APPELLATE CRIMINAL.

1879
May 16.

Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Spankie, and Mr. Justice Oldfield.

EMPRESS OF INDIA *v.* LALAI.

Act XXVI of 1870 (*Prisons Act*), *ss.* 3, 45, 54—*Entering a Havalat with intent to convey food to Prisoner—Rules made by Local Government for the management and discipline of Prisons—House-trespass—Offence in relation to Prison—Act XLV of* 1860 (*Penal Code*), *s.* 442—*Previous Acquittal—Act X of* 1872 (*Criminal Procedure Code*) *ss.* 454, 460.

Per SPANKIE, J. and OLDFIELD, J., (STUART, C. J., doubting) that a havalat (lock-up) is a prison within the meaning of the Prisons Act.

Per STUART, C. J., that food is not an "article" within the meaning of s. 45 of that Act.

Per STUART, C. J. and OLDFIELD, J. that the conveyance of food into a havalat, not being expressly prohibited by the rules made by the Local Government under s. 54 of that Act for the management and discipline of prisons, is not "contrary to the regulations of the prisons" within the meaning of s. 45 of that Act, and is therefore not an offence punishable under that section.

Held therefore *per* STUART, C. J. and OLDFIELD, J. that where a person entered into a havalat with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Indian Penal Code and it was not an act punishable under s. 45 of the Prisons Act.

Per SPANKIE, J., *contra.*

Per STUART, C. J. that the fact that such person had been tried for house-trespass and acquitted was no bar to his being tried subsequently for an offence under s. 45 of the Prisons Act.

THESE were appeals by the Local Government from two judgments of acquittal of Mr. C. Daniell, Sessions Judge of Gorakhpur, dated the 31st May, 1878, and 24th August, 1878, repectively. The facts of these cases are sufficiently stated for the purposes of this report in the judgments of the Division Bench (STUART, C. J. and SPANKIE, J.) before which the appeals came for hearing.

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

Munshi *Kashi Prasad*, for the respondent.

The *Junior Government Pleader.*—The term "prison" is defined in s. 3 of the Prisons Act, 1870, to mean "any gaol or peni-

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tentiary, and includes the airing-grounds or other grounds or buildings occupied for the use of the prison." The word "gaol" means a place of confinement for persons legally committed to it for crime or for persons committed to it for trial—Webster's Dictionary.—"Havalat" is a Persian word meaning "safe custody." The "havalat" in Gorakhpur is under the charge of the Superintendent of the District gaol. Lalai, by attempting to supply cooked food to an under-trial prisoner confined in the havalat committed the offence described in s. 45 of the Prisons Act. Under that section whoever, contrary to the regulations of the prison, conveys or attempts to convey, any letter or other article not allowed by such regulations, into or out of any such prison, shall, on conviction before a Magistrate, be liable to rigorous imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both. The Local Government, by virtue of the power given to it under s. 54 of the Act, is empowered to make rules consistent with the Act as *to the food* and clothing of criminal prisoners, and according to s. 3 of the Act "criminal prisoner" means a person charged or convicted of a crime. Ch. 29 of the rules framed by the Local Government refers to prison dietary, and these include the diet scale for native non-labouring prisoners, and rule 418 provides that prisoners under trial shall receive the non-labouring prisoner's rations of the gaol, and the non-labouring ration is wheat-flour (second quality) *bajra*, *dal*, vegetables, oil or *ghi*, firewood, chillies, salt. It is submitted that under these rules an under-trial prisoner is not entitled to get any thing besides what is laid down for his ration in the above rules. He is not entitled to procure cooked food from home. True it is that he can cook his own food in gaol, unlike the convict prisoner who is not allowed that privilege, but he cannot get food prepared for him outside the gaol. Inasmuch then as a punishment is provided for the breach of any of the prison rules, any person who does offend against any of those rules commits an offence, as that term is defined in s. 2, Act XXVII of 1870. Lalai entered the havalat intending to give an under-trial prisoner food, that is to say, with intent to commit an offence, and thereby committed the offence of criminal trespass as defined in s. 441 of the Indian Penal Code, the punishment for which offence is provided in s. 448 of the Code. The first conviction therefore of the defendant by the Assistant Magistrate under s. 448

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of the Indian Penal Code was good and valid and should not have been quashed on appeal.

