respondent will pay the costs of the appeals to the Courts below, and of these appeals.

Appeal allowed.

Solicitors for the appellant: Messrs. *Lattey & Payne.*

Solicitors for the respondent: Messrs. *T. L. Wilson & Co.*

C. B.

CRIMINAL REVISION.

Before Mr. Justice Banerjee and Mr. Justice Sale.

FARKAN AND OTHERS (PETITIONERS) *v.* SOMSHER MAHOMED AND ANOTHER (OPPOSITE PARTIES.) *

1894. *October* 24.

Judgment—Form and contents of judgment—Criminal appeal, Judgment in—Criminal Procedure Code, 1882, sections 367, 424.

A Deputy Commissioner, after hearing an appeal from a Deputy Magistrate who had convicted the appellants of rioting, gave the following judgment:—

"After hearing the arguments of the pleader for the appellants and examining the record I am of the opinion that the lower Court had ample ground for convicting the accused of rioting. I do not consider the sentence too severe. Appeal dismissed."

Held, that this was not a judgment within the meaning of sections 367 and 424 of the Criminal Procedure Code, and that the appeal must be reheard.

Kamruddin Dai v. *Sonatun Mandal* (1), and *In the matter of the petition of Ram Das Maghi* (2), followed.

THE facts of this case were as follows:—

The accused were charged with rioting under section 147 of the Penal Code, the occurrence having taken place on the 6th Assar (19th June). The case for the prosecution was that the two complainants and another had come to the south bank of the river Jalia with a herd of cattle to feed them; that the accused with others to the number of 60 or 70 men came in a body armed with *lathis* and other weapons for the purpose of turning the complainants off the

* Criminal Revision No. 558 of 1894, against the order passed by B. B. Newbold, Esq., Deputy Commissioner of Sylhet, dated the 4th September 1894, confirming the order passed by Babu G. C. Nag, Sub-Deputy Magistrate of Sunamgunge, dated the 21st August 1894.

(1) I. L. R., 11 Calc., 449. (2) I. L. R., 13 Calc., 110.

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land by force; that the latter being afraid crossed the river in their boat to the north bank in order to get away from the accused, but that they were followed by them there and assaulted.

The accused pleaded not guilty, the substantial portion of their defence being that on the day of the occurrence a number of cattle belonging to the Jalia village, to which the complainants belonged, and which were on the north bank of the river, had crossed the river on to the southern bank and strayed on to the land of one Korai; that he and two others went there to seize the cattle and take them to the pound; and that when the accused had taken the cattle across the river on the way to the pound the people of Jalia came out in a body and assaulted them and rescued the cattle.

There was also a cross-case between the parties. The Sub-Deputy Magistrate went fully into the facts and evidence in the case, and believing the case for the prosecution convicted the accused and sentenced them to four months rigorous imprisonment. The accused then appealed to the Deputy Commissioner who upheld the conviction. The following was his judgment delivered on the 4th September 1894 :—

"After hearing the arguments of the pleader for the appellant and examining the record I am of the opinion that the lower Court had ample ground for convicting the accused of rioting. I do not consider the sentence too severe. Appeal dismissed."

The accused then moved the High Court, and a rule was issued to show cause why the judgment and order of the 4th September should not be set aside and the appeal re-heard, the ground being that it did not comply with the provisions of sections 367 and 424 of the Code of Criminal Procedure. The rule came on to be heard.

Mr. *A. C. Banerjee* for the petitioners in support of the rule.

No one appeared to show cause.

