

FULL BENCH (CIVIL).

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Mosely, and
Mr. Justice Ba U.

MA KYI v. MA THON AND ANOTHER.*

1935

Mar. 26.

Mortgage—Usufructuary mortgage—Possession by mortgagee under oral arrangement—Requirements of the law—Absence of registered instrument—Suit by mortgagor for redemption—English equitable doctrines, application of—Evasion of statutory law of India—Remedy of mortgagor and mortgagee—Transfer of Property Act (IV of 1882 and XX of 1929), ss. 53 (A), 58(d), 59—Registration Act (XVI of 1908), ss. 17, 49—Specific Relief Act (I of 1877), s. 27 (A).

Notwithstanding the provisions of s. 59 of the Transfer of Property Act cultivators in India and in Burma are wont to obtain loans by delivering their lands to the lenders upon the terms that the lenders may remain in possession until the loan is repaid, and appropriate the fruits of the land towards the repayment of the principal and/or of the interest due under the loan. Such transactions are usufructuary mortgages within s. 58 (d) of the Transfer of Property Act, and unless the instrument of mortgage in such a case is in writing, and the transaction also falls within s. 53 (A) of the Act, the terms of the mortgage cannot be relied on as a ground of attack or of defence by either the plaintiff or the defendant in a mortgage suit, except in cases in which they are embodied in a duly registered written instrument.

It is wrongful, and in the long run a harmful circumvention of the law to meet individual cases of hardship, to apply by analogy an English equitable doctrine affecting the provisions of an English statute relating to the right to sue upon a contract, with the result that an interest in lands created without any writing, and which the Transfer of Property Act enacts can only be created by means of a registered instrument. It amounts to an obvious and substantial evasion of the law enacted under the Registration Act and the Transfer of Property Act.

Ariff v. Jadduath Majumdar, 58 I.A. 91, s.c. I.L.R. 10 Ran. 530n—followed.

Bop Lou v. Po Lu, 8 L.B.R. 553; *Currimbhey & Co., Ltd. v. Creel*, I.L.R. 60 Cal. 980; *Kurri Veerareddi v. Kurri Bapireddi*, I.L.R. 29 Mad. 336; *Ma Hwee v. Maung Lun*, 8 L.B.R. 334; *Maung Myal Tun Aung v. Maung Lu Pu*, I.L.R. 3 Ran. 243; *Maung Sau Min v. Maung Po Hlaing*, I.L.R. 4 Ran. 1; *Maung Shwe Goh v. Maung Inn*, 10 L.B.R. 120; *Nemtulla Tycballi v. Saftabu Allibhai*, 37 Bom. L.R. 82; *Official Assignee v. M. E. Moolla Sons, Ltd.*, I.L.R. 12 Ran. 589; *Pir Bakhsh v. Mohamed Tahar*, I.L.R. 58 Bom. 650; *Royenddi Sheik v. Kali Nath Mookerjee*, I.L.R. 33 Cal. 985—referred to.

* Civil Reference No. 3 of 1935 arising out of Civil Second Appeal No. 303 of 1934 of this Court.

C.A.M.K.R. Chettiar v. Ma Kyaw, I.L.R. 6 Ran. 270; *Ma Ma E v. Maung Tun*, I.L.R. 2 Ran. 479; *Maung Kin Lay v. Maung Tun Thaing*, I.L.R. 5 Ran. 679; *Maung Myat Tha Zan v. Ma Dun*, I.L.R. 2 Ran. 285; *Maung Ok Kyi v. Ma Pu*, I.L.R. 4 Ran. 368; *Maung Tun Ya v. Maung Aung Dun*, I.L.R. 2 Ran. 313; *Venkatesh Damodar v. Mallappa*, I.L.R. 46 Bom. 722; *Visagapalam Sugar Development Co., Ltd. v. Muthuramareddi*, I.L.R. 46 Mad. 919—treated as overruled.

1935
 MA KYI
 v.
 MA THON.

A person cannot sue for the redemption of his property under an oral mortgage which by law must be created by a registered instrument. He can, however, sue for possession relying on his title. The defendant cannot rely on an oral mortgage to retain possession, but he may in a proper case apply for a stay of proceedings in order to enable him to compel the plaintiff to execute an instrument in his favour which could be duly registered.

Pir Bakhsh v. Mahomed Tahar, I.L.R. 58 Bom. 650—referred to.

