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MAHOMED HOSSEIN v. KOKIL SINGH.

bin Shivlingaya (1); but whether they were or no, the words "subsisting decree" evidently mean a *decree unreversed and in full force*, and not merely one upon which execution cannot be issued.

We think that, after the sale had been confirmed, and no attempt made by the execution-debtor to stay its confirmation, the Subordinate Judge had no power to set aside the sale by a summary order; and we think moreover, that under sched. ii, art. 165 of the Limitation Act, the application which was made to him ought not to have been entertained.

We say nothing as to the right of the judgment-debtor to raise the question in a substantive suit; though we give him no encouragement to bring such a suit.

The rule must be made absolute with costs.

Rule absolute.

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

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IN THE MATTER OF THE PETITION OF GOPAL DHANUK.

THE EMPRESS *v.* GOPAL DHANUK.*

Plea of Guilty—False Charge—Penal Code (Act XLV of 1860), s. 211—Record of Plea—Explaining Charge—Criminal Procedure Code (Act X of 1872), s. 237.

A prisoner, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing *A* of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by s. 237 of the Criminal Procedure Code, appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner,

* Criminal Appeal, No. 188 of 1881, against the order of W. H. Verner, Esq., Officiating Sessions Judge of Bhagulpore, dated the 26th February 1881.

(1) I. L. R., 2 Bomb., 540.

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and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A.

Held, that the conviction was bad.

IN this case one Gopal Dhanuk was charged under s. 211 of the Penal Code with having made a false charge with intent to injure one Bedwa. It appeared that the prisoner had stated to the police that Bedwa had assaulted one Manjar, who died shortly afterwards, and that the death was the result of, or accelerated by, the blow. At the trial before the Sessions Judge, the prisoner stated that the original complaint made by him to the police was false, and that he made it unthinkingly. The Judge treated this statement as a plea of guilty, and sentenced the prisoner to eight months' rigorous imprisonment. No record of the prisoner's plea, as required by s. 237 of the Criminal Procedure Code, appeared on the proceedings, nor did it appear that the charge had been explained as well as read to him; and the Sessions Judge, in giving judgment, stated that the original complaint, though malicious, could hardly be regarded as amounting to a charge of culpable homicide.

The prisoner appealed to the High Court.

No one appeared.

The judgment of the Court (MORRIS and TOTTENHAM, JJ.) was delivered by

MORRIS, J.—This conviction is bad in law, and must be set aside. The Sessions Judge states that the prisoner pleads guilty to the charge, and that the only question is as to what punishment should be allotted. We find in the proceedings no record of the prisoner's plea, as required by s. 237 of the Code of Criminal Procedure, when he pleads guilty. All that we find is a narrative by the Judge of what occurred and of the statements made by the prisoner. We do not find from this, that the charge was explained as well as read to the prisoner (*vide* s. 237), and we do find that he did not admit one very important element in an offence under s. 211 of the Penal Code, *viz.*, the intention to injure another. The prisoner is said to have represented that he made the false complaint unthinkingly. This certainly does not amount to a plea of guilty.

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The Judge was further somewhat inconsistent, for, after stating that the prisoner pleaded guilty, he proceeds to show that he was not guilty of the charge as framed, inasmuch as he had not made a complaint of an offence under s. 304A of the Penal Code, which was alleged in the charge.

The Judge committed an error, therefore, in convicting the prisoner without a trial. We therefore set aside the conviction and sentence, and direct that the prisoner be tried according to law, and that the Judge conform to the procedure laid down in chap. XIX, Code of Criminal Procedure.

Conviction set aside.

APPELLATE CIVIL.

Before Mr. Justice Pontifex, Mr. Justice Morris, and Mr. Justice Prinsep.

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WOMESH CHUNDER GHOSE (PLAINTIFF) *v.* SHAMA SUNDARI BAI (DEFENDANT).*

Evidence—Secondary Evidence—Bond—Loss or Destruction of Instrument—Evidence Act (I of 1872), s. 65, cl. (c).

In a suit by the purchaser of a debt, the plaintiff stated that, in 1873, *A* executed a bond in favour of *B* to secure the repayment of Rs. 1,000, and that he had purchased the interest of *B* at a sale in execution of a decree against him. The plaintiff now sued *A* upon the bond, making *B* a party. At the trial, *A* denied the execution of the bond, and it was not produced by the plaintiff, who, having served *B* with notice to produce, tendered secondary evidence of its contents. *B* was not examined as a witness, and no evidence was given of the loss or destruction of the bond.

Held by PONTIFEX and MORRIS, JJ. (PRINSEP, J., dissenting), that secondary evidence was not admissible.

THE plaintiff in this case alleged that the defendant No. 1 executed a registered bond on the 16th Choit 1279 (28th March

* Appeal from Appellate Decree, No. 794 of 1879, against the decree of T. T. Allen, Esq., Judge of Rajshahye, dated the 5th February 1879, reversing the decree of Baboo Jibun Krishna Banerjee, Subordinate Judge of that district, dated the 12th September 1878.