respondent had not obtained his discharge, nor had he obtained *ad interim* protection The debt was not entered in his schedule, and could not be proved—Insolvent Act, s. 49.

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GEORGE *v.* GEORGE.

MACPHERSON, J., made an order for attachment.

Attorney for Mrs. George : Mr. *Fink*.

Before Mr. Justice L. S. Jackson and Mr. Justice Miller.

THE QUEEN *v.* GOOJREE PANDAY AND ANOTHER.*

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May 12.

Criminal Procedure Code (Act X of 1872), *s.* 280—*Enhancement of Sentence.*

THE facts are fully stated in the judgment of the Court.

The Junior Government Pleader (Baboo *Juggodanund Mookerjee*) for the prosecution.

The prisoners were undefended.

JACKSON, J.—The prisoners in this case, named Goojree Panday and Jadu Sein, were convicted, by the Court of Session at Midnapore, of a dacoity, and were sentenced, Goojree Panday to rigorous imprisonment for three years, and Jadu Sein to similar imprisonment for six months.

Upon the hearing of the appeal, the Junior Government Pleader appeared and applied to us to exercise the powers vested in the Court of Appeal by s. 280 of the Code of Criminal Procedure by enhancing the punishment which has been awarded against the prisoners. He represented that considering the gravity of the offence and the circumstances under which it was committed, and the place, and also the class of persons to which the complainant belonged, being a traveller to the shrine of Juggernath, and the necessity of protecting such persons, the Court ought to see that an adequate sentence is passed. This Court is empowered, both as a Court of Appeal and also as a Court of Revision, to enquire into the sufficiency of sentences passed by the inferior Courts. One contingency in which that power may be exercised is when the Judge, recognizing the heinous nature of the offence committed, yet considers that there are circumstances which go to mitigate punishment, or make the prisoner an object of leniency. In such a case no doubt the High Court may enquire into those circumstances, and although it is generally reluctant to do so, may take a different view of the discretion which ought to have been exercised, and may enhance the punishment. But there is another view of the case in which the duty of the High Court will arise, and that is,

* Criminal Appeal, No. 287 of 1873, from an order of the Sessions Judge of Midnapore, dated the 18th February 1873.

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where no circumstances of mitigation have been set forth, and where without any sufficient reason the Court convicting the prisoner has awarded a punishment, which is in ordinary cases quite inadequate in respect of the offence committed. I think it is the duty of the High Court in such a case—a duty which the Legislature has in ss. 280 and 297 specially imposed upon us—to take care that the inferior Criminal Courts do not, by the infliction of lenient punishments, give, as it were encouragement to the commission of serious offences. Now the offence of which the prisoners in this case were convicted is one which, under s. 395 of the Indian Penal Code, makes them liable to transporation for life, or rigorous imprisonment which may extend to ten years, and section 397 provides:—"If, at the time of commiting dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years." Now I find in the evidence of the prosecutor in this case, and that evidence is not disbelieved by the Judge, the statement "a woman who was travelling with us, had her foot hurt when the dacoits were pulling off her anklet,—a bannia, who was with us, and a garreewan were, struck on the head and hurt,—and another cartman was struck on the foot and a third carter had his leg broken," which amounts to grievous hurt; and if the Court below had considered, as it might have done, all these circumstances, then under s. 397 a less sentence than seven years' rigorous imprisonment could not be passed. Looking further into the case, the matter appears to have been a planned and preconcerted robbery on the part of the prisoners. The prosecutor, being one of a party of persons travelling to the shrine of Pooree, halted one afternoon for refreshment in a village place. The prisoners contrived to have access to them, and to get into their confidence in some degree, and doubtlessly observed where they kept their money, and afterwards attack them when they had gone a short distance on their journey at the dead of night with a number of malefactors sufficient to overcome all resistance. I think this is a case in which the sentence of three years' rigorous imprisonment passed by the Sessions Judge on the principal accused is wholly inadequate, and that, under the circumstances of the case, a punishment less than seven years ought not to have been passed on him. The sentence is enhanced accordingly.

In respect of Jadu Sein, the younger member, he is considered both by the Magistrate and the Sessions Judge to be a mere lad, who was led into the crime by inducement and persuasion; and although we may have a suspicion that his criminality was something more than this, I do not think there are sufficient grounds for us to interfere with the exercise of the Judge's discretion by directing that no severer sentence should be passed on this prisoner. In his case, therefore, the sentence will be affirmed as it stands.