The following order of reference for the decision of a Full Bench was made by

DUNKLEY, J.—The suit in the Township Court of Myittha, out of which this second appeal arises, was brought by Ma Kyi, as the heir and legal representative of her husband Maung Htwe (deceased), for recovery of possession of two holdings of agricultural land on payment of a sum of Rs. 380. In first appeal to the District Court of Kyaukse, the learned Additional District Judge has wrongly described the suit as a suit for redemption. The facts which have been found are that on the 12th May, 1924, Maung Htwe delivered to the defendants-respondents, Ma Thon and Maung Saw Hla, possession of these two holdings of land as security for a debt of Rs. 380, taken by him at various times as loans from the respondents, and it was agreed that on re-payment of this amount the lands should be returned, and that in the meantime the respondents should enjoy the usufruct of the lands. The transaction was oral and no document was executed. Subsequently in 1926 Maung Htwe took a further advance of Rs. 125 on the security of possession by the respondents of these lands. This transaction was also oral. Both transactions, therefore, amounted to abortive usufructuary mortgages which cannot be proved for lack of registered deeds. The respondents were prepared to re-deliver possession of the lands to the appellant on payment of the total sum advanced, namely, Rs. 505. The Township Court granted a decree for recovery of possession on payment of Rs. 505. In form, this decree

1935
 MA KYI
 v.
 MA THON.
 DUNKLEY, J.

was correct. The Additional District Judge on first appeal, while upholding all the findings of the Township Court, incorrectly passed a preliminary decree for redemption as if the suit were a suit on a mortgage, which it was not.

Both Courts have found that the subsequent advance of Rs. 125 was made, as alleged by the respondents. The appellant has admitted the original loans amounting to Rs. 380, and has admitted liability to repay this amount before she can recover possession. She has denied the subsequent advance of Rs. 125. The sole point raised before me in this appeal is that as the transaction whereby the further and unadmitted advance of Rs. 125 was taken was not by registered deed, and as the transaction was in the nature of an usufructuary mortgage for a sum exceeding Rs. 100, which can only be created by registered deed under the provisions of section 17 (1) (b) of the Registration Act, oral evidence to prove the transaction was entirely inadmissible and, therefore, the appellant was entitled to recover the lands on payment of the admitted amount of Rs. 380.

This contention raises the question of the correctness of the decision of this Court in the case of *Maung Tun Ya v. Maung Aung Dun and one* (1), which followed certain prior decisions of the late Chief Court of Lower Burma, and has been followed in several subsequent decisions, both reported and un-reported, of this Court. Cases of this description are *Maung Aung and one v. Maung Shwe Lin and one* (2); *Maung San Min and one v. Maung Po Hlaing and others* (3); and *Maung Sin and another v. Maung So Min* (4). In *Ma Hwee v. Maung Lun* (5), which arose out of a suit for redemption of a mortgage invalid for want of registration, there occurs the dictum "It may be that if the plaintiff had sued for possession on the ground of her title only she would have been entitled to a decree without paying anything, * *," and this dictum appears to be in accordance with the judgment of Mookerjee J. in the case of *Royznddi Sheik v. Kali Nath Mookerjee* (6), in the course of which he states "It is an established doctrine that equity will not contravene the positive enactments or requirements of law and defeat its policy by supplying, under the guise of amending

(1) (1924) I.L.R. 2 Ran. 313.

(2) 1 Bur. L.J. 203.

(3) (1926) I.L.R. 4 Ran. 1.

(4) (1930) I.L.R. 8 Ran. 556.

(5) 8 L.B.R. 334 at p. 335.

(6) (1906) I.L.R. 33 Cal. 985, at p. 995.

