

1878  
February 22.

## APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

MUL CHAND (DEFPENDANT) v. BALGOBIND (PLAINTIFF).\*

*Mortgage—Condition against Alienation.*

*J* gave *B* a bond for the payment of money in which he hypothecated certain immoveable property as security for such payment, covenanting not to sell or transfer such property until the mortgage-debt had been paid. In breach of this condition he granted *M* a lease of his rights and interests in such property for a term of twelve and a half years. *B*, having sued on such bond and obtained a decree charging such property with the satisfaction of the decree, sued *M* and *B* for the cancelment of the lease and a declaration that it would not be binding on the purchaser at a sale in the execution of the decree, alleging that the lease had been granted to defeat the execution of the decree. The High Court refused, in view of its decision in *Chunni v. Thakur Das* (1), to interfere with the decree of the lower Court giving *B* such a declaration.

THIS case being in all respects similar to *Chunni v. Thakur Das* (1), a detailed report of it seems unnecessary.

1878  
February 27.

## CRIMINAL JURISDICTION.

Before Mr. Justice Pearson.

IN THE MATTER OF THE PETITION OF NARAIN DAS.

*Acquittal of Accused without asking Assessors their opinion—Error or Defect in Proceedings—High Court, Powers of Revision of—Act X of 1872 (Criminal Procedure Code), ss. 255, 283, 297, 300.*

*Held*, where without asking the opinion of the Assessors a Court of Session acquitted an accused person, after his defence had been heard, that such omission, although a serious irregularity, was not such an error or defect in the proceedings as was, withreference to the provisions of ss. 283 and 300 of Act X of 1872, a ground for revisional interference (2).

THIS was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872.

\* Second Appeal, No. 1274 of 1877, from a decree of R. F. Saunders, Esq., Judge of Farukhabad, dated the 8th August, 1877, modifying a decree of Pandit Har Sahai, Subordinate Judge of Farukhabad, dated the 18th May, 1877.

(1) I. L. R., 1 All. 126.

(2) When a judgment of acquittal is recorded under s. 261 of Act X of 1872, it seems that it is not necessary to ask the Assessors their opinion—see *Reg. v.*

*Parvati*, 7 Bom. H. C. R., C. C., 82, where it was so ruled with reference to the corresponding section (372) of the old Code of Criminal Procedure.

One Durga Prasad was tried for certain offences by Mr. C. J. Daniell, Sessions Judge of Mainpuri, with the aid of Assessors, and acquitted, after his defence had been heard, without the opinion of the Assessors being asked. The first ground in the application for revision of this judgment of acquittal took exception to this procedure of the Sessions Judge.

Mr. J. E. Howard, for the petitioner.

The judgment of the High Court, so far as it related to such ground; was as follows :

PEARSON, J.—The opinion of the Assessors does not appear to have been taken as it is not found on the record. The omission to take it was a serious irregularity and must be pointed out to the Judge, and he must be cautioned to avoid a similar irregularity in future. At the same time I cannot hold that it affected the conduct of the prosecution or prejudiced the prisoner in his defence, and it is not therefore, with reference to the provisions of ss. 283 and 300 of Act X of 1872, a ground for revisional interference.

## APPELLATE CIVIL.

1878  
February 27.

*Before Mr. Justice Pearson and Mr. Justice Turner.*

GANGA PRASAD (DEFENDANT) v. KUSYARI DIN (PLAINTIFF) \*

*Suit for Money charged on Immoveable Property—Mortgage.*

The obligor of a bond for the payment of money gave the obligee a moiety of the profits of a certain mauza up to the end of the current settlement, and charged the other moiety of such profits with the payment of such money. It was also stipulated in such bond that the obligee should take the management of such mauza, rendering accounts to the obligor, and that, if the obligor failed to pay such money when due, the obligee should remain in possession of the entire mauza until payment of all that was due. The original obligor having died his heir gave the obligee a second bond, in which he admitted the creation of the original charge and a certain further debt. A portion of such further debt he undertook to pay on a certain date, and he agreed that the balance due should be realised by the obligee from a moiety of the profits of the mauza, according to the terms of the first bond, and that the mauza should remain in the obligee's possession until the amounts due under both bonds were realised by him, and that he, the obligor, should have no power to sell, mortgage, or alienate the mauza. *Held*, in a suit by the obligee on the bonds, that the bonds created a mortgage only of the profits

\* Regular Appeal, No. 112 of 1877, from a decree of Maulvi Ali Bakhsh Khan, Subordinate Judge of Banda, dated the 28th September, 1877.