1868. *November 6.* *R. A. No. 59 of 1868.*

parties remain precisely the same as in the case of the issuing of a similar warrant on an ordinary written application for execution.

Our answer to the question submitted is that the defendant was entitled to the privilege of a reasonable time for his return home, and the arrest therefore was irregular.

Appellate Jurisdiction (a)

Criminal Regular Appeal No. 59 of 1868.

K. CHAPPU MENON.....*Appellant.*

An appeal lies against an order of the Session Court imposing a fine upon a witness under Section 228 of the Penal Code for intentional insult to the Session Judge sitting in a stage of a judicial proceeding.

Where the High Court were satisfied that the witness did not intend to insult the Judge the order was set aside.

1868. *November 6.* *C. R. A. No. 59 of 1868.*

THIS was an appeal against the sentence of G. R. Sharpe, the Session Judge of Calicut, in Case No. 19 of the calendar for 1868.

JUDGMENT:—The appellant in this case has been fined rupees 70 under Section 228 of the Penal Code for the offence of intentional insult to the Session Judge of Calicut when sitting in a stage of a judicial proceeding. The insult appears from the Court's order to have been "a derisive laugh" immediately on entering the witness box when about to be affirmed, and "pretended inability to articulate a single word," both then and when "a nasty question as to his antecedents was put in cross-examination," which threats of a fine removed.

The appellant at the time declared that he meant no insult, and that the manner observed by the Judge was owing to natural infirmity of articulation. But the Judge considered the excuse insufficient to account for the demeanour exhibited.

The question is whether there are good grounds for the belief that the Judge was led at the moment to form a mistaken impression of the man's intention from his

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appearance. He has returned to the inquiry of this Court that the order appealed from contains all that there is on record relating to the contempt, and in it there is nothing to suggest any reason for the appellants being disposed to show disrespect to the Judge or feign or exaggerate natural infirmity of speech; neither does it appear that he made use of improper expressions of any kind.

The laugh and hesitation in speaking were the only two things considered contemptuous. But it is apparent from the order that the Judge himself believed at the time that the appellant was in some degree afflicted with infirmity of utterance, and was influenced by impressions of the appellant's general character derived from inquiries of others, which must have been very strong to have led to the use in the Court's order of the very unbecoming language "his scoundrelly character." This we considered warranted further inquiry, and we have now returned by the Session Court the evidence of two witnesses, who have known the appellant for several years and deposed to his being afflicted with stammering and having a laughing appearance when about to speak. Little reliance would have been placed on this evidence by itself; but from our own observation of the man's manner and appearance when speaking in the presence of this Court, and what appears from the order of the Lower Court, we have a strong conviction that they have stated substantially what is true, and that the Judge has mistakenly supposed, as in such a matter on the mere view he might easily do, that the laugh and hesitation he observed were meant as an insult to him.

We should mention that a doubt having suggested itself as to the right of appeal in such a case, we have considered the provisions of the Code of Criminal Procedure, and are of opinion that the right of appeal is given. The doubt suggested was whether it could be said that there had been "a conviction on a trial" within the meaning of Section 408 of the Code. The proceeding under Section 163 involved the consideration of the sufficiency of what took place in the presence of the Court to constitute a punishable offence, after hearing the statement of the offender; and the Court was bound to record the facts with the statement, as well

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as the finding and sentence. It was therefore clearly a trial although by a summary mode and on the view of the Judge.

It is true that Section 408 specially mentions the two instances of trial with the aid of assessors, and trial by jury, but not so as to exclude the application of the general words "any person convicted on a trial held by a Court of Session," to a trial in another way. A man arraigned, pleading guilty and convicted on his plea, has clearly been convicted on his trial within the meaning of Section 408.

Further, Section 413, which expressly gives an appeal from a conviction for the offence in this case by a Civil Court, shows clearly that the Sections were intended to apply to a conviction by a Criminal Court. Were it otherwise, there would be this anomaly that a conviction by a Judge would be open to appeal when made in the exercise of his Civil but not his Criminal jurisdiction.

The order therefore must be set aside and the fine refunded.

It is accordingly ordered that the sentence of the said Court of Session be, and the same hereby is, reversed; and that the fine be refunded.

Appellate Jurisdiction (a).

Regular Appeal Miscellaneous No. 57 *of* 1868.

Y. VIRABHADRA RAU against M. RAMAIYA *alias* BABPAUTULA.

Application for execution of a decree obtained in 1858 under the old law as to limitation was made in January and disposed of in February 1864, and a subsequent application was made in November 1867.

Held, that the first application was in time, but the second application was barred by Section 20, Act XIV of 1859.

1868. *November* 13 *R. A. M. No.* 57 *of* 1868.

THIS was a Regular Appeal against an order of E. B. Foord, the Civil Judge of Berhampore, dated 15th November 1867, rejecting an application for the execution of the

(a) Present; Scotland, C. J. and Collett, J.