

decree was absolutely bound to confirm the sale, and as it did not do so, but acted in excess of its jurisdiction in refusing to do so, and in cancelling it, it appears that the suit will lie. We are justified in this opinion by a decision of a Division Bench of this Court in special appeal No. 1437 of 1876, decided on the 13th March of the present year (1). We therefore affirm the judgment of the lower appellate Court and dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

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

RAMANAND, JUDGMENT-DEBTOR, (APPELLANT) v. THE BANK OF BENGAL, DECREE-HOLDER, (RESPONDENT).*

Act VIII of 1859, s. 273—Act XX of 1866, s. 52—Act VIII of 1871, ss. 53, 54, 55—Appeal—Execution—Procedure—Repeal.

No appeal lies against orders passed in execution of decrees under Act XX of 1866, the procedure under that Act having been expressly saved by Act VIII of 1871, which repealed Act XX of 1866.

The judgment-debtor appellant filed the above miscellaneous appeal from an order of the Subordinate Judge of Cawnpore under

* Miscellaneous Regular Appeal, No. 75 of 1876, from an order of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 4th November 1876.

(1) In this case the plaintiff sued to establish his right as auction-purchaser to, and to obtain possession of, the property sold by auction, by setting aside the orders passed on the miscellaneous side by the first and appellate courts which cancelled the said auction-sale. The plaintiff added a claim to obtain mesne profits from date of sale to date of possession.

The lower Courts having on insufficient grounds assumed fraud in the auction-sale by reason of inadequacy of price and other irrelevant circumstances, and having held that the orders passed on the miscellaneous side under ss 256 and 257 of Act VIII of 1859 precluded a fresh suit to establish the auction-purchaser's right to the property, sale of which was annulled, the High Court (Pearson and Turner, J.J.) remanded the case for trial on the merits in a judgment of which the following extract is the material portion:—

“The order passed by the Munsif on the 10th March 1875, setting aside the

sale, and that passed by the Judge on the appeal from it on the 5th June 1875, did not, it would seem, proceed on the ground of any material irregularity in publishing or conducting the sale, and cannot, therefore, in reference to the provisions of s. 257 of Act VIII of 1859 bar the present suit, which the plaintiff is entitled to have tried on the merits. He cannot indeed obtain in this suit all the relief he asks for; but if he should succeed in showing that the sale made to him was a valid one which should have been confirmed, he would be entitled to a decree annulling the order above-mentioned, and declaring his right to obtain from the Munsif an order confirming the sale, a certificate of the nature described in s. 259, and delivery of the property which was the subject of the sale in the manner provided by s. 263 or s. 264 of Act VIII of 1859.”

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s. 273 of Act VIII of 1859, alleging that execution of the decree passed under Act XX of 1866 was barred by limitation according to the provisions of cl. 166, sch. iii, Act VIII of 1871, and that on the facts established by the record the appellant was entitled to his discharge from prison, the decree-holder having failed to show that appellant was possessed of any property.

Babu *Dwarkanath Mukerji* and *Shah Asad Ali* for appellant.
Messrs. *Hill and Greenway* for respondent.

JUDGMENT :—This is a miscellaneous regular appeal from an order made by the Subordinate Judge of Cawnpore in execution of a decree, and a preliminary objection is taken by the respondent's counsel that the appeal cannot be heard inasmuch as no appeal lies from such an order.

The circumstances appear to be these. The judgment-debtor, being indebted to the Bank of Bengal in a very considerable sum, upwards of Rs. 76,000, made an agreement for the liquidation of the debt under s. 52 of Act XX of 1866, which agreement was duly registered. It is here to be observed that although that Act was repealed by Act VIII of 1871, the procedure for such cases as the present is thereby expressly saved and is provided by the subsequent ss. 53, 54, and 55 of the Act. Under s. 53 of that Act the Bank obtained a decree against the judgment-debtor, and as that section provides that such a decree may be enforced forthwith under the provisions for the enforcement of decrees contained in the Code of Civil Procedure, he was arrested under a warrant issued pursuant to s. 273 of Act VIII of 1859 in execution of the decree, and on the 23rd of October 1876 he applied for his discharge under s. 8 of Act XXIII of 1861. Subsequently the Bank were called upon to show cause, on the 4th November 1876, why they should not proceed against their judgment-debtor's property and he himself be discharged, and such cause having been shown to the satisfaction of the Court, the judgment-debtor's application was refused, and he himself sent back to prison. Against this order the present appeal has been preferred.

S. 55 of the Act of 1866 expressly provides that "there shall be no appeal against any decree or order made under ss. 53,

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54, or this section." It would thus appear that the preliminary objection taken at the hearing of this appeal was well-founded. The respondent's counsel in support of his objection referred to two Calcutta cases respectively (1). But to my mind, the law is too clear to admit of any doubt on the subject, and it is quite unnecessary to refer to any other rulings. The objection is therefore allowed, and the appeal is dismissed with costs.

OLDFIELD, J.—I concur in the proposed order.

Appeal dismissed.

JURISDICTION AS COURT OF REVISION.

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 April 23.

Before Mr. Justice Spankie.

THE EMPRESS OF INDIA v. RAMESHAR RAI.

Act XLV of 1860 (Indian Penal Code), ss. 192, 193 and 414—Fabricating false evidence—Voluntarily assisting in concealing stolen property—Act X of 1872 (Criminal Procedure Code), s. 297—Separate offences.

Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender, held that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Indian Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Indian Penal Code.

Mr. A. E. C. Casey, Assistant Magistrate of the first class, stationed at Gházipur, convicted a zamindar, Rameshar Rai, of having employed one Mussammat Bhagi Bindin to secrete stolen railway pins in the godown and fields of Rameshar Rai's enemy, Sedari, for the purpose of implicating the said Sedari as the thief.

The Assistant Magistrate convicted Rameshar Rai of fabricating false evidence for the purpose of being used in a stage of a judicial proceeding, and under s. 193, Indian Penal Code, sentenced Rameshar Rai to two years' rigorous imprisonment and to pay a fine of Rs. 50, or in default to be further rigorously imprisoned for six months, and on the same facts the Assistant Magistrate found Rameshar Rai guilty of the additional offence of voluntarily assisting in concealing stolen property, and sentenced him under s. 414,

(1) Petition of Pearee Lal Sahoo, 7 W. R. 130; 17 W. R. 512.