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thing or given any directions about it; and there is, in my opinion, no sufficient material to warrant the inference of guilty knowledge on his part. So with regard to Amman, no property was found with him or produced through his instrumentality, and under these circumstances I think that both he and Ram Bakhsh ought to have been acquitted.

I dismiss the appeals of Baldeo, Mir Singh and Amir Bakhsh, but, allowing those of Ram Bakhsh and Amman, acquit them and direct that they be released.

CRIMINAL REVISIONAL.

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July 1.

Before Mr. Justice Brodhurst.

QUEEN-EMPRESS *v.* RAM NARAIN AND ANOTHER.

Appeal, summary rejection of—Judgment of Criminal Appellate Court—Criminal Procedure Code, ss. 367, 421, 424, 439—*High Court's powers of revision—Delay in applying for exercise.*

The powers conferred by s. 421 of the Criminal Procedure Code should be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under that section.

Where a Sessions Judge rejected an appeal summarily under s. 421 of the Code, by an order consisting merely of the words "appeal rejected," and an application for revision of such order was made to the High Court nearly nine months thereafter, on the ground that the Judge was wrong in rejecting the appeal without assigning his reasons for so doing,—*held* that this objection, if taken within a reasonable time, would have been valid, but as the application for revision was made with very great delay, the Court should not interfere.

THIS was an application for revision of an order of Mr. H. M. Bird, Joint Magistrate of Cawnpore, dated the 4th July, 1885, and of the order of Mr. W. Blennerhassett, Sessions Judge of Cawnpore, dated the 4th September, 1885, summarily rejecting, under s. 421 of the Criminal Procedure Code, an appeal from the Joint Magistrate's order. The facts of the case are stated in the judgment of the Court.

Pandit *Moti Lal*, for the applicants.

The *Government Pleader* (Munshi *Ram Prasad*), for the Crown.

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BRODHURST, J.—In this case Ram Narain and Ganeshi were convicted by the Joint Magistrate of Cawnpore under s. 342 of the Indian Penal Code, and were sentenced to pay fines of Rs. 200 and Rs. 100 respectively, or, in default of payment, to be rigorously imprisoned for three months. From these convictions and sentences, Ram Narain and Ganeshi each preferred an appeal. The Sessions Judge rejected the appeals summarily, his order, in each instance, consisting merely of the two words "appeal rejected."

Ram Narain and Ganeshi have now applied to this Court for revision of the orders of the lower Courts, and the 5th and last ground taken by them is "because the learned Sessions Judge was wrong in rejecting the appeal summarily without assigning his reasons for so doing."

This objection, if taken within a reasonable time, would, in my opinion, have been valid. The law, I consider, requires that a lower appellate Court in disposing of an appeal, and even in summarily rejecting an appeal under the provisions of s. 421 of the Criminal Procedure Code, should give reasons for so doing; and, so far as I am aware, no Criminal Appellate Court of these Provinces, other than that the proceedings of which are now objected to, is addicted to disposing of any appeal without giving reasons for doing so. It is laid down in s. 367, Chapter XXVI of the Criminal Procedure Code, that the judgment of a Criminal Court of original jurisdiction "shall contain the point or points for determination, the decision thereon, and the reasons for the decision;" and by s. 424 of the same Code—a section in the same chapter with s. 421, and only three sections after it—it is enacted that "the rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any appellate Court other than a High Court." The powers conferred by s. 421 of the Code should, I consider, be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under that section.

Under the circumstances stated above, I should have reversed the orders of the Sessions Judge, and should have directed him to

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re-hear the appeals and dispose of them in accordance with law, had I not found that the application for revision was made with very great delay, that is, after the expiration of nearly nine months from the date of the lower appellate Court's orders. On this ground, and also because I think that valid reasons might have been given for dismissing or rejecting the appeals, I decline to interfere in this revision case and reject the application.

Application rejected.

PRIVY COUNCIL.

P. C. *
1886
February 10.

MUHAMMAD ISMAIL KHAN (DEFENDANT) *v.* FIDAYAT-UN-NISSA AND OTHERS (PLAINTIFFS).

[On appeal from the High Court for the North-Western Provinces.]

Family custom—Wajib-ul-arz—Muhammadan Law—Appeal to Her Majesty in Council—Question of fact.

It having been alleged that an estate, by custom, descended to a single heir in the male line, the High Court, concurring with the Court of first instance, found that this custom had not been proved to prevail in the family.

On an appeal contesting this finding, it was argued, among other objections, that the High Court had not given sufficient effect to an entry in the *wajib-ul-arz* of a zamindari village, the principal one comprised in the family estate now in dispute; the last owner of that estate, who held all the shares in the village, having caused an entry to be made to the effect that his eldest son should be his sole heir, the others of the family being maintained.

Held that, though termed an entry in a *wajib-ul-arz*, the document was not entitled to the name, but was rather in the nature of a testamentary attempt to make a disposition contrary to the Muhamadan law of descent.

The appeal was not taken out of the rule as to the concurrent findings of two Courts, primary and appellate, on a question of fact.

APPEAL from a decree (21st April, 1881) of the High Court, confirming a decree (14th July, 1880) of the Subordinate Judge of Meerut.

Ghulam Ghaus Khan, of an ancient Biluch family in the Bulandshahr district, died in 1879, leaving one son, the appellant, and three daughters, the respondents, besides certain illegitimate children. Upon his death, his son took possession, and alleged a sole title to the inheritance by the custom of the family. Between the brother and the sisters, the question on this appeal was whether

* *Present:*—LORD BLACKBURN, LORD MONKSWELL, LORD HOBHOUSE, and SIR RICHARD COUCH.