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the Deputy Commissioner was bad by reason of there not being any evidence on the record contradicting the case which the Deputy Commissioner thought to be false, and also of there having been no preliminary inquiry held. We do not think that it is necessary for the validity of an order under section 476 that there should be in the original proceedings such contradictory evidence on the record, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a rigid rule to that effect would simply introduce into the criminal procedure in this country a new stage as a matter of imperative necessity, and as we understand the case of *Khepu Nath Sikdar v. Grish Chander Mukerjee* (1) we do not think it was intended to introduce such practice as the words used would seem to convey. We do not think that such a practice is rendered imperative by the law, and it is not desirable that it should be necessarily, and in every case, introduced. We think, were this an order under section 476, we ought to follow the decision of Sir Richard Garth in *In the matter of Mutty Lall Ghose* (2). We thought it necessary to mention this, as section 476 was relied upon. We think that the rule must be discharged in the present case.

*Rule discharged.*

A. F. M. A. R.

## CRIMINAL REFERENCE.

*Before Mr. Justice Pigot and Mr. Justice Hill.*

THE QUEEN-EMPRESS v. SITA NATH MITRA.\*

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 Oct. 24.

*Fine, Levy of—Realization of fine after death of person fined—Moveable Property—Immoveable Property—Penal Code (Act XLV of 1860), s. 70—Criminal Procedure Code (Act XXV of 1861), s. 6—Criminal Procedure Code (Act X of 1882), s. 386.*

Where a person was fined under the Penal Code and died before the fine was paid, and the Magistrate ordered the fine to be realized by sale of

Criminal Reference No. 275 of 1892, made by J. Knox-Wright, Esq., Sessions Judge of Jessore, dated 24th September 1892, against the order passed by A. Earle, Esq., District Magistrate of Jessore, dated the 18th of June 1892.

(1) I. L. R., 16 Calc., 730

(2) I. L. R., 6 Calc., 308.

his joint moveable property, and that being found insufficient to cover the fine, his immovable property was also attached under the order, *held*, that the liability of the immovable property of the deceased could not be enforced by distress.

*Reg. v. Lallu Karwar* (1) followed.

Section 386 of the Criminal Procedure Code is not applicable to such a case.

THIS was a reference made by the Sessions Judge of Jessore under the provisions of section 438 of the Code of Criminal Procedure.

The facts of the case were as follows :—A man was fined Rs. 50 under the Penal Code. He died before the fine was paid. The Magistrate ordered the realization of the fine by attaching and selling his joint moveable property.

On the 18th May 1892 the Sessions Judge referred the case to the High Court for orders on the questions (*a*) whether the joint moveable property was saleable under section 386 of the Code of Criminal Procedure, and (*b*) whether the immovable property was saleable; and if so, under what section and what procedure.

The High Court (O'KINEALY and AMEER ALI, JJ.) on the 3rd June 1892 made the following order :—

“In regard to moveables we think the Magistrate can only attach moveables of which the deceased was sole owner. No question in regard to immovable property has as yet arisen, and this Court does not answer abstract questions of law that may never arise. When a question arises, and not till then, can any reference be made.”

The material portion of the present letter of reference was in the following terms :—

“The Magistrate first ordered the sale of the joint moveable property that had been attached (no other property was available). That property was not sufficient to cover the fine, and the High Court held that it could not be attached. The Magistrate upon receiving the order, passed another order directing the fine to be realized by attachment and sale of the immovable property. This immovable property has now been attached and will be sold.

“This order is illegal, so far as I am aware, inasmuch as there is no authority given in the law for the attachment and sale of immovable

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property. Section 386, Criminal Procedure Code, is not applicable to this case.

“Then as to the second point, the Calcutta High Court have held that although under the Code of Criminal Procedure only moveable property belonging to the offender is liable in satisfaction of a fine [see Criminal Letter of the High Court, dated the 19th September 1865 (1)], yet under the terms of section 70, Penal Code, *after* his death *any* property which would be legally liable for his debts would be liable to the payment of a fine remaining unpaid at his death; the restriction as to the distress and sale of moveable property continuing only during the lifetime of the offender. This view must be followed in Bengal no doubt; but even so the third question remains unsettled. I may note here that the Bombay High Court has refused to follow this view of the Calcutta High Court [*Reg. v. Lallu Karwar* (2)], holding that the law has provided for the distress and sale of moveable property only, and there is no way by which immoveable property can be made liable for a fine.

“There remains the third question—If immoveable property is liable for the payment of a fine, what is the procedure to be adopted? Is the summary procedure order, section 386, Criminal Procedure Code, applicable, or should Government bring a civil suit? So many points would occur where the question of the sale of immoveable property arises that I do not think section 386 would be applicable. It would require a regular suit to ascertain and define the respective rights of the offender and his co-sharers. I think these points are of great importance, and would therefore ask the High Court to pronounce a decision upon them. Meanwhile, as I consider the Magistrate’s action not according to law, I have directed that his proceedings be stayed until final orders are received.”

No one appeared on the reference.

The order of the Court (PIGOR and HILL, JJ.) was as follows:—

We do not understand the Criminal Letter of the High Court, dated the 19th September 1865 (1), to lay down that the liability of the immoveable property which is exacted by section 70 of the Penal Code can be enforced by distress under the Criminal Procedure Code. That question was not before the Court when the Letter was written, so far as can be judged.

The Letter is on a question as to the scope of the Criminal Procedure Code (Act XXV of 1861), section 6, and states that under that section only moveable property within the jurisdiction of the Magistrate is, in the lifetime of the offender, liable. This recognises the fact of the liability of immoveable property after the

(1) 4 W. R. Cr. Let., 6.

(2) 5 Bom. H. C., 63.

offendor's death under section 70, Penal Code, but it does not say expressly nor, we think, even by implication, how that liability is to be enforced.

We think we are free to follow the authority of *Reg. v. Lallu Karwar* (1) so far, at any rate, as that it cannot be enforced by distress. If no special form of remedy is provided for such a case, it follows that the normal remedy, that by suit, must be the only one. Section 386 does not of course apply to such a case as this.

The order of the District Magistrate must therefore be set aside and all proceedings under it, if any, set aside also.

*Order set aside.*

A. F. M. A. R.

*Before Mr. Justice Pigot and Mr. Justice Hill.*

BHARUT CHUNDER NATH v JABED ALI BISWAS.\*

*Compensation—Complainant—Complaint—Criminal Procedure Code (Act X of 1882), ss. 4, 250, 560—Act IV of 1891, s. 2—Penal Code (Act XLV of 1860), ss. 186.*

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Sept. 19.

Where a Civil Court peon was sent by a Munsif to attach certain property, and on the peon reporting that he had been obstructed in making the attachment, the Munsif sent the case to the Deputy Magistrate for investigation and trial, and the Deputy Magistrate summarily tried the accused under section 186 of the Penal Code, dismissed the case, and awarded compensation of Rs. 20 to the accused,

*Held*, that the award of compensation was illegal: the peon, though nominally the informant in the case, was not the real complainant, nor could the proceedings properly be said to have been instituted before the Deputy Magistrate on his information.

This case was referred by the Sessions Judge of Jessore, under the provisions of section 438 of the Criminal Procedure Code, in the following terms:—

"A Civil Court peon was sent by a Munsif to attach the property of a judgment-debtor. The peon reported to the Munsif that he had been

\* Criminal Reference No. 222 of 1892, made by J. Knox-Wight, Esq., Sessions Judge of Jessore, dated the 10th August 1892, against the order passed by M. K. Bose, the Deputy Magistrate of Bongong, dated the 4th July 1892.