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acquiescence in the sale from asserting his right. There remains the question, which formed the fourth issue in the Court below, namely—"What is the actual price of the property in dispute, and what sum has passed between the vendor and vendee, and whether any fraud has been practised on the sale-deed as regards consideration?"

The Court below did not determine these matters, having dismissed the suit on preliminary grounds. But this treatment of the case has not excluded evidence on these questions. All the evidence of the parties is on the record, and it is therefore incumbent on us to try this issue and decide it on the materials before us. The plaintiff tendered no evidence as to the actual value of the property or of the fraudulent exaggerations he imputed to the sale-deed. The defendants, on the other hand, gave evidence, which has not been questioned or contradicted, in support of the correctness and good faith of the recitals of the instrument of sale. This being so, we have no alternative but to determine the issue of price in favour of the respondents. The appellant therefore will get a decree, entitling him to purchase the shares sold in the villages mentioned above, on condition of his paying for them the sale-deed prices within thirty days from the date when this decree shall have been certified in the Court below. Failing to make such payment, his suit will stand dismissed.

The appeal thus stands decreed, with costs proportionate to the success of the parties respectively.

Appeal allowed.

CRIMINAL REVISIONAL.

1887,
January 15.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, and Mr. Justice Oldfield.

QUEEN-EMPRESS v. NARAIN.

Maintenance—Wife—Criminal Procedure Code, s 488—Breach of order for monthly allowance—Warrant for levying arrears for several months—Imprisonment for allowance remaining unpaid after execution of warrant—Act I of 1868 (General Clauses Act. s. 2 (18)—"Imprisonment."

Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding and arrears levied under a single warrant, the Magistrate, acting under

s. 488 of the Criminal Procedure Code, has no power to pass a heavier sentence in default than one month's imprisonment, as if the warrant only related to a single breach of the order.

Per EDGE, C. J.—S. 488 contemplates that a separate warrant should issue for each separate monthly breach of the order.

Per STRAIGHT, J.—The third paragraph of 488 ought to be strictly construed, and, as far as possible, construed in favour of the subject. Under the section, a condition precedent to the infliction of a term of imprisonment is the issue of a warrant in respect of each breach of the order directing maintenance, and where, after distress has been issued, *nulla bona* is the return. The section contemplates one warrant one punishment, and not a cumulative warrant and cumulative punishment.

Also *per* STRAIGHT, J.—With reference to s. 2, cl. (18), of the General Clauses Act (I) of 1868, "imprisonment" in s. 488 of the Criminal Procedure Code may be either simple or rigorous.

Per OLDFIELD, J.—A claim for accumulated arrears of maintenances arising under several breaches of order may be dealt with in one proceeding and arrears levied under a single warrant.

THIS was a reference under s. 438 of the Criminal Procedure Code by the Sessions Judge of Benares. It appeared that on the 10th April, 1882, one Narain was ordered, under s. 488 of the Code, to make and pay a monthly allowance of Rs. 2 for the maintenance of his wife. He took no steps to have this order set aside. In November, 1886, arrears of maintenance for seven months having become due, a warrant was issued against him, under the third paragraph of s. 488, by Mr. W. R. Partridge, the officiating Joint Magistrate of Benares, for levying the aggregate amount of such arrears. On the 18th November, 1886, the Joint Magistrate passed an order to the effect that arrears of maintenance for seven months having accrued, and nothing having been realized under the warrant, the defendant must be sentenced to one month's rigorous imprisonment in respect of each monthly breach of the order for maintenance, or in all to seven months' rigorous imprisonment.

The Sessions Judge of Benares, being of opinion that the Joint Magistrate's order was illegal, referred the case to the High Court for orders, with the following observations:—

"In a note under s. 488 in Prinsep's annotated edition of the Criminal Procedure Code, p. 456, I find it stated on the authority of certain rulings of the Madras High Court that, although fifteen months' arrears of maintenance might be levied by

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one warrant, yet only *one month's* imprisonment can be awarded in default of realization. The sum here concerned is only Rs. 14, and if a fine of that amount had been awarded, only two months' imprisonment would have been adjudged in case of failure to pay. But if the Joint Magistrate's order be legal, it is obvious that for failure to pay arrears of maintenance of his wife, a man might be subjected to very prolonged incarceration. Again, although the word 'imprisonment' is, under s. 488, without any qualification of 'simple' or 'rigorous,' I should think that only 'simple' imprisonment is contemplated. I would recommend that the said order be quashed."

The case came on for hearing before Straight, J., who directed that it should be laid for disposal before a Division Bench.

EDGE, C. J.—I am of opinion that the principle enunciated in the ruling reported in the Madras High Court Reports, Vol. 6, p. xxiii (Appendix), is applicable to a case arising under s. 488 of the present Criminal Procedure Code. In my opinion the section contemplates that a separate warrant should issue for each separate monthly default, and where that is done, the maximum punishment can be one month's imprisonment. If a warrant is issued for an accumulation of arrears for several months, the Magistrate has no power to pass a greater sentence in such a case than if the warrant in that case only related to one particular breach. To hold otherwise would raise a very great difficulty in regard to the manner in which the amount of punishment would have to be arrived at. For instance, an order is made for the payment of Rs. 10 monthly, and default is made for six months, from January to June. On this a warrant is issued for Rs. 60 arrears and returned by levy of Rs. 30. It would be difficult to say how the Magistrate should ascertain for which month's default he was to inflict punishment—whether he was to spread the payment over six months, or whether he was to apply it to three months; and, if so, whether in discharge of the first three months, or the last three months, or the intermediate three months. I am of opinion that the regular proceeding is that only one warrant should issue for each separate monthly breach, and that a Magistrate cannot inflict a greater punishment than one month on each such occasion.

STRAIGHT, J.—I am of the same opinion. It appears to me that the provisions contained in the third paragraph of s. 488 of the Criminal Procedure Code, being distinctly of a penal character, ought to be strictly construed, and, as far as possible, construed in favour of the subject. As I interpret that section, a condition precedent to the infliction of a term of imprisonment is the issue of a warrant in respect of each breach of the order directing maintenance, and where, after distress has been issued, *nulla bona* is the return. I am borne out in this view by the language of the latter portion of the section, which says that the punishment which is to be inflicted under this section is to be inflicted in respect of the “whole or any part of each month’s allowance remaining unpaid after the execution of the warrant.” That is to say, a warrant shall be issued in respect of each separate individual breach of the order of maintenance. I am not prepared to say, having regard to the ruling of the Madras High Court, that if by an informality one warrant may have been issued in respect of several breaches, and it appears that after the issue of that warrant distress has been made and there is still money unpaid by the party against whom the order has been made, it might not be within the competence of the Magistrate to inflict a sentence of imprisonment. But that sentence would have to be regarded as applicable for a single breach, and could only extend to one month. But, in my opinion, the section contemplates one warrant, one punishment, and does not contemplate a cumulative warrant and cumulative punishment. I think, therefore, that in the present case the proper course will be to direct that the term of imprisonment ordered by the Magistrate be reduced to one month’s simple imprisonment. Looking to the terms of s. 2, cl. 18 of the General Clauses Act, “imprisonment” in s. 488 may be either simple or rigorous.

OLDFIELD, J.—I think that a claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding and arrears be levied under a single warrant. At the same time I quite concur in the opinion expressed, that, where this is done, the term of imprisonment inflicted in default must be limited to a term of one month.

Sentence reduced.