

1896.

QUEEN-
EMPERESS
v.
KALU DOSAN.

The reference came on for hearing before a Division Bench (Parsons and Ranade, J.J.).

There was no appearance for the Crown or for the accused.

PER CURIAM :—We return the appeal to the Sessions Judge for him to dispose according to law. We do not understand what he means by saying that he cannot deal with the appeal except as regards the amount of punishment. Section 412 of the Criminal Procedure Code provides for convictions by Courts of Session or Presidency Magistrates only, and the exception is not only as to the extent but as to the legality of the sentence.

Case remanded.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPERESS v. HANMA.*

1896.

December 10.

[*Criminal law—Practice—Procedure—Sentence—Enhancement of sentence—Power of appellate Court—Conviction and sentence on two separate charges—Retention of sentence where conviction on one of the charges is reversed.*

Where an accused person is convicted and sentenced on two separate charges, the appellate Court has no power, in appeal, to maintain the whole sentence when it reverses the conviction on one of the charges, as to do so is, in effect, to enhance the sentence.

THE accused was convicted by the Second Class Magistrate of Belgi of the offences of theft and mischief by killing, &c., cattle under sections 379 and 429 of the Indian Penal Code (Act XLV of 1860) and sentenced to one month's rigorous imprisonment for each offence.

On appeal, the District Magistrate of Bijápur convicted the accused of the offence of mischief only under section 429 of the Indian Penal Code, but upheld the whole sentence of two months' rigorous imprisonment.

The High Court sent for the record of the case under section 435 of the Code of Criminal Procedure (Act X of 1882).

* Criminal Review, No. 315 of 1896.

PER CURIAM:—In this case we do not interfere, as the sentence has expired, but we would point out to the lower appellate Court that it had no power to maintain the whole sentence when it reversed the conviction on one of the charges, such a maintenance being an enhancement of the sentence (see Criminal Ruling No. 41 of 1892).

1893.

QUEEN-
EMPERESS
v.
HANNA.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Candy.

ANANDRAO BABAJI BARVE (ORIGINAL PLAINTIFF), APPELLANT, v.
DURGABAI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1897.

June 26.

Transfer of Property Act (IV of 1882), Sec. 135—Assignment of mortgage by mortgagee—Suit by assignee—Payment into Court by defendants (representatives of mortgagor) of price paid to the assignor (mortgagee) without admitting the mortgage or assignment—Interest—Payment in grain—Damdapat.

In a suit by the assignee of a mortgage to recover the amount due on it, the defendants (who were representatives of the mortgagor) without admitting the mortgage, or that anything was due under it, paid into Court the amount which the plaintiff had paid for the assignment with interest and expenses, but said that they did not admit the assignment to the plaintiff or the assignor's right to the mortgage, but that they were willing that the amount should be paid to the plaintiff if he proved that he was the person entitled to recover the mortgage-debt.

Held, that the plaintiff was entitled to recover the whole amount legally due on the mortgage, and that section 135 of the Transfer of Property Act (IV of 1882) did not apply. Payment into Court under such circumstances was only a conditional tender and such a conditional tender is not a payment under the section.

Held, also, that the rule of *damdapat* applied to the mortgage, the advance having been in cash, although the interest was to be paid in grain.

SECOND appeal from the decision of J. Fitzmaurice, District Judge of Thána, varying the decree of Ráo Sáheb G. V. Saraiya, Subordinate Judge of Bassein.

Suit by the plaintiff as assignee of a mortgage. The mortgage had been executed on the 12th January, 1880, by Balkrishna N. Vartak and Narayan Balkrishna Vartak to one Parashram Sadashiv, whose grandson Balkrishna assigned it to the plaintiff. The deed provided (*inter alia*) that twenty maunds of paddy

* Second Appeal, No. 624 of 1896.