cantonment. The perusal of this record is a dismal reading as to the manner in which the elementary principles which are to be kept in the forefront by those who are called upon to administer justice according to law, have been departed from.

For reasons mentioned above, this revision is allowed, the order of the learned District Judge is reversed and the temporary injunction granted by the learned District Judge is vacated. The trial Court may now proceed with the case where it was left by its order, dated 16th November, 1961. The petitioner will be entitled to its costs in this Court and in the Court of the District Judge.

B.R.T.

REVISIONAL CRIMINAL

Before D. Falshaw, C.J., and Inder Dev Dua, J.

SHEO DAN,—*Petitioner.*

versus

PIR DAN AND ANOTHER,—*Respondents.*

Criminal Revision No. 645 of 1961.

1962

April, 2nd

Code of Criminal Procedure (Act V of 1898)—S. 520—Appeal under—Whether lies from an order passed by a magistrate under S. 517—Power of Sessions Judge to reverse or modify order passed by a magistrate under S. 517.

Held, that the Sessions Judge has no jurisdiction as an appellate Court under section 520 to reverse or modify an order passed by a Magistrate, under section 517 since no appeal lies against an order under that section as such, and in exercise of his powers of revision the Sessions Judge can only exercise revisional powers conferred on him by Chapter 32 and, therefore, must, if he thinks an order under section 517 requires correction, forward the case to the High Court under section 438 for the orders of that Court.

Held, (per Dua, J.)—that section 520 of the Code of Criminal Procedure merely empowers the Courts exercising the various powers vested in them in the course of such exercise to stay the consequential order passed under section 517, etc., by the subordinate Courts and to modify, alter or amend those orders and then to pass such further orders as may be considered just.

Case referred by Hon'ble Mr. Justice Mehar Singh, on 29th November, 1961 to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble the Chief Justice Mr. D. Falshaw, and Hon'ble Mr. Justice Inder Dev Dua, on 2nd April, 1962.

GOKAL CHAND MITTAL, ADVOCATE, for the Petitioner.

D S. TEWATIA, ADVOCATE, for the Respondents.

JUDGMENT

Falshaw, J. FALSHAW, C. J.—This case has been referred to a larger Bench in the following circumstances:—

A she-camel with a young camel belonging to Sheo Dan, petitioner disappeared, but somehow found their way to a cattle pound where after some time they were auctioned by the authorities and purchased by one Arjan who in turn sold them to the respondent Pir Dan along, with another young camel to which the she-camel had given birth. After that Pir Dan sold the she-camel and the younger offspring to Bhagwana from whose house they somehow or other found their way to the house of Sheo Dan.

The latter reported the matter to the police with the result that Pir Dan was prosecuted under section 411, Indian Penal Code. The trial Magistrate acquitted him and at the same time passed an order, under section 517 Criminal Procedure Code directing the return of the she-camel and elder offspring to Sheo Dan and the younger offspring to Bhagwana.

Both Pir Dan and Bhagwana filed appeals against this order, which were heard by the learned Sessions Judge, Hissar, on the 27th of April, 1961. He dismissed the appeal of Bhagwana but did not think that it had been established beyond doubt that the elder offspring was the same one which had disappeared along with the she-camel in the first instance, and he accepted the appeal of Pir Dan to the extent of ordering the elder offspring to be given to him. In spite of the fact that apparently Sheo Dan had expressed his intention of establishing his title to the elder offspring by a civil suit and Pir Dan was directed not to dispose of the animal for three months in order to enable Sheo Dan to take this step. Sheo Dan has come in revision to this Court.

The learned Single Judge has referred the case to a larger Bench because of the conflict of authority on the main legal point raised on behalf of Sheo Dan in the revision petition. This point was that the learned Sessions Judge had no jurisdiction to pass such an order in appeal and that in fact no appeal lies against an order under section 517 Criminal Procedure Code as such. The relevant provisions of the Code read as follows:—

"517(1). When an enquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

"520. Any Court of appeal, confirmation, reference or revision may direct any order, under section 517, section 518 or section 519; passed by a Court subordinate thereto, to be stayed pending

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consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just."

