

1876
December 5.

APPELLATE CIVIL.

(*Mr. Justice Pearson and Mr. Justice Spankie.*)

JADU LAL (PLAINTIFF), v. RAM GHOLAM AND ANOTHER (DEFENDANTS).*

Act VIII of 1859, s. 2—Res judicata.

When a plaintiff claims an estate, and the defendant, being in possession, and knowing that he has two grounds of defence raises only one, he shall not, in the event of the plaintiff obtaining a decree, be permitted to sue on the other ground to recover possession from the plaintiff.

Where, therefore, the defendants purchased an estate in the plaintiff's possession, and sued him to recover possession of it, and the plaintiff resisted the suit merely on the ground that the sale to the defendants was fraudulent and without consideration, and the defendants obtained a decree, and the plaintiff then sued claiming a right of pre-emption in respect of the property, a claim which he might have asserted in reply to the former suit, held that he was debarred from suing to enforce such claim.

Baldeo Sahai v. Bateshar Singh (1) followed.

As this case merely follows the decision in *Baldeo Sahai v. Bateshar Singh*, it is not reported in detail (2).

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APPELLATE CRIMINAL.

(*Mr. Justice Pearson.*)

THE QUEEN v PETERSON.

Biqamy—Attempt—Publication of the Banns of Marriage.

The act of causing the publication of banns of marriage is an act done in the preparation to marry but does not amount to an attempt to marry (3).

Where therefore a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.

Mr. C. Donovan, Magistrate of the first class, on the 7th June, 1876, committed Peter Peterson, a European, to the Court of Session for trial on the following charge amongst others, *viz.*, that he, in or about the end of December, 1875, and beginning

* Special Appeal, No. 819 of 1876, against a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 13th April, 1876, reversing a decree of Sultan Husain, Additional Subordinate Judge, dated the 17th May, 1875.

(1) I. L. R., 1 All. 75.

(2) *Baldeo Sahai v. Bateshar Singh* was again followed in S. A., No. 998 of 1876, decided the 16th December, 1876.

(3) For acts amounting only to a preparation to commit forgery, and not to an attempt to commit that offence. See *Queen v. Ramsarun Chowbey*, H. C. R., N.-W. P., 1872, p. 46.