

heard and disposed of. There was, therefore, the strongest reason for his believing that the judgment-debtor had a saleable right, title, and interest in the property brought to sale.

Had the provisions of s. 315, Act X of 1877, been applicable, I think that the objection taken in the first ground of appeal by the appellant would have been fatal to the plaintiff's claim, and that, instead of instituting a regular suit, the proper course for an auction purchaser to pursue under circumstances such as those which have arisen in the present case is to apply under s. 312 in the execution department. This appeal must, therefore, be decreed with costs.

*Appeal allowed.*

## CIVIL JURISDICTION.

*Before Mr. Justice Pearson and Mr. Justice Straight.*

DURGA PRASAD (DECREE-HOLDER) v. RAM CHARAN AND ANOTHER (JUDGMENT-DEBTORS).\*

*Appeal from Order setting aside sale of immovable property in the execution of Decree—Act X of 1877 (Civil Procedure Code), ss. 312, 588 (m)—Act XII of 1879, ss. 90 (16), 102—Act I of 1868 (General Clauses Act), s. 6.*

On the 25th June, 1879, a Subordinate Judge made an order setting aside the sale of immovable property in the execution of a decree, from which an appeal was preferred, under Act X of 1877, to the District Court on the 25th July, 1879, before Act XII of 1879 came into force. *Held* that, as the appeal would not have lain at all, had Act XII of 1879 been in force on the date of its institution, s. 102 of that Act did not apply, but as the appeal lay to the District Court under the law in force on that date, it was competent to dispose of it under the provisions of s. 6 of Act I of 1868.

Appeal from order No. 133 of 1879 (1) and Revision Case No. 38B. of 1879 (1) observed on.

THIS was an application to the High Court for the exercise of its powers of revision under s. 622 of Act X of 1877. The petitioner was a decree-holder, in the execution of whose decree certain immovable property belonging to his judgment-debtors had been sold. On the application of the judgment-debtors the sale was set aside by the Subordinate Judge of Farukhabad, the Court executing the decree, by an order bearing date the 25th June,

\* Application under 622 of Act X of 1877 connected with First Appeal, No. 10 of 1880, from an order of R. F. Saunders, Esq., Judge of Farukhabad, dated the 6th December, 1879.

(1) Unreported, decided the 11th February, 1880.

1880

HIRA LA  
v.  
KARIM-UN-  
NISA.

1880

March 24.

1880  
 DEEGA  
 PRASAD  
 v.  
 M. CHARAN.

1879. On the 25th July, 1879, or before Act XII of 1879 came into operation, the decree-holder preferred an appeal to the District Judge from the Subordinate Judge's order. On the 6th December, 1879, Act XII of 1879 having in the meantime come into force, the District Judge held, with reference to ss. 91 and 102 of that Act, that the appeal ought to be heard and determined by the High Court, and returned the memorandum of appeal to be presented to the High Court.

The decree-holder accordingly presented the memorandum of appeal to the High Court, and the High Court admitted the appeal. Subsequently, however, the decree-holder applied to the High Court, under s. 622 of Act X of 1877, for the revision of the District Judge's order on the ground that the appeal, having been preferred to that officer before Act XII of 1879 came into force, was cognizable by him.

Pandits *Bishambhar Nath* and *Nand Lal*, for the petitioner.

Babu *Oprokash Chandar Mukarji* and *Munshi Kushi Prasad*, for the opposite parties.

The High Court (PEARSON, J., and STRAIGHT, J.,) delivered the following

JUDGMENT.—The Subordinate Judge's order dated the 25th June, 1879, was appealable to the Judge under s. 588 (m), Act X of 1877, and was made the subject of an appeal to him on the 25th July, 1879, before Act XII of 1879 was passed. An order setting aside a sale under the second clause of s. 312, Act X of 1877, is not appealable under s. 588, Act X of 1877, as amended by s. 90 (16), Act XII of 1879. This being so, s. 102 of the latter Act, which provides for the disposal of "every appeal now pending which would have lain if the Act had been in force on the date of its institution," does not apply in this case, for the appeal would not have lain at all, had Act XII of 1879 been in force on the date of its institution; but, as the appeal lay to the Judge under the law in force on that date, he was competent and bound to dispose of it under the provisions of s. 6, Act I of 1863, which declares that the repeal of any Act shall not affect any proceeding commenced before the repealing Act shall have come into operation.

As the Judge failed to exercise a jurisdiction vested in him by law in the matter of the appeal, we set aside the order and direct the memorandum of appeal to be transmitted to him for disposal on the merits according to law.

1880

DURGA  
PRASAD  
v.  
RAM CHAR

In the course of considering this matter we have had occasion to examine two decisions, passed by us on the 11th of February last, in Appeal from Order No. 133 of 1879 (1) and Revision Case No. 38B of 1879 (1).

We think it right to take this opportunity to say, as regards the first of these, that it was determined under an erroneous conception of s. 102 of Act XII of 1879. It was incorrect to say, that that section was "inapplicable" to that appeal. The order thereby appealed was one "*confirming a sale*," and it was appealable both under s. 588 of Act X. of 1877 and the amendment of that section contained in Act XII of 1879. Moreover, that appeal was pending, when the last-mentioned Act came into force, and should, therefore, have been heard and determined as provided by the amendment to s. 589, namely, by this Court. Accordingly our order sending it back to the Judge for disposal was incorrect.

In Revision Case No. 38B. we were in error in using the expression "had the provisions of Act XII of 1879 been applicable, the appeal from the Munsif's order *setting aside the sale* would lie, not to the Judge but the High Court"; for s. 588, as amended, enacts, by omission, that appeals from orders setting aside sales can no longer be had. We have thought it right to correct this inaccuracy of expression, though our order in the case was perfectly regular.

## APPELLATE CIVIL.

1880  
March

*before Mr. Justice Pearson and Mr. Justice Oldfield.*

GANPATJI AND ANOTHER (PLAINTIFFS) v. SAADAT ALI AND OTHERS  
(DEFENDANTS.)\*

*Mortgage—Sale in execution of decree—Vendor and Purchaser.*

The proprietors of a taluka and mahál called *B*, assessed with revenue at Rs. 6,800-4-7, to which certain lands which had been gained by alluvion apper-

(1) Unreported, decided the 11th February, 1880.

\* First Appeal, No. 50 of 1879, from a decree of Maulvi Mahmud Baksh, Additional Subordinate Judge of Ghazipur, dated the 28th February, 1879.