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a creditor seeking by a side wind, such as this, to gain an advantage over his fellow creditors.

A fortiori must that be the case where, as here, the creditor has obtained no leave before he took steps to interfere with the receiver's possession, for such an interference the taking out of a prohibitory order clearly amounted to.

That would clearly be the position of the plaintiffs if the decree in Suit No. 320 of 1891 were an ordinary decree for winding up the partnership. In form, at any rate, it is not that; but such it was probably intended to be. As such, at any rate for the purposes of this application, I think I must treat it. I treat the decree, therefore, as one under which the Commissioner will ascertain the debts due by the partnership and pay them rateably. If he finds any difficulty in doing so under this decree no doubt he will apply for further power.

The summons will be dismissed, without prejudice to plaintiffs' right to bring in their claim before the Commissioner. As I think the plaintiffs have been led into this mistaken procedure by the form of the decree above referred to, I will order that the plaintiffs be at liberty to add their costs of and incidental to this summons to their claim. Receiver's costs taxed as between attorney and client to be paid out of the funds in his hands.

Attorneys for plaintiffs:—Messrs. *Chalk, Walker and Smetham.*

Attorneys for L. A. Watkins:—Messrs. *Payne, Gilbert and Sayáni.*

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Parsons.

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QUEEN-EMPRESS *v.* ABDUL RAHIMAN.*

September 10.

Criminal Procedure Code (Act X of 1882), Secs. 439, 423 and 254—High Court's powers in revision to order a person convicted and sentenced to be committed for trial—Indian Penal Code (Act XLV of 1860), Sec. 326—Grievous hurt—Inadequate sentence.

The accused was tried by a Presidency Magistrate on a charge of voluntarily causing grievous hurt with an instrument for cutting. He was convicted and sentenced, under section 326 of the Indian Penal Code, to rigorous imprisonment for two years.

* Criminal Revision, No. 326 of 1891.

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The local Government, being of opinion that the sentence was inadequate, moved the High Court, under section 435 of the Code of Criminal Procedure (Act X of 1882), to quash the Magistrate's proceedings, and order the accused to be committed for trial to the High Court. It was contended for the prisoner that, as the offence was not exclusively triable by the Court of Session, the High Court had no power, under section 423 (*b*) of the Code, to order the accused to be committed for trial.

Held, dissenting from *Queen-Empress* v. *Sukha* (1), that section 423 (*b*) gives to an Appellate Court the power to order an accused person to be committed for trial when it considers that that is the procedure that should have been adopted by the Magistrate in the case.

Held, also, that the offence of which the prisoner was convicted being one punishable, under section 326 of the Indian Penal Code, with transportation for life, or rigorous imprisonment for ten years and fine, the Presidency Magistrate ought to have committed the accused for trial to the High Court.

THIS was an application by the Government of Bombay for revision of the order passed by W. R. Hamilton, Esq., Presidency Magistrate, in the case of *Queen-Empress* v. *Abdul Rahiman*.

The accused was charged, under section 326 of the Indian Penal Code, with cutting off his wife's nose with a penknife.

The Presidency Magistrate convicted the accused of the offence of voluntarily causing grievious hurt with an instrument for cutting, and sentenced him to undergo rigorous imprisonment for two years.

The local Government, being of opinion that the sentence was inadequate, at first wrote a letter to the High Court, asking that the record of the case should be sent for, and the Magistrate's order revised, under section 435 of the Code of Criminal Procedure (Act X of 1882).

This letter was considered by the Judges in Chambers, and a reply was sent to Government to the effect that an application for revision of the Magistrate's proceedings should be made in open Court. Hence the present application.

The High Court issued notice to the accused to show cause why the Magistrate's proceedings should not be quashed and he be ordered to be committed for trial.

Hari Sitárám Dikshit for the accused :—This Court has no power, under sections 439 and 423 (*b*) of the Code of Criminal Procedure, to order the accused to be committed for trial. The

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offence with which the prisoner was charged is not an offence triable exclusively by the Court of Session. In construing section 423 (*b*) the Allahabad High Court has held that it is only in cases exclusively triable by the Court of Session that an Appellate Court can order an accused person to be committed for trial—*Queen-Empress* v. *Sukha*[1].

