

1890  
AUG. 2.  
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ORIGINAL  
CIVIL.  
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15 B. 7.

seems to be impossible to say that opinions upon, or steps taken in reference to, a suit in which the plaintiffs and defendant are putting forward opposing contentions, can relate solely to the case of the plaintiffs, though they may not support the case of the defendant or impeach that of the plaintiffs. If the opposition to produce rested on this ground alone, I should feel bound, upon the authority of *Bustros v. White* (1) and *The Attorney-General v. Emerson* (2), to order their inspection notwithstanding the judgment in *Bewicke v. Graham* (3). In the last mentioned case the nature of the documents was not described, and the Court had no means of considering their materiality.

To allow a further affidavit being made relating to the privileged documents on the basis of this judgment I shall adjourn the summons for a week, making it at once absolute on the first head.

Attorneys for the plaintiffs: Messrs. *Craigie, Lynch and Owen*.

Attorneys for the defendant: Messrs. *Conroy and Brown*.

15 B. 11.

CRIMINAL REVISION.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

IN RE SHIVAPPA BIN SHIDLINGAPPA.\* [11th January, 1888.]

*Criminal Procedure Code (Act X of 1882), ss 367 and 424—Judgment, contents of—Reasons for the finding necessary.*

A District Magistrate, in disposing of an appeal, recorded the following judgment:—

“The affray was a faction fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate’s finding that [12] the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed.”

*Held*, that this was not a judgment in accordance with ss. 367 and 424 of the Code of Criminal Procedure (Act X of 1882).

[*F.*, Rat. Unr. Cr. Cas. 772 (773); *R.*, 20 C. 353 (357); 6 C.P.L.R. 24 Cr.; 13 Cr. L.J. 559=15 Ind. Cas. 975=8 N.L.R. 84; Rat. Unr. Cr. Cas. 776 (777); Rat. Unr. Cr. Cas. 826 (827); Rat. Unr. Cr. Cas. 844 (845); *D.*, 1 C.W.N. 169.]

THIS was an application under s. 435 of the Code of Criminal Procedure (Act XIV of 1882).

The accused and two other persons were convicted by the Second Class Magistrate at Bankapur of committing affray under s. 160 of the Indian Penal Code and were sentenced to a fine of Rs. 50 each.

Against this conviction and sentence the accused appealed to the District Magistrate, who passed the following order:—

“The affray was a faction fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate’s finding that the two appellants took part in the affray, and that the party to which they

\* Criminal Review No. 239 of 1887.

(1) L.R. 1 Q.B.D. 423. (2) L.R. 10 Q.B.D. 191. (3) L.R. 7 Q.B.D. 400.

belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed."

The accused applied to the High Court for a revision of the District Magistrate's order.

*Branson* (with him *Narayan Ganesh Chandavarkar* and *Vasudev Gopal Bhandarkar*) for the accused.—The order rejecting our appeal is clearly opposed to the provisions of s. 367 of the Code of Criminal Procedure. No reasons are given for rejecting the appeal.

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## JUDGMENT.

BIRDWOOD, J.—The District Magistrate in dealing with the appeal before him has failed to comply with the provisions of ss. 367 and 424 of the Code of Criminal Procedure; and from his judgment, as it stands, we are unable to say that he has duly considered the evidence in the case. He does not, for instance, refer at all to the material circumstance that the complainant Mudapa, when first complaining to the police patel, did not mention the applicant as taking part in the affray, although the applicant seems actually to have been present when the complaint was made.

[13] It is impossible to say that the applicant may not have been prejudiced by the omission of the District Magistrate to comply with the requirements of s. 367 of the Code of Criminal Procedure. This being a case, therefore, to which s. 537 does not apply, we follow the rulings in *Kamruddin Dai v. Sonatun Mandal* (1) and *In the matter of the Petition of Ram Das Maghi* (2); and reverse the District Magistrate's order, and direct him to rehear the appeal.

*Order reversed; case remanded.*

15 B. 13.

## APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Hart.*

APPAJI BAPUJI (*Original Defendant*), *Appellant v. KESHAV SHAMRAV AND OTHERS* (*Original Plaintiffs*), *Respondents*; AND

KESHAV SHAMRAV AND OTHERS (*Original Plaintiffs*), *Appellants v. APPAJI BAPUJI* (*Original Defendant*), *Respondent*.\*

[20th January, 1890.]

*Vatan service land, alienation of—Gordon Settlement in the Southern Maratha Country—Effect of the application of, to service vatan—Alienability of such vatan where services have been dispensed with—Construction—Vatandars' (Bom.) Act III of 1874—Court sale of right, title and interest of the father, effect of.*

One Rudro and his sons were members of an undivided family. In execution of certain money decrees passed against Rudro the lands in dispute were sold to various persons, from whom they were afterwards bought by the defendant. In 1875 Rudro died, and in 1887 his sons and grandson filed this suit against the defendant to recover the lands. They alleged that the lands were service *vatan* lands and inalienable, and that the execution sales affected nothing except Rudro's life-interest, and that on Rudro's death they (the plaintiffs) became entitled. They also contended that, even if the Court should find the lands were

\* Cross Appeals Nos. 72 and 79 of 1888.

(1) 11 C. 449.

(2) 13 C. 110.