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for appeals in s. 486 just in the same way as an appeal is provided in s. 476B. In these provisions the subordination of Courts is the same, that is to say, an appeal from a Subordinate Judge lies to the District Judge and so on. It seems obvious, therefore that it was not the intention of the legislature to make civil and revenue Courts subordinate to the criminal Courts in such matters. But in s. 486 it is expressly provided that the procedure for hearing appeals and the powers of the appellate Court in dealing with the appeals are to be in accordance with the provisions of Chapter XXXI of the Criminal Procedure Code.

The convenience of the practice of dealing with these matters under s. 439, which practice I think is as well established here as in Lahore, seems to me to be obvious. As far as I can see there is nothing in the Code which can be said to prohibit the application of that section. I agree, therefore, with the learned Chief Justice and with the answers which he proposes to the questions referred.

WASSOODEW J. I agree that the answers to the questions referred should be as stated in the judgment of my Lord the Chief Justice.

Answer accordingly.

Y. V. D.

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Wassoodew.

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January 10

Criminal Procedure Code (Act V of 1898), ss. 419, 420, 421 and 422—Jail appeal—Admission—Whether accused entitled to be heard in person.

A convicted person presenting his appeal from jail under s. 420 of the Criminal Procedure Code, 1898, has no right to be heard in person when the appeal came up for admission. The proviso to s. 421 of the Code does not apply to an appeal presented under s. 420 of the Code.

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Where, however, notice is issued to the appellant under s. 422 of the Code, the appellant is entitled, if he so desires, to appear on the hearing of the appeal either by himself or his pleader.

Emperor v. *Lal Bahadur*,[1] referred to.

PETITION of appeal presented through the Superintendent, Sabarmati Jail, against conviction and sentence passed by G. H. Salvi, Sessions Judge, Kaira, Nadiad.

The appellant was convicted by the Sessions Judge of Kaira, for an offence under s. 302 of the Indian Penal Code and sentenced to transportation for life. Aggrieved by the conviction and sentence, the appellant presented a petition of appeal to the High Court, through the Superintendent of Sabarmati Jail.

The appellant applied to the High Court for permission to argue his appeal in person when it came up for admission.

Dewan Bahadur P. B. Shingne, Government Pleader, appeared.

BEAUMONT C. J. This is an appeal by the accused from jail in which the accused asks to be allowed to argue his appeal. As we have had a good many cases recently in which accused persons in jail have preferred a request to be allowed to come and argue their appeals when they come up for admission, we thought it right to ask the learned Government Pleader to look into the matter and refer us to any authorities on the subject, since there does not appear to be any ruling of this Court upon the question.

Section 419 of the Criminal Procedure Code provides that every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall be accompanied by the documents therein referred to. Section 420 provides that if the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the

[1] (1927) 50 All. 543, F.B.

proper appellate Court. It is under that section that the present appeal is presented through the officer of the jail. Section 421 provides that on receiving the petition and copy under s. 419 or s. 420, the appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily. Then there is a proviso that no appeal presented under s. 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. Then s. 422 provides that if the appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader.

The first question which arises for consideration is whether the proviso to s. 421 directing that an appeal shall not be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard, applies to an appeal presented under s. 420. In my opinion, the proviso does not so apply. The express reference in the substantive part of s. 421 to a petition presented under s. 419 or s. 420 indicates that the omission of any reference to s. 420 in the proviso is deliberate, and that the proviso is only intended to apply to an appeal presented under s. 419, that is an appeal presented direct to the Court, and not through the officer in charge of the jail. The legislature may well have thought that it would occasion serious inconvenience and expense to allow every convicted person who desires to appeal from jail the right to come to the appellate Court to be heard. We get many appeals from jail, which appear to be based on nothing more substantial than the hope which "springs eternal in the human breast", and it would be a serious matter if all such appellants were entitled as of right to insist on being brought at the public expense, often from a jail in a distant part of the presidency, to Bombay, to argue their appeals.

The next question is, whether, apart from any statutory right, a convicted person who presents an appeal ought upon

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general principles to be given the right of being heard. The general rule that no person should be condemned unheard cannot apply to an appeal, the right to which is the creation of statute. Where a man has already been condemned and deprived of his liberty, it requires, in my opinion, some statutory provision to entitle him to insist upon leaving the place where he is confined and being brought to the place where his appeal is to be heard. The Court will, I need hardly say, always consider whether the ends of justice require that an appellant should be heard. If the Court thinks that there is any possibility of its decision being influenced by anything the accused may say, then the Court can always direct him to be brought before it when his appeal is being heard in the first instance.

