

original charge when proceedings were instituted against Abul Hasan. Whether it would be a sufficient answer to a charge of false complaint that the complaint had not been determined and that proceedings were still pending, we need not now determine, for in this case no proceedings had been instituted. The offence consists not in the prosecution of a false complaint but in the making of it. The case of *The Queen v. Subbanna Ganndan* (1) is precisely in point. We concur in the ruling of Chief Justice Scotland in that case and in the grounds on which that ruling proceeds. The ground therefore on which the judgment of the Sessions Judge proceeds is bad in law. The evidence adduced by the prosecution satisfies us that the original charge was made and that it was false, and warrants the inference that Abul Hasan knew it was false, and made it with the intention of injuring Ser Mal. The conviction was therefore proper, and the sentence is certainly not too severe. The appeal is allowed, the judgment of acquittal passed by the Sessions Judge is set aside, and the conviction and sentence affirmed.

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 EMPRESS OF
INDIA
v.
ABUL HASAN.

 APPELLATE CIVIL.

 1877
November 14.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Turner.

DIRGAJ SINGH AND OTHERS (PLAINTIFFS) v. DEBI SINGH AND ANOTHER
(DEPENDANTS).*

Conditional Sale—Mortgage—Foreclosure—Regulation XVII of 1806, s. 8.

Where land which has been conditionally sold is subsequently mortgaged, the second mortgagee, being the mortgagor's "legal representative," within the meaning of that term in s. 8 of Regulation XVII of 1806, is entitled on foreclosure proceedings being taken by the conditional vendee to the notice required by that section, and cannot be deprived by the conditional vendee of the possession of the land notwithstanding foreclosure, where no such notice has been given to him.

THIS was a suit for possession of a share in the village of Khushalpur and of a share in the village of Jithupur. These shares had been conditionally sold to the plaintiffs in 1864 by Gurdhan Singh, the proprietor, defendant in this suit. In 1870 they were mortgaged by him to Debi Singh, also a defendant in this suit. The mortgage to the plaintiffs having been

* Special Appeal, No. 141 of 1877, from a decree of Maulvi Sultan Hasan Khan, Subordinate Judge of Gorakhpur, dated the 3rd February, 1877, reversing a decree of Maulvi Muhammad Hamid, Munsif of Basti, dated the 9th December, 1876.

(1) 1 Mad. L. C. R., 30.

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foreclosed, they brought the present suit for possession of the shares. The Munsif gave the plaintiffs a decree, holding that the mortgage to Debi Singh was not a genuine mortgage but made to defraud the plaintiffs of their rights under the conditional sale. Debi Singh appealed to the Subordinate Judge, who reversed the decree of the Munsif, and dismissed the suit as brought, on the ground that the plaintiffs could not obtain possession of the shares without redeeming the mortgage to Debi Singh, which he held was a genuine mortgage.

The plaintiffs appealed to the High Court contending that they were entitled to take the shares free of incumbrance, and that the respondents, having failed to redeem them within the time allowed by law, had lost all right or interest in them.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellants.

Munshis *Hanuman Prasad* and *Sukh Ram*, for the respondents.

The High Court made the following

ORDER OF REMAND.—The pleas set out in the memorandum of appeal show valid grounds of objection to the decree of the lower appellate Court. The appellants' deed of conditional sale was executed in 1864, the respondent's deed of mortgage in 1870. Now the mortgagor could only convey to the respondent such a title as he himself had, namely, a title subject to the conditional sale and the legal consequences of the sale. Consequently the appellants were entitled to take proceedings for foreclosure without discharging the alleged mortgage-debt due to the respondent. Such proceedings have been taken, but the respondent now alleges that he had no notice of them. If the mortgage made to the respondent was merely colourable and the original mortgagor remained solely interested in the property subject of course to the conditional sale, this notice to the respondent was not necessary, but if the mortgage made to the respondent did in fact create an interest in the property in his favour he was entitled to notice, and it must be ascertained whether he received such notice. The lower appellate Court must try the following issues: Had the respondent at the time the foreclosure proceedings were commenced a *bonâ fide* interest

in the property? If so, was notice of foreclosure served on him? The lower appellate Court will return its finding on these issues, when ten days will be allowed for objections.

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The Subordinate Judge determined on these issues that at the time the foreclosure proceedings commenced Debi Singh was in possession of the shares as mortgagee, and was still in possession as such, and that no notice of foreclosure was served on him.

On the return of these findings, the High Court delivered the following

JUDGMENT.—The facts found by the Court below are no longer disputed, and we accept the findings. We entirely concur in the more recent rulings (1) that the term mortgagor's "legal representative" used in the Regulation (XVII of 1806) was intended to apply to all or any persons who at the date of the notice possess a title to the equity of redemption whether absolute or defeasible under the mortgage. The respondents were as mortgagees entitled to notice, and the foreclosure proceedings as against them are invalid. They were entitled to have the opportunity of coming in to redeem the mortgage held by the appellants so as to preserve their own security, and the issue of notice to them was indispensable to bar them by foreclosure. The appeal is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

November 14,
1877

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Turner.

AJNASI KUAR (JUDGMENT-DEBTOR) v. SURAJ PRASAD (DECREE-HOLDER).*

Decree for the Performance of a Particular Act—Execution of Decree—Act VIII of 1859 (Civil Procedure Code), s. 200.

A, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house. *Held* that such conduct on the part of A was no such evidence of interference with her daughter's return as would justify the execution of the decree against her, under the provisions of s. 200 of Act VIII of 1859.

* Miscellaneous Special Appeal, No. 46 of 1877, from an order of M. Brodhurst, Esq., Judge of Benares, dated the 8th June, 1877, affirming an order of Babu Promoda Charn Banarji, Munsif of Benares, dated the 17th May, 1877.

(1) See 3 W. R. 230, *per* Phear, J., so 6 W. R. 230.