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the surplus of the revenue which had been collected during the intervening three years. It seems to us that the intention of Government was to undo, so to speak, the act of confiscation and treat it as a nullity; to treat it, in fact, as though it had never occurred. In the circumstances above mentioned and after giving full consideration to the various authorities which have been cited before us by learned counsel on both sides, we disagree with the finding of the court below and we hold that the Rajaur *raj* reverted in 1818 to its original status as a joint ancestral estate and became re-impressed with all the incidents of such an estate.

* * * * *

In view of our finding that Raja Sanwal Singh devised the estate to his widow, the plaintiff's suit must fail. This appeal is accordingly dismissed with costs.

REVISIONAL CRIMINAL

Before Mr. Justice Niamat-ullah and Mr. Justice Ganga Nath

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EMPEROR *v.* BISHWANATH*

Criminal Procedure Code, section 423(2), 439(6)—Enhancement of sentence—Right of accused to show cause against the conviction—Extent of such right in cases of trial by jury—Questions of misdirection, or misunderstanding of law, only.

When an accused person, who has been convicted on the verdict of a jury, is called upon, under section 439 of the Criminal Procedure Code, to show cause why his sentence should not be enhanced, he is entitled by sub-section (6) to show cause against his conviction itself, but only so far as section 423(2) of the Code allows, and has not an unlimited right of impugning the conviction on the evidence. The combined effect of sections 439(6) and 423(2) is to entitle the accused to question the conviction by showing only that the Judge misdirected the jury or that the jury misunderstood the law laid down by the Judge in his charge.

*Criminal Revision No. 490 of 1936, by the Local Government, from an order of T. N. Mulla, Sessions Judge of Allahabad, dated the 21st of March, 1936.

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The Government Advocate (Mr. *Muhammad Ismail*) for the Crown.

Mr. *A. P. Dube*, for the opposite party.

NIAMAT-ULLAH and GANGA NATH, JJ.:—This is an application on behalf of the Crown for enhancement of sentence passed on Bishwanath by the learned Assistant Sessions Judge of Allahabad in a case in which Bishwanath was committed to his court to take his trial for an offence under section 19(*f*) of the Indian Arms Act. The trial was held with the aid of a jury, who returned a unanimous verdict of guilty.

The police received information to the effect that Bishwanath would be passing on an "ekka" on a certain day on the Canning Road. They took the precaution of securing the presence of two Magistrates, one stipendiary and the other honorary, at the time when Bishwanath was expected to drive on the Canning Road. Accordingly a party consisting of two police officers and two Magistrates lay in wait at a convenient spot on the Canning Road. Bishwanath was noticed approaching on an "ekka", which was stopped by the police, and a search of his person was made in the presence of the Magistrates. A revolver and a few cartridges were found concealed in the folds of his "dhoti". He was taken in custody and prosecuted for the offence of being in possession of an unlicensed revolver. The learned Assistant Sessions Judge sentenced him to one year's rigorous imprisonment under section 19(*f*) of the Indian Arms Act. He appealed to the court of the learned Sessions Judge, Allahabad, who upheld the conviction and sentence. The Local Government has moved this Court for enhancement of sentence.

The learned Government Advocate has argued before us that in case of a weapon like a revolver or pistol the sentence passed by the trial Judge was wholly inadequate. The learned counsel for Bishwanath claimed a right to open the case on facts and offered to show that the conviction itself was not justified by the evidence pro