The judgment of the High Court (BANERJEE and SALE, JJ.) was as follows :—

This is a rule calling upon the Deputy Commissioner of Sylhet to show cause why his order dated 4th September 1894

should not be set aside and the appeal re-heard. The ground upon which we have been asked to interfere in this case is that the order complained of which is the judgment of the Deputy Commissioner on appeal from a judgment of the Deputy Magistrate does not comply with the requirements of section 367 read with section 424 of the Code of Criminal Procedure. The judgment is an extremely short one. It is in these terms: "After hearing the arguments of the pleaders for the appellants and examining the record, I am of opinion that the lower Court had ample ground for convicting the accused of rioting. I do not consider the sentence too severe." It does not, as section 367, which is made applicable to appellate judgments by section 424, requires, contain the point or points for determination, nor any explicit statement of the reasons for the decision on such point or points. It is argued by the learned Counsel for the petitioners that one of the questions that arises in the case is whether there was any common object by which the persons who are said to have composed the unlawful assembly were animated, and it is of importance in such cases always to see what the common object is in order to determine whether it is one of the objects which would make the assembly unlawful. Judgments very similar to the one now under revision have been considered by this Court to be insufficient under the law, and retrials have been ordered. [See the cases of *Kamruddin Dai* v. *Sonatun Mandal* (1), and *In the matter of the petition of Ram Das Maghi* (2).] No doubt section 537 of the Code of Criminal Procedure provides that no finding or sentence of a Court of competent jurisdiction shall be reversed on appeal or revision on account of any error, omission or irregularity in the judgment, unless such error, omission or irregularity has occasioned a failure of justice; but it is impossible to say that the error, omission or irregularity in the judgment in this case has not occasioned a failure of justice, when we do not know what finding the lower Appellate Court would have arrived at upon the evidence with regard to the question of common object of the members of the unlawful assembly, and whether, if its attention had been directed to the determination of this question, it would

(1) I. L. R., 11 Calc., 449. (2) I. L. R., 13 Calc., 110.

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or would not have found that there was a common object such as converted the assembly in this case into an unlawful assembly. Where the law allows an appeal, the appellant is entitled to have an explicit opinion from the Court of appeal that has to deal with them on the questions of fact involved in the case. The case seems to us to be exactly similar to the two cases referred to above, and, following those two cases, we make the rule absolute, set aside the judgment of the Appellate Court and direct the appeal to be re-heard.

H. T. H. *Rule made absolute and judgment set aside.*

APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Gordon.

1894
May 17.

KARMI KHAN (DEFENDANT) *v.* BROJO NATH DAS (PLAINTIFF.)*

Bengal Tenancy Act (VIII of 1885), Chapter X, sections 101, 102—Power of Revenue Officer—Decision of Special Judge—Res judicata—Question whether land is mal or lakhiraj—Limitation—Sale for arrears of revenue—Act XI of 1859, sections 37, 53—Incumbrance—Adverse possession.

The plaintiff had been proprietor of an estate which was sold for arrears of Government revenue and repurchased from the then purchaser by the plaintiff in 1886. He applied under Chapter X of the Bengal Tenancy Act for the measurement of the estate and the preparation of a record of rights, and the Revenue Officer deputed for these purposes found that a portion of the estate held by the defendant was *mal* land, though it was held as *lakhiraj* under certain *sanads*, and as he also found that no rent had ever been paid for it, it was entered on the record of rights as *mal* land held under those *sanads* as *lakhiraj*. The Special Judge on appeal by the plaintiff held that the land having been found to be *mal* should have been entered as *mal* land unassessed with rent. In a suit to have the land assessed with rent, it was found that the *sanads*, under which the defendant claimed to hold, were granted not by any predecessor in title of the plaintiff, and were of a date anterior to the Permanent Settlement: *Held*, (reversing the decision of the lower Appellate Court) that the Special Judge had no jurisdiction to determine whether the land was *mal* or *lakhiraj*, and that his judgment as to its being *mal* did not therefore operate as *res judicata*. *Secretary of State for India v. Nitye Singh* (1) referred to; *Gokhul Sahu v. Jodu Nundun Roy* (2) distinguished.

* Appeal from Appellate Decree No. 523 of 1892, against the decree of Babu Rabi Chandra Ganguli, Subordinate Judge of Midnapore, dated the 22nd of January 1892, reversing the decree of Babu Ram Jadab Tolapatro, Munsif of Tamlukh, dated 30th of March 1891.

(1) I. L. R., 21 Calc., 38. (2) I. L. R., 17 Calc., 721.