

1880, dismissed it. He now applies to this Court under s. 207 of the Criminal Procedure Code upon the following grounds:—(i) That a conviction could not properly be had in the absence of the original principal document; (ii) That the officiating Magistrate and Collector, being by s. 43 of Act XVIII the actual prosecutor of the case, should not have sat to hear and dispose of it in his judicial capacity.

Dealing with this latter objection first, I am of opinion it is a well-founded one and should prevail. Both the Stamp Acts of 1869 and 1879 recognise the Collector as primarily responsible for the institution of prosecution for offences against those Acts, except where the Local Government generally, or he himself specially, has authorised some other officer to discharge such duty. The letter of the officiating Judge of Gorakhpur of the 1st September, 1879, and the *rukbar* directing an inquiry under the Stamp Act of 1869 against the present applicant and Amirta were amply sufficient to justify proceedings. But the officiating Magistrate and Collector should have detailed the case for hearing and disposal to some other qualified Magistrate, more especially when it was almost impossible for him to prevent his mind being influenced by the very forcible language in which the officiating Judge had couched his letter of 1st September, 1879. The conviction must be quashed and a new trial had before such Magistrate, as the now officiating Judge of Gorakhpur may select.

(The learned Judge then proceeded to deal with the first point urged on behalf of the applicant.)

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Spinkie.

JAGAT NARAIN AND ANOTHER (DEFENDANTS) v. QUTUB HUSAIN
(PLAINTIFF.)*

Mortgage—Contribution.

In March, 1864, the owner of an estate mortgaged it as security for the payment of certain moneys. Subsequently portions of such estate were purchased by the plaintiff and the defendants at an execution-sale. Subsequently again the mort-

* Second Appeal, No. 1172 of 1879, from a decree of H. Lushington, Esq., Judge of Allahabad, dated the 19th April, 1879, affirming a decree of Rai Makhaz Tal, Subordinate Judge of Allahabad, dated the 19th July, 1878.

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gagae sued the mortgagor and the plaintiff for the mortgage-money, claiming to recover it by the sale of the portion of such estate purchased by the plaintiff. Having obtained a decree, the mortgagee caused a portion of such portion to be sold in the execution of the decree. In order to save the remainder of such portion from sale in the execution of the decree, the plaintiff satisfied the judgment-debt. The plaintiff then sued the defendants for contribution. Held that, assuming that the mortgagee, by not including the defendants in his suit upon the mortgage-bond, had put it out of his power to proceed at law by another suit on the basis of the same bond against the properties in the possession of the defendants as purchasers, it did not follow that the plaintiff's equitable right to recover a fair contribution from the defendants on the ground of his having paid the whole debt due to the mortgagee was thereby invalidated.

On the 23rd March, 1864, one Dildar Husain, the owner of an estate called taluqa Asad-ul-lahpur, gave one Ilahi Bakhsh a bond for the payment of certain moneys in which he hypothecated taluqa Asad-ul-lahpur as collateral security for such payment. Ilahi Bakhsh brought a suit on this bond in which, claiming to recover the money due thereon by the sale of the taluqa, he made Qutub Husain, the plaintiff in the present suit, and one Alopi Din, who had in the meantime each purchased a portion of the taluqa at an execution-sale, defendants. Having obtained a decree, Ilahi Bakhsh caused a portion of the property purchased by the plaintiff, and the property purchased by Alopi Din, to be put up for sale in execution of the decree. The portion sold of the property in the plaintiff's possession realized Rs. 1,800, and the property in Alopi Din's possession realized Rs. 200. In order to save the remainder of the property in his possession from sale, the plaintiff paid the balance of the judgment-debt. In the present suit he claimed contribution from the defendants, who had purchased portions of taluqa Asad-ul-lahpur at the same execution-sale at which he had purchased, in proportion to the value of the portions which they had purchased, claiming to recover such contributions by the sale of such portions. Both the lower Courts gave the plaintiff a decree.

On appeal by three of the defendants it was contended on their behalf that, inasmuch as in the suit brought by Ilahi Bakhsh he had not made them defendants or sought to enforce his lien on the portions of the taluqa in their possession, such portions were not lawfully chargeable with the judgment-debt at the time the plaintiff satisfied it, and consequently were not liable to contribution.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji),
for the appellants.

The *Senior Government Pleader* (Lala Jugal Prasad) and
Pandit *Ajudhia Nath*, for the respondent.

The judgment of the Court (PEARSON, J., and SPANKIE, J.)
was delivered by

PEARSON, J.—The argument set out in the ground of appeal is more ingenious and plausible in appearance than agreeable in substance to reason and equity. The contention is that the properties purchased by the defendants-appellants, which were equally with that purchased by the plaintiff subject to the lien created by the bond executed on the 23rd March, 1864, by Dildar Husain in favour of Hahi Bakhsh, were released from liability because they were not included in the suit brought by the latter for the recovery of the bond-debt by enforcement of the lien. But the contention seems to be irreconcilable with the doctrine of contribution expounded in Story's Equity Jurisprudence. Assuming that Hahi Bakhsh by the frame of his suit above-mentioned had put it out of his power to proceed at law by another suit on the basis of the same bond against the properties in the possession of the defendants in the present suit as purchasers, we are not prepared to admit, as a necessary consequence of such assumption, that the plaintiff's equitable right to recover a fair contribution from the defendants on the ground of his having paid the whole debt due to Hahi Bakhsh is thereby invalidated. The appeal is dismissed with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oxlfield, and Mr. Justice Straight.

GANGA SAHAI AND ANOTHER (DEFENDANTS) v. HIRA SINGH (PLAINTIFF),*

Award—Estoppel—Hindu law—Inheritance—Act I of 1872 (Evidence Act), s. 115.

D, who was the natural brother of H, but had been adopted into another family, on the one part, and G, on the other part, referred to arbitration a dispute

* Second Appeal, No. 782 of 1879, from a decree of R. M. King, Esq., Judge of Meerut, dated the 9th May, 1879, reversing a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 24th December, 1877.

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