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payment into Court on or before the 5th June 1895, of the sum of Rs. 98,989-12-0 with interest thereon at the rate of six per cent. per annum from the 19th March 1892 to date of payment, and that on such payment these defendants-appellants shall deliver up to the plaintiff, or to such person as he may appoint, all documents in their possession or power relating to the mortgaged property, and shall assign to the plaintiff the mortgage of the 11th February 1878, free from all incumbrances created by the defendants-appellants or any person claiming under them, or by those under whom they or any of them claim as mortgagees, and that if such payment be not made on or before the 5th June 1895, the plaintiff shall be absolutely debarred from all right to redeem these defendants-appellants or to sell any portion of the property mortgaged to them.

The defendants-appellants shall have their costs of this appeal and their costs in the Court below to be paid by the plaintiff.

Appeal decreed.

REVISIONAL CRIMINAL.

1894.
November 6.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.

QUEEN-EMPRESS *v.* ISHRI.

Criminal Procedure Code ss 106, 423—*Security to keep the peace—Appellate Court not competent to require such security—Sentence, powers of appellate Court in respect of.*

The Magistrate of a district acting as an appellate Court in criminal cases cannot make an order under s. 106 of the Code of Criminal Procedure. *Aslu* v. *The Queen-Empress* (1), and *Queen-Empress* v. *Lachman* (2) referred to.

Where a District Magistrate acting as an appellate Court in a Criminal case altered a sentence of four months' rigorous imprisonment to one of three months' rigorous imprisonment, but imposed a fine of Rs. 10 or in default a further term of six weeks' rigorous imprisonment; *held* that as the latter sentence might involve an enhancement of the former such sentence was in excess of the powers of the Magistrate having regard to s. 423 of the Code of Criminal Procedure.

This was a reference made under s. 438 of the Code of Criminal Procedure by the Sessions Judge of Agra. The facts of the case sufficiently appear from the judgment of the Court.

(1) I. L. R., 16 Calc., 779. (2) Weekly Notes 1890, p. 201.

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

EDGE, C.J. and BLAIR, J.—A Deputy Magistrate convicted Ishri and others of the offences punishable under ss. 225B and 342 of the Indian Penal Code, and for the offence under s. 225B he sentenced the accused to three months' rigorous imprisonment, and further he sentenced them to four months' rigorous imprisonment in respect of the offence under s. 342. They appealed. The appeal was heard by the District Magistrate of Agra. He maintained the convictions, but altered the sentences. He sentenced them to three months' rigorous imprisonment and a fine of ten rupees, or, in default, 6 weeks' rigorous imprisonment for the offence under s. 225B, and to three months' rigorous imprisonment and a fine of ten rupees, or, in default, 6 weeks' rigorous imprisonment for the offence under s. 342. He also ordered the accused to enter into their personal recognizances in Rs. 100 with two sureties in Rs. 50 each to keep the peace for one year, or, in default, to undergo simple imprisonment for one year. It has been rightly held by the High Court of Calcutta in *In re Asln* v. *The Queen-Empress* (1), and by this Court in *Queen-Empress* v. *Lachman* (2) that the Magistrate of a district when acting as an appellate Court in criminal cases cannot make an order under s. 106 of the Code of Criminal Procedure. Consequently the orders in respect to recognizances are bad, and, so far as the recognizances are concerned, they are quashed. The bonds, if given, are to be returned.

It appears to us that the Magistrate of the district exceeded his jurisdiction under s. 423 of the Code of Criminal Procedure in respect of the sentences under s. 225B. of the Indian Penal Code in this way. He maintained the sentence of three months' rigorous imprisonment under that section, and added to it a fine of ten rupees, or in default six weeks' rigorous imprisonment. That was clearly an enhancement of the sentence. The Magistrate also, in our opinion, enhanced the sentences passed under s. 342 of the Indian Penal Code. It is true that he reduced the sentence of four months' rigorous imprisonment to one of three months' rigorous imprison-

(1) I. L. R., 16 Calc., 779. (2) Weekly Notes 1890 p 20

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ment, but he added to the sentence a sentence of a fine of ten rupees, or in default six weeks' rigorous imprisonment. The result might be that, if the ten rupees were not paid, each of these men would have to undergo practically four months and two weeks' rigorous imprisonment instead of four months' rigorous imprisonment for the offence under s. 342. We set aside so much of the orders of the District Magistrate as related to the fines, and the fines, if paid, must be returned at once.

APPELLATE CIVIL.

1894
December 11.

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

DWARKA DAS (PLAINTIFF) *v.* KAMESHAR PRASAD AND ANOTHER (DEFENDANTS.)*

Civil Procedure Code, s. 283 - *Jurisdiction—Valuation of suits -Act No. XII of* 1887 (*Bengal, &c., Civil Courts Act*) *ss.* 19, 21—*Act No.* 1 *of* 1887 (*General Clauses Act*) *s.* 3, *cl.* (13).

When the only parties to a suit under s. 283 of Act No. XIV of 1882 are the execution-creditor or his representative on one side, as plaintiff or as defendant, and the claimant-objector or his representative on the other, and the sole question in the suit between such parties is the question whether the property attached in execution of the decree of the execution-creditor is or is not liable to be attached and sold in execution of the decree of the execution-creditor, the value of the suit, within the meaning of ss. 19 and 21 of Act No. XII of 1887, which, by cl. (13) of s. 3 of Act No. I of 1887, means "the amount or value of the subject matter of the suit," is the value of the property sought to be sold in execution of the decree, when the amount of the decree exceeds the value of the property, and the value of so much of the property sought to be sold as will on a sale satisfy the amount sought to be realized by the sale, when the value of the property attached exceeds the amount sought to be realized, and that in such latter case the amount which it is sought to realise by a sale under the decree may be taken as the value of that portion of the property the sale of which will theoretically, although possibly not in practice, be sufficient to satisfy the amount sought to be realised by a sale.

But when in a suit under s. 283 of Act No. XIV of 1882 the claimant-objector makes the judgment-debtor or his representative party as defendant to the suit, the property attached must be regarded as the subject matter of the suit, and the value of the suit, within the meaning of ss. 19 and 21 of Act No. XII of 1887

* First Appeal No. 291 of 1893, from a decree of Babu Nilmadhub Rai, Subordinate Judge of Benares, dated the 14th March 1893.