipulation preventing the obligors from repaying the loan at any time within the six months after which it was reclaimable. *Held* that the only amount certainly secured by the bond was the principal, and the bond did not therefore need to be registered (2).

THE facts of this case were as follows: In 1871 certain persons gave the plaintiff in this suit a bond for the payment of Rs. 75 by

\* Second Appeal, No. 1078 of 1879, from a decree of Maulvi Abdul Qayum Khan, Subordinate Judge of Agra, dated the 26th July, 1878, affirming a decree of Rai Laxmi Dhar, Munsif of Agra, dated the 8th June, 1878.

(1) I. L. R., 2 Bom 384.

(2) See also *Karan Singh v. Ram Lal*, I. L. R., 2 All, 96, where it was held that a bond for Rs. 63-8-0 payable

on demand with interest did not certainly secure Rs. 100, and its registration was therefore optional.

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instalments, without interest, within five years, which bond charged certain land with such payment. This bond did not need to be and was not registered. On the 11th January, 1874, the same persons gave Ahmad Bakhsh, the defendant in this suit, a bond for the payment of Rs. 99. In this bond, which was registered, the obligors agreed to pay the principal amount within six months from the date of the execution of the bond. They also agreed therein to pay interest on the principal amount every month at the rate of two per cent., and that if they failed to pay such interest in any month, the obligee should be at liberty to sue to recover "the entire amount mentioned in the bond," and they charged the same land with the payment of "the amount mentioned in the bond." On the 7th August, 1874, Ahmad Bakhsh obtained a decree on his bond which declared his lien on the land; and on the 24th November, 1876, the plaintiff in this suit obtained a decree on his bond declaring his lien on the land. On the 26th December, 1876, the land was attached in the execution of Ahmad Bakhsh's decree, and on the 15th April, 1877, it was attached in the execution of the decree of the plaintiff in this suit. On the 20th April, 1877, the land was sold by auction in the execution of these decrees, and was purchased by the plaintiff in this suit. The Court executing the decrees directed that the sale-proceeds should be paid to Ahmad Bakhsh as the creditor who had first attached the land. The present suit was brought by the plaintiff against Ahmad Bakhsh to recover the money so paid to him. The Court of first instance gave the plaintiff a decree, which the lower appellate Court, on appeal by the defendant, affirmed, holding, *inter alia*, that the registration of the defendant's bond was compulsory, and that consequently the fact that it was registered did not give it preference over the plaintiff's bond the registration of which was optional.

The defendant appealed to the High Court.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and Pandit *Ajudhia Nath*, for the appellant.

Munshi *Hanuman Parshad* and Mir *Zahur Husain*, for the respondent.

The judgment of the Court was delivered by

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PEARSON, J.—In the bond executed in favour of the defendant, appellant, there was no stipulation preventing the debtor from repaying the loan advanced to him at any time within the six months after which it was reclaimable. This being so, it cannot be said that any portion of the interest accruing on the principal was secured for certain, in the sense that it could be definitively calculated and taken into account at the date of the execution of the deed. The only amount certainly secured was the principal which was below Rs. 100. The bond did not therefore need to be registered; but having been registered is entitled to take effect against the unregistered bond executed in the plaintiff's favour. The property was moreover first attached by the defendant, appellant, who, for that reason as well as because his bond is registered, is entitled to preference over the plaintiff, respondent. We accordingly decree the appeal with costs of all Courts, reversing the decree of the lower Courts, and dismiss the suit.

*Appeal allowed.*

## FULL BENCH.

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

### EMPRESS OF INDIA v. SARMUKH SINGH.

*Act XI of 1872 (The Foreign Jurisdiction and Extradition Act), ss. 3, 9—Liability of Native Indian British Subject for offence committed in Cyprus—"Native State"—Act V of 1869 (Indian Articles of War), Articles 170, 171—Reference—Confirmation of Sentence of Death—Act X of 1872 (Criminal Procedure Code), ss. 288; 297—Division Court—Full Court.*

*Held* (STUART, C. J., dissenting) that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus while on service in such army, and who was accused of such offence at Agra, might, under s. 9 of Act XI of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State," in reference to Native Indian subjects of Her Majesty, within the meaning of that Act (1).

*Per* STUART, C. J.—The power of the Governor-General of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed.

(1) As to the power of the Governor-General in Council to legislate for Native Indian subjects of Her Majesty, see 32 and 33 Vic. c. 98, ss. 1 and 2.