1918.

NARAGOUNDA v. CHAWAGOUNDA.

I, therefore, think that the answer to the first question asked by Marten J. should be in the negative.

In the second question propounded by Marten J. another consideration is introduced, viz., the legal effect of the mortgage of 30th August 1901 executed by the minor's guardian. The determination of that question depends on whether the present suit can be treated as a suit by the plaintiff for redemption of the mortgage. The lower Courts have so treated it and the referring Bench apparently inclined to the same view. Apparently the plaintiff does not object to this and the mortgage must, therefore, be taken as established and binding on him. This question does not, therefore, to my mind arise for decision by us.

Answers accordingly.

J. G. R.

CRIMINAL REVISION.

Before Mr. Justice Shah and Mr. Justice Marten.

IN RE KHEMA RUKHAD*.

1918. *February* 22.

Criminal Procedure Code (Act V of 1898), section 520—Order as to disposal of property—Order can be varied only by a Court of appeal or Court of revision entitled to act in the case.

In acquitting an accused person of the charge of theft of cattle, the trying Magistrate ordered the cattle to be returned to him. This order was modified by the Sessions Judge, who ordered the cattle to be given up to the complainant. The accused having applied to the High Court :—

Held, that the Sessions Judge had no jurisdiction, under section 520 of the Criminal Procedure Code, to make the order he had made, since he was neither a Court of appeal or a Court of revision in the case.

In re Laxman Rangu Rangari[1], followed.

Queen-Empress v. *Ahmed*[2], dissented from.

*Criminal Application for Revision No. 404 of 1917.

(1) (1911) 35 Bom. 253. (2) (1886) 9 Mad. 448.

1918.

KHEMA RUKHAD *In re.*

THIS was an application under revisional jurisdiction from an order passed by B. C. Kennedy, Sessions Judge of Ahmedabad modifying an order passed by T. P. Lakhia, First Class Magistrate at Dhandhuka.

The complainant lodged a complaint in the Court of the First Class Magistrate at Dhandhuka, alleging that the accused had committed theft of cattle belonging to him. The defence of the accused was that the complainant had removed the wife of accused No. 1, who brought the matter to the notice of the caste panch. In accordance to the decision of the panch, the complainant delivered the cattle to accused No. 1 as security for the return of the wife of accused No. 1.

The trying Magistrate acquitted the accused as in his opinion the defence was made out. He also ordered the cattle to be delivered to the accused No. 1.

The complainant applied to the Sessions Judge of Ahmedabad, who modified the order and ordered the cattle to be handed over to the complainant.

The accused No. 1 applied to the High Court.

Setalvad with *G. N. Thakor*, for the applicant :—In the present case appeal from acquittal lay to the High Court under section 417 of the Criminal Procedure Code. The Sessions Judge had no jurisdiction to act under section 520, either as a Court of appeal or a Court of Revision. See *In re Laxman Rangu Rangari*[1].

G. S. Mulgaonkar, for the opponent.—The Sessions Judge had jurisdiction to proceed as a Court of appeal. The appeal allowed by section 520 is independent of the general provisions as to appeals. See *Queen-Empress* v. *Ahmed*[2].

(1) (1911) 35 Bom. 253. (2) (1886) 9 Mad. 448.

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KHEMA RUKHAD *In re.*

SHAH, J.:—In this case the accused were charged with the theft of certain cattle. The First Class Magistrate, who tried the accused, acquitted them and directed the cattle to be given to the accused No. 1, Khema Rukhad. The complainant applied to the Sessions Court at Ahmedabad as regards the order relating to the disposal of the property. The learned Sessions Judge modified the order of the trial Court and directed that the cattle be returned to the complainant. The present application is made to this Court to revise the order of the Sessions Judge.

It is contended on behalf of the applicant that the Sessions Judge had no jurisdiction in this case under section 520, Criminal Procedure Code, to modify the order of the trial Court. The argument is that the Court of Sessions is neither a Court of appeal nor a Court of revision in this case within the meaning of section 520, Criminal Procedure Code. In my opinion it is not a Court of appeal, as an appeal from the order of acquittal would lie to this Court and not to the Court of Session. The Court of appeal within the meaning of the section is the Court to which an appeal lies in the particular case, and not the Court to which the appeals would ordinarily lie from the Court deciding that particular case. This view is supported by the observations of Heaton J. in *In re Laxman Rangu Rangari*[1], though the point that we have to consider did not arise in that case. The decision in *Queen-Empress* v. *Ahmed*[2], to which our attention has been drawn by Mr. Mulgaonkar, is opposed to this view. After giving my best consideration to the judgment, with all respect to the learned Judge, I am unable to agree with the interpretation of the section accepted by him. It is not essential that the appeal allowed should be preferred to the Court of appeal; but the Court indicated is one to which the

(1) (1911) 35 Bom. 253. (2) (1886) 9 Mad. 448.

appeal lies in that case. The fact that the appeal against an acquittal can be preferred at the instance of the local Government and by nobody else does not make any difference on this point.

I am unable to see how in such a case the Court of Session can be treated as a Court of revision within the meaning of section 520. Assuming, without admitting, that the complainant having no right of appeal, there was no Court of appeal so far as he was concerned within the meaning of the section, I think that the Court of revision in such a case would be the High Court and not the Court of Session for the purpose of section 520, Criminal Procedure Code.

I am, therefore, of opinion that the Court of Session had no power to make the order complained of.

On the merits also, it seems to me that having regard to all the circumstances, the proper order would be to restore the cattle to the person in whose custody they were at the date of their seizure.

It is hardly necessary to add that this order will be without prejudice to the civil rights of the parties.

I would, therefore, set aside the order made by the Sessions Judge and restore that made by the trial Magistrate with reference to the cattle.

MARTEN, J. :—I agree. In my judgment the decision of the learned Sessions Judge cannot be upheld either on the question of jurisdiction or on the merits.

As regards *Queen-Empress* v. *Ahmed*[1], the decision appears to have been that of a single Judge in a case where the parties were unrepresented, and where consequently the Court did not have the benefit of any argument from counsel. Be that as it may, I respectfully prefer the view taken by my brother Shah in the

[1] (1886) 9 Mad. 448.

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KHEMA RUKHAD *In re.*

judgment he has just delivered to that expressed by Mr. Justice Brandt in *Queen-Empress* v. *Ahmed*[1]. The disputed agreement Exhibit 18/1 is a curious one, for it purports to treat the cattle in question as a security for the return of the wife of accused No. 1 or alternatively as damages for her non-return. If this agreement be established, the rights of the parties under it can best be determined in a civil Court. The complainant can therefore now do what he could have done in the first instance, viz., have his rights ascertained in a civil Court instead of attempting to steal a march upon his opponents by instituting criminal proceedings against them for theft of the cattle the subject of the agreement, Exhibit 18/1, charges which the trial Magistrate has held to be unfounded.

I accordingly agree with the order proposed by my learned brother.

Order set aside.

R. R.

[1] (1886) 9 Mad. 448.

ORIGINAL CIVIL.

Before Mr. Justice Beaman.

1917.

March 30.

MAHOMEDALI ADAMJI PEERBHOY AND OTHERS (PLAINTIFFS) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANTS).*

Land held under Sanad from Government—Resumption of land—Valuation of land to be determined by a committee appointed by Government—Construction of the word "committee"—Valuation fixed by the majority binding on parties to the Sanad—Distinction between arbitrators and valuers.

Land was held by the plaintiffs under a Sanad from Government which provided "the said ground to be at any time resumable by Government for

* O. C. J. Suit No. 935 of 1915.