

THE
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FULL BENCH.

1897
February 2.

Before Mr. Justice Knox, Mr. Justice Burkitt and Mr. Justice Aikman.
QUEEN-EMPRESS v. ISHRI.*

*Criminal Procedure Code, sections 35 and 367—Concurrent sentences not
authorised by the Code.*

There is no provision in the Code of Criminal Procedure by which a Court is empowered, on convicting an accused person of two or more offences at the same time, to direct that the sentences imposed in respect of such offences shall run concurrently.

THIS case was referred to a Bench at the instance of Aikman, J., in view of the rulings of the Court in *Queen-Empress v. Wazir Jan* (1) and *Queen-Empress v. Dalip* (2). The facts of the case, so far as they are necessary for the purposes of this report, appear from the order of the Court.

KNOX, BURKITT and AIKMAN, JJ.—This case was called for on a perusal of the Sessions statement of the Bareilly District for the month of October 1896. The Sessions Judge had convicted an accused person of separate offences falling under sections 420, 467 and 471 of the Indian Penal Code. For each offence he sentenced the accused to suffer rigorous imprisonment for three months and directed that the sentences should run concurrently. The passing of concurrent sentences is nowhere authorised by the Code of Criminal Procedure. Section 35 of that Code provides that when a person is convicted at one trial of two or more distinct offences, the Court may sentence him for such offences to separate terms of imprisonment, but provides

* Criminal Revision No. 38 of 1897.

(1) I. L. R., 10 All., 53.

(2) I. L. R., 18 All., 246.

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that the separate terms of imprisonment shall commence one after the expiration of the other in such order as the Court may direct. These words show that the passing of concurrent sentences was not in the contemplation of the Legislature for cases in which convictions take place at one trial. Section 397 of the Code provides that in case of a person already undergoing a sentence of imprisonment and such person being sentenced to another term of imprisonment, such latter imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced. We cannot but regret that a power to pass concurrent sentences has not been conferred by the Code. Numerous cases occur to us in which such a power would be very salutary. As the law at present stands, we must hold that the concurrent sentences passed are illegal. We accordingly set aside the sentences passed in this case, and direct that for each offence the accused suffer rigorous imprisonment for a term of one month. These terms of imprisonment will run consecutively from the date of the original conviction. Let the papers be returned.

1897
July 6.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

NABBU KHAN (PLAINTIFF) v. SITA (DEFENDANT).*

Civil Procedure Code, sections 440 et seqq.—Lunatic—Act No. XXXV of 1858—Lunatic, not adjudged to be so, may sue through a next friend or defend through a guardian ad litem.

The provisions of Chapter XXXI of the Code of Civil Procedure are not exhaustive, and where a person is admitted or has been found to be of unsound mind, although he has not been adjudged to be so under Act No. XXXV of 1858, or by any other law for the time being in force, he should, if a plaintiff, be allowed to sue through his next friend, and the Court should appoint a guardian *ad litem* where he is a defendant. *Porter v. Porter (1), Venkat-*

* Second Appeal No. 202 of 1895 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 4th December 1894, reversing a decree of Syed Abdur Razzak, Munsif of Koil, dated the 5th June 1894.