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it was laid down that it was not the practice to make an order for payment of costs between an attorney and his client except in a regular suit against the client. But it is to be remembered that the plaintiff, who appeared in person, while objecting to the payment of this fund to the attorneys, did not dispute the deposit of title deeds, or that the money was due to the attorneys. I think the better course will be to give the applicants the opportunity of establishing their claim by suit, and then of renewing this application if so advised. For that purpose the present application may stand over.

The plaintiff appeared in person, and no question of costs arises as far as he is concerned.

As regards the attaching creditor, I make no order as regards his costs either, nor do I make any order as regards Mr. Apear's client the subsequent purchaser, who, as far as I can judge, need not have appeared.

Attorneys for the applicant: Messrs. *Watkins and Co.*

Attorney for the defendant: Baboo *O. C. Ganguli.*

J. V. W.

CRIMINAL REVISION.

Before Mr. Justice Trevelyan and Mr. Justice Rampini.

1893 *September* 4.

RASH BEHARI DAS (PETITIONER) *v.* BALGOPAL SINGH (OPPOSITE PARTY).*

Judgment—Judgment of Appellate Court—Criminal Procedure Code (Act X of 1882), *ss.* 367 *and* 421—*Appeal rejected without any reasons given.*

An Appellate Court on rejecting an appeal under the provisions of section 421 of the Criminal Procedure Code need not give its reasons for the decision.

ON the complaint of one Balgopal Singh, Rash Behari Das, the petitioner, was charged by the Sub-Deputy Magistrate of Contai,

* Criminal Revision No. 503 of 1893, against the order passed by L. P. Shirres, Esq., District Magistrate of Midnapore, dated the 2nd August 1893, affirming the order passed by Baboo Narendra Kumar Chowdhry, Sub-Deputy Magistrate of Contai, dated 31st July 1893.

under section 323, Penal Code, with the offence of voluntarily causing hurt, to which charge the petitioner pleaded not guilty; but the Sub-Deputy Magistrate found him guilty of the said offence and sentenced him to simple imprisonment for three weeks and to pay a fine of Rs. 25; in default, further simple imprisonment for one week.

Against this finding and sentence the petitioner preferred an appeal; and on the 2nd August 1893, the Magistrate of Midnapore rejected the appeal. The judgment of the appeal Court consisted merely of the words "appeal rejected."

Rash Behari Das filed a petition to the High Court, in which he prayed that the sentence might be set aside on the ground (among others) that the judgment of the Magistrate, dated 2nd August 1893, was bad in law inasmuch as there was no judgment passed by him in accordance with law.

Baboo *Jagat Chandra Banerjee* for the petitioner.

The *Officiating Deputy Legal Remembrancer* (Mr. *Leith*) for the Crown.

Baboo *Jagat Chandra Banerjee*:—Chapter XXVI of the Criminal Procedure Code relates to judgments in criminal cases. Section 367 has reference to judgments of Courts of first instance, and section 424 to judgments of Appellate Courts. It is clear from these two sections that judgments must contain reasons, and numerous decisions of this Court and of the High Courts of Bombay and Allahabad have upheld that view: see *Kamruddin Dai* v. *Sonatun Mandal* (1), *In the matter of the petition of Ram Das Maghi* (2); *In re Shivappa* (3), and *Queen-Empress* v. *Hargobind Singh* (4). Even in summary trials reasons must be given in the judgment, although no evidence need be recorded,—see section 263 of the Code. Now, the question is whether in a summary rejection of an appeal under section 421 reasons need be given. It is submitted that it could never have been intended by the Legislature that no reasons should be recorded when the Judge rejects an appeal summarily. [TREVELYAN, J.—What is the meaning of those words "summarily reject"?] Those words mean rejection without sending for the

(1) I. L. R., 11 Calc., 449.
(2) I. L. R., 13 Calc., 110.
(3) I. L. R., 15 Bom., 11.
(4) I. L. R., 14 All., 242 (272, 273).

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record. The next section, *viz.* section 422, makes that meaning perfectly clear. It should be borne in mind that unless reasons are recorded, the accused is placed in a position of great disadvantage with regard to motions before the High Court in revision. The cases of *Queen-Empress* v. *Ram Narain* (1) and *In the matter of the petition of Bala Subbana* (2), are in my favour.