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duced in the case. He relies on section 439(6) of the Criminal Procedure Code, which provides: "Nothwithstanding anything contained in this section, any convicted person, to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced, shall, in showing cause, be entitled also to show cause against his conviction." It is argued that the right to show cause against conviction is comprehensive enough to include a right to reopen the case on evidence and impugn the verdict of the jury. We are of opinion that the rule quoted above should be read with other provisions contained in the Code of Criminal Procedure, especially section 423(2), which lays down: "Nothing herein contained shall authorise the court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him." Section 418 of the same Code limits the right of appeal in cases of convictions based on verdicts of jury to matters of law only. We are clearly of opinion that section 439(6) of the Criminal Procedure Code entitles the person who has been called upon to show cause why his sentence should not be enhanced to show cause against his conviction only so far as section 423(2) of the Criminal Procedure Code allows. The combined effect of sections 439(6) and 423(2) is to entitle the accused to question the conviction by showing that the Judge misdirected the jury or that the jury misunderstood the law laid down by the Judge in his charge. To hold that section 439(6) confers an unlimited right of impugning the conviction would be to introduce the anomaly that a person convicted on the verdict of a jury can question the conviction only within the narrow limits laid down in section 423(2), but if he has to show cause against a motion for enhancement of sentence his right to question his conviction is very materially enlarged. We do not think that

this was the intention of the legislature, nor do we think that there is anything in section 439(6) read with other provisions of the Criminal Procedure Code which justifies the view contended for by the learned counsel for Bishwanath. Reliance is placed in this connection on *King-Emperor* v. *Bansgopal Singh* (1) decided by a Division Bench of this Court. It is true that in that case the learned Judges considered the evidence and examined the propriety of conviction, though the trial was with the aid of a jury. We find, however, that the question which has been directly raised before us was not raised in that case. In the present case the learned counsel for Bishwanath has expressly claimed a right to comment on the evidence, and the learned Government Advocate has questioned the right of Bishwanath to do so. We think that the case referred to is not an authority for the proposition contended for by the learned counsel for Bishwanath, and we are not at all certain that if the question had been raised before that Bench, as has been raised before us, they would have taken a different view from what we are inclined to take. We hold, therefore, that the learned counsel for Bishwanath is not entitled to question the propriety of the verdict of the jury, except within the limits laid down by section 423(2).

Learned counsel for Bishwanath attempted to show that the Assistant Sessions Judge did not draw the attention of the jury to certain aspects of the evidence in the case. We are not satisfied that there was any such omission on the part of the learned Assistant Sessions Judge as may vitiate the unanimous verdict of the jury.

The only question which we have to consider is whether the sentence of one year's rigorous imprisonment, passed by the learned Assistant Sessions Judge, was appropriate, having regard to all the circumstances of the case. If it had been the case of some other unlicensed weapon having been found in the possession of an accused person, a sentence of one year's rigorous imprisonment might well have been considered to be

(1) Cr. Rev. No. 523 of 1930, decided on 20th September, 1930.

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adequate. The case of pistol or revolver stands on a somewhat different footing. It is a dangerous weapon and can easily change hands without detection. The chances of a weapon of that kind falling into the hands of dangerous persons are not very remote. In these circumstances, we think that the learned Assistant Sessions Judge should have passed a severer sentence than one year's rigorous imprisonment. We think that a sentence of two years' rigorous imprisonment will meet the ends of justice. Accordingly we enhance the sentence to that extent.

APPELLATE CIVIL.

Before Sir Shah Muhammad Sulaiman, Chief Justice and Mr. Justice Bennet

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SHYAM SUNDAR LAL AND ANOTHER (PLAINTIFFS) *v.* DIN SHAH AND OTHERS (DEFENDANTS)*

Transfer of Property Act (IV of 1882), sections 53A, 105—Transfer of Property (Amendment) Act (XX of 1929), section 63(d)—Part performance—Operation of section re transactions prior to its coming into force—Retrospective effect—Section applicable to leases.

The provisions of section 53A of the Transfer of Property Act are applicable to a case where the suit is filed after the 1st of April, 1930, the date of coming into operation of that section, although the transaction was effected before that date.

Section 63 of the Transfer of Property (Amendment) Act, 1929, prevented only certain specified sections of the Act from having a retrospective effect; and as regards the other sections the provision amounted to this that where the transaction had taken place before the 1st of April, 1930, and an action in respect of it was actually pending on that date, these sections would not affect the rights of parties in such litigation. It followed that the legislature intended that where no such action was pending on the 1st of April, 1930, the provisions of these sections would be applicable even though the transactions came into existence prior to that date.

*Appeal No. 52 of 1935, under section 10 of the Letters Patent.