

that such conditions are introduced to protect the lien created by the mortgage, and that a transfer made in contravention of the condition is not absolutely void, but voidable so far as it is in defeazance of the mortgagee's rights. In the present case the mortgagees have obtained a decree for the sale of the estate in satisfaction of the loan. The existence of the lease may induce purchasers to offer a less price for the property than they would offer if they could obtain immediate possession. On the other hand, the lease may be an arrangement highly beneficial to the owner of the estate and thus a substantial increment to its value. The mortgagees will have obtained all that in equity they are entitled to, if the Court gives them a declaration that the lease will not be binding on a purchaser in execution of the decree, unless he desires its continuance. The decrees of the Courts below will be modified accordingly, but as the appeal substantially fails, we must order the appellant to bear the respondents' costs.

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CRIMINAL JURISDICTION.

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January 14

(*Mr. Justice Oldfield*)

QUEEN v. KULTÁRAN SINGH

Act X of 1872, ss. 468, 471, 472, 473—Offence against Public Justice—Offence in Contempt of Court—Prosecution—Procedure

An offence against public justice is not an offence in contempt of Court within the meaning of s. 473, Act X of 1872.

But notwithstanding this the Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in ss. 467, 468, 469, Act X. of 1872, may not, except as is provided in s. 472, try the accused person itself for the offence charged.

The case of *Sujtoollah*, petitioner (1), followed.

A SUIT was brought against Kultáran Singh for the recovery of arrears of rent, in which he produced a witness, Bhikam Singh, who gave evidence as to the payment of the rent by Kultáran Singh. This evidence, in the opinion of the Assistant Collector trying the suit, afforded ground for inquiry into a charge against Kultáran

(1) 22 W. R. Cr. 49, see however *Reg. v. Navranbeg Dulábeg*, 10 Bom. H. C. Rep., 73; and 7 Mad. H. C. Rep., Rulings xvii and xviii.

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Singh of an offence under s. 196 (using evidence known to be false) of the Indian Penal Code, and against Bhikam Singh of one under s. 193 (giving false evidence). That officer, therefore, acting in the capacity of Assistant Magistrate, proceeded to try the accused persons on the charges above-mentioned, and finding each guilty of the offence he was charged with, sentenced him to one year's rigorous imprisonment.

The High Court called for the record of the case on the petition of Kultáran Singh.

Mr. *Raikes*, for the petitioner, in support of the first ground of revision taken in the petition, *viz.*, that s. 473, Act X of 1872, barred the jurisdiction of the Assistant Collector, referred to *Reg. v. Navranbeg Duldabeg* (1). When express provision is made for the prosecution of offences mentioned in ss. 467, 468, 469, Act X. of 1872, when they are committed before a Civil or Criminal Court, such provision should be followed in those cases, notwithstanding the Court may have power otherwise to deal with such offences. It appears from the language of s. 471 that the Court before which the offence is committed cannot itself try the accused person. It also appears from s. 472, which gives the Court power, when it is a Court of Session, to commit, or hold to bail and try, a person for any such offence committed before it, upon its own charge, only if the offence is exclusively triable by it. He referred to the case of *Sufatoollah*, petitioner (2).

The *Junior Government Pleader* (Bábu *Dwárka Níth Banarji*), for the Crown.—S. 471 does not bar the jurisdiction of a Court if otherwise competent. It cannot be said that a Court before which perjury is committed has any such interest in the prosecution as would render it undesirable that it should itself try the offence. The principal recognized by s. 473 does not therefore apply.

OLDFIELD, J. (who, after stating the facts, continued):—It has been objected on the part of Kultáran Singh that the Assistant Magistrate was not competent to try and convict the petitioner, being the Court before which the said offence was committed. This objection was urged under ss. 471 and 473, Code of Criminal Procedure.

(1) 10 Bom. H. C. Rep. 73.

(2) 22 W. R. Cr. 49.

