

1895.

JEYNARAYAN
MEGHRAJv.
ISMAIL
KURIMALI.

cation to this Court on its appellate side to exercise its extraordinary jurisdiction under section 622 of the Civil Procedure Code.

Attorneys for the claimant:—Messrs. *Bicknell, Mervánji and Motilál.*

Attorneys for the plaintiffs:—Messrs. *Matubhai and Jamiet-rám.*

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

IN RE NABISHAH.*

1894.
September 27.

Criminal Procedure Code (Act X of 1882), Sec. 431—Appeal by accused against conviction—Death of appellant—Abatement of appeal—Appeal—Remedy open to the deceased appellant's heirs—Practice.

Two persons, Mahomadsháh and Nabisháh, were convicted of criminal breach of trust and each was sentenced to one year's rigorous imprisonment and a fine of Rs. 1,000. Both prisoners filed an appeal to the High Court. Nabisháh died pending his appeal. On Mahomadsháh's appeal the High Court passed an order acquitting him and reversing his conviction and sentence. Thereupon one of the relatives of the deceased Nabisháh applied to the High Court to set aside the conviction and sentence passed in his case, and order the fine to be refunded.

Held, that on Nabishah's death his appeal abated under section 431 of the Code of Criminal Procedure (Act X of 1882).

As the case turned on the appreciation of evidence, the High Court declined to interfere in the exercise of its revisional jurisdiction, referring the legal representatives of the deceased to the Governor in Council for redress.

THIS was an application for the exercise of the High Court's criminal revisional jurisdiction under section 439 of the Criminal Procedure Code (Act X of 1882).

Two persons, Mahomadsháh Rahimansháh and Nabisháh Rahimansháh, were convicted by the Sessions Judge of Sátára of the offence of criminal breach of trust, and sentenced each to one year's rigorous imprisonment and a fine of Rs. 1,000.

Against the said convictions and sentences both the accused, Mahomadsháh and Nabisháh, appealed to the High Court.

On 18th August, 1894, and after the appeals had been filed in the High Court, Nabisháh died.

* Application for Criminal Revision, No. 229 of 1894.

On 12th September, 1894, the High Court passed an order on Mahomedsháh's appeal, acquitting him and reversing the conviction and sentence passed in his case.

Thereupon the present applicant, who was the nephew of the deceased Nabisháh, applied to the High Court to reverse the conviction and sentence passed upon the deceased Nabisháh, and order the fine levied from him to be refunded to his heirs.

Máneeksháh Jahángirsháh for the applicant.

PER CURIAM:—The Court's records that the appeal of the deceased Nabisháh Rahimansháh has abated under section 431 of the Code of Criminal Procedure. Under the circumstances we do not think we should take up the case under our revisional powers, as it depends on appreciation of evidence, and the judgment appealed against is not one of the kind about which this Court uses that jurisdiction as a general rule. The representatives of the deceased appellant have their remedy by application to the Governor in Council, and will be furnished, if they so desire, with a copy of the judgment of this Court on the appeal of the co-prisoner to support any such application.

Order accordingly.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Ránade.

QUEEN-EMPRESS *v.* HORMUSJI NOWROJI LORD.*

Penal Code (Act XLV of 1860), Sec. 279—Rash riding on a public way.

The accused was convicted of rash riding on a public way under section 279 of the Indian Penal Code (Act XLV of 1860). He contended that his conviction was bad, on the ground that there was no proof that any person was on the road in question at the time when he was alleged to have ridden in a rash or negligent manner.

Held, that though there was no such proof, it was competent to the Court to take into its consideration the probability of persons using the public way being placed in danger by the act of the accused. The accused's act came within the mischief struck at by section 279 of the Indian Penal Code and was included within its terms.

THIS was an application for the exercise of the High Court's Revisional Jurisdiction under section 439 of the Code of Criminal Procedure (Act X of 1882).

* Criminal Revision, No. 177 of 1894.

1891.

IN RE
NABISHÁH.

1894.

August 29.