defective instruments, those deficient elements of form without which the agreement is absolutely void, even as between the parties to it." The *ratio decidendi* of the judgment in *Maung Tun Ya's* case (1) appears to be the doctrine of part performance, for, referring to this doctrine, Carr J. states in the course of his judgment (at page 317) "If it is so applicable then it would seem that a mortgagee in possession under an invalid mortgage is entitled to retain possession until the mortgage debt is paid off. He can therefore resist a suit for possession, based merely on title, by his mortgagor. * * * The mortgagor therefore has no legal remedy open to him and unless his mortgagee will allow redemption he loses his property altogether. The result is obviously inequitable." But it has now been held by their Lordships of the Privy Council that the equitable doctrine of part performance, except as enacted in section 53 (A) of the Transfer of Property Act, has no application in India—see *Ariff v. Jadunath Majumdar* (2) and *Pir Bakhsh v. Mahomed Tahar* (3). Therefore, apparently a mortgagee in possession under an invalid mortgage cannot resist a suit for possession, based merely on title, by his mortgagor, and the dictum in *Ma Htwe's* case (4), that the mortgagor is entitled to recover possession without paying anything, would seem to be correct. It is clear that a person put into possession of land under an invalid usufructuary mortgage has, in consequence of the provisions of section 49 (a) of the Registration Act, no rights whatever in the land, and it has been held in *Maung Tun Ya's* case (1) that his possession does not amount to a charge on the land, within the meaning of section 100 of the Transfer of Property Act. See also on this point *Royzuddi Sheik v. Kali Nath Mookerjee* (5) and *P.R.P.R. Somasundram Chettiar v. Y.P.N. Nachiappa Chettiar* (6). The effect of the decisions in *Maung Tun Ya v. Maung Aung Dun* (1) and similar cases is apparently that a creditor is thereby enabled to recover a debt which otherwise would be barred by time. Apparently, the correct principle was stated in the case of *Ma Htwe v. Maung Lun* (4), and the plaintiff in such a suit is entitled to recover the land without

1935

MA KYI
v.
MA THON.

DUNKLEY, J.

(1) (1924) I.L.R. 2 Ran. 313.

(2) (1931) I.L.R. 58 Cal. 1235.

(3) (1934) I.L.R. 58 Bom. 650.

(4) 8 L.B.R. 334 at p. 335.

(5) (1906) I.L.R. 33 Cal. 985.

(6) (1924) I.L.R. 2 Ran. 429.

1935
 MA KYI
 v.
 MA THON.
 DUNKLEY, J.

payment if the suit is brought within time. The defendant will, of course, have a separate cause of action to recover his debt if his suit is brought within time. Consequently, I am of opinion that the decision in *Maung Tun Ya v. Maung Aung Dun* (1) requires further consideration. I therefore refer to a Full Bench for decision the following question :

“ Where a person has been put into possession of land as usufructuary mortgagee, and the mortgage is invalid for want of a registered document, is the true owner of the land in a suit for possession entitled to recover possession without payment of the amount of the debt ? ”

Aung Gyaw for the appellant. Where the principal money secured by a mortgage is over Rs. 100 a mortgagee cannot give oral evidence of the mortgage, and that is what the mortgagee is seeking to do in this case. Under such circumstances there is no defence to a suit by the true owner for recovery of possession of his property.

Wellington for the respondent. In consideration of a sum of Rs. 125 lent to the appellant the respondent was allowed to remain in possession of the property in suit. He was put in possession of the property under an earlier mortgage for Rs. 380. The transaction is in the nature of a charge falling under s. 100 of the Transfer of Property Act, and no registered instrument is necessary for the creation of a charge. The loan is charged on the property, and until it is repaid the borrower has no right to claim it back. *Aditya Prasad v. Ram Ratan Lal* (2). The present suit is framed as a suit for possession and the defendant therefore is entitled to raise the defence in question. The plaintiff did not frame the suit as a suit for redemption because he knew that the suit would fail.

(1) (1924) I.L.R. 2 Ran. 313.

(2) I.L.R. 5 Luck. 365.

[PAGE, C.J.] Even as a suit for possession the plaintiff would be entitled to succeed because the defendant has derived no valid title to the property.]

1935
MA KYI
v.
MA THON.

Maung Tun Ya v. Maung Aung Dun (1) directly supports the respondent. The defendant is entitled in equity to retain possession of the land till his debt is repaid. See also *Ma Htwe v. Maung Lun* (2); *Kaw Lu v. Maung Ke* (3); *Maung San Min v. Maung Po Hlaing* (4); *Maung Kin Lay v. Maung Tun Thaing* (5); *Maung Sin v. Maung So Min* (6).

In *Ko Yan v. Ma Mai Wi* (7) the decision in *Ariff v. Jadunath* (8) was followed, and it was held that no title passed in similar circumstances except by a registered deed. But the equity of the case has also to be considered, and where the relation of mortgagor and mortgagee has been created, and immovable property has been given as security for the repayment of the debt it is right to regard the transaction as creating a charge on the property. *Royzuddi v. Kali Nath* (9). The respondent can then give evidence to show how he came into possession. *Varada Pillai v. Jeevarathnammal* (10).