The objection is not tenable under s. 473. That section is to the effect that, except as provided in ss. 435, 436, 472, no Court shall try any person for an offence committed in contempt of its own authority of a Court. It was not intended apparently to include such offences as those which are the subject of this trial, which, under the Indian Penal Code, are classed as offences against public justice, in contradistinction to offences in contempt of the Court's authority. The Indian Penal Code has separately classified those two classes of offences, and it may be presumed that s. 473, Code of Criminal Procedure, has followed this classification, and that when it refers to offences in contempt of authority of a Court, it refers only to such as are so classed under the Indian Penal Code. As a matter of fact also, the classification of the Indian Penal Code has been followed in the Code of Criminal Procedure, and notably in s. 468 in regard to offences under s. 193, and which are classed as offences against public justice. This is the view of s. 473 taken by this Court in their answer dated the 14th September, 1874, to a reference in *Munni* and others made by the Judge of Agra, and was also held by the Calcutta Court in *Safatoolah* (1).

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But it appears to me that, with reference to s. 471, the Assistant Magistrate was not competent to try the petitioner for an offence under s. 196, committed before him as Assistant Collector. S. 471 is as follows:—"When any Court, Civil or Criminal, is of opinion that there is sufficient ground for inquiring into any charge mentioned in ss. 467, 468, 469, such Court, after making such preliminary inquiry as may be necessary, may either commit the case itself or may send the case for inquiry to any Magistrate having power to try or commit for trial the accused person for the offence charged."

This section seems to require that the Court shall either commit the case or send it to some other Magistrate, but not charge or try the person on its own charge. It appears to have been intended that the rule in s. 471 should have general application, with the one exception provided for in s. 472. That section gives an exceptional power to a Court of Session to charge and try on its own charge a person for an offence committed before it when the offence is triable by the Court of Session exclusively; and s. 472,

(1) 22 W. R. Cr. 49.

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by thus exceptionally exempting a Court of Session from the operation of the provisions of s. 471, shows what the general effect and aim of those provisions was intended to be.

To permit the Court in the present case to charge and try for the offence committed before it would be interpreting s. 471 as giving the Court a higher power than is allowed to a Sessions Court. A similar view of the effect of s. 471 was taken by the Calcutta High Court in *Safatollah* (1).

The convictions and sentences passed on Bhikam Singh and Kultaran Singh are annulled, and the Court is directed either to commit them for trial or to send the case to another competent Magistrate for disposal.

APPELLATE CIVIL

1876
February 11

(Mr. Justice Spankie and Mr. Justice Oldfield)

SHAIKH EWAZ AND ANOTHER (DECREE-HOLDERS) v. MOKUNA BIBI AND OTHERS
(JUDGMENT-DEBTORS)*

Pre-emption—Conditional Decree—"Final" Judgment and Decree

THE Court granting a decree to the plaintiff in a pre-emption suit is competent to grant the decree subject to the payment of the purchase-money within a fixed period (2), and if the decree-holder fails to comply with the condition imposed on him by the decree, he loses the benefit of the decree. *Sheo Pershad Lall v. Thakoor Rai* (3) approved.

When a direction contained in a decree referred to the time at which such decree should become *final, held* (the case being one in which a special appeal lay) that such decree does not become final on being affirmed by the lower appellate Court, but on the expiry of the period of special appeal, or, where such an appeal was instituted, when the decision of the lower appellate Court was affirmed by the High Court.

THE plaintiffs in a suit to establish a right of pre-emption in respect of a share in a certain village, under and by virtue of a clause in the village administration-paper to the effect that no

(1) 22 W. R. Cr. 49. (2) *Contra* see *Syud Ahsun Ali v. Sabokee Beebee*, 10 W. R. 53. (3) H. C. R., N.-W. P., 1868, p. 254.

* Miscellaneous Special Appeal, No. 66 of 1875, from an order of the Judge of Azamgarh, dated the 24th July, 1875, affirming an order of the Munsif, dated the 1st May, 1875.