Lang, Acting Advocate General, for the Crown :—The construction put upon section 423 (*b*) by the Allahabad High Court is opposed to the plain, unambiguous wording of the section. That section clearly gives power to the Appellate Court to order a committal whenever it considers fit to do so. In the present case, the accused has been convicted of voluntarily causing grievous hurt with an instrument for cutting. This is an offence punishable, under section 326 of the Penal Code, with transportation for life, or with imprisonment up to ten years. The Magistrate has sentenced him to two years' rigorous imprisonment. This sentence is clearly inadequate. The Magistrate ought to have committed the accused for trial to the High Court.

JARDINE, J. :—We were first moved to send for and review this case by a letter from the Government of Bombay, which we considered in Chambers. The Court replied that any application that might be made in Court would be taken into consideration. This Bench was afterwards moved by the Advocate General to call for the case. Although section 439 of the Code of Criminal Procedure does give the High Court power to call for cases, not only on judicial information, but also "which otherwise come to its knowledge," yet in most cases it is the right practice that Judges should be moved in open Court : publicity is thus secured, and a fuller hearing of the reasons which move the Government in the interests of the public order, or a private party in his own. It is, therefore, desirable that motions of this kind should be made in the usual manner, however wide the powers of the Judges may be to interfere on knowledge otherwise acquired. Moreover, this procedure has been approved by the Supreme Government as the most convenient, as will be seen in the correspondence about the *Fuller case*[2], since when, I believe, the practice of the High Courts has been uniform.

[1] I. L. R., 8 All, 14, at p. 17.

[2] *Govt. of India Gazette*, 1877, p. 1311.

The present case is one which the local Government might well bring to the notice of this Court in revision. The Magistrate found that the prisoner deliberately cut off his wife's nose with a penknife. He sentenced him to the longest imprisonment he could inflict, *viz.*, two years. The prisoner was liable, under section 326 of the Penal Code, to transportation for life, or imprisonment for ten years. The Government move on the ground that the inflicted punishment is inadequate. Without prejudicing the prisoner by further comment on the facts, it is necessary to say that in a case of such gravity the Magistrate would have exercised a proper discretion if he had sent the prisoner for trial by the High Court.

Mr. Dikshit, who appears for the prisoner, takes the objection that the High Court has no power to order a committal, the case not being one excluded from the jurisdiction of the magistracy. He relies on an interpretation of section 423 (*b*) of the Code of Criminal Procedure, which supports his contention. It is found in Mr. Justice Brodhurst's judgment in *Queen-Empress* v. *Sukha*[1]. That learned Judge was of opinion that the words of section 423 (*b*), "order him to be . . . committed for trial," must be confined to persons triable exclusively by the Court of Session. With all respect, it appears to us that this is a construction which narrows the plain meaning. "We are to look to the words in the first instance, and where they are plain we are to decide on them. If they are doubtful, we are then to have recourse to the subject-matter"—*The King* v. *The Inhabitants of Hodnett*[2]. There is no limitation in the words, and, in our opinion, none can be implied in the subject-matter. The powers of the High Court under sections 435 and 439 have been extended by the Code of 1882, as pointed out in *Queen-Empress* v. *Chagan* [3]: cf. *Queen-Empress* v. *Maganlál*[4]. We can call for records to satisfy ourselves of the correctness and propriety of the proceedings. The infliction of an inadequate punishment is undoubtedly an impropriety which the jurisdiction in revision is intended to remedy. In the most serious cases to which the rules about enhancement by the High Court itself do not apply, a provision that the High Court may direct a new

(1) I. L. R., 8 All., 14 at p. 17.
(2) 1 T. R., 96, at p. 101.
(3) I. L. R., 14 Bom., at p. 341.
(4) I. L. R., 14 Bom., 115.

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trial before a Court having greater powers than any Magistrate seems beneficial to the public and fair to the prisoner. A Magistrate is not to determine every case he is *competent* to try. He is required by section 254 to consider whether such punishment as he can inflict is adequate: if not, he can commit the prisoner to the higher Court under section 210 or 347. In the case of the corrupt Magistrates[1] the learned Judges of the Full Bench remark that the object of a Code of Criminal Procedure is to provide a machinery for the punishment of offenders. Of course, punishment means adequate punishment. Thus, in affirming the jurisdiction of this Court, we give effect to the reason of the Code. We now quash the conviction and sentence, and direct the Magistrate to commit the prisoner for trial by the High Court.