I would add that it has been held by a full bench of the High Court of Allahabad (*Emperor* v. *Lal Bahadur*[1]) that where a notice is issued under s. 422, the appellant is entitled, if he so desires, to appear on the hearing of the appeal either by himself or by a pleader. I agree with that ruling. I think that the obligation imposed on the Court under s. 422 of giving notice to the appellant, if he has no pleader, involves that the appellant must have a right to act upon the notice and come to the Court to argue his appeal if he so desires. But, in my opinion, where the Court is dealing with an appeal under s. 421, it is entitled to dismiss the appeal summarily without hearing the accused, and the accused has no right to insist on being heard.

In the present case the accused was convicted of the murder of his wife. He does not dispute that he did in fact kill his wife, but he says that he acted under grave and sudden provocation and in self-defence. The assessors have taken the view that the case falls under s. 304 of the Indian Penal Code. One of them seems to think that the accused was acting in self-defence, and the others think that there was grave and sudden provocation. It is, in my opinion,

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quite clear from the judgment of the learned Judge that there was no evidence on which the Court could hold that the case fell within any of the exceptions to s. 300; and I think that it would be useless to allow the accused to come here and argue the appeal, because there is no material to enable the Court to hold that the case does not fall under s. 302.

We, therefore, dismiss the appeal summarily without hearing the accused.

WASSOODEW J. The rule "hear the other side" *audi alteram partem* cannot be extended without qualification, in my opinion, to criminal appeals presented by a convict from jail under s. 420, Criminal Procedure Code. That rule is followed in criminal trials, it being incorporated in the statute itself as an indispensable requirement of justice. It is true that in judicial proceedings a party is ordinarily given an opportunity of hearing what is urged against him. But it is equally true that the right of appeal is essentially a statutory right, and the provisions of the statute conferring that right, in so far as it lays down the procedure to be followed in the exercise of that right even in the matter of audience, have necessarily to be observed. The relevant provisions are contained in ss. 419, 420 and 421 of the Criminal Procedure Code. It is clear that the proviso to the last section deals with appeals presented under s. 419, and by the language used the legislature has expressly restricted the right of the appellant to be heard to cases under s. 419. By necessary implication the right to be heard under s. 420, Criminal Procedure Code, has been denied. I do not wish to suggest that the inherent power of the Court to do justice, by directing the accused to be produced before it for being heard upon his case, is in any way limited. In spite of the restriction contained in the proviso to s. 421, wherever the appellate Court considers it desirable that the accused should be heard, the Court has power to direct the production of the

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prisoner before it for disposing of the appeal. But it cannot be said that a convicted person presenting his appeal under s. 420 from jail has a right to be heard in person. The Court if it thinks proper can decline to hear him. It may be noted that an argument drawn *ab inconvenienti* has been regarded as forcible in law. In such matters, where convicts from jail frequently apply for permission to be heard in person, the Courts have to allow their decision to be determined generally by considerations of inconvenience and public expense. The case is, however, different when notice is given to the appellant under s. 422, Criminal Procedure Code. (See *Emperor* v. *Lal Bahadur*.[1]) In the present case the accused's presence is not necessary. I therefore agree with the order proposed by my Lord the Chief Justice.

Appeal dismissed.

J. G. R.

[1] (1927) 50 All. 543, F. B.

APPELLATE CIVIL.

Before Mr. Justice Divatia and Mr. Justice Sen.

1937 *September 16*

NAGAPPA ALIAS RAMAYA BAB BALGI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* SANTAPPA PANDURANG PAI AND OTHERS (ORIGINAL DEFENDANTS NOS. 1, 2 AND 4), RESPONDENTS.*

Religious Endowments Act (XX of 1863), s. 14—Breach of trust—Suit against trespasser—Suit not maintainable—Construction.

Section 14 of the Religious Endowments Act, 1863, contemplates that in a suit under the section the Court has not to pass any order against a person who is alleged to have intruded into management without authority, but that the only question to be considered is whether a person in whom property has been vested should be removed for misfeasance or malfeasance.

In a suit in which the plaintiffs asked for a declaration that one of the defendants, viz., defendant No. 4, had no right to manage the property of the suit temple, for

* Cross Appeals Nos. 24 and 25 of 1932.