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.v.
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DUTT.

remanded to the lower Court with liberty to either party to apply to that Court as they may be advised. If the present respondents consider they are entitled to the purchase money as determined by Mr. Bechambers, it may be that they can make a proper application to the lower Court for an order directing payment to them; but I express no opinion as to whether they are so entitled, nor has that question been, as yet, determined by the Court of First Instance. If on the other hand, no step be taken by the respondents it will, probably, be open to the appellant to apply to the lower Court for an order determining the litigation for want of prosecution. But I do not see that we can properly do more, at the present juncture, than remand the case. As regards costs the victory has been divided, and there will be no costs of the appeal, the more so as the present appellant was a consenting party to the order of the 22nd June to which I attribute most of the difficulty which has arisen. As regards the costs of the hearing before Mr. Justice Ameer Ali each party will bear his own costs. We do not interfere with his order refusing to discharge the order of the 18th September.

PRINSEP, J.—I am of the same opinion.

HILL, J.—I am also of the same opinion.

Case remanded.

Attorneys for the appellant : Messrs. *Watkins & Co.*

Attorneys for the respondents : Mr. *N. G. Bose* and Babu *Sarat Chunder Dutt.*

B. D. B.

CRIMINAL REVISION.

Before Mr. Justice Prinsep and Mr. Justice Handley.

LAL MAHMUD SHAIK, COMPLAINANT (PETITIONER) *v.* SATCOWRI
BISWAS AND OTHERS, ACCUSED (OPPOSITE PARTY).*

1900
May 7.

Compensation—Order of payment of compensation and imprisonment in default of such payment—Legality of such order—Compensation recoverable as fine—Code of Criminal Procedure (Act V of 1898), ss. 250, 386, 387, 388, and 389.

A Magistrate passed an order under s. 250 of the Code of Criminal Procedure directing the complainant to pay compensation in a certain sum, and he

* Criminal Revision No. 255 of 1900, made against the order passed by S. L. Gupta, Esq., Deputy Magistrate of Narail, dated the 24th of February 1900.

further directed that "if the compensation is not realized within eight days, the complainant shall undergo 30 days' simple imprisonment." *Held*, that the order was contrary to s. 250 of the Code of Criminal Procedure.

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That section directs that "compensation shall be recoverable as if it were a fine," and s. 386 and the following sections of the Code direct by what means a fine shall be recovered. These sections would, therefore, be applicable for realization of the money ordered to be paid as compensation. But in regard to an order of imprisonment in such a case, s. 250, proviso (2), declares that "if the compensation cannot be recovered, simple imprisonment may be awarded for such term not exceeding 30 days." The alternative (imprisonment) therefore can only be awarded if compensation cannot be recovered.

IN this case the charge laid against the accused was that they being armed with guns and accompanied by a large number of other armed men, cut away the paddy crops of the complainant's lands by show of force on the 8th December 1899. The accused were tried by the Deputy Magistrate of Narail and were acquitted under s. 258 of the Code of Criminal Procedure, and the Deputy Magistrate being of opinion that this was a fit case for an order of compensation, ordered the complainant, on the 24th February 1900, under s. 250 of the Code of Criminal Procedure, to pay compensation of Rs. 20 to each of the accused, and that if the fines were not realized within eight days, *i.e.*, by the 3rd of March, the complainant should undergo 30 days' simple imprisonment.

Babu *Bidhu Bhushan Gangooli* for the petitioner.

The judgment of the Court (PRINSEP and HANDLEY, JJ.) was delivered by

PRINSEP, J.—The Magistrate passed an order under s. 250, Code of Criminal Procedure, directing the complainant to pay compensation in a certain sum, and he further directed that "if the compensation is not realized within eight days, that is, by the 3rd March, the complainant shall undergo 30 days' simple imprisonment." In consequence of the terms of this order, a rule has been granted to show cause why it should not be set aside as contrary to s. 250, Code of Criminal Procedure. In reply the District Magistrate has submitted that the order is legal and warranted by the terms of the section; and he contends that inasmuch as it is declared that "compensation shall be recoverable as if it were a fine" it follows that as, on non-payment of a fine, imprisonment

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can be ordered in default, a similar order can be at once passed in respect of non-payment of compensation. The Magistrate, however, has misread the law. It only directs that "compensation shall be recoverable as if it were a fine" and s. 386 and the following sections of the Code direct by what means a fine shall be recovered. These sections would, therefore, be applicable for realization of the money ordered to be paid as compensation. But in regard to an order for imprisonment in such a case, s. 250, proviso (2) declares that, "if the compensation cannot be recovered, simple imprisonment may be awarded for such term not exceeding 30 days." The alternative (imprisonment) therefore can only be awarded *if compensation cannot be recovered*. The case, therefore, is different from one in which a sentence of fine may have been passed. A case like the present, moreover, is provided for by s. 388 (2). The order for imprisonment is, therefore, set aside. The Magistrate is competent to proceed in accordance with the law in the terms of s. 250 (2) if the compensation has not been recovered on receipt of this order.

D. S.

APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

1900
 July 3.

BABALUDDIN MAHOMED AND OTHERS (PLAINTIFFS) v. DWARKA NATH SINGHA (DEFENDANT).*

Bengal Tenancy Act (VIII of 1885), s. 48, cl. (a)—Under-raiyat—Limit of rent—Retrospective effect.

The provisions of s. 48, cl. (a) of the Bengal Tenancy Act are retrospective and apply to a tenancy created before the passing of that Act. *Guru Dass Shut v. Nand Kishore Pal* (1) followed.

THESE appeals arose out of two analogous suits for recovery of rent and cesses. The plaintiffs, who are raiyats, claimed rent

* Appeal from Appellate Decree, No. 838 of 1899, against the decree of H. E. Ransom, Esq., District Judge of Midnapur, dated the 27th of January 1899, affirming the decree of Babu Jugal Kishore Dey, Munsif of Contai, dated the 17th of June 1898.