

APPELLATE CRIMINAL.

1878
August 26.*Before Sir Robert Stuart, Kt, Chief Justice.*EMPRESS OF INDIA *v.* NADUA.*EMPRESS OF
INDIA
v.
NADUA.

Appeal by person convicted by Deputy Commissioner invested under s. 36 of Act X of 1872 (Criminal Procedure Code)—Act X of 1872 (Criminal Procedure Code), ss. 270, 271—High Court.

Quere.—Whether, where a person has been convicted by a Deputy Commissioner invested under s. 36 of Act X of 1872, and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to which such Deputy Commissioner is subordinate, and such sentence has been confirmed accordingly, an appeal lies to the High Court against such conviction and sentence.

ON the 17th June, 1878, one Nadua was convicted of a certain offence by Mr. J. Liston, Deputy Commissioner of Lalitpur, invested with the powers mentioned in s. 36 of the Code of Criminal Procedure, and was sentenced by the Deputy Commissioner to rigorous imprisonment for four years. This sentence was in accordance with the provisions of the same section of the Code, on the 26th June, 1878, confirmed by Mr. H. B. Webster, Commissioner of Jhānsi, and the Sessions Judge to whom the Deputy Commissioner of Lalitpur was subordinate.

On the 26th July, 1878, Nadua appealed to the High Court.

The following judgment was delivered by the Court:

STUART, C. J.—I doubt very much whether this appeal lies. The original trial took place before Mr. Liston, the Deputy Commissioner of Jhānsi, and, as directed by s. 36 of the Criminal Procedure Code, the sentence was confirmed by Mr. Webster, the Commissioner, who, by Resolution of the Government, North-Western Provinces, of 1862, has the powers of a Sessions Judge, and to whom Mr. Liston is subordinate. But neither s. 36 nor any other provision of the chapter, ch. iv, of which it forms part contains any thing respecting an appeal from such a conviction and sentence to this Court.

By s. 270 of the Code it is provided that any person convicted on a trial held by an officer invested with the powers described in s. 36 may appeal to the High Court, but that no appeal in such case shall lie to the Court of Session. This would apply to the present case if the procedure had stopped with the trial before Mr.

* Reported under the special orders of the Hon'ble the Chief Justice.

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Liston, the Deputy Commissioner ; but the peculiarity is that here the sentence was confirmed by the Commissioner, as it had to be by law, and it would seem anomalous to allow an appeal to the High Court from a conviction and sentence by an inferior Court like that of a Deputy Commissioner over the head of, and in fact ignoring what had been done by, the superior officer, the Commissioner. The last provision of s. 270 allows a sentence of an Assistant Sessions Judge to be appealed to the High Court, a provision which has obviously no application to such a case as this.

The only other section respecting appeals to the High Court on convictions on a criminal trial is s. 271, which provides that any person convicted on a trial held by a Sessions Judge may appeal to the High Court. But neither does this section apply to a case like the present, for here the trial was not by the Sessions Judge, but an inferior officer, and the Commissioner, who no doubt had the powers of a Sessions Judge, simply confirmed the sentence.

Under these circumstances I would have felt disposed to refer the case to a Full Bench with the question whether the appeal to this Court lies. But it would appear that the practice of this Court has been to entertain these appeals whether the sentence was confirmed by the Sessions Judge or not, and a list of cases, going over a period of three years, has been supplied me by the Office in which the appeals were entertained and apparently without objection. No such cases have come before myself, and the question does not appear to have been raised before any other Judge, the validity of the appeal having apparently been assumed. For myself I confess that I doubt the legality of the procedure. It may have been intended to allow an appeal to this Court in such a case as the present, but that intention does not in my opinion appear from the sections of the Code of Procedure to which I have referred. In deference, however, to the practice of the Court, or such practice as the Court has, tacitly at least, sanctioned, I refrain from making any order calling it in question, especially as such practice is on the side of the right of appeal in a criminal case, which I consider ought always, if possible, to be favoured.

In the present case the appeal is dismissed and the conviction and sentence affirmed.

Appeal dismissed.