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There are two schools of thought regarding the meaning of the provisions of section 520 in a case where no appeal is filed either against an order of conviction or an order of acquittal passed by the trial Court. One view is that in such a case the Court to which appeals ordinarily lie from the orders of the trial Court cannot pass an order, under section 520 as if an appeal had been filed merely against the order of the trial Court, under section 517, and that the only proper course is for the appellate Court to refer the matter to the High Court on its revisional side. The opposite view is that the appellate Court can pass an order, under section 520 modifying, altering or annulling the order of the trial Court, under section 517, without having to deal with any appeal.

There is no doubt that the preponderance of authorities is on the side of the latter view which appears to have been first authoritatively stated by a Full Bench of the Rangoon High Court in *U Po Hla* v. *Ko Po Shein* (1), and the view was accepted by a Full Bench in *Walchand Jasraj Marwadi* v. *Hari Anant Joshi* (2), by which an earlier decision of the Court in *Khema Rukhad, In re* (3), was overruled. In *Ram Abhilakh and another* v. *The State* (4), it has been held by a Division Bench that the words 'a court of appeal, confirmation, reference or revision' in section 520 refer to a Court to which appeals, references, confirmations or revisions ordinarily lie against the judgment and decision of the trial Court and do not refer to a Court to which an appeal, etc., has in fact been preferred and the court of appeal exists under the law and it is there whether an appeal has been preferred to it or not in a particular case. It was held as long ago as 1878 in

(1) A.I.R. 1929 Rang. 97.
(2) A.I.R. 1932 Bom. 534,
(3) I.L.R. 42 Bom. 664.
(4) A.I.R. 1961 All. 544,

The Empress on the Prosecution of Michell v. *Joggessur Mochi* (5), in which the Sessions Judge had submitted the case to the High Court, that he could have dealt with it himself, under section 419, Criminal Procedure Code, as it then was, and that the words 'Court of appeal' in that section are not necessarily limited to a Court before which an appeal is pending.

On the other hand it was held by Blacker, J., in *Ghulam Ali* v. *Emperor* (6), that there is no *ad hoc* right of appeal or revision to the Sessions Judge, from an order, under section 517, and all that the Sessions Judge can do is to substitute his own order for that passed by the trial Court, if the substantive case comes before him as a Court of appeal, or a Court of revision. All that he can do in the case of an order which comes to his notice otherwise is to report it to the High Court for revision. In *K. Srinivasa Moorthi* v. *Narasimhalu Naidu* (7), Curgenven, J., held that an application made, under section 520 to a 'Court of appeal, confirmation, reference or revision' is not in the nature of an appeal. Finally there is the view of Bose, J., in *Ibrahim Rahmatullah* v. *Emperor* (8), as follows:—

> "The reference to the Court of appeal, in section 520, does not indicate that an appeal is permissible under section 517. Section 520, does not fall under Chapter 31 of the Code which deals with appeals nor does it confer a right of appeal upon anybody. That being the case, there can be no appeal against an order passed under section 517. All that can happen is that the Court of appeal, that is to say, the Court hearing the appeal against the acquittal or the conviction in the original trial, is empowered to deal with the property in

(5) I.L.R. 3 Cal. 379.
(6) A.I.R. 1945 Lah. 47.
(7) A.I,R, 1927 Mad, 797.
(8) A.I.R. 1947 Nag. 33.

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respect of which the offence appears to have been committed in the same way as the trial Court, and it is further empowered to annul, alter or modify the trial Court's order. That order is not passed on appeal from an order under section 517 but is merely one of the powers which the appellate Court is empowered to use."

In spite of the fact that this view has the support of a smaller number of learned Judges in the Reports, I am nevertheless of the opinion that it is the correct view. Chapter 31 of the Code deals with appeals and section 404 provides that no appeal shall lie from any judgment or order of a criminal Court except as provided for by this Code or by any other law for the time being in force. The following sections up to section 417 provide for appeals against orders of certain kinds or rule out appeals in certain cases. No provision is made in these sections for any appeal against an order disposing of property under section 517.