PAGE, C.J.—This case raises a question of considerable importance to the public generally, and in particular to cultivators of the soil in Burma and India. The question propounded is :

“Where a person has been put into possession of land as usufructuary mortgagee, and the mortgage is invalid for want of a registered document, is the true owner of the land in a suit for possession entitled to recover possession without payment of the amount of the debt ?”

(1) I.L.R. 2 Ran. 313.

(2) 8 L.B.R. 334.

(3) 8 L.B.R. 556.

(4) I.L.R. 4 Ran. 1.

(5) I.L.R. 5 Ran. 679.

(6) I.L.R. 8 Ran. 556.

(7) I.L.R. 10 Ran. 529.

(8) I.L.R. 58 Cal. 1235.

(9) I.L.R. 33 Cal. 955.

(10) I.L.R. 43 Mad. 244.

1935
 MA KYI
v.
 MA THON.
 PAGE, C.J.

It is an inveterate habit of cultivators to mortgage their lands orally for loans of Rs. 100 and upwards, without executing and/or registering an instrument of mortgage.

Now, the Transfer of Property Act was passed in 1882, 53 years ago, and by section 59 of that Act it is provided that :

“Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.”

Nevertheless, both in India and in Burma cultivators, in the teeth of the express terms of the statute, are still wont to obtain loans by delivering their lands to the lenders upon the terms that the lenders may remain in possession until the loan is repaid, and appropriate the fruits of the land towards the repayment of the principal and/or of the interest due under the loan. There does not appear to me to be any escape from the conclusion that such transactions are usufructuary mortgages within section 58 (d) of the Transfer of Property Act. It follows, therefore, that unless the instrument of mortgage in such a case is in writing, and the transaction also falls within section 53 (A) of the Transfer of Property Act, the terms of the mortgage cannot be relied on as a ground of attack or of defence by either the plaintiff or the defendant in a mortgage suit, except in cases in which they are embodied in a duly registered written instrument. (Registration Act, XVI of 1908, sections 17 and 49.)

The persistent neglect of lenders and borrowers, particularly in the mofussil, to conform to the provisions of the law when seeking to effect loans on mortgage has led to much unhappiness, and often

in the minds of the cultivators to much injustice also. I venture to think that it would be a benevolent and at the same time a politic act on the part of the local executive authorities if steps were taken to call the attention of the untutored proletariat to the necessity of executing and registering a written instrument when obtaining loans on mortgage of their lands for Rs. 100 or upwards.

1935
MA KYI
v.
MA THON.
PAGE, C.J

Meanwhile, the Courts have had recourse to certain doctrines recognized by Courts of Equity in England for the purpose of redressing the hardship that it was thought would follow the rigorous enforcement of the law. The result of applying such principles of equity, however, in cases where the Registration Act or the Transfer of Property Act requires a particular transaction to be carried out by means of a registered instrument is that a serious encroachment has been made upon the law of registration, the salutary effect of which in India and in Burma cannot be gainsaid, and much more harm than good is done. In this connection I desire to refer to the following observations by White C.J. in *Kurri Veerareddi and others v. Kurri Babireddi and another* (1) :

“The application of the strict letter of the law untempered by equitable considerations may, no doubt, at first, result in hardship to individuals. But as soon as it is known to be well settled that the strict letter of the law will be applied, cases of individual hardship will cease to occur, and full effect will be given to the considerations of public policy on which the enactment in question is based.

The application of the letter of the law leads to certainty of title and to a diminution of the opportunities for perjury. The tempering of the letter of the law by recognizing equities which would take a case out of the statute, leads in precisely the opposite direction.”

(1) (1906) I.L.R. 29 Mad. 336 at p. 344.

1935
 MA KYI
 MA THON.
 PAGE, C.J.

I am glad to think that since the decision of the Privy Council in *Ariff v. Jadunath Majumdar* (1), *Currimbhoy and Company, Limited v. Creet* (2), *Pir Bakhsh v. Mahomed Tahar* (3) and *Maung Shwe Goh v. Maung Inn* (4), except as provided in section 53 (A) of the Transfer of Property Act and section 27 (A) of the Specific Relief Act, those cases in which attempts have been made to evade the law of registration by applying in India principles of equity, the enforcement of which is regarded in England as a legitimate mode by which the law can be circumvented, no longer can be treated as laying down the law correctly, and are not to be followed.

