

REVISIONAL CRIMINAL.

Before Jwala Prasad and Macpherson, JJ.

1926.

KULDIP SINGH

v.

KING-EMPEROR.*

June, 4.

Code of Criminal Procedure, 1898 (Act V of 1898), section 423—appeal, whether can be dismissed for default.

Under section 423, Code of Criminal Procedure, 1898, the court is bound to peruse the record, and to hear the appellant or his pleader if he appears, before disposing of the appeal.

Where, therefore, on the date fixed for hearing, the appellant was not present and the court recorded the following order:—

“ Appellant not present. Appeal dismissed ”.

Held, that the order contravened the requirements of section 423, and that the court was bound, even when the appellant was not present, to go through the record itself and to decide the appeal on its merits.

The facts of the case are stated in the judgment.

C. M. Agarwala, for the appellant.

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

JWALA PRASAD AND MACPHERSON, JJ.—This is an application against the order of the Sessions Judge of Patna, dated the 28th of April, 1926, dismissing a criminal appeal of the petitioner.

The appeal was admitted on the 18th of February 1926 and after certain adjournments was fixed for hearing for the 28th of April. On the last date the

*Criminal Revision no. 341 of 1926, from the order of A. C. Davies, Esq., I.C.S., Sessions Judge of Patna, dated the 28th April, 1926, upholding an order of Babu Ranjit Prasad, Magistrate of Patna City, dated the 13th February, 1926.

learned Sessions Judge dismissed the appeal recording the following order :—

“ Appellant not present. Appeal dismissed.”

The order in question has contravened the requirements of section 423 of the Code of Criminal Procedure under which a criminal appeal has to be dealt with. That section requires that the Court is bound to peruse the record and to hear the appellant or his pleader if he appears before disposing of the appeal. Even if the appellant was not present, the learned Sessions Judge was bound to go through the record himself and to decide the appeal upon merits. Therefore, the appeal has not been legally disposed of.

The order of the learned Sessions Judge, dated the 28th of April, 1926, is illegal and is set aside, and the appeal is restored to its original file. The learned Sessions Judge will now dispose of it in accordance with law.

Appeal restored.

REFERENCE UNDER THE COURT-FEES ACT, 1870.

Before Jwala Prasad J.

PANDIT DHANUKDHARI TEWARI

v.

MANI SONAR.

1926.

June, 9.

Court-fees Act 1870 (Act VII of 1870), section 7(2), 7(4) (c) and Article 17, Schedule II—assessment of fair and equitable rent, suit for—prayer not in the nature of declaratory relief—ad valorem court-fee payable.

A suit for recovery of possession with mesne profits and in the alternative for assessment of fair and equitable rent upon adjudication of plaintiff's title is a suit for a declaration of title and for consequential relief, and court-fee is payable under section 7(4) (c), Court-fees Act, 1870.

The words “ other sums payable periodically ” in section 7(2) must be construed as implying sums payable in the nature