

been released, the document No. 45, which is express to that effect, was put in, and that is exactly the use that was made of the document by the Subordinate Judge."

The Court, therefore, remands the case for a finding by the District Judge on the third and fourth issues raised by the Subordinate Judge. The District Judge will exercise his discretion as to the admission of fresh evidence as respects the said issues.

Decree reversed and case remanded.

APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice F. D. Melvill.

IMPERATRIX v. RA'MA' PREMA'.*

The Code of Criminal Procedure (Act X of 1872), Sec. 18—Sentence—'Modify'—'Enhance'—Session Judge—Assistant Session Judge.

The word 'modify' in section 18, clause 2 of the Code of Criminal Procedure (Act X of 1872) does not include the power to *enhance* a sentence: consequently, when an Assistant Sessions Judge passes a sentence of more than three years' imprisonment, the Sessions Judge cannot enhance it.

THE accused Rámá Premá was tried by G. Druitt, Assistant Sessions Judge of Surat, on a charge of criminal breach of trust as a public servant, and, being convicted on his own plea of guilty, was sentenced to four years' rigorous imprisonment, subject to confirmation by the Sessions Judge, H. M. Birdwood, who enhanced the sentence to five years.

On review of the criminal return containing the above case, one of the Judges of the High Court (Pinhey, J.) called for the record and proceedings to consider the question whether a Sessions Judge can, under clause 2 of section 18 of the Code of Criminal Procedure (Act X of 1872), enhance a sentence passed by an Assistant Sessions Judge, subject to the Sessions Judge's confirmation under that section.

There was no appearance for the accused or the Crown.

Per Curiam.—The Court is of opinion that a Sessions Judge has no such power. The words used in the last sentence of clause 2 of section 18 of the Code of Criminal Procedure are: "The

* Criminal Review, No. 247 of 1879.

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Sessions Judge may either confirm, modify, or annul such sentence of the Assistant Sessions Judge." We do not consider that the word "modify" includes, or can have been intended to include, the power of enhancing the sentence. An Appellate Court can, when hearing the appeal, enhance a sentence under section 280 of the Code; and the High Court, as a Court of revision, can enhance a sentence under clause 7 of section 297; but no such power of enhancement of sentence is any where given to a Sessions Judge taking up a case referred by an Assistant Sessions Judge under the last clause of section 18.

The Court, therefore, alters the sentence, passed by the Sessions Judge of Surat in this case, to one of four years' rigorous imprisonment.

Order accordingly.

APPELLATE CRIMINAL.

Before Sir Charles Sargent, Kt., Officiating Chief Justice, and Justices M. Melvill, Kembell, Pinhey and F. D. Melvill.

January 8.

IMPERATRIX v. ABDULLA.*

The Code of Criminal Procedure (Act X of 1872), Sec. 46—Order—Committal.

The word "order" in section 46 of the Code of Criminal Procedure, associated as it is with the words "judgment and sentence", means a final order, *i.e.*, one disposing of a case so far as the Magistrate, to whom a Subordinate Magistrate submits the proceedings of the case for higher punishment, is concerned. It does not deprive that Magistrate of the exercise of his discretion as to its being a proper case for the Sessions, and of the power of committing it for trial given by section 143 of the Code of Criminal Procedure.

THIS was an appeal from the sentence of transportation for life passed on Abdulla by C. F. H. Shaw, Session Judge of Belgaum, convicted, on his own plea of guilty, of the offences of house-breaking with intent to commit theft and theft in a dwelling-house. The said Abdulla was thrice previously convicted of similar offences.

The convict was at first tried by the Second Class Magistrate of Athni, who found him guilty; but, being of opinion that he deserv-

* Appeal No. 207 of 1879.