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The admission of an appeal revives the proceedings against the accused person who has been acquitted, and the Appellate Court, which has power, under s. 272 of the Criminal Procedure Code, to pass such judgment, sentence or order, as may be warranted by law, can, I apprehend, under the powers so conferred, compel the appearance of the accused person before it, and order his arrest.

STRAIGHT, J.—At the hearing of this reference I entertained some doubt as to the power of this Court, upon the admission of an appeal under s. 272 of the Criminal Procedure Code, to order the re-arrest of the person or persons who had been acquitted. I am not altogether clear upon this point now, despite the reasoning of the case (1) quoted by Mr. Justice Oldfield, but I may refrain from coming to any determinate opinion as to that, seeing that under the proposed new Code of Criminal Procedure such difficulty cannot recur. Moreover, I think, that under s. 297, it having come to the notice of this Court that the accused were improperly discharged, an order may be issued for their arrest. Let the Magistrate, therefore, arrest the accused, and keep them in custody till the appeal is disposed of.

Application allowed

APPELLATE CIVIL.

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July 8.

Before Mr. Justice Oldfield and Mr. Justice Straight.

THAMMAN SINGH (PLAINTIFF) v. GANGA RAM AND OTHERS (DEFENDANTS)*

Decree—What it is to contain—Act X of 1877 (Civil Procedure Code), s. 206.

The plaintiff sued on a bond in which real property was hypothecated. In his claim the property hypothecated was detailed, and the property itself was impleaded as a defendant, and he obtained a decree in the following terms: "Decree for plaintiff in favour of his claim and costs against defendant" Held that the decree was to be regarded as simply for money and not for enforcement of lien.

THIS was a suit by the plaintiff for possession of one biswa zemindari share in mauza Kaili, in pargana Badaun, by setting aside

* Second Appeal, No. 115 of 1879, from a decree of Maulvi Zain-ul-ab-din, Subordinate Judge of Shahjahanpur, dated the 14th November, 1878, affirming a decree of Rai Raghu Nath Sahai, Munsif of Eastern Badaun, dated the 5th August, 1878.

(1) I. L. R., 1 Calc., 281.

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the auction-sale of the same in favour of the defendants. His claim was based on the following ground: That he had purchased the property in suit, and that after his purchase Ganga Ram, one of the defendants, caused the same to be sold by auction in execution of his decree against one Azim-ud-din, at which sale the other defendants, Ahmad Husain and others, purchased the same; that the decree in favour of Ganga Ram was a mere money-decree, and therefore the property was not liable to be sold in execution thereof, as previous to the sale it had passed to the plaintiff. The defendants, auction-purchasers, contended that the bond on which Ganga Ram obtained his decree was prior to the sale under which plaintiff claimed the property, and that in it the aforesaid zemindari share was hypothecated as security for the debt due on the bond; that, in his claim on the bond, Ganga Ram had detailed the property, and the property itself had been impleaded as defendant, and that the decree which was in the words following, "Decree for plaintiff in favour of his claim and costs against defendant," was both for the money and enforcement of lien.

The Munsif, holding that as in the claim both the property and the person of the defendant were impleaded as defendants, and that as the decree passed was in his favour and against the defendants, the decree was therefore one for the enforcement of the lien and not a mere money-decree, dismissed the plaintiff's claim. On appeal, the Subordinate Judge, agreeing with the Munsif in his construction of the decree, dismissed the appeal. The plaintiff, thereupon, appealed to the High Court, contending that the decree did not give the plaintiff in that case the relief he sought, *viz.*, the enforcement of his lien against the property.

Munshi *Sukh Ram*, for the appellant.

Pandit *Ajudhia Nath*, Mir *Zuhur Husain*, and Maulvi *Obeidul Rahman*, for the respondents.