In the present case the plaintiff sued to recover possession of certain immovable property on payment of Rs. 380 to the defendants. In paragraph 3 of the plaint it is alleged that the plaintiff's father had delivered possession of the said lands

"to the defendants in payment of various loans taken previously, amounting to Rs. 380, with the promise that the lands shall be returned with delivery of possession after working them for three years and three harvests."

In paragraph 4 it is further alleged that on the plaintiff demanding re-delivery of the lands on payment of Rs. 380

"the defendants gave a reply-notice stating that they were willing to return the said lands, but they contended that the mortgage money for the suit lands and other lands was not Rs. 725 but Rs. 925, and that they were willing to return the lands only on payment of Rs 925."

In paragraph 3 of the defence the defendants admitted that the lands in suit had

(1) (1931) L.R. 58 I.A. 91; (2) (1932) I.L.R. 60 Cal. 980.
 I.L.R. 10 Ran. 530n. (3) (1934) I.L.R. 58 Bom. 650.
 (4) (1916) I.L.R. 44 Cal. p. 542; 10 I.L.R. 120.

"been delivered to them for the original sum of money Rs. 380 ; and the same lands have been taken over with delivery of possession. That in about the month of *Tabodwe*, 1288, B.E. (1927) a further sum of Rs. 125, on request, was taken on the said lands, with the promise that this sum of Rs. 125 shall be returned together with the previous sum taken, *i.e.*, Rs. 380, on redemption of the said lands, *i.e.*, by payment of a total sum of Rs. 505 ; therefore as the further advance was taken on this promise, these lands ought not to be returned on payment of Rs. 380 only but they ought to be returned only on payment of Rs. 505."

1935
 MA KYI
 v.
 MA THON.
 PAGE, C.J.

It was common ground at the trial that no document embodying the terms of this transaction was executed or registered, although a mutation of names in the register had been made. In my opinion, with all due respect, the present suit is framed as a suit for redemption of lands which are the subject of an oral usufructuary mortgage on payment of Rs. 380, the principal amount due under the loan ; the real issue in the suit being whether the amount due under the alleged mortgage upon payment of which redemption should be allowed was Rs. 380 or Rs. 505.

Both the lower Courts have passed a decree in favour of the plaintiff, the trial Court "for the recovery of possession of the suit lands on payment of Rs. 380"; the Additional District Court "for redemption of the lands on payment of Rs. 505 within six months." In my opinion, the suit in its present form cannot be sustained inasmuch as the plaintiff pleads and relies on the oral mortgage. [*Ma Htwe v. Maung Lun* (1); *Bon Lon and others v. Po Lu* (2); *Kurri Veerareddi and others v. Kurri Bapireddi and another* (3); *Royzuddi Sheik v.*

(1) (1916) 8 L.B.R. 334.

(2) (1916) 8 L.B.R. 553.

(3) (1906) I.L.R. 29 Mad. 336 at p. 344.

1935
 MA KYI
 v.
 MA THON.
 PAGE, C.J.

Kali Nath Mookerjee (1); *Ariff v. Jadunath Majumdar* (2); *Currimbhoy and Company, Limited v. Creet* (3); *Pir Bakhsh v. Mahomed Tahar* (4); *Maung San Min v. Maung Po Hlaing* (5); *Maung Myat Tun Aung v. Maung Lu Pu* (6); *The Official Assignee v. M. E. Moolla Sons, Ltd.* (7); *Nemtulla Tyeballi v. Safiabu Allibhai* (8).] For the same reason the defendants are not entitled to prove the alleged oral mortgage of the lands for an additional sum of Rs. 125.

The proper course for the plaintiff to have taken in the present case would have been to have sued for possession relying on her title which was not and could not be disputed. To such a suit there would have been no defence, for the only ground upon which the defendants could have claimed to remain in possession would have been based upon the alleged rights which they had acquired under the oral mortgage on which it was not permissible for them to rest their title, and which could not be proved.

It has been held over and over again by the Courts in Burma and elsewhere in India, however,—founding upon the doctrine of part performance which is applied by the Courts in England in administering jurisdiction in equity—that to a suit for possession based on the plaintiff's title it would be a good defence that the defendant was in possession under an oral mortgage or an oral agreement for sale or for a lease. Further, it has been held that where a suit was framed in terms similar

(1) (1906) I.L.R. 33 Cal. 985.

