

the suit be entitled to recover possession of the suit lands upon payment by her to the defendants of the sum of Rs. 442-8-0. Each party to pay their own costs throughout.

The proceedings will be returned to the referring Court for a decree to be passed in the above sense.

MOSELY, J.—I agree.

BA U, J.—I agree.

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## CRIMINAL REVISION.

*Before Mr. Justice Mosely.*

### KING-EMPEROR v. NGA TUN LU.\*

1934  
Dec. 4.

*Appeal—Order of imprisonment in default of furnishing security—Criminal Procedure Code (Act V of 1898), ss. 123, 415—Order to furnish security to keep the peace not appealable.*

There is no general provision in the Criminal Procedure Code allowing an appeal from an order of imprisonment in default of furnishing security passed under s. 123 of the Code. Under s. 415 a sentence which would not otherwise be subject to appeal is not appealable merely because the person affected has been ordered to furnish security to keep the peace.

MOSELY, J.—The respondent, Nga Tun Lu, who gave his age as seventeen, was found guilty of obscene conduct with intent to insult the modesty of a woman, an offence under section 509 of the Indian Penal Code, and was sentenced to a fine of Rs. 10 or in default ten days' rigorous imprisonment. He was also required, under section 106 of the Criminal Procedure Code, to execute a bond to keep the peace in the sum of Rs. 50 with two sureties for one year.

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\* Criminal Revision No. 915A of 1934 from the order of the Township Magistrate of Pwinbyu in Criminal Regular Trial No. 182 of 1934.

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Considering the nature of the offence and the youth of the accused, I doubt whether an order to keep the peace should have been passed in this case at all, certainly not for so long a period. The respondent was unable to pay the fine or to furnish the security, and it was, therefore, ordered that at the expiration of the rigorous imprisonment directed in default of payment of the fine he should suffer simple imprisonment until he furnished the necessary security. He has been in jail since the 22nd of August, something over three months.

On appeal the learned Sessions Judge dismissed the appeal on the ground that no appeal lay. This is correct. An appeal is allowed under section 406 of the Criminal Procedure Code from any order to keep the peace under section 118 of the Criminal Procedure Code, but section 118 of the Criminal Procedure Code which is part of Chapter VIII-B, headed "security for keeping the peace in other cases and security for good behaviour", only refers, in the case of a breach of the peace, to an order passed on an enquiry under section 107 of the Criminal Procedure Code. That is again clear from the wording of section 123 (1) of the Criminal Procedure Code, which differentiates orders under section 106 and section 118 of the Criminal Procedure Code. Under section 415 of the Criminal Procedure Code no sentence which would not otherwise be liable to appeal is appealable merely on the ground that the person affected is ordered to find security to keep the peace. As the substantive sentence in this case was not appealable no appeal lay. There is no general provision in the Code for allowing an appeal from an order of imprisonment in default of furnishing security passed under section 123 of the Criminal Procedure Code, and perhaps it was not contemplated that an order to furnish security

under section 106 of the Criminal Procedure Code would be coupled with a non-appealable sentence. In my opinion it should rarely, if ever, be necessary to do this, and it should certainly not be done until it has been ascertained that the accused is able to furnish security.

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In the present case I consider that the respondent has been more than sufficiently punished. The Magistrate's order will be modified to one directing the respondent to furnish security to keep the peace under section 106, Criminal Procedure Code, for a period of three months. The respondent will, therefore, be released forthwith.

## CRIMINAL REVISION.

*Before Mr. Justice Mosely.*

### U HPAY LATT v. MA PO BYU.\*

1935  
 Jan. 12.

*Maintenance order—Enforcement by the magistrate passing the order—Residence of the person liable—Criminal Procedure Code (Act V of 1898), ss. 488 (3), 490—Proviso to s. 488 (3), meaning of.*

The provisions of s. 490 of the Criminal Procedure Code are supplementary to those of s. 488 (3) which allow the magistrate who passed the order for payment of maintenance to enforce it. It is not obligatory that the order shall be enforced in the district in which the person directed to pay lives.

*Ma Thaw v. King-Emperor, 7 L.B.R. 116—referred to.*

The proviso to s. 488 (3) is intended to prevent a person entitled to maintenance from being negligent and allowing arrears to accumulate, but it is not intended for the benefit of the person who evades payment by avoiding service of process.

The respondent applied on the 18th July 1933 for 4 months' maintenance ending June 1933. The case had to be closed as the applicant could not be found. She then applied on the 31st May 1934 for 15 months' maintenance in arrears.

*Held*, that the application lay.

\* Criminal Revision No. 792B of 1934 from the order of the Headquarters Magistrate, Sandoway, in Criminal Misc. Trial No. 23 of 1934.