

APPELLATE JURISDICTION (a)

Criminal Regular Appeal No. 240 of 1870.

SELLAM.....Appellant.

The prisoner was convicted of an offence punishable under Section 307 of the Penal Code. In addition to the sentence passed upon him under that Section, the Session Judge directed, under Section 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of Rupees 100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period.

The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement.

THIS was an appeal against the sentence of the Court of Session of Trichinopoly, in Case No. 14 of the Calendar for 1870.

1870.
December 2.
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240 of 1870.

The prisoner was tried and convicted under Section 307 of the Indian Penal Code. The evidence showed that he attempted to stab one Heroju Row (who, the prisoner had reason to believe, was carrying on an intrigue with his wife) with a dagger. The sentence was that the prisoner be kept to rigorous imprisonment for sixteen months, and do pay a fine of Rupees 15, and in default do undergo one month's additional rigorous imprisonment under Section 307 of the Penal Code, and that, after the expiration of the term of the imprisonment, he do execute a formal engagement in a sum of Rupees 100 for keeping the peace towards the first witness (Heroju Row) for a period of one year, and in default do suffer simple imprisonment for that period under Section 280 of the Criminal Procedure Code.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—In this case the Session Judge has convicted the prisoner of an offence under Section 307 of the Indian Penal Code, and in addition to the sentence passed upon him under that Section, with which we see no reason to interfere, has, under Section 280 of the Criminal Procedure Code, required him at the expiration of his term of imprisonment to execute a formal engagement in a sum of 100 Rupees for keeping the peace towards 1st witness for period of one year, and has provided that, in default of his

(a) Present : Scotland, C. J. and James, J.

370. number 2.
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of 1870. complying with the terms of the requisition, he do suffer simple imprisonment for that period.

The Section of the Criminal Procedure Code under which this sentence was passed does not authorize or contemplate the imposition of a term of imprisonment in default of compliance with the order to enter into a recognizance to keep the peace, nor is there any provision in the Chapter to which the Section belongs for providing for imprisonment to enforce compliance with an order under Section 280 to enter into such a recognizance. The application of Section 288 is clearly limited to proceedings taken under Section 282. That portion of the Session Judge's sentence, therefore, which provides a period of imprisonment in default of the prisoner's entering into a formal engagement to keep the peace must be set aside.

APPELLATE JURISDICTION. (α)

Regular Appeal No. 68 of 1870.

IBRAHIM SAIB.....*Appellant.*

MUNI MIR UDIN SAIB.....*Respondent.*

The Mahomedan doctrine of pre-emption is not law in this Presidency.

70. number 7.
. No. 68
1870. THIS was a Regular Appeal against the decree of C. G. Plumer, the Acting Civil Judge of Chittoor, in Original Suit No. 24 of 1868.

This was a suit by plaintiff to enforce his right of pre-emption to 14½ cawnies of punjah laud with a hut, well, trees, and other things attached thereto, and Rupees 50 damages.

The plaint set forth that the above property belonged to one Narayana Chetty, who sold it to 1st defendant for Rupees 1,000 and executed a deed of sale on November 4th, 1867; that the plaintiff, who owns the land adjoining the said property had, under the Mahomedan law, the right of

(α) Present: Holloway, Acting C. J., and Innes, J.