(2) (1931) L.R. 58 I.A. 91;
 I.L.R. 10 Ran. 530*n*.

(3) (1932) I.L.R. 60 Cal. 980.

(4) (1934) I.L.R. 58 Bom. 650.

(5) (1926) I.L.R. 4 Ran. 1.

(6) (1925) I.L.R. 3 Ran. 243.

(7) (1934) I.L.R. 12 Ran. 589.

(8) (1934) 37 Bom. L.R. 82.

to those in the present case, and the plaintiff claims possession only on payment of the amount due under the loan the Court ought to strive to hold that the suit is a title suit, and a decree in the above sense ought to be passed in the plaintiff's favour; although

1935
 MA KYI
 2.
 MA THON.
 PAGE, C.J.

"it is true that the giving to them of a decree in the terms they ask would have the same effect as a decree for redemption of a usufructuary mortgage"

[per Brown J. in *Maung Kin Lay v. Maung Tun Thaing* (1)]. With all due respect, in my opinion, a decree passed in favour of the defendant on the first ground or in favour of the plaintiff on the second would operate as an obvious and substantial evasion of the law enacted under the Registration Act and the Transfer of Property Act; and, as Lord Russell pointed out in *Ariff v. Jadunath Majumdar* (2)

"that an English equitable doctrine affecting the provisions of an English statute relating to the right to sue upon a contract, should be applied by analogy to such a statute as the Transfer of Property Act, and with such a result as to create without any writing an interest which the statute says can only be created by means of a registered instrument, appears to their Lordships, in the absence of some binding authority to that effect, to be impossible."

Of course it may be that where a plaintiff has sued for possession of immovable property the defendant would be entitled to apply for a stay of proceedings "in order to enable him to compel the plaintiff to execute an instrument in his favour which he could have duly registered."

(1) (1927) I.L.R. 5 Ran. 679
 at p. 682.

(2) (1931) L.R. 58 I.A. 91;
 I.L.R. 10 Ran. 530n.

1935
 MA KYI
 v.
 MA THON.
 PAGE, C.J.

[*Pir Bahsh v. Mahomed Tahar* (1).] It depends on the circumstances. But, as Lord Macmillan observed in that case,

"the remedy thus available to the defendant would not have depended on any recognition of the agreement of sale as in itself a defence to the action of ejectment, but rather on the principle that the Court will not grant a decree of ejectment which can at once be rendered ineffective by the same Court being required to grant a decree of specific performance resulting in reinstatement."

In the present case, however, no such question arises.

For the reasons that I have stated, and having regard to the principles enunciated in *Ariff v. Jadunath Majumdar* (2), I am of opinion that in *Maung Myat Tha Zan v. Ma Dun* (3); *Maung Tun Ya v. Maung Aung Dun* (4); *Ma Ma E v. Maung Tun* (5); *Maung Ok Kyi v. Ma Pu* (6); *Maung Kin Lay v. Maung Tun Thuang* (7); *C.A.M.K.R. Chettiar v. Ma Kyaw* (8); *Vizagapatam Sugar Development Company, Limited v. Muthuramareddi* (9) and *Venkatesh Damodar Mokashi v. Mallappa Bhimappa Chikkalki* (10) the law was not correctly stated, and that these cases must be regarded as having been overruled.

I would answer the question propounded in the above sense.

We are now informed that the parties have composed their differences, and apply that a consent decree may be passed ordering that the plaintiff in

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| (1) (1934) I.L.R. 58 Bom. 650. | (5) (1924) I.L.R. 2 Ran. 479. |
| (2) (1931) L.R. 58 I.A. 91 ;
I.L.R. 10 Ran. 530. | (6) (1926) I.L.R. 4 Ran. 368. |
| (3) (1924) I.L.R. 2 Ran. 285. | (7) (1927) I.L.R. 5 Ran. 679 at p. 682. |
| (4) (1924) I.L.R. 2 Ran. 313. | (8) (1928) I.L.R. 6 Ran. 270. |
| | (9) (1923) I.L.R. 46 Mad. 919. |
| | (10) (1921) I.L.R. 46 Bom. p. 722. |

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.

1935
MA KYI
v.
MA THON.
PAGE, C.J.

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.

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