

1881

DAMODAR
DEVCHAND
v.
NARO
MAHADEV
KELKAR.

paying to Ragho the amount of such deficit within three calendar months from the date on which the Subordinate Judge shall notify to Damodar or his pleader the amount of such deficit ; and if Damodar make default in payment of such deficit (if any) within the time aforesaid, let him be for ever barred and foreclosed from redeeming the said unsold materials of the said house and the said site. In the event of it appearing, on taking the said account of the sold materials, that the amount realized by the sale thereof exceeds the said sum of Rs. 60 and costs awarded to Ragho by his decree, let the excess (ordered hereinbefore in that event to be paid into Court by Ragho), or so much thereof as may be necessary, be paid over to the plaintiff Damodar in or towards satisfaction of the sum of Rs. 133-8-3 and costs found due to him under his mortgage ; and in the event of such last-mentioned payment being insufficient to meet the said sum of Rs. 133-8-3 and costs, or in the event of the amount realized by the sale of the said materials equalling the amount found due to Ragho under his decree for Rs. 60 and costs, let the said unsold materials of the said house and (if necessary) the said site be sold, and let the proceeds, or so much thereof as may be sufficient, be paid to the said Damodar in discharge of so much of the said sum of Rs. 133-8-3 and costs as may remain due to him, and let the balance, if any, be made over to the said defendant Ragho. The parties respectively should bear their own costs of the suit and both appeals.

Decree reversed.

APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill and Mr. Justice Pinhey.

IMPERATRIX v. SHIVRAM GUNDO.*

September 20.

Mukhtyar—Criminal Procedure Code, Act X of 1872, Section 278—Appeal.

An Appellant in a criminal case has a right to appear and be heard by a mukhtyar.

THIS was an application for a revision of an order passed by M. B. Baker, Joint Session Judge of Poona, at Sholapur.

The accused was originally tried by Khan Bahadur Darasha Dosabhai, Magistrate (First Class) at Sholapur, of the offence of

* Criminal Application for Revision, No. 203 of 1881.

retaining stolen property, and sentenced to suffer rigorous imprisonment for eighteen months. The accused preferred an appeal to the Joint Session Judge, and engaged one Narayan Vishnu, a mukhtyar, to conduct the appeal on his behalf. Mr. Baker refused to hear him. He said: "Narayan Vishnu, a mukhtyar, wished to appear on behalf of the appellant, but the Court declined to grant him permission to do so under section 186 of the Code of Criminal Procedure. He contended that he had a right to appear in an appeal; but with this contention I cannot agree, for the appellant is as much 'a person accused of an offence' when the case is before a Court of appeal as when it is before a Court of original jurisdiction. I do not consider that the Legislature can have intended to give [unqualified practitioners privileges in an Appellate Court which are denied to them in a Court of original jurisdiction. To admit mukhtyars is to injure qualified pleaders; and this particular mukhtyar has already been warned that he would not be permitted to appear in this Court." Mr. Baker then went into the merits of the case, and confirmed the conviction and sentence.

The accused thereupon applied to the High Court.

There was no appearance in the High Court either on behalf of the accused or the Crown.

Per Curiam.—The appellant in a criminal case has a right to appear and be heard by a mukhtyar (see *Reg. v. Bechar Pitambar*; Criminal Rulings of 22nd February, 1870; *Imp. v. Samaldas Becharlal*⁽¹⁾, 13th January, 1881; *In re Subba Aitala*⁽²⁾). It is impossible to say what effect the arguments of the mukhtyar might or might not have produced on the Session Judge in the case. The order of the Session Judge confirming the conviction and sentence on Shivram must be reversed, and he must be ordered to re-try the appeal of Shivram, after giving notice to the mukhtyar, and hearing him if he appears.

Order accordingly.

(1) Unreported.

(2) I. L. R. 1 Mad. 304.