

1901

KING-  
EMPEROR  
v.  
MUHAMMAD  
HUSAIN.

As regards the offence under section 232, the point is a more difficult one. So far as the evidence goes, it would appear that the appellant has been in the habit of receiving what are called "kundedar" rupees. There is nothing to show on the record that any material part of the rupees has at any time been removed. For aught that appears, all that may have been done by the appellant is to remove the "kunda" and work up the face of the coin where the "kunda" had been. If this was all that he did, I am not prepared to hold without better evidence than there is in this case that any offence has been committed under section 232 of the Indian Penal Code. There is certainly room for doubt here as regards this portion of the case. I allow the appeal, find the appellant not guilty of any offence under section 232 of the Indian Penal Code, and set aside the sentence.

1901  
May 30.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Blair and Mr. Justice Burkitt.*

KING-EMPEROR v. KARIM-UD-DIN BEG.\*

*Criminal Procedure Code, sections 110, 123—Security for good behaviour.*

*—Term for which imprisonment in default of finding security should be ordered.*

Although it is within the competence of a Sessions Judge, acting under section 123(3) of the Code of Criminal Procedure, to direct that a person who has been ordered to give security shall, on failure to give security, be imprisoned for any term not exceeding three years, yet it is advisable that the term of imprisonment in default ordered under that section should always be the same as the period for which the security is directed to be given.

In this case Karim-ud-din Beg was ordered, under section 110, of the Code of Criminal Procedure, to find security for a term of three years. On the proceedings coming before the Sessions Judge for orders under section 123 of the Code, the Sessions Judge reduced the amount of security required, but not the term; and in default ordered that Karim-ud-din Beg should be rigorously imprisoned for eighteen months.

Against this order an application for revision was filed on behalf of Government, the objection urged being that the Sessions Judge having directed Karim-ud-din Beg to furnish security for

\*Criminal Revision, No. 256 of 1901.

a term of three years, should have directed that in default of furnishing security he should suffer imprisonment for the same period.

The Sessions Judge in answer to a notice issued by the High Court sent up a report, in which he submitted that there was nothing contrary to law in the order which he had passed, it being within his power to direct a person making default in finding security to suffer imprisonment for any period not exceeding three years. The learned Sessions Judge referred in support of his position to the case of *Queen-Empress v. Jafar* (1).

The Government Advocate (Mr. E. Chamier) appeared in support of the application.

Munshi *Haribans Sahai* for the opposite party.

The following order was passed :—

BLAIR and BURKITT, JJ.—We are not prepared at this moment to put a construction upon the words of section 123 of the Code of Criminal Procedure, to which our attention has been called, namely, the words “may pass such order on the case as it thinks fit.” But it is, in our opinion, absurd for a Court to order the detention of a person bound over under section 123 for a period less than that for which he is called upon to give security. Acting upon that view we enhance the period of rigorous imprisonment in this case from eighteen months to three years.

## APPELLATE CIVIL.

1901  
June 5.

*Before Mr. Justice Blair and Mr. Justice Aikman.*

MUHAMMAD AHMAD (DEFENDANT) v. MUHAMMAD SIRAJUDDIN

(PLAINTIFF).\*

*Act No VII of 1870 (Court Fees Act), section 7, cls. 5 and 6(c), 28—Suit undervalued—Power to extend time for payment of deficiency in Court fee—Civil Procedure Code, section 54—Limitation.*

A suit for pre-emption of zamindari property was filed one day before the expiry of the prescribed period of limitation. The plaint stated the profits of the property to be Rs. 8-4-0, and should therefore have borne Court fee stamps to the amount of the proper Court fee on Rs. 123-12-0; but the valuation

\* First Appeal No. 117 of 1900, from an order of Babu Nihal Chandra, Subordinate Judge of Shahjahanpur, dated the 13th June 1900.

(1) Weekly Notes, 1899, page 151.