

1895

DWARAKA DAS

v.

SANT

BAHSH.

favorable construction which would entitle us to treat it as substantive evidence in this case, and not to exclude it as evidence which was inadmissible. There is no reason to suppose that Ajudhia was speaking falsely. He is corroborated by Balbhaddar, and he is corroborated also by the entries in the books of his firm, which are relevant, those books having been properly kept in the ordinary course of business.

We do not believe the evidence for the defendants.

We dismiss this appeal with costs. The plaintiffs have filed objections. They objected to the view which the Judge took of the truthfulness of some of their witnesses. That did not form a ground of objection under section 561 of the Code of Civil Procedure, as it did not go to any part of the case upon which they had not succeeded. The other ground of objection which was filed, was as to the disallowance of their costs in the Court below. We will not interfere with the discretion of the District Judge. The plaintiffs came into Court with apparently a true case, but determined to back that true case up by perjured evidence. In this Court their perjured evidence very nearly induced us to discredit their whole case. We disallow the objections with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1895
November 26.

Before Mr. Justice Aikman.

QUEEN-EMPRESS v. PUNNA AND ANOTHER.

Criminal Procedure Code, s. 560—Order for imprisonment in default of payment of compensation.

Although compensation awarded under section 560 of the Code of Criminal Procedure is recoverable as if it were a fine, it is not competent to a Magistrate immediately upon ordering a complainant to pay compensation to direct that he should in default be sentenced to imprisonment.

THIS was a reference under section 438 of the Code of Criminal Procedure made by the Officiating Sessions Judge of Mainpuri. The facts of the case sufficiently appear from the judgment of Aikman, J.

AIKMAN, J.—This is a case reported by the learned Sessions Judge of Mainpuri for the orders of this Court. One Sham Lal brought a charge of theft against two men, Punna and Ruma. The charge was inquired into by Syed Mustafa, a Magistrate of the first class. The Magistrate came to the conclusion that the charge was vexatious, and, under section 560 of the Code of Criminal Procedure, ordered the complainant Sham Lal to pay Rs. 50 as compensation to each of the accused, or, in default, to undergo one month's simple imprisonment. The compensation not having been paid at once, the complainant was forthwith committed to jail. Sub-section (2) of section 560 of the Code of Criminal Procedure lays down that compensation of which a Magistrate may order payment under sub-section (1) shall be recoverable as if it were a fine, *i.e.*, by issue of a warrant for the levy thereof by distress and sale of any movable property belonging to the person ordered to pay the compensation, and provides that, if it cannot be recovered, the imprisonment to be awarded shall be simple and shall not exceed 30 days. In my opinion in sub-section (2) the words "if it cannot be recovered" presuppose that before imprisonment is awarded an attempt must have been made to recover the money in the manner prescribed by section 386 of the Code of Criminal Procedure. A Magistrate is not authorised immediately on ordering a complainant to pay compensation to direct that he should in default be sentenced to imprisonment. The order of the Magistrate sentencing the complainant Sham Lal to one month's simple imprisonment was under the circumstance illegal and is hereby set aside. It appears that the complainant was released after detention of one week on his filing security for payment of the compensation awarded, so no further order is necessary.

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QUEEN-
EMPRESS
v.
PUNNA.