husband, otherwise ineligible, in consideration of a benefit secured to themselves, an agreement by which such benefit is secured is, in our opinion, opposed to public policy and ought not to be enforced. The present case is a case of that description. From the statements made in the plaint, it is clear that the reason for the execution of the agreement on which the plaintiff relies was that the defendant was advanced in years, that his brother had been married out of the brotherhood and that in consequence no member of the brotherhood of any standing would consent to give his daughter in marriage to the defendant. The plaintiff adds that she and her husband were poor, and that they gave their daughter in marriage to the defendant because the latter agreed to maintain them and give them an allowance of Rs. 4 a month. On the plaintiff's own showing, therefore, she made the marriage of her daughter a source of gain to herself, and had no regard for the happiness and welfare of the girl. An agreement executed under such circumstances is, we think, opposed to public policy and should not be given effect to. We therefore allow the appeal, set aside the decree of the Courts below and dismiss the suit, but, having regard to the defendant's conduct, we direct that he do bear his own costs in all Courts.

Appeal decreed.

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BALDEO SAHAI v. JUMNA KUNWAR.

REVISIONAL CRIMINAL.

1901 *August* 10.

Before Mr. Justice Banerji.

KING-EMPEROR *v.* SAGWA.*

Act No. XLV of 1860 *(Indian Penal Code), section* 70—*Criminal Procedure Code, section* 423—*Alteration of sentence in appeal—Enhancement.*

A Magistrate on a conviction under section 420 of the Indian Penal Code, sentenced the accused to six months' rigorous imprisonment. On appeal the Sessions Judge reduced the substantive term of imprisonment to four months, but imposed a fine of one hundred rupees, or in default two months' further rigorous imprisonment. *Held*, that inasmuch as, even after the two months' imprisonment imposed in default of payment of the fine had been served, the fine could still be exacted, the latter sentence amounted to an enhancement of the former. *Queen* v. *Modoosoodun Day* (1), *Rachal Raja* v. *Kirode*

* Criminal Revision No. 486 of 1901.

(1) (1865) 3. W. R., Cr. R., 61.

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Pershad Dutt (1), and *Empress* v. *Meda* (2) referred to. *Queen-Empress* v. *Chagan Jagannath* (3) dissented from.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Gulzari Lal*, for the applicant.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

BANERJI, J.—The applicant Sagwa was convicted by a Magistrate of the first class of the offence punishable under section 420 of the Indian Penal Code, and sentenced to six months' rigorous imprisonment. Upon appeal the Additional Sessions Judge upheld the conviction, but altered the sentence to one of four months' rigorous imprisonment and a fine of Rs. 100, or in default of payment two months' further rigorous imprisonment. It is contended that this was an enhancement of the sentence, and was beyond the powers conferred on an appellate Court by section 423 of the Code of Criminal Procedure. In my opinion this contention is valid. It is true that the total term of imprisonment, which the accused would have had to undergo if he failed to pay the fine, did not exceed the term of imprisonment imposed by the Magistrate, but regard must be had to the fact that under section 70 of the Indian Penal Code, the amount of the fine may be levied at any time within six years after the passing of the sentence. It would be leviable even after the accused has undergone the imprisonment imposed in default of payment—see *Queen* v. *Modoosoodun Day* (4). Such imprisonment is not a discharge or satisfaction of the fine but is imposed as a punishment for non-payment. In *Queen-Empress* v. *Chagan Jagannath* (3), to which reference was made in the argument, the learned Judges appear to have been of opinion that if the total term of imprisonment, including that imposed for default in payment of the fine, was not in excess of the term of imprisonment imposed by the Magistrate, that did not amount to an enhancement, and this also seems to have been the view of Mr. Justice Shephard in the case cited in that judgment. With great deference I am unable to agree

(1) (1899) I. L. R., 27 Calc., 175.
(2) Weekly Notes, 1887, p. 100.
(3) (1898) I. L. R., 23 Bom., 439.
(4) (1865) 3 W. R., Cr. R., 61.

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with this view, as it overlooks the provisions of section 70 of the Indian Penal Code, to which I have already referred. The question whether the sentence has been enhanced by the appellate Court, is a question of fact in each particular case, and must be determined with reference to the facts of the case. This was held in *Rakhal Raja* v. *Kirode Pershad Dutt* (1), and this appears to have been the opinion of Brodhurst, J., in *Empress* v. *Meda* (2). In this case, if the alternative sentence of imprisonment in default of payment of fine be undergone by the accused, he would serve out the full term of imprisonment imposed by the Magistrate, and he would still be liable to have his property seized and sold for realization of the fine. The alteration of the sentence by the appellate Court therefore amounted to an enhancement of the sentence, and was consequently illegal. I allow the application, and alter the sentence to that of a fine of Rs. 20, in addition to the sentence of four months' rigorous imprisonment. As I am informed that the fine has already been realized, it is not necessary to pass an alternative sentence in default of payment.

APPELLATE CIVIL.

1901
July 13.

Before Mr. Justice Burkitt and Mr. Justice Chamier.

MURARI LAL (JUDGMENT-DEBTOR) v. UMRAO SINGH (DECREE-HOLDER).*

Civil Procedure Code, sections 36 *and* 37—*Act No. XV of* 1877 *(Indian Limitation Act), Sch. ii, Art.* 179(4)—*Execution of decree—Limitation—Application not in accordance with law—Application made by general attorney, decree-holder being at the time within the jurisdiction of the Court.*

Held, that an application in execution of a decree was not an application "in accordance with law" within the meaning of article 179 of the second schedule of the Indian Limitation Act, 1877, when it was made by a general attorney of the decree-holder at a time when the decree-holder himself was resident within the local limits of the jurisdiction of the Court executing the decree.

THE facts of this case sufficiently appear from the judgment of the Court.

* Second Appeal No. 156 of 1900 from a decree of Munshi Shankar Lal, Additional Subordinate Judge of Saharanpur, dated the 27th November 1899, reversing a decree of Pandit Kunwar Bahadur, Munsif of Muzaffarnagar, dated the 25th February 1899.

(1) (1899) I. L. R., 27 Calc., 175. (2) Weekly Notes, 1887, p. 100.