

failed to inquire into and determine. We are unable to find facts, and we must, therefore, in reversing the Judge's decree, return the case for a fresh decision on the real merits. Costs to follow final judgment.

1875.

TRIMBAK  
BA'NU  
v.  
NA'NA'  
BHAVA'NI.

[APPELLATE CRIMINAL JURISDICTION.]

REG. v. GULÁM ABA'S.

April 15.

*The Code of Criminal Procedure, Sections 273 and 453—Appeal—Aggregate sentence.*

For purposes of appeal the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence.

*Semble*, that where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed.

But if a separate sentence be passed on each head, *Held* that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court.

**T**HIS was a reference, under Section 296 of the Code of Criminal Procedure, by H. M. Birdwood, Session Judge of Surat. The accused Gulám Abás was charged under Section 381 of the Indian Penal Code with having committed theft in his master's house on two occasions, and being convicted by S. P. Pandit, Magistrate F.C., he was sentenced for the first offence to suffer two years' rigorous imprisonment and to pay a fine of Rs. 50, or in default to suffer three months further rigorous imprisonment; and for the second offence was sentenced to receive sixty lashes with a cat-o'-nine tails. On appeal, the Session Judge, on a review of the evidence, reversed the sentence for the first offence, but was of opinion that he had no jurisdiction to deal with the sentence passed for the second. He, therefore, reported the proceedings for the orders of the High Court.

The reference was heard by WEST and PINHEY, JJ.

No one appeared either on behalf of the accused person or the Crown.

PER CURIAM:—The prisoner Gulám Abás was tried at the same time for two instances of the same offence. For such a trial provision is made by Section 453 of the Code of Cri-

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iminal Procedure. It does not seem absolutely necessary that in such a case there should be more than a single sentence, but if a separate sentence be passed on each head, an appeal brings the aggregate of those separate sentences as together constituting the punishment awarded in a single trial, within the jurisdiction of the court which is competent to hear an appeal. In other words, the whole punishment awarded to one person on one trial is to be regarded for the purposes of appeal as one sentence. The High Court could not properly on review deal with the evidence. It, therefore, directs that the Session Judge dispose of the case himself.

*Order accordingly.*

[APPELLATE CIVIL JURISDICTION.]

April 19.

*Special Appeal No. 280 of 1874.*

NA'RAYA'NBA'BA'JIDA' BHOLKAR. *Plaintiff and Appellant.*  
PA'NDURANG RA'MCHANDRA } *Defendants and Respon-*  
DA' BHOLKAR and another } *dents.*

*Suit for partition—Omission of a mortgaged field from claim—Subsequent suit—Civil Procedure Code, Section 7—Limitation—Separation in living and separation by partition:*

In 1861 the plaintiff brought a general partition suit (No. 1363) to recover his share of the family property in the possession of the first defendant and did not include in that claim a field then in the possession of a mortgagee. The field was subsequently redeemed by the first defendant, who again mortgaged it to the second defendant. The plaintiff then filed the present suit to recover his share in the field. The first court allowed the plaintiff's claim, but the District Judge in appeal threw it out, on the ground that it was barred both by Section 7 of the Civil Procedure Code and by the Law of Limitation. The Judge based the latter finding on certain allegations made by the plaintiff in Suit No. 1363, and in another suit brought by him against the first defendant and the then mortgagee of the field, from which allegations the Judge inferred a separation between the plaintiff and the first defendant :

*Held* in special appeal that the claim was not barred by Section 7 of the Civil Procedure Code, because the mortgaged field was not available for an actual partition at the time of the former suit, No. 1363 of 1861. *Held* also that the suit was not barred by limitation, because the possession of the first defendant, or of his mortgagee, was not adverse to plaintiff, the alleged separation being only a separation in living, as distinguished from a separation by partition.