

1879

PRESS OF  
INDIA  
v.  
GHUBAR.

which conviction takes place, there has been direct force or violence to the person, or conduct inducing an apprehension of force or violence, or a direct threat of force or violence, or a provocation to the commission of force or violence. Intimidation, for example, as in the present case, may have none of these elements about it. The threats used here are "to make charges" against the complainant, and involve no suggestion of personal physical injury, but one can readily understand the possibility of a case of intimidation arising in which there might be the strongest indication of an evident intention to commit a breach of the peace. As far as I have been able to ascertain there are only three cases bearing upon the point, two of these decided by the Calcutta High Court (1) upholding the taking of recognizances on conviction for criminal trespass, and a decision of the Full Bench of this Court in the matter of *Chamru*, decided 8th December, 1876 (2). These bear out the view I have expressed, and though I think in the present instance that the Magistrate was wrong in requiring recognizances, because there is nothing about the conduct of the accused threatening the peace, the mistake he has fallen into is perfectly excusable. The recognizances of the defendants must therefore be discharged.

## APPELLATE CIVIL.

1879  
August 11.

*Before Mr. Justice Spankie and Mr. Justice Straight.*

GOPAL SINGH (AUCTION-PURCHASER) *v.* DULAR KUAR (JUDGMENT-DEBTOR).\*

*Execution of Decree—Application to set aside sale of immoveable property—Auction-purchaser—Appeal—Act X of 1877 (Civil Procedure Code), ss. 32, 311, 312, 588 (m), 647.*

Where after a judgment-debtor has applied, under s. 311 of Act X of 1877, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale. *Kanthi Ram v. Bankey Lal* (3) followed.

THE judgment-debtor in this case applied to the Court executing the decree under the provisions of s. 311 of Act X of 1877 to

\* First Appeal, No. 47 of 1879, from an order of Babu Aubinash Chandar Banarji, Officiating Subordinate Judge of Farukhabad, dated the 12th March, 1879.

(1) 7 W. R. Cr. 14, and 20 W. R. 1875, p. 328, and *Queen v. Kunhiya*, H. C. R., N.W. P., 1872, p. 154.

(2) Unreported. See two other cases, *Queen v. Bachu*, H. C. R., N.W. P., (3) Unreported.

set aside the sale of certain immoveable property. This application was opposed by the auction-purchaser. The Court allowed the application and set aside the sale, on the ground of a material irregularity in its publication which had substantially injured the judgment-debtor.

The auction-purchaser appealed to the High Court, contending that there had been no irregularity in publishing the sale, or if there had been any it was not a material one, nor had the judgment-debtor been injured by reason of it, and the sale should therefore not have been set aside.

The *Senior Government Pleader* (Lala *Juala Prasad*) and *Munshi Hanuman Prasad*, for the appellant.

Mr. *Leach* and *Pandit Bishambhar Nath*, for the respondent.

The following judgments were delivered by the Court :

SPANKIE, J.—There was some preliminary argument, though the objection cannot be said to have been distinctly raised by respondent's pleader, as to whether the auction-purchaser was in a position to appeal. By s. 311 of Act X of 1877 the decree-holder or any person whose immoveable property has been sold may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting the sale. In this case the judgment-debtor objected, and notice was served upon the decree-holder and the auction-purchaser. Upon the judgment-debtor's objection the sale was set aside. An appeal against the order setting aside the sale is admissible under letter (m), s. 588 of the Civil Procedure Code. The auction-purchaser appeals. It is true that the auction-purchaser as such cannot apply under s. 311 to set aside a sale on the ground of irregularity. That application is confined to the decree-holder and the person whose immoveable property has been sold. But if the auction-purchaser has been made a party to the proceedings under ss. 32 and 647 of the Code, and if he has appeared on service of notice and has shown cause why the sale should not be set aside, then if the order be against him, I see no bar to his availing himself of the appeal allowed by law. I would say that the appeal is admissible, and in this view I follow a ruling to which I was a party in the case of *Kanthi Ram v. Bankey Lal* (1) decided on the 11th June, 1879. If, however,

(1) Unreported.

1879

L. SINGH  
v.  
R. KUAR.

my hon'ble colleague has a doubt upon this point, I am willing that it should be referred for the consideration of the Court at large. On the merits this appeal should be decreed. (The learned Judge then proceeded to determine the appeal).

STRAIGHT, J.—I am glad to have had an opportunity of carefully looking at the several sections of Act X of 1877 relating to the setting aside of sales in execution of decree, and to the title of the parties who may be heard upon the applications of that kind. In the present case the appellant is to be found in the person of the auction-purchaser, and although in ss. 311 and 312 he is not specifically referred to as one of the persons who may go to the Court for relief, yet in the proceedings in the execution department he was made a defendant under s. 32, I presume upon the ground that his presence was necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved, so that he became to all intents and purposes a party to the proceedings, and as such I think entitled to all the rights that there were in the litigation either in the judgment-debtor or the decree-holder. Consequently as they would both of them have a right of appeal against an order setting aside or confirming a sale under s. 588, I think that the auction-purchaser, having been made a party to the proceedings, may as in the present case lodge an appeal. Therefore agreeing with the views of Mr. Justice Spankie in this matter, and with those expressed by him and Mr. Justice Oldfield in a case decided by them on the 11th June, 1879, of *Kanth Ram v. Banky Lal* (1), I see no reason for referring the point as to the right of appeal of an auction-purchaser to the Full Bench. (The learned Judge then proceeded to determine the appeal.)

*Before Mr. Justice Spankie and Mr. Justice Straight.*

BHAWANI KUAR AND ANOTHER (PLAINTIFFS) v. RIKHI RAM AND ANOTHER  
(DEFENDANTS).\*

*Suit for damages—Suit for money received to plaintiff's use—Act XV of 1877 (Limitation Act), sch. ii, art. 62.*

The holder of a decree for money which had been sold in the execution of a decree against him sued the auction-purchaser, the sale having been set aside, for

\* Second Appeal, No. 414 of 1879, from a decree of C. W. Moore, Esq., Officiating Judge of Aligarh, dated the 14th March, 1879, reversing a decree of Manvi Farid-din Ahmad, Subordinate Judge of Aligarh, dated the 21st September, 1878.

(1) Unreported.

1879

August 12.