

of 1869 says: "When an arrear of rent remains due from any ryot at the end of the Bengalee year or at the end of the month of Jayt of the Fuslee or Willayuttee year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due: provided that no ryot having a right of occupancy or holding under a pottah, the term of which has not expired, shall be ejected otherwise than in execution of a decree, or order under the provisions of this Act."

It is clear, therefore, that all ryots, whether having a right of occupancy or not, and whether such right of occupancy be saleable by the usage of the country or not, are liable to ejection if an arrear of rent remains due at the end of the year. This provision is not controlled or modified by any subsequent section. Upon the Act itself, therefore, the soundness of the conclusion to which the lower Courts have come is open to doubt. But as there is no conflict of authority on this point, and as it has been understood that the law has been settled in the way in which the lower Court's decision goes, I concur in dismissing the appeal with costs.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Maclean.

FAZAL IMAM AND OTHERS (DECREE-HOLDERS) v. METTA SINGH
(JUDGMENT-DEBTOR).*

1884

March 20.

Decree—Execution—Step in aid of execution—Limitation—Limitation Act XV of 1877, Sch. II Art. 179, Cl. 4.

An application made by a judgment-creditor to take out of Court certain monies, the sale proceeds realized by the sales of certain properties of his judgment-debtor in a previous execution, cannot be considered to be an application to the Court to take a "step in aid of execution," and is not therefore within the meaning of cl. 4, Art. 179, Sch. II of Act XV of 1877.

Hem Chunder Chowdhry v. Brojo Soondury Debts (1); Venkatarayalu v. Narasimha (2) dissented from.

* Appeal from Appellate Order No. 409 of 1883, against the order of G. B. Garret, Esq., Judge of Patna, dated 26th of September 1883, affirming the order of Baboo Sharoda Pershad Ghose, Munsiff of Behar, dated the 17th of July 1883.

(1) I. L. R., 8 Calc., 89.

(2) I. L. R., 2 And., 174.

1884
 FAZAL IMAM
 v.
 MERTTA
 SINGH.

THIS was an appeal from an order holding that the execution of a decree was barred. The application for execution was made on the 1st March 1883, and was within three years of another application, dated the 5th August 1880, made by the judgment-creditors for the purpose of taking out of Court the sale proceeds realized by the sale of certain properties of the judgment-debtors in a previous execution. The judgment-creditor contended that that application constituted the taking of some step in aid of execution; and that consequently they were within time, and that execution of decree was not barred, but the Munsiff rejected this contention, and held that the execution was barred, and this decision was upheld on appeal by the lower Appellate Court.

The judgment-creditor now specially appealed against that order.

Munshi Mahomed Yusoof for the appellant.

Baboo Saligram Singh for the respondent.

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

MITTER, J.—The lower Courts in this case have held that the decree-holders' right to execute the decree is barred by limitation. It is contended before us that this decision is wrong, because the present application, which is dated 1st March 1883, is within three years from the date of another application, dated 5th August 1880 made by the judgment-creditor in order to draw out the sale proceeds realised by the sale of certain properties of the judgment-debtor in a previous execution. In support of this contention our attention has been called to the decision in *Venkatarayalu v. Narasimha* (1). The lower Courts have decided this case on the strength of a ruling of this Court in the case of *Hem Chunder Chowdhry v. Brojo Soondury Debee* (2). We have examined both these rulings, and we find that the one of our Court is exactly in point. No doubt in the Madras case it was given as an additional reason over and above the one on which the decision mainly rested, that such an application as this was an application which came within the purview of the words "an application to take some step in aid of

(1) I. L. R., 2 Mad., 174.

(2) I. L. R., 8 Cal., 89.

execution." We are of opinion that no reason has been placed before us that would warrant us in not following the ruling of our Court.

We therefore dismiss this appeal with costs.

Appeal dismissed.

1884
FAZAL IMAM
v.
MUTTA
SINGH.

CRIMINAL REFERENCE.

Before Mr. Justice Mitter and Mr. Justice Maclean.

QUEEN EMPRESS v. NOWAB JAN.*

1884
April 3.

Criminal Procedure Code (Act X of 1882), ss. 248, 259, 345, 437—Further enquiry, Power of District Magistrate to direct—"Subordinate Magistrate"—Compoundable offence.

A criminal charge under s. 448 of the Indian Penal Code having been instituted, the accused was sent up by the Police before a Deputy Magistrate of the first class. Previous to any evidence being taken the complainant intimated to the Magistrate that the case had been amicably settled, and that he did not wish to proceed further in the matter, upon which the Magistrate recorded an order, "Compromised; defendant acquitted." Subsequently the Magistrate of the district, relying upon ss. 248 and 259, and professing to act under s. 437 of the Criminal Procedure Code, directed the Deputy Magistrate to send up the parties and proceed regularly with the case.

Held, that ss. 248 and 259 had no bearing on the case, and that the mere fact of the accused had been sent up by the Police did not prevent the offence, which was legally compoundable, from being compromised, and that consequently the order of the Deputy Magistrate was perfectly correct and legal.

Held further, that in addition to the Magistrate's order not being warranted by the fact, it was *ultra vires*, inasmuch as the Deputy Magistrate was a Magistrate of the first class and not "inferior" to the District Magistrate and to give the District Magistrate jurisdiction to call for a record under s. 435 from another Magistrate and to act under s. 437, the latter must be inferior. *Nobin Kristo Mookerjee v. Russick Lall Laha* (1) followed.

THE facts of this reference were as follows:—

On the 2nd December 1883 Pir Bux complained to the Police at thanua Mahinapore against Nowab Jan, charging him with house-trespass. The Police sent up the accused to the Deputy Magistrate of Lalbagh for trial, under s. 448 of the Indian Penal

* Criminal Reference No. 87 of 1884 and letter No. 296 from the order made by T. M. Kirkwood, Esq., Officiating Sessions Judge of Moorshedabad, dated the 17th March 1884.