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paid, limits or extinguishes his interest in the land in consideration of such payment, whereas such limitation or extinction (if there can be said to be any), as results from the payment on account of the mortgage-debt, is the legal consequence of such payment, and not the act of the mortgagee. It was said, however, that, at any rate a receipt operates to limit the mortgagee's interest in the land, as contemplated by cl. (*b*). Undoubtedly, the payment reduces the sum due at the time on the mortgage, and thus modifies the account between the mortgagor and mortgagee; but it does not operate to limit or confine within narrower limits the right or interest of the mortgagee in the land, which is simply to have the payment of the principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose.

The question has never, as far as we know, been directly raised in this Court. However in the case of *Basawa* v. *Kalkapa* (1) it would appear to have been assumed that a simple receipt for a payment in respect of a mortgage-debt would not require registration. The Court says: "On that point it has been urged by Mr. Mandlik that the document No. 45 is, *prima facie*, a receipt; that his client Kalkapa wishes to employ it in no other character; and that as a receipt it did not need registration. But as a mere receipt for so much money, if it were, in truth, limited to that, it could not prove the release or extinguishment of any particular right over the property in dispute vested in Parapa by the mortgage. It could not, therefore, show that, in subsequently admitting Parapa's claim under that mortgage, Sidoji wilfully failed to assert his own rights. It was only if his mortgage was released that Parapa's claim to possession could be unfounded, or Sidoji's admission of it could be a fraud on Kalkapa. To prove that it had [239] been released, the document No. 45, which is express to that effect, was put in, and that is exactly the use that was made of the document by the Subordinate Judge."

The Court, therefore, remands the case for a finding by the District Judge on the third and fourth issues raised by the Subordinate Judge. The District Judge will exercise his discretion as to the admission of fresh evidence as respects the said issues.

Decree reversed and case remanded.

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4 B. 239.

APPELLATE CRIMINAL.

Before Mr. Justice Pinhey and Mr. Justice F. D. Melvill.

IMPERATRIX *v.* RAMA PREMA.* [7th January, 1880.]

The Code of Criminal Procedure (Act X of 1872), s. 18—Sentence—'Modify'—'Enhance'—Session Judge—Assistant Session Judge.

The word 'modify' in s. 18, cl. 2 of the Code of Criminal Procedure (Act X of 1872) does not include the power to *enhance* a sentence; consequently, when an Assistant Sessions Judge passes a sentence of more than three years' imprisonment, the Sessions Judge cannot enhance it.

[R., 9 C. P.L.R. 29 (30).]

THE accused Rama Prema was tried by G. Druitt, Assistant Sessions Judge of Surat, on a charge of criminal breach of trust as a public servant,

* Criminal Review No. 247 of 1879.

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and, being convicted on his own plea of guilty, was sentenced to four years' rigorous imprisonment, subject to confirmation by the Sessions Judge, H. M. Birdwood, who enhanced the sentence to five years.

On review of the criminal return containing the above case, one of the Judges of the High Court (Pinhey, J.) called for the record and proceedings to consider the question whether a Sessions Judge can, under cl. 2 of s. 18 of the Code of Criminal Procedure (Act X of 1872), enhance a sentence passed by an Assistant Sessions Judge, subject to the Sessions Judge's confirmation under that section.

There was no appearance for the accused or the Crown.

PER CURIAM.

The Court is of opinion that a Sessions Judge has no such power. The words used in the last sentence of cl. 2 of s. 18 of the Code of Criminal Procedure are: "The [240] Sessions Judge may either confirm, modify, or annul such sentence of the Assistant Sessions Judge." We do not consider that the word "modify" includes, or can have been intended to include, the power of enhancing the sentence. An appellate Court can, when hearing the appeal, enhance a sentence under s. 280 of the Code; and the High Court, as a Court of revision, can enhance a sentence under cl. 7 of s. 297; but no such power of enhancement of sentence is anywhere given to a Sessions Judge taking up a case referred by an Assistant Sessions Judge under the last clause of s. 18.

The Court, therefore, alters the sentence, passed by the Sessions Judge of Surat in this case, to one of four years' rigorous imprisonment.

Order accordingly.

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4 B. 240.

APPELLATE CRIMINAL.

Before Sir Charles Sargent, Kt., Officiating Chief Justice, and Justices M. Melvill, Kemball, Pinhey and F. D. Melvill.

IMPERATRIX *v.* ABDULLA.*

[8th January, 1880.]

The Code of Criminal Procedure (Act X of 1872), s. 46—Order—Committal.

The word "order" in s. 46 of the Code of Criminal Procedure, associated as it is with the words "judgment and sentence," means a final order, *i.e.*, one disposing of a case so far as the Magistrate, to whom a Subordinate Magistrate submits the proceedings of the case for higher punishment, is concerned. It does not deprive that Magistrate of the exercise of his discretion as to its being a proper case for the Sessions, and of the power of committing it for trial given by s. 143 of the Code of Criminal Procedure.

[F., 26 A. 344 (345) = A.W.N. (1904) 42; 1 L.B.R. 124 (125); R., 13 C. 305 (307); 2 L. B.R. 285 (287); Rat. Unrep. Crim. Cases. 472 (473).]

THIS was an appeal from the sentence of transportation for life passed on Abdulla by C. F. H. Shaw, Session Judge of Belgaum, convicted, on his own plea of guilty, of the offences of house-breaking with intent to commit theft and theft in a dwelling-house. The said Abdulla was thrice previously convicted of similar offences.

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* Appeal No. 207 of 1879.