

1878
February 22.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

MUL CHAND (DEFPNDANT) 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, with reference 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.