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his costs incidental to the suit, as an administration suit, out of the estate, but who as a matter of fact directed that he should pay all the minor's costs, *i.e.*, the costs incurred by himself as next friend, out of his own packet. But the mere fact, that the appointment of a receiver in the suit would preserve the fund now in Court from a possible danger in the future, cannot certainly bring it within the ordinary rule as to the solicitor's lien, even if it could, which we much doubt, by the existence of the word "preserved" which is introduced into the English Act 23 and 24 Vic., cap. 127. In *Baile* v. *Baile*(1), where the lien was allowed, the rents due to the estate were considered to be in actual danger of being lost when the suit was brought. In *Pinkerton* v. *Easton*(2) it was held that, as the administration suit had resulted in nothing, the solicitor was not entitled to a lien.

We must, therefore, discharge the order with costs on Messrs. Jefferson, Bháishankar and Dinshá throughout.

Order reversed.

(1) L. R., 13 Eq., 497. (2) L. R., 16 Eq., 490.

REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1885. December 10.

QUEEN-EMPRESS *v.* PIR MAHOMED.*

Indian Penal Code (Act XLV of 1860), Secs. 71, 193, 211—Concurrent sentences—Criminal Procedure Code (Act X of 1882), Sec. 35—Enhancement of sentence.

Where the accused, who was a head constable, was found guilty of making a false charge under section 211, and of giving false evidence under section 193 of the Indian Penal Code (XLV of 1860), and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently,

Held, that the sentences were inadequate and illegal.

Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence; and as the two offences were distinct, the High Court directed, under section 35 of the Criminal Procedure Code (X of 1882), one sentence to commence after the expiration of the other.

Queen v. *Abdool Azeez*(1) followed.

* No. 188 of 1885.

(1) 7 Calc. W. R. Cr. Rul., 59.

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QUEEN-EMPRESS v. PIR MAHOMED.

THE accused in this case was second class head constable of the Surat Police Force. He was charged, first, under section 211 of the Indian Penal Code (XLV of 1860), with having instituted criminal proceedings against one Merwánji Hormasji in the Court of the First Class Magistrate of Surat on a charge of gambling, knowing that there was no just or lawful ground for such proceedings; and, secondly, under section 193 with intentionally giving false evidence in the said proceedings, in falsely stating that he had seen the said Merwánji gambling with five other persons.

He was convicted under both the charges by E. T. Candy, Sessions Judge of Surat, who passed sentences of three months' simple imprisonment for each offence. And, as the Sessions Judge held that the offences were in a great measure due to an overzealous discharge of duty on the part of the accused, he directed the sentences to run concurrently.

The accused appealed to the High Court from the conviction and sentence. But the High Court upheld the conviction; and, considering the sentences to be inadequate, directed a notice to be issued to the accused, calling upon him to show cause why the sentences should not be enhanced.

Shámráv Vithal, for the accused, showed cause:—The Sessions Judge has found that the accused was not actuated by malice in instituting proceedings against the complainant, Hormasji. He acted in good faith, and, if he erred at all, he erred through excess of zeal in the *bonâ-fide* performance of duty. Considering his character and length of service, the lower Court was right in passing a lenient sentence. The offences under sections 211 and 193 of the Indian Penal Code (XLV of 1860) are, no doubt, distinct, but they arise out of the same transaction. Refers to section 71 of the Indian Penal Code. In *Empress* v. *Rám Partáb*[1] it was held that "a member of an unlawful assembly, some members of which had caused grievous hurt, could not lawfully be punished for the offence of rioting as well as for causing grievous hurt."

BIRDWOOD, J.:—We cannot concur in the opinion that the offences of which the accused was convicted were "due to the overzeal of a trusted police officer." The Sessions Judge and both

(1) I. L. R., 6 All., 121.

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the assessors found that the accused had knowingly given false evidence. The statements made by him were deliberate and malicious perversions of the truth. It would be dangerous to regard such conduct as in any sense compatible with an honest discharge of duty. The only grounds on which a lenient sentence was permissible were that the conviction carried with it the professional ruin of the accused, including the loss of his pension, and that he had, till the time of his conviction, borne a good character in the Police Department for many years. After giving due consideration to these circumstances, we are unable to concur with the Sessions Judge that sentences of simple imprisonment only were adequate.

Nor do we think that the Sessions Judge could legally pass concurrent sentences for the offences, under sections 211 and 193 of the Indian Penal Code (XLV of 1860), of which the accused was convicted. The case does not fall under section 71 of the Indian Penal Code (XLV of 1860): see *Queen* v. *Abdool Azeez*[1]. Under section 35 of the Criminal Procedure Code (X of 1882) consecutive sentences should have been passed, as the accused was convicted of two distinct offences within the meaning of that section.

We alter the sentences of simple imprisonment, recorded by the Sessions Judge, to sentences of rigorous imprisonment, and direct that they commence "the one after the expiration of the other." The result will be that the accused will now undergo a further period of rigorious imprisonment for three months.

Sentences enhanced.

(1) 7 Calc. W. R. Cr. Rul., 59.

APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1885. *December* 17.

QUEEN-EMPRESS *v.* GANPAT TÁPIDÁS.*

The Indian Penal Code (Act XLV of 1860), *Sec.* 409—*Criminal breach of trust by a public servant.*

Where the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple allowances, and did not at once pay over the same to the persons entitled to receive them, as he was

* No. 176 of 1885.