General's Act and to the principle enunciated by Westropp, J., in *Gamble* v. *Bholagir*[1] in which his Lordship said: "We think it more agreeable to the justice and equity of the case that there should be a distribution of the property of an insolvent amongst his creditors at large than that individual creditors should carry off the whole fund."

In these circumstances it appears clear that under sections 278 and 280 of the Civil Procedure Code the Administrator General has a right to have the attachment removed, because he was exclusively entitled, at first by reason of the order under section 18 and subsequently by his letters of administration, to recover the debt, and was not subject to any decree which affected his title.

The supplementary question whether the order made to the debtor to pay the money into Court, can be enforced under section 649, and relatively under Chapter XIX of the Civil Procedure Code, does not, therefore, arise. We accordingly abstain from expressing any opinion on it. Costs of this reference to be costs in the case.

Attorney for plaintiff:—Mr. *D. Bazonji*.

Attorneys for defendant:—Messrs. *Bicknell, Merwanji and Motilal*.

(1) (1866) 2 Bom. H. C. Rep., 146 at p. 161.

CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Ranade.

QUEEN-EMPRESS v. CHAGAN JAGANNATH.*

1898.
September 1.

*Criminal Procedure Code (Act X of 1882), Sec. 423—Appellate Court—Powers of appellate Court to enhance sentence—Sentence—Alteration of sentence.**

The accused was convicted of criminal breach of trust and sentenced to nine months' rigorous imprisonment. On appeal, the conviction was upheld, but the sentence was altered to one of six months' rigorous imprisonment and a fine of Rs. 1,000, or, in default of payment, three months' further rigorous imprisonment. The accused applied to the High Court in revision, contending that the alteration of the sentence amounted to an enhancement of the sen-

* Criminal Revision, No. 207 of 1898.

1898.

QUEEN-EMPRESS v. CHAGAN JAGANNATH.

tence beyond the powers of the appellate Court under section 423 of the Code of Criminal Procedure (Act X. of 1882).

Held, that there was no enhancement of the sentence.

Queen-Empress v. *Ishri* (1) distinguished.

APPLICATION under section 435 of the Code of Criminal Procedure (Act X of 1882).

The accused was convicted by the First Class Magistrate of Broach of criminal breach of trust in respect of a sum of Rs. 725, and sentenced to nine months' rigorous imprisonment.

On appeal, the Joint Sessions Judge upheld the conviction, but altered the sentence of nine months' rigorous imprisonment to one of six months' rigorous imprisonment and a fine of Rs. 1,000, or, in default of payment, three months' further rigorous imprisonment.

The accused applied to the High Court under its revisional jurisdiction, contending that the alteration of the sentence in appeal amounted to an enhancement of the sentence, which was illegal, and *ultra vires* of the appellate Court.

N. G. Chandavarkar, for the accused.

Rão Bahádur *Vasudev J. Kirtikar*, Government Pleader, for the Crown.

PARSONS, J.:—In this case the Sessions Judge on appeal altered the sentence of nine months' rigorous imprisonment to a sentence of six months' rigorous imprisonment and a fine of Rs. 1,000, in default of payment three months' further rigorous imprisonment. It is contended that this is an enhancement of the sentence beyond the powers of the appellate Court: see section 423 of the Criminal Procedure Code. If we treated the case as one of fact only, then the objection of the applicant might alone be sufficient to show that the altered sentence was more severe than the original one, for whether it is so or not to him depends upon the circumstances of the accused. And we think, as a general rule, that a sentence ought not to be so altered, except where the Court expressly purports to mitigate it in this manner, which would almost always be at the instance of the accused person himself. We have, how-

(1) (1894) 17 All., 67.

ever, to deal with the case as involving a point of law, and looked at in that light we think that we cannot yield to the contention. A sentence of fine is always considered lighter than a sentence of imprisonment. A sentence, therefore, of a fine of Rs. 1,000 would not be so severe as a sentence of three months' rigorous imprisonment, and the substitution of the former for the latter would not be an enhancement. The sentence of three months' rigorous imprisonment, in default of payment, does not make the whole sentence of imprisonment larger than it was before. In a case which came before the Madras High Court, (which has not been reported, but the record of which has kindly been sent to us—Criminal Revision Case No. 460 of 1888 decided on the 27th August, 1888), where the original sentence of three months' rigorous imprisonment had been altered to one of two months' rigorous imprisonment and Rs. 30 fine, in default one month's additional rigorous imprisonment, Shepherd, J., passed the following decision:—"I do not think that there is any enhancement of the sentence. If the accused is in a position to pay the fine, and does pay it, the nature of the sentence is altered, but the sentence is not enhanced. If he cannot and does not pay the fine, the sentence remains unaltered." The case of *Queen-Empress* v. *Ishri*[1] is not an authority to the contrary, for there the term of imprisonment *plus* the additional imprisonment in default of the payment of the fine exceeded the original term, and the altered sentence was on that account held to be an enhanced one.

We follow the decision of the Madras High Court and reject the application.

(1) (1894) 17 All., 67