

a suit for declaration. One of us, on the strength of the two cases last cited, held that the suit was within time, inasmuch as the proceedings of 1909 gave the plaintiffs a cause of action, whether the proceedings of 1901 gave them cause of action or not. The decision was confirmed in an appeal under the Letters Patent. In *Akbar Khan v. Turaban* (1) the name of the defendant had been entered in the revenue papers in respect of the property in 1895. A suit for declaration of title was brought in 1904 and the question of limitation was raised. On behalf of the plaintiffs it was contended that a fresh cause of action accrued to them in 1903 when the defendant objected to the correction of the *kherwat*. This Court held that the proceedings of 1903 did not constitute a fresh cause of action. They regarded the refusal to allow the entry to be corrected as a continuation of the original cause of action.

In the present case, notwithstanding the order of April, 1904, the plaintiffs remained in possession of the land without liability to pay rent therefor. It was not until rent was assessed in the proceedings of 1910 that they became liable to pay rent. It seems to us that the order of 1912 gave the plaintiffs an entirely fresh cause of action. That order was almost equivalent to a suit against them for rent of the land. On the authorities we think that the decision of the court below was correct. We dismiss this appeal with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr Justice Champier.*

EMPEROR v. KUNDAN AND OTHERS.\*

*Criminal Procedure Code, sections 118 and 123—Security for good behaviour—Imprisonment in default not to include solitary confinement*

1914  
May, 22.

The imprisonment which a person may be ordered to undergo in default of furnishing security for good behaviour cannot be made to include solitary confinement.

THIS was a reference by the Sessions Judge of Budaun in respect of an order passed by a magistrate of that district. The facts which gave rise to the reference sufficiently appear from the order of the Sessions Judge, which was as follows :—

\*Criminal Reference No. 351 of 1914.

(1) (1908) I. L. R., 31 All., 9.

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"The above three persons were asked to execute a bond of Rs. 200, with sureties of Rs. 200, for maintaining good behaviour, under section 110 of the Code of Criminal Procedure. The order of the Sub-Divisional Magistrate Mr. Sharafat-ullah Khan is in these terms:—"I confirm my order directing each of the accused to undergo rigorous imprisonment for one year, including solitary confinement for two months, unless bonds in Rs. 200, and sureties in Rs. 200, each are forthcoming."

"The jail authorities have referred the case to this Court regarding the order of solitary confinement. The order of solitary confinement is evidently a mistake. Section 123 of the Code of Criminal Procedure allows only imprisonment, simple or rigorous, as the case may be. It does not allow solitary confinement. The case is, therefore, submitted to the Hon'ble High Court with a recommendation that the order of solitary confinement be set aside. The explanation of Magistrate will now be taken and submitted. Meanwhile the order of solitary confinement will be suspended."

The following order was passed by—

CHAMIER, J.—In this case the Magistrate passed an order under section 118 of the Code of Criminal Procedure, and when the security demanded was not forthcoming directed that the persons concerned should be rigorously imprisoned for one year, of which two months would be spent in solitary confinement. He had no power to order solitary confinement in a case of this kind. So much of his order as directs that Kundan, Sumer Singh and Kallan Shah be kept in solitary confinement for two months is set aside,

*Order modified.*

*Before Mr. Justice Figgott.*

EMPEROR v. KUNDAN\*

*Criminal Procedure Code, sections 367 and 421—Appeal—Appeal summarily dismissed—How far court bound to record reasons for dismissal.*

A court of criminal appeal is not bound, when dismissing an appeal summarily under section 421 of the Code of Criminal Procedure, to write a judgement as defined in section 367 of the Code. It is, however, advisable that it should give reasons for rejecting the appeal in view of the possibility of its order being challenged by an application for revision.

*Queen Empress v. Warubai* (1) followed. *Rash Behari Das v. Balgopal Singh* (2), *Queen Empress v. Ram Narain* (3), *Queen Empress v. Nannhu* (4) and *Queen Empress v. Pandeh Bhat* (5) referred to.

\* Criminal Revision No. 237 of 1914 from an order of R. C. Hobart, Magistrate, First class, of Moradabad, dated the 24th of January, 1914.

(1) (1895) I.L.R., 20 Bom., 540.

(3) (1886) I.L.R., 8 All., 514.

(2) (1893) I.L.R., 21 Calc., 92.

(4) (1895) I.L.R., 17 All., 241.

(5) (1897) I.L.R., 19 All., 506.

1914  
May, 23.