PARSONS, J.:—I concur in reversing the finding and sentence, and in ordering the accused to be committed for trial. Section 435 of the Code of Criminal Procedure gives the High Court the power of calling for and examining the record of any proceeding before any inferior Court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence, or order; and section 439 confers on it in such cases the discretion of exercising any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427 and 428. One of the powers conferred by section 423 is "to reverse the finding and sentence, and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial." I am unable to concur in the opinion expressed by Brodhurst, J., in the case of *Queen-Empress* v. *Sukha*[2] that "the Appellate Court referred to in section 423 can, in an appeal from a conviction, only order an accused person to be committed for trial, when it considers that the accused is triable exclusively by the Court of Session." Such an interpretation necessitates the interpolation of words in section 423, which, to judge from their insertion in section 436, were designedly omitted therefrom. The words used in section 423 are clear and unambiguous, and give to an Appellate Court the power to order an accused person to be committed for trial when it considers that that was the proper procedure to have been adopted

(1) I. L. R., 13 Bom., at p. 598. (2) I. L. R., 8 All., 14 at p. 17.

in the case. It is only a qualified jurisdiction which is conferred by section 28 on a Magistrate to try an offence which is shown in the eighth column of the second schedule to be triable by him. Section 207 lays down the procedure to be adopted, not only where the case is triable exclusively by a Court of Session or High Court, but also where the case, in the opinion of the Magistrate, ought to be tried by such Court. Section 254 is still more restrictive, for it provides that the Magistrate shall try an accused person only for an offence which, in his opinion, can be adequately punished by him. These two sections show that a Magistrate has to exercise a discretion in the matter of every case that is brought before him, and his proceedings in the exercise of this discretion are clearly subject to examination and review by a superior Court, either on appeal, or in revision.

In the present case the accused one night tied his wife by her arms and legs to a bedstead, and then with a penknife cut off the whole of the soft parts of her nose, and a portion of her upper lip. The excuse he gives for his act is that she confessed that during his absence in Calcutta, some time previous, she had had an intrigue with another man, that since his return she had twice run off to the house of her sister, and that she said she would run away again. There is no evidence of her infidelity, but she admits running away from him. For his offence, which is one punishable under section 326 of the Penal Code with transportation for life or imprisonment up to ten years and fine, he has been sentenced to two years' rigorous imprisonment by the Presidency Magistrate, W. R. Hamilton, Esq., who remarks as follows:—"The accused is not a criminal, but an honest working man, who feels himself grossly wronged by his wife's misconduct, and has unfortunately punished her in a cruel way." Beyond this extraordinary remark there is nothing on the record to show the reasons which induced the Presidency Magistrate to form the opinion that he could adequately punish the offence committed by the accused. In my opinion, the sentence is wholly inadequate for such a fiendish act, which is found by the Magistrate to have been deliberately committed by the accused, apparently for the sole reason that the complainant would not live with him as his wife. As the sentence is

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the utmost that the Magistrate could pass, it follows that the offence was one that could not be adequately punished by the Presidency Magistrate. He had, therefore, no jurisdiction to try the accused, but was bound, in law, to have committed him for trial to the High Court. I may add that, according to my experience, cases of cutting off a woman's nose are invariably, throughout the Presidency, committed to the Court of Session, and the punishment awarded is much more than two years' rigorous imprisonment.

The Court accordingly quashed the conviction and sentence, and directed the Magistrate to commit the prisoner for trial by the High Court.

Conviction and sentence quashed.

REPORTER'S NOTE.—The prisoner was subsequently brought up for trial before Bayley, J., and a common jury, and on conviction was sentenced by that learned Judge to eight years' rigorous imprisonment.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1891. *September* 14.

GOVINDRAV KRISHNA RATNA'GKAR, (ORIGINAL PLAINTIFF), APPELLANT, *v.* BA'LU BIN MONA'PA, (ORIGINAL DEFENDANT), RESPONDENT.*

Inámdár—Inámdár's assignee—Suit to recover enhanced rent—Land Revenue Code (Bombay Act V of 1879), Secs. 85, 86 and 87—Assistance of the Collector—Inámdár not a party to the suit—Objection not taken at the hearing, or in memorandum of appeal—Objection too late in appeal—Waiver.

Sections 86 and 87 of the Land Revenue Code (Bombay Act V of 1879) do not make it compulsory on the *inámdár*, or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the *inámdár*, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by section 85 of the Code, and they had refused, he would have become at once entitled to his ordinary civil remedy.

Objection as to the absence of legal demand for enhanced rent not being taken,

Held, that the suit was properly tried by the Court of first instance on the merits.

The lower appellate Court having dismissed the suit on the ground that the *inámdár* was not a party to the suit, a point on which no issue was raised, al-

* Second Appeal, No. 501 of 1890.