

who purposely went to an uninhabited and distant part of the village, a share in which was sold, and there in the presence of his couple of witnesses made a second demand under circumstances which would not make it likely that the demand would come to the ears of the vendee, would be making a *bonâ fide* and good demand according to the Muhammadan law. There is no doubt as to the *bonâ fides* of the demand in the present case. We dismiss this appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Aikman.

QUEEN-EMPRESS *v.* LACHMI KANT.

*Criminal Procedure Code, section 423 (b) (3)—Sentence, enhancement of—
Powers of appellate Court.*

Held that the alteration by an appellate Court of a sentence of a fine of Rs. 50 or in default two months' simple imprisonment to a sentence of six months' rigorous imprisonment was an enhancement of the sentence, and, as such, prohibited by section 423 of the Code of Criminal Procedure. *Queen-Empress v. Dansang Dada* (1) referred to.

THIS was a reference under section 438 of the Code of Criminal Procedure made by the Sessions Judge of Gorakhpur. A tahsildâr having powers of a Magistrate of the second class had sentenced the accused to a fine of Rs. 50 or in default to two months' simple imprisonment. On appeal the District Magistrate upheld the conviction, but altered the sentence to one of six months' rigorous imprisonment, being of opinion that the alteration of the sentence was one of form only and not of amount, and that the nature of the offence was such as rendered a punishment by fine only undesirable. On an application by the accused for revision of the District Magistrate's order the Sessions Judge came to the conclusion that the sentence passed by the Magistrate of the district was illegal with regard to section 423 of the Code of Criminal Procedure, and referred the matter to the High Court.

The Public Prosecutor (Mr. *E. Chamier*) in support of the reference.

(1) I. L. R., 18 Bom., 751.

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KULSUM BIBI

o.

FAQIR
MUHAMMAD
KHAN.

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March 7.

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QUEEN EM-
PRESS
v.
LACHMI
KANT.

AIKMAN, J.—This case has very properly been reported to this Court by the learned Sessions Judge of Gorakhpur. The following are the facts. One Lachmi Kant was convicted by a Magistrate of the second class of the offence of voluntarily causing hurt, and sentenced under the provisions of section 323 of the Indian Penal Code to pay a fine of Rs. 50, or in default to undergo two months' simple imprisonment. Lachmi Kant appealed to the District Magistrate, who upheld the conviction, but altered the sentence of fine to one of six months' rigorous imprisonment. The District Magistrate endeavours to defend his action by stating that all that he did was to change the "form" of punishment. There cannot be the slightest doubt that the action of the District Magistrate was in contravention of the provision contained in section 423 (b) (3) of the Code of Criminal Procedure, which provides that "an Appellate Court may alter the nature of the sentence, but not so as to enhance the same." I have no hesitation in holding that the alteration made by the District Magistrate was in this case an enhancement of the sentence. In the case *Queen-Empress v. Dansang Dada* (1) it was held that the action of a Sessions Judge, who on appeal altered a sentence of Rs. 51 fine to a sentence of rigorous imprisonment for one month, was illegal. This is a more glaring case of enhancement. I set aside the order of the District Magistrate in regard to the sentence passed on Lachmi Kant, and restore the sentence imposed by the Magistrate of the second class.

APPELLATE CIVIL.

Before Mr. Justice Aikman.

TILAKDHARI RAI AND ANOTHER (DEFENDANTS) v. SOGHEA BIBI (PLAINTIFF).

Act No. XII of 1881 (N. W. P. Rent Act), section 189—Appeal—Suit to recover arrears of revenue.

The term "rent," as used in section 189 of Act No. XII of 1881, cannot be extended so as to include revenue.

Second Appeal No. 217 of 1895 from a decree of W. F. Wells, Esq., District Judge of Ghazipur, dated the 1st December 1894, modifying a decree of W. Lamb, Esq., Collector of Ghazipur, dated the 20th April 1894.

(1) I. L. R., 18 Bom., 751.

1896
March 9.