The judgment of the Court was delivered by

STRAIGHT, J.—The simple point in this case is whether the decree obtained by the defendant Ganga Ram against his judgment-debtor is to be regarded as one for enforcement of lien or simply for money. It is true that, in the claim itself, the hypothecated property is detailed and the property itself is impleaded as a defen-

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dant, but the decree is quite silent about it and thus disposes of the suit: "Decree for plaintiff in favour of his claim, and costs against defendant." It was urged for the respondents, auction-purchasers, that a liberal construction should be placed upon the terms of the decree, and that it may reasonably be read as carrying relief against the property hypothecated. We think this argument should not be allowed to influence us and is inapplicable, where the Legislature has in the most specific terms directed how a decree should be shaped and what details it should contain.

(i.)—The number of the suit.

(ii.)—Names and description of parties.

(iii.)—Particulars of the claim.

(iv.)—*Shall specify clearly the relief granted or the determination of the suit.*

(v.)—The amount of costs incurred in the suit, and by what parties and in what proportion they are to be paid.

It is admitted by the respondents that the decree in this case is vague and defective; but they urge that read by the light of the claim, its intention is obvious, and that it may fairly be interpreted as being one for the enforcement of lien. There are certain broad rules by which construction of Acts is guided, that are perfectly well known and recognised, but it does not appear to us that they could be applied here, nor do we think that we have any right to treat this as a question of construction at all. The s. 206 of Act X of 1877 has, in the details already set out, laid down in the most explicit way, what the contents of a decree are to be: "Shall specify clearly the relief granted," and if there be an omission in the decree so that the relief given by it does not in terms go to the extent asked, we do not think it is part of the duty of this Court, or, indeed, of any other, to import words for the purpose of stretching its operation. The Court making the decree must be presumed to have expressed the relief it was prepared to give, and the words "Decree for plaintiff in favour of his claim and costs against defendant" have, in our judgment, nothing about them specifying clearly, as required by the Act, any relief in the shape of enforcement of lien against property

hypothecated. The argument for elasticity in construction of the terms of a decree urged by the respondent would, if admitted, be productive of the greatest confusion and inconvenience, and involve a continued conflict of decisions. We must take the decrees as we find them, and not embark into speculation as to what was the intention of the Court passing the decree. Under these circumstances we decree the appeal and plaintiff's claim with costs.

Appeal allowed.

Before Mr. Justice Spankie and Mr. Justice Straight.

IIARSUKH (DEFENDANT) v. MEGHRAJ (PLAINTIFF) *

Decree—What it is to contain—Act VIII of 1859 (Civil Procedure Code), s. 189—Act X of 1877 (Civil Procedure Code,) s. 206.

Where the plaintiff by his claim sought for a decree for money and enforcement of lien on the property hypothecated in the bond on which the claim was based, and he obtained a decree for the "claim as brought" without any specification in it as to the relief he sought by charging the property hypothecated, held that such a decree was a decree for money only, and did not enforce the charge on the property.

Muluk Fuqueer Bahksh v. Manohur Das (1) followed.

This was an appeal from the decision of the Judge of Meerut reversing the decree of the Subordinate Judge of the district. The facts of the case and the grounds of contention before the High Court appear sufficiently from the following judgments of the Court.

Babu *Jogindro Nath Chaudhri*, for the appellants.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) and Babu *Oprokash Chandar Mukarji*, for the respondents.

The following judgments were delivered by the Court:—

SPANKIE, J.—In this case the facts were admitted. The only question for decision is, whether the original decree obtained by appellants charged the property in suit for the satisfaction of the amount decreed.

The Subordinate Judge held that the property was so charged. The suit was one to enforce a lien. The judgment declared the

* Second Appeal, No. 146 of 1879, from a decree of R. M. King, Esq., Officiating Judge of Meerut, dated the 12th November, 1878, reversing a decree of Babu Kashi Nath Biswas, Subordinate Judge of Meerut, dated the 11th July, 1878.

(1) H. C. R., N.-W. P., 1870, p. 29.

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