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REFERENCE UNDER S. 28 OF ACT No. VII OF 1870.

means follows that it is an order having the force of a decree. It certainly is not a decree. It differs from a decree in many essentials and attributes. Section 166 certainly allows it to be enforced in the manner in which decrees of the winding up Court made in any suit pending therein may be enforced. But this is merely a provision as to the procedure which may be observed in enforcing the order. The mode in which an order may be enforced is not necessarily an indication or a criterion of the nature of the order. There is a great difference and no inter-connection between the force of a decree and the method of enforcing it. I have been unable to find any authority as to the meaning of the words 'force of a decree' used in art. 11 of the 2nd schedule of the Court-fees Act. In the case of *Jamsang Devabhai* v. *Goyabhai Kikabhai* (1), which was a case of a second appeal to the High Court in a question involving a right to partition, it was held, at page 412, that as the appeal was a 'miscellaneous appeal' arising from an order and not from a decree a Court-fee of Rs. 2 was sufficient. The same principle would *primâ facie* apply to the present case. Further, as the Court-fees Act is a fiscal enactment, it is one whose provisions are to be construed strictly, and, whenever there is any ambiguity or doubt, in favor of the subject.

Now the words 'having the force of a decree' are not very intelligible. Their meaning has not been interpreted by any authority, and in the present cases I am not prepared to say that the orders in question have such force. I am therefore of opinion that the Rs. 2 Court-fee is sufficient.

FULL BENCH.

1895
February 8.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Banerji and Mr. Justice Aikman.

QUEEN-EMPRESS *v.* NANNHU.*

Criminal Procedure Code, s. 421—Summary rejection of appeal—Court to record reasons for rejection.

It is advisable that a Court when rejecting an appeal in a criminal case under the provisions of s. 421 of the Code of Criminal Procedure, 1882, should record

(1) I. L. R. 16 Bom 408.

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shortly its reasons for such rejection in view of the possibility of such order being challenged by an application for revision.

THIS case was referred to a Bench by an order of Aikman, J., of the 26th of January 1895—"with the view of having it determined whether a Sessions Judge or Magistrate, when acting as an Appellate Court, can reject an appeal without assigning any reason"

The facts of the case sufficiently appear from the judgment of the Court.

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

EDGE, C.J., BANERJI and AIKMAN, JJ.—This is an application to this Court to exercise its functions in criminal revision. The applicant was convicted of the offence punishable under s. 411 of the Indian Penal Code. The evidence appears to have been conclusive that he was guilty of the offence of which he stood charged. He appealed against the conviction to the Sessions Judge; and the Sessions Judge rejected the appeal, this being the order made:—"Rejected summarily under s. 421, C. P. C." By s. 421, C. P. C., the Sessions Judge meant s 421 of the Code of Criminal Procedure, 1882.

There is absolutely no doubt that the appeal could not have succeeded. The man was properly convicted and sentenced.

The only question is one which is raised in the Court now and then, *viz.*, whether an order such as that made by the Sessions Judge is sufficient. It is quite plain from the last paragraph of s. 421 of the Code of Criminal Procedure, 1882, that the Appellate Court is not bound before rejecting under that section a criminal appeal to send for the record. Without deciding that when a Court acts under the first paragraph of s. 421 of the Code of Criminal Procedure, 1882, it is necessary for the Court to express its views of the case, beyond stating that it considers that there is no sufficient ground for interfering, we think it advisable for Courts of Session and Magistrates when acting as Appellate Courts to state shortly in their order the reason or reasons which influence them in coming to the conclusion that there is no sufficient ground for interfering

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in the case. We do not say that it is necessary to write a judgment in the form prescribed by s. 367 of the Code of Criminal Procedure, 1882, or anything like it. We only say that we think it is advisable for those Courts whose orders may be challenged by application in revision to record something which may be a guide for the Court acting in revision.

We dismiss this application.

Application dismissed.

APPELLATE CIVIL.

1895
January 24.

Before Mr. Justice Blair and Mr. Justice Burkitt.

RATTANJI (DECREE-HOLDER) *v.* HARI HAR DAT DUBE (JUDGMENT-DEBTOR.)*

Execution of decree—Attachment of immovable property—Order striking off application for execution but maintaining attachment—Appeal.

A decree-holder in execution of his decree applied for the sale of certain immovable property of his judgment-debtor attachment of which had been obtained before judgment; but on objection being made to the sale he took no further steps to complete the execution of the decree, and the Court struck off the execution-proceedings, maintaining the attachment. Against this order the decree-holder appealed. *Held* that, inasmuch as the order in question was not a judicial disposal of the application for sale and would not preclude the decree-holder from continuing the execution of his decree, an appeal from such order was superfluous and must be dismissed.

THE facts of this case are sufficiently stated in the judgment of the Court.

Pandit *Moti Lal Nehru*, for the appellant.

Mr. *T. Conlan*, Mr. *Abdul Majid* and Pandit *Sundar Lal*, for the respondent.

BLAIR and BURKITT, J.J.—In our opinion this appeal is quite unnecessary. On the statement of facts it appears that the predecessor in title of the appellant obtained in May 1890, a money decree against the late Rajah Hari Har Dat Dube. It further appears that under the provisions of s. 483 of the Code of Civil

* First Appeal No. 153 of 1891, from an order of Rai Anant Ram, Subordinate Judge of Jaunpur, dated the 13th June 1891.