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money-decree against the mortgagor. The Full Bench did not think it necessary to decide the question raised under s. 7 of the Procedure Code, and for the same reason we need not now do so; but it is by no means certain that the operation of that section would not in itself be an answer to this suit, as a suit in which full relief could have been given, might, at the time of the summary decree, have been instituted against the mortgagor. We decide nothing about any other remedy which may be open to the mortgagee, but we must restore the judgment of the Subordinate Judge.

Appeal decreed.

FULL BENCH.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice L. S. Jackson, Mr. Justice Markby, and Mr. Justice Ainslie.

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THE EMPRESS *v.* BAIDANATH DAS.*

Offence punishable by Fine and Confiscation—Act XXI of 1856, *s.* 49—*Offences triable in a summary way—Summons Cases—Sentence—Criminal Procedure Code (Act X of* 1872*), ss.* 4, 8, 148, 149, *&* 222.

An offence under s. 49 of Act XXI of 1856 can be tried summarily under s. 222 of the Criminal Procedure Code, the confiscation provided by s. 49 being merely a consequence of the conviction, and not forming part of the punishment for the offence.

THE prisoner in this case was charged with the illegal possession of ganja, convicted under s. 49 of Act XXI of 1856, and sentenced by the Joint Magistrate of Rungpore to a fine of Rs. 100, or in default, to rigorous imprisonment for one month. The Sessions Judge referring to the case of *Juddoonath Shaha* (1), was of opinion that the order was illegal, as the Joint Magistrate had no power to try the case summarily or to pass sentence of rigorous imprisonment. He, therefore, referred the case under s. 296, Act X of 1872.

* Criminal Reference, No. 48 of 1877, by H. Beveridge, Esq., Officiating Sessions Judge of Rungpore, dated the 30th August 1877.

(1) 23 W. R., Cr. Rul., 33.

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The High Court (Markby and Prinsep, JJ.) held, that the sentence of rigorous imprisonment was illegal, and modified the order in that respect. They referred the question as to whether the offence could or could not be tried in a summary way to a Full Bench with the following remarks:—

PRINSEP, J. (MARKBY, J., concurring)—The matter which remains for our decision is, whether an offence under s. 49, Act XXI of 1856, can be tried summarily by a Magistrate, under s. 222 of the Code of Criminal Procedure.

The punishment for that offence, on which this matter depends, is thus described: the offender "shall forfeit for every such offence a sum not exceeding Rs. 200." It is further stated, "and the liquors and drugs, together with the vessels, packages, and coverings in which they are found, and the animals and conveyances used in carrying them, shall be liable to confiscation."

Section 222 of the Code declares that the Magistrate of the District may try certain offences in a summary way, and among these offences are "offences referred to in s. 148 of this Code." Such offences are described in the Code, s. 4, as "summons cases," see definition.

Section 148 is to the following effect: "When a complaint is made before a Magistrate having jurisdiction in the case, that any person has committed, or is suspected of having committed, any offence triable by such Magistrate, and punishable with fine only, or with imprisonment for a period not exceeding six months, or with both, the Magistrate may issue his summons directed to such person, requiring him to appear at a certain time and place before such Magistrate to answer to the complaint."

So only offences punishable with "fine only, or imprisonment for a period not exceeding six months, or both," would be triable in a summary way under the first clause to s. 222 already quoted.

Is an offence under s. 49, Act XXI of 1856, one punishable with fine only, or does the confiscation which follows on conviction form a part of the punishment, so as to alter the character of the offence as regards the mode of trial to be adopted?

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In two reported decisions of this Court—*Khetter Mohun Chowrunghee* (1) and *Judoonath Shaha* (2)—it has been held that such offences are not summons cases, and therefore are not triable in a summary way, because they are punishable with confiscation as well as with fine.

We have great doubts regarding the correctness of those decisions—doubts which, we would add, are shared by the only Judge of this Court now present, who was a party to one of those decisions. We are informed that Magistrates constantly try offences of this description summarily, probably in ignorance of the rule laid down in these decisions; and we, therefore, think it right to submit the matter to be authoritatively settled by a Full Bench of this Court.

We are inclined to hold that such an offence can be tried summarily as a "summary case," for the following reasons, which we state, because the parties to this case are unrepresented, and therefore it is not probable that there will be any argument at the bar.