Munshi *Kashi Prasad*, for the respondent, contended that a havalat was not a prison within the meaning of the Prisons Act. Havalats are places which do not form part of the prisons. They existed before the Act was passed and the Act does not mention them. The prison rules do not expressly prohibit under-trial prisoners from procuring cooked food from outside. Such prisoners can cook their own food, and the prisoner in this case might have prepared "*puris*" for himself. There is no reason then why they should not be prepared outside the gaol and given to him.

The *Junior Government Pleader* in reply.—Prisoners can only provide their food out of the rations given to them by the gaol authorities, and as they are not able to procure any food for themselves from outside the gaol, it is an offence against the prison regulations to take food inside the gaol.

The following judgments were delivered by the Division Bench:

STUART, C. J.—These are two appeals by the Government against two acquittals of the same respondent, and on the same facts, although under different charges or different denominations of crime. The facts common to both cases are these:—On or about the 29th April, 1878, an octroi muharrir, otherwise called a chungi muharrir, had been sent to the havalat at Gorakhpur on a charge of embezzlement. On the following day the accused Lalai in company with his brother named Lochan, an octroi chaprasi, came to the havalat about 12 o'clock noon and asked the head-constable, Bakhtawar Khan, who was in charge of the guard, to allow them to give some food to the chungi muharrir who was confined there; this the head-constable refused and told the accused and his brother Lochan to go away. About half an hour after an alarm was raised by a constable on duty that some one was on the top of the havalat wall where there is a platform for the police sentry. The police were sent to the spot and the prisoner was taken. On being searched there, there was found on him a packet of "*puris*" (wheat-cakes fried in *ghi* or oil) and vegetables, and these together were the food which the accused and his brother attempted to give to the octroi muharrir. On these facts the accused Lalai was

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first charged with house-trespass under s. 448, Indian Penal Code, and tried before and convicted of that offence by the Joint Magistrate, and sentenced to rigorous imprisonment for three months. On appeal to the Judge the Magistrate's order was reversed, the appeal allowed, and the accused ordered to be discharged; the Judge's order to that effect was dated 31st May, 1878. Subsequently and on the same facts the accused respondent was tried before the Deputy Magistrate of Gorakhpur on a charge preferred under s. 45 of the Prisons Act XXVI of 1870, and convicted and sentenced on the 19th August 1878 to rigorous imprisonment for three months, but on appeal to the Judge, the Magistrate's order was reversed and the prisoner again released from custody.

It would be convenient to notice and dispose this second appeal first. But before considering the merits in this second appeal, I would notice an objection in the way of a plea of *res judicata*, and which objection was allowed by the Judge. "In this case," he said, "I consider that there can be no doubt that appellant has been imprisoned for committing the same offence for which he was tried and sentenced on 15th May 1878, and released on appeal on 31st May. Under these circumstances his second trial and imprisonment for the same offence must be quashed under s. 460 of the Criminal Procedure Code." In this opinion I do not concur. By the second paragraph of s. 460 it is provided that a person convicted or acquitted of any offence may afterwards be tried for any other offence for which a separate charge might have been made against him on the former trial. Under s. 454, Criminal Procedure Code, first paragraph which provides that "if in one set of facts, so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried for every such offence at the same time;" s. 460, however, providing that this may be done "afterwards." The Judge's objection therefore of *res judicata* or of *autrefois acquit*, as they would call it in English criminal pleading, fails, and the second prosecution and all that followed upon it were perfectly valid.

But on the merits I am of opinion that it is too doubtful a case to justify Lalai's conviction. Lalai was charged under s. 45 of

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Act XXVI of 1870 of an offