

allegation that the mortgage-debt had been satisfied, and it had been found that this was not the case, the plaintiffs were not entitled to a conditional decree.

Munshi *Sukh Ram*, for the appellants.

Lala *Lalta Prasad*, for the respondents.

The judgment of the Court, so far as it is material for the purposes of this report, was as follows :

TURNER, J.—We are not satisfied that a conditional decree was improper in this case. It does not appear that the appellants ever rendered any accounts, indeed, they denied they were in possession as mortgagees, and inasmuch as no agreement had been made as to the amount at which the profits should be estimated it was impossible for the respondents to have ascertained before suit what sum, if any, was due by them. The more proper course would have doubtless been for the respondents to have offered to pay what might be found due. Seeing that whether the decree is altered or not the respondents may immediately pay the balance and demand possession, and the appellants could not legally refuse it, we think it unnecessary to interfere with the decree in this case.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Spankie.

HUSAIN BAKHSI (DECREE-HOLDER) v. A. D. MADGE (JUDGMENT-DEBTOR).*

Execution of Decree—Application to enforce or keep in force the Decree—Limitation—Act VIII of 1859 (Civil Procedure Code), ss. 212, 285—Act IX of 1871 (Limitation Act), sch. ii, art. 167.

Held that an application under s. 285 of Act VIII of 1859, being a necessary and decided step towards the execution of the decree, was an application to enforce or keep in force the decree, within the meaning of art. 167, sch. ii of Act IX of 1871.

THIS was an application for the execution of a decree. The decree was passed by the Civil Judge of Lucknow on the 20th February, 1874. On the 28th May, 1875, the decree-holder made an application to the Civil Judge of Lucknow, under s. 285 of Act

* Miscellaneous Regular Appeal, No. 64 of 1877, from an order of H. Lushington, Esq., Judge of Allahabad, dated the 20th June, 1877.

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VIII of 1859, that a copy of the decree should be transmitted to the District Court at Allahabad, together with a certificate that satisfaction of the decree had not been obtained. This application was granted, and on the 5th April, 1877, the present application for execution of the decree was made, under s. 212 of Act VIII of 1859, to the District Court at Allahabad. That Court held, on objection taken by the judgment-debtor, that the application was barred by limitation, inasmuch as no previous application under s. 212 of Act VIII of 1859 had been made. On appeal to the High Court by the decree-holder it was contended that the application dated the 28th May, 1875, kept the decree in force.

Mr. *Niblett*, for the appellant.

Mr. *Chaterji*, for the respondent.

The judgment of the Court was delivered by

PEARSON, J.—The Judge apparently holds the present application dated 5th April last for the execution of the decree of the 20th February, 1874, to be barred because no previous application of the nature described in s. 212, Act VIII of 1859, had been made. But such an application could not well be made to the Court which passed the decree, if the decree could not be executed within its jurisdiction. The only application which could usefully be made to the Lucknow Court was that which was made to it on the 28th May, 1875. The remark that no application under s. 212 was made at the same time is of no weight or importance. The question is whether the application of the 28th May, 1875, was not one to enforce or keep in force the decree within the scope and meaning of art. 167, sch. ii, Act IX of 1871. It is difficult to conceive any other object which the applicant can have had in view in making the application than the enforcement or keeping in force the decree. The idea of *mala fides* is preposterous. The application was a necessary and decided step towards the execution of the decree (1) in the Allahabad district. Under these circumstances we cannot but regard it as an application within the terms of art. 167 aforesaid; and the present application being within three years from the date of that application is within time. The view we take

(1) See Indian Limitation Act, 1877, sch. ii, art. 179.

of the nature of the application of 28th May, 1875, is supported by a decision of a Bench of this Court dated 22nd ult., in miscellaneous special appeal No. 64 of 1877, *Banki Behari*, appellant v. *Musammât Rahsi*, respondent.

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We reverse the lower appellate Court's order of 20th June last, and, decreeing the appeal with costs, direct that the application be allowed and proceeded with.

Appeal allowed.

APPELLATE CRIMINAL.

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December 7.

Before Mr. Justice Pearson and Mr. Justice Turner.

EMPRESS OF INDIA v. SALIK.

Act XLV of 1860 (Indian Penal Code), s. 211—False Charge.

To constitute the offence of making a false charge, under s. 211 of the Indian Penal Code, it is enough that the false charge is made and that the charge is not pending at the time of the offender's trial. *The Queen v. Subbanna Gaundan* followed (1).

THIS was an appeal to the High Court by the Local Government against a judgment of acquittal passed by Mr. J. W. Power, Sessions Judge of Ghazipur, dated the 8th September, 1877, reversing a judgment of conviction passed by Mr. A. E. C. Casey, Assistant Magistrate of the first class, dated the 1st August, 1877.

As this case merely follows *Reg. v. Subbanna Gaundan* (1) already followed in *Empress of India v. Abul Hasan* (2), it is not reported in detail.

CRIMINAL JURISDICTION.

1877
December 15.

Before Mr. Justice Spinkie.

MUTHRA v. JAWAHIR AND OTHERS.

Public Ferry—Act XLV of 1860 (Indian Penal Code), ss. 138, 441—Criminal Trespass—Regulation VI of 1819, s. 6—Disobedience to order duly promulgated by Public Servant—Act VIII of 1851.

A person plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass," within the meaning of that term in s. 441 of the Indian Penal Code (3).

(1) 1 Mad. H. C. Rep. 30.

(2) I. L. R., 1 All. 497.

(3) As to "criminal trespass" on a right of fishery in a public river, see *The Empress v. Charu Nayiak*, I. L. R. 2 Cal. 354.