Moreover the very wording of section 520 suggests that although any "Court of appeal, confirmation, reference or revision" may pass an order under it, such an order can only be passed in exercise of its statutory powers under these headings. The words 'may direct any order under section 517.....to be stayed pending consideration by the former Court' are certainly intended to be applied when an appeal or revision petition is pending, and since there is no appeal provided against an order under section 517 any appeal must be an appeal against the order of conviction or acquittal in connection with which the order has been passed under section 517. The revisional powers of Sessions Judges and District Magistrates, which are apparently concurrent, appear to be confined by sections 436 and 437 of the Code to ordering further enquiry into a complaint dismissed by a subordinate Magistrate under section 203 or section 204(3) or to ordering

the commitment to the Sessions Court of persons found to have been wrongly discharged by a subordinate Magistrate in connection with an offence triable exclusively by the Court of Sessions. Otherwise in order to correct any errors which come to the notice of Sessions Judges or District Magistrates on calling for the records under section 435, they must report the cases to the High Court, under section 438 with their recommendations. It thus seems to me that the Sessions Judge has no jurisdiction as an appellate Court under section 520, to reverse or modify an order passed by a Magistrate under section 517, since no appeal lies against an order under that section as such, and in exercise of his powers of revision the Sessions Judge can only exercise revisional powers conferred on him by Chapter 32 and therefore must, if he thinks an order under section 517 requires correction, forward the case to the High Court under section 438 for the orders of this Court.

In these circumstances I consider that the learned Sessions Judge had no jurisdiction on a so-called appeal by Pir Dan to order the return to him of the elder of the two young camels in this case. It may seem that since, once this Court is seized of the case under its revisional powers, it can pass whatever order it thinks fit, it is only an academic question, whether the order of the learned Sessions Judge was passed under the wrong impression that he could deal with the case as an appeal and his order might be treated as a recommendation made to this Court under section 438, but I do not think the matter is quite as academic as it may seem, since the attitude of the Court in dealing with revision petitions is different from its approach to appeals in which questions of fact not only can but must be reopened and thoroughly re-investigated. It seems quite possible that if the learned Sessions Judge had not treated the matter as an appeal he might not have thought it a fit case to forward to this Court under section 438, and in my opinion there

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are not sufficient grounds for interfering in revision with the order of the trial Court, under section 517 leaving the younger of the offspring with Bhagwana and restoring the she-camel and the elder off-spring to Sheo Dan. The result is that I would accept the revision petition of Sheo Dan and set aside the order of the learned Sessions Judge giving the older of the young camels to Pir Dan.

Dua, J.

DUA, J.—I fully agree with the reasoning and the conclusions of my Lord, the Chief Justice. In view, however, of the importance of the question and since we are differing from the view taken by a large majority of Courts I would like to say a few words.

The right of appeal is a substantive right and not a mere matter of procedure. It is not inherent or implied but must be given by statute. This general rule has actually been recognised in section 404 of the Code of Criminal Procedure.

There does not appear to be any statutory definition of the word "appeal" but in the ordinary acceptation of the term an attempt to get an order of a subordinate Court set aside or revised by the Appellate Court may be considered to amount to an appeal. The question arises: Does the language of section 520 of the Code create a right of appeal ? In my opinion it does not. The language of this section does not in terms create a right of appeal. It is, however, to be seen if it does so by necessary implication or intendment. The comparison of the language of this section with the language of the sections in Part VII leaves little doubt on the point. This section does not find place in Part VII of the Code which consits of two Chapters, XXXI and XXXII. The former deals with the right of appeal and the latter provides for reference and revision. Had the Legislature intended to create a right of appeal by enacting section 520, one would have ordinarily expected this section to find place in Chapter XXXI or at least in Part VII. I must