The *Officiating Deputy Legal Remembrancer* for the Crown :—There is no appeal "pending" until the appeal has been admitted; see section 426. An appeal is not *heard* if rejected summarily; see section 422 There is a distinction between a "dismissal" and "rejection"; as to the former, see sections 421, 423; as to the latter, see sections 421, 422. It is only when an appeal is heard that reasons need be given in the judgment. No judgment is needed in a summary rejection, and therefore no reasons are required. Section 424 deals with judgments of Appellate Courts: surely that means judgments in appeals. It is submitted that there cannot be any judgment in an appeal which has not been heard or admitted, but has been summarily rejected. Section 430 contemplates "judgments" and "orders" of Appellate Courts; it is submitted section 421 involves an "order," not a "judgment." Where the Legislature wants reasons to be recorded, it has carefully expressed that intention in clear terms—see sections 213, 249, 253, 257, 263, 264, 307 and 426. We find the term "judgment" used in section 249 for the first time in the Code, and it is there used in connection with judgments of acquittal and conviction. [TREVELYAN, J.—Is there anything in the Code to show that there is to be a judgment when the appeal is heard?] No, not in express terms. [TREVELYAN, J.—Then that is an argument against you, for we know there must be a judgment in such a case.] The word "judgment" is also used in sections 338, 347, 404, 425, 537, 548, and in Chapter XXVI. As to what is a judgment, and what it should contain, see section 367. Under section 421 the points for determination are, *first*, whether the appeal is to be admitted, or, *secondly*, to be rejected. The wording of the section itself supplies the reason for rejection, *viz.*, that the Court "considers that there is not sufficient ground for interfering." [TREVELYAN, J.—Unless a judgment is given under section 421, how are we to

(1) I. L. R., 8 All., 514. (2) Weir's Rep., 1009.

know, without sending for the record, that the Judge has exercised a proper discretion in rejecting an appeal?] The same reasoning may be applied to a case under section 422, where the Judge admits an appeal. It may be argued that the Judge must write a judgment when he admits an appeal. The words of section 421 show that no judgment need be given. In case the High Court think it necessary to interfere, the original record containing the judgment of the first Court is available. The decisions in *Baidya Nath Singh* v. *Muspratt* (1) and *Yacoob* v. *Adamson* (2) were arrived at on the ground that it would be impossible for the High Court to act owing to want of material for acting: but that is not the case here.

With regard to the cases cited, the case of *Queen-Empress* v. *Ram Narain* (3) is not the judgment of a Divisional Bench; it is the judgment of a single Judge. [RAMPINI, J.—In that judgment I do not understand Brodhurst, J. to say that the Judge under section 421 must write a judgment; he merely says the Judge should give reasons.] That is so. The observation, besides, is an *obiter dictum*. Moreover, if under section 421 we take it that the summary rejection is only an order (and it is spoken of as an "order" in the above case), then no reasons need be given. The case of *In the matter of the petition of Bala Subbana* (4) is in my favour.

Baboo *Jagat Chandra Banerjee* in reply:—The case of *Queen-Empress* v. *Ram Narain* (3) decides that "reasons must be given" for the *decision* of the Judge, and the decision of the Judge is his judgment. [RAMPINI, J.—But it does not lay down that a judgment must be written.] "Judgment" and "decision" are interchangeable terms, and the reasons given by the Judge for his decision form his judgment.

The judgment of the Court (TREVELYAN and RAMPINI, JJ.) was as follows:—

The question in this case is whether an Appellate Court, in rejecting an appeal under the provisions of section 421, Criminal Procedure Code, is obliged to give a judgment containing the particulars enumerated in section 367 of the Code, or at any rate,

(1) I. L. R., 14 Calc., 141.
(2) I. L. R., 13 Calc., 272.
(3) I. L. R., 8 All., 514.
(4) Weir's Rep., 1009.

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give reasons for its decision. In this case the Magistrate of Midnapore, acting as an Appellate Court, has, in rejecting the appeal, simply recorded the words "appeal rejected." The question is an important one affecting a large number of tribunals in this country. So far as we know, this Court has always considered that section 421 does not require a formal judgment of any description. There seems to be no reported or decided case on the subject in this Court. In a case of *In the matter of the petition of Bala Subbana* (1) a Division Bench of the Madras High Court expressly held that no judgment was necessary. Mr. Justice Brodhurst, sitting as a Division Bench of the Allahabad High Court, expressed an opinion that reasons, however concise, should be given for rejecting an appeal under section 421 [see *Queen-Empress* v. *Ram Narain* (2)]. The decision of this point was not absolutely necessary to Mr. Justice Brodhurst's decision, but he expressed the opinion after argument of the question. We think that the question really depends upon the meaning of the word "summarily" in section 421 of the Code. In the absence of that word, there would seem from the Code to be no reason why a judgment is more required in a case where an appeal is heard and dismissed than in a case where it is rejected under section 421, but the word "summarily" we think differentiates the cases. The word "summarily" ordinarily means in an informal manner and without the delay of formal proceedings. This, we think, would seem to show that the Judge was entitled to reject the appeal without any formality at all; therefore, without the formality of either a recorded judgment or reasons of any description. We think we are supported in this conclusion by the construction which this Court has, as far as we know, ordinarily placed upon section 421, and we see no reason to express any opinion which will have the effect of causing subordinate tribunals to depart from the practice which they have followed,—at any rate in this Province, for some time. There is no other question in the case. As far as the sentence is concerned, it does not seem to be excessive. We discharge the rule.

Rule discharged.

J. V. W.

(1) Weir's Rep., 1009.

(2) I. L. R., 8 All., 514.