

appellants' decree pending the decision of the regular suit brought by the judgment-debtor. It ordered that the attached property should remain under attachment, but proceeded to strike the execution-case off its file.

1882

 NIHAL
 CHAND
 v.
 RAMESHARI
 DASSEE.

It appears to us that the appellants have no right of appeal to this Court in this matter. They contend that it is an order determining a question between themselves and the judgment-debtor under s. 244, and that, that being so, the order amounts to a decree within the meaning of s. 2.

We think that there are two reasons against this contention being allowed. First of all we think that an order staying execution under s. 243 is not one which comes within the purview of s. 244; and secondly, if it could be said to come within the purview of s. 244, we do not think that this order amounts to a decree as defined by s. 2, as it is not an adjudication of any right claimed, nor does it appear to us to be a determination of any question mentioned in s. 244. It seems to us that the Court below has not finally determined any question as between the parties; it has simply postponed the determination of a matter before it. It is quite clear that, unless this order amounts to a decree, there is no appeal against it; for it is not one of those mentioned in s. 588, against which an appeal is allowed as against an order; and we being of opinion that it is not a decree, we are compelled to dismiss the appeal with costs.

Appeal dismissed.

CRIMINAL REFERENCE.

Before Mr. Justice Maclean and Mr. Justice Macpherson.

TAMIZ MANDAL v. UMID KARIGAR.*

*Security for Good Behaviour—Code of Criminal Procedure (Act X of 1872),
 ss. 504, 505.*

1882
 July 26.

An accused person was convicted of theft and sentenced to two years' rigorous imprisonment, and was further ordered to enter into his own recognizances for Rs. 50 and find two sureties, each for a like sum, for his good

* Criminal Reference, No. 149 of 1882, from the order made by W. V. G. Tayler, Esq., Magistrate of Nuddea, dated the 20th July 1882.

1882 behaviour for one year after the term of his imprisonment had expired; in
 TAMIZ default to suffer rigorous imprisonment for one year.
 MANDAL *Held*, that the latter part of the order was bad, and that the Magistrate
 v. should have proceeded under the provisions of s. 504, cl. 2, of the Code of
 UMID Criminal Procedure.
 KARIGAR.

The *Empress v. Partab* (1) followed.

THIS was a criminal reference made by the Magistrate of Nuddea, under s. 296 of the Code of Criminal Procedure (Act X of 1872). The terms of the reference were as follows:—
 “Umid Karigar was convicted by the Assistant Magistrate of Kooshtea, under s. 380, Indian Penal Code, and was ordered to be rigorously imprisoned for two years, to enter into his own recognizances in Rs. 50, and to find two sureties, each in a like sum, to be of good behaviour for one year after the term of his imprisonment had expired. In default, to suffer rigorous imprisonment for another year. The order for security and for a further term of one year’s rigorous imprisonment failing security does not appear to be legal. The Assistant Magistrate, on being asked to report why this part of the sentence should not be quashed, stated that he was guided by the case of *The Empress v. Partab* (1); but I am still of opinion that it is illegal to call

(1) I. L. R., 1 All., 666. In this case Spankie, J., said:—“In making an order for security for good behaviour, I presume that the Magistrate holds the powers of a first class Magistrate, and that he was acting under s. 505 of the Code of Criminal Procedure. I have some doubt whether the Magistrate had adduced before him such *evidence as to general character* as to justify his dealing with the accused for the offence of which he found he was guilty, and in the record of the trial I find no evidence from which it could be gathered that the accused was by repute a receiver of stolen property. But the prisoner certainly allowed that he had been punished twice for theft, and here he was again tried and found guilty of receiving stolen property. I am therefore unwilling to disturb the order. But the order should be no part of the sentence for the offence of which accused was convicted. There should have been a proceeding drawn out representing that the Magistrate, from the evidence as to general character adduced before him in this case, was satisfied that Partab was by repute an offender within the terms of s. 505 of the Criminal Procedure Code, and therefore security would be required from him. But as he had been sentenced to two years’ rigorous imprisonment, which term has not expired, an order should have been recorded to the effect that, on the expiration of the term, the prisoner should be brought up for the purpose of being bound (cl. 2, s. 504).”

upon an accused person to find security for future good behaviour in addition to a sentence passed upon him for a specific offence, and this view appears to be concurred in by the Sessions Judge, who has lately in another case reversed a similar sentence. This portion of the sentence should, therefore, I think, be quashed."

No one appeared to argue the case.

The judgment of the Court (MACLEAN and MACPHERSON, JJ.) was delivered by

MACLEAN, J.—It would have been better had the Assistant Magistrate followed the course pointed out by the Presiding Judge in the case of *The Empress v. Partab* (1) as the proper course to be adopted.

We direct that the order passed under s. 505 of the Criminal Procedure Code be set aside, and leave it to the Assistant Magistrate to follow the course prescribed in s. 504, cl. 2, if he thinks proper.

APPELLATE CIVIL.

Before Mr. Justice McDonell and Mr. Justice Field.

DINOBUNDHOO PAL (AUCTION-PURCHASER) *v.* SHOSHIEE MOHUN PAL AND OTHERS (DECREE-HOLDERS).*

1882
June 14.

Insolvency—Execution of Decree—Decree against Insolvent—Official Assignee—Purchaser at Execution-Sale—Setting aside Sale—Code of Civil Procedure (Act X of 1877), s. 313.

Where, in execution of a decree passed against a person who had previously been adjudicated an insolvent, portions of his property (then vested in the Official Assignee) are attached and sold, the purchaser is entitled to have the sale set aside under s. 313 of the Code of Civil Procedure, notwithstanding that the Official Assignee acquiesces in the sale, and is content to receive the sale-proceeds.

THE facts of this case are fully set forth in the judgment of the Court. The auction-purchaser appealed against the order

* Appeal from Original Order, No. 21 of 1882, against the order of Baboo Gunga Churn Sircar, Subordinate Judge of Dacca, dated the 10th of December 1881.

(1) See *ante*, p. 216.