

But giving all force to these considerations, they cannot see how that which should in reality form the basis of an independent suit against a separate party, for some act done by himself, can be introduced as a question to be tried in execution proceedings in another suit. Section 47 of the Act does not apply. If the added persons did commit trespasses, these were distinct ones, and not committed by them as representatives of the original defendant. To hold otherwise, would be to confuse the rights.

Considerations both of form and of substance are opposed to the order from which this appeal is brought.

Their Lordships will therefore humbly recommend His Majesty that this appeal should be allowed, and the decree of the High Court discharged and the decree of the Subordinate Judge restored, and that the appellant should have his costs before this Board and in the two Courts below.

Solicitors for appellant: *Watkins and Hunter*,

REVISIONAL CRIMINAL.

Before Jwala Prasad and Coutts, J.J.

OLAYET KHAN

v.

KING-EMPEROR.*

Code of Criminal Procedure 1898 (Act V of 1898), sections 423 and 439—revisional jurisdiction—appeal disposed of in unavoidable absence of appellant's representative—whether High Court has power to interfere.

The High Court has no power, in the exercise of its revisional jurisdiction under the Code of Criminal Procedure, 1898, to set aside an order of the lower appellate court merely

1922.

MAHARAJA
SIR
MANINDRA
CHANDRA
NANDI
v.
RAM LAL
BHAGAT.

1922.

April, 4.

* Criminal Revision No. 85 of 1922, against an order of W. H. Boyce, Esq., Sessions Judge of Manbhum-Sambalpur, dated the 10th February, 1922.

1922.

on the ground that the appellant's pleader or counsel was unavoidably prevented from being heard.

OLAYET
KHAN
v.
KING-
EMPEROR.

The facts of the case material to this report are stated in the judgment of the Court.

Hasan Imam, for the petitioner.

H. L. Nandkeolyar, Assistant Government Advocate, for the Crown.

JWALA PRASAD AND COUTTS, J. J.—This application appears to be incompetent. The appeal in the Court below was disposed of under section 423 of the Code of Criminal Procedure after "perusing the record" and considering the grounds of appeal. The appellant's Counsel could not be heard, inasmuch as he was prevented from being present in Court in time on account of the railway strike. The appeal was, therefore, disposed of on the merits, and in revision we can deal with it only under section 439 of the Code of Criminal Procedure, under which the petition before us has to be disposed of under section 423 of the Code. There is, therefore, no power in this Court to set aside the judgment of the Court below, merely upon the ground that the pleader or the Counsel on behalf of the petitioner was not heard in the Court below.

The application is, therefore, rejected.

Application rejected.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Adami, J.

1922.

SUDHANSU BALA HAZRA;

April, 11.

IN RE MISS.*

Appeal to His Majesty in Council—Legal Practitioners Act 1879 (XVIII of 1879), section 6, order under, refusing to enrol applicant as legal practitioner.

* Privy Council Appeal No. 6 of 1922.