For the procedure in the trial of offences, the Code has divided them into three classes:

Summons cases, defined in s. 148. Warrant cases, defined in s. 149. Sessions cases, or trials in the Court of Session, defined in s. 4.

If the offence under s. 49, Act XXI of 1856, is not a summons case, it must be either a warrant case or a sessions case, and whatever opinion may be expressed regarding its falling under the category of summons cases, it clearly cannot fall within either of the two other classes. No special mode of trial has been prescribed for such an offence, and it is difficult to suppose that such cases were overlooked by the Legislature.

The proper solution of this difficulty seems to be to regard confiscation not as a punishment contemplated by the Code of Procedure so as to affect the mode of trial.

It may be said that a sentence is the declaration of the punishment imposed. Section 20 of the Code of Criminal Procedure sets forth the powers of Magistrates in passing sen-

(1) 22 W. R., Cr. Rul., 43. (2) 23 W. R., Cr., Rul., 33.

tence, and these powers are limited to imprisonment, fine, and whipping. It is in consideration only of such punishments that the Code has prescribed the different modes of trial, and though confiscation of certain articles may be awarded on conviction of any offence under a special or revenue law, such confiscation is not taken into account by the Code so as to form a portion of the sentence, or to affect the nature of the offence or the mode of trial.

Further we observe that s. 8 of the Code, in providing for the trial of offences under local or special laws, states that "no Court shall award any sentence in excess of its powers," and the powers of Magistrates in respect to passing sentences on persons convicted is set forth in s. 20, which, as already stated, only refers to three kinds of punishments—imprisonment, fine, and whipping. Confiscation under Act XXI of 1856, and also under the Salt Act, can, however, be ordered by a Magistrate.

Under these circumstances, we are inclined to hold that confiscation is no part of the sentence or punishment under the Code of Criminal Procedure, but that it follows as a consequence of the conviction.

The question referred is that stated in the first paragraph of this reference. If the answer to the question be in the affirmative, the conviction will stand. If the answer be in the negative, the conviction and sentence, including the order of confiscation, will be set aside, and a new trial ordered.

No one appeared on either side before the Full Bench.

The judgment of the Full Bench was delivered by

GARTH, C.J.—We are clearly of opinion, that an offence under s. 49, Act XXI of 1856, can be tried summarily by a Magistrate under s. 222 of the Criminal Procedure Code.

The confiscation, which is provided for by s. 49, is merely a consequence of the conviction, and does not form part of the punishment for the offence. We observe that, in the case of *Khetter Mohun Chowrunghee* (1), to which we are referred, the

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question which we are called upon to decide was given up by the Government pleader without argument; and that in the second case the learned Judges merely followed the ruling in the first, so that this would appear to be the first occasion on which the point has been seriously considered.

ORIGINAL CIVIL.

NARAIN SINGH *v.* RAM LALL MOOKERJEE.

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Practice—Immoveable Property situate in different districts—Leave to admit Plaint—Civil Procedure Code (Act X of 1877), *ss.* 2, 19—*Charter Act, cl.* 12.

Under s. 19 of the Civil Procedure Code, it is not necessary to obtain the leave of the Court to sue in respect of immoveable property situate partly within and partly without the ordinary original civil jurisdiction of the High Court.

THIS was a suit respecting immoveable property, part of which was situate within, and part without, the jurisdiction of the Court.

Mr. *Moyle* now moved to admit the plaint under cl. 12 of the Charter Act.

Mr. *Bonnerjee* as *amicus curiæ* called the attention of the Court to s. 19 of the Civil Procedure Code, which says that if a suit be to obtain relief respecting property or compensation for wrong to immoveable property situate within the limits of different districts, the suit may be instituted in any Court otherwise competent to try it within whose jurisdiction any portion of the property is situate; and to s. 2, which defines "district" as including the local limits of the ordinary original civil jurisdiction of a High Court; and asked whether applications of this nature should, for the future, be made under cl. 12 of the Charter or not.

PONTIFEX, J., admitted the plaint, and said that s. 19 of the Code gave the Court jurisdiction, and that it was not necessary to apply under cl. 12 of the Charter.