admit that this factor is not conclusive but at the same time it does not seem to be wholly irrelevant either, for the enactment of a well-drafted statute divided into different parts with definite headings at the time it emerges from the Legislature must to some extent be indicative of the legislative intent. This section is found in Chapter XLIII headed "Of the Disposal of Property" which is included in part IX, the last Part of the Code, which is concerned with the "Supplementary Provisions" like Public Prosecutors, Bails, Commission for examining witnesses, Special rules of evidence, Bonds, Disposal of property, Transfer of criminal cases, Irregularity of proceedings and Miscellaneous matters. Chapter XLIII which concerns itself with the subject of disposal of property begins with section 516-A and concludes with section 525. The first section deals with the interim custody of property produced before a Criminal Court in certain cases and section 517 with final orders for the disposal of property at the conclusion of trial. Section 518 empowers the Court instead of passing an order under section 517 to direct delivery of the property to the District Magistrate or to a Sub-Divisional Magistrate to be dealt with as if it had been seized by the police and reported to the said Magistrate. Seizure and report is the subject-matter of section 523 read with section 51, and sections 524 and 525. It is noteworthy that section 524(2) in express words creates a right of appeal in case of orders passed under section 524. This does indicate to some extent that the right of appeal when intended to be given has been expressed in clear terms by the law-giver. Section 519 provides for payment of money found on a convicted person to innocent purchaser of stolen property. Then comes section 520 which in terms provides for direction by Courts of appeal, confirmation, reference and revision to stay the orders passed under sections 517, 518 and 519 by subordinate Courts pending consideration by the former Courts, which are empowered to modify, alter or annul such orders and also to make any further orders which justice may require.

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Looking at the scheme of the Code and also at Part VII I find it a little difficult to conclude that section 520 by itself creates a right of appeal from orders passed under section 517 to 519. Section 517, as I read it, contemplates a consequential and subsidiary miscellaneous order after the Court trying a criminal offence has reached its conclusions on the merits of the trial. On this view, it is not easy to comprehend the feasibility or utility of conferring a power of general reconsideration of the merits of the main order passed under section 517 divorced from the merits of the main order passed at the trial on the question of the guilt or innocence of the accused person. If a Court cannot go into the merits of the main controversy in the judgment—and it can hardly be disputed that without an appeal the Appellate Court cannot go into its merits and come to a different conclusion, to confer on that Court a power to go into the merits of the consequential miscellaneous order passed on the same evidence and apparently based on the conclusions of the main charge, appears to me to lead to certain anomalous consequences; at least it would hardly prove to be of any substantial utility.

The contention that section 520 does not confer a right of appeal but merely enables an aggrieved party to approach any one of the Courts mentioned there for the purpose of re-viewing and re-assessing the merits of the order passed under section 517 would also seem to suffer from the same defect and is subject to the same criticism.

It appears to me that section 520 merely empowers the Courts exercising the various powers vested in them in the course of such exercise to stay the consequential order passed under section 517 etc., by the subordinate Courts and to modify, alter or amend those orders and then to pass such further orders as may be considered just.

It is true that this provision could equally well have been contained in the sections dealing

with Appeals, Confirmation, Reference and Revisions and one may also argue that the power to re-consider the order passed in section 517 may be implicit in the Court of Appeal, confirmation, reference or revision. But the, insertion of section 520 in Chapter XLIII in the sequence in which it occurs is understandable and is not without justifiable reasons. And then assuming—without expressing any considered opinion—such a power to be necessarily implied in a Court of Appeal, Confirmation, Reference or Revision dealing with the main case, it is by no means rare to find instances when such powers are inserted in statutes by way of abundant caution to remove any possible doubt.

With these observations, I agree with the order passed by my Lord the Chief Justice.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

NATHU AND OTHERS,—*Appellants.*

versus

PURAN AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1764 of 1961.

1962

April, 2nd

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—S. 3—Meaning and scope of—Shamilat land—Nature of—Date for determination of—Whether 9th of January, 1954 when Act I of 1954 came into force or 4th May, 1961, when Act 18 of 1961 came into operation.

Held, that section 3 of Punjab Village Common Lands (Regulation) Act (18 of 1961) makes the Act applicable to all lands which are *Shamilat Deh* as defined in clause (g) of section 2. It further provides that before the commencement of this Act the *Shamilat Deh* law shall be deemed to