

1909.

RAYJI
VALAD
MAHADU
v.
SARUJI
VALAD
KALOJI.

the plaintiffs, on the ground that she had vested right as the nearest heir of the last vatandar.

We, therefore, dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

CRIMINAL REFERENCE.

Before Mr. Justice Chandavarkar and Mr. Justice Bateelor.

1909.

December 2.

EMPEROR v. ARJUN AMBO KATHODI.*

Criminal Procedure Code (Act V of 1898), sections 109, 123, 397—Penal Code (Act XLV of 1860), section 320—Concurrent sentences—Consecutive sentences.

The accused was proceeded against under section 109 of the Criminal Procedure Code, and sentenced on the 6th July 1909, under section 123 of the Code, to rigorous imprisonment for nine months, in default of security for good behaviour. He was then tried for an offence of theft committed by him in November 1908, and was, on the 17th August 1909, sentenced to suffer rigorous imprisonment for three months: the second sentence was directed to take effect on the expiry of the first sentence.

Held, that the two sentences ought not to run consecutively; but must run concurrently.

REFERENCE made by J. L. Rieu, District Magistrate of Thána.

Arjun Ambo Kathodi was proceeded against under section 109 of the Criminal Procedure Code before the Honorary Magistrate First Class, Thána, who, in default of his giving the security demanded, sentenced him under section 123 of the Code to undergo rigorous imprisonment for nine months. This order was passed on the 6th July 1909.

Arjun was subsequently prosecuted in the Court of the First Class Magistrate, Sálsette, for an offence of theft committed by him in November 1908, and convicted and sentenced to suffer rigorous imprisonment for three months on the 17th August 1909

* Criminal Reference No. 100 of 1909.

with a direction that the sentence should take effect on the expiry of the term of imprisonment ordered in the former case.

The District Magistrate of Thána, being of opinion that the direction was not permissible in law, referred the case to the High Court, observing :—

“In view of the decision of their Lordships delivered in *Emperor v. Muthukomaran* (L. L. R. 27 Madras 525), both the sentences ought to run concurrently.”

The reference was considered by their Lordships.

PER CURIAM :— We must accept the District Magistrate's view in this Reference which is in accordance with the ruling of this Court in *Queen-Empress v. Tulshya Bahiru*⁽¹⁾, with *Emperor v. Muthukomaran*⁽²⁾ and *Joghi Kannigan v. Emperor*⁽³⁾.

We must, therefore, make the sentences concurrent in the present case.

R. R.

(1) (1893) Unrep. Cr. C. 970.

(2) (1903) 27 Mad. 525.

(3) (1903) 31 Mad. 515.

APPELLATE CRIMINAL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

*IN RE DHONDO KASHINATH PHADKE.**

*Newspaper (Incitements to Offences) Act (VII of 1908), section 3—
Order—Forfeiture of press.*

Section 3 of the Newspaper (Incitements to Offences) Act, 1908, provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. The section refers to the whole of the press : and no order could be made under it limited only to such portions of the press as were employed in printing the offending newspaper.

APPEAL from an order passed by J. L. Ricu, District Magistrate of Thána.

* Criminal Appeal No. 405 of 1909.

1909.

EMPEROR
v.
ARJUN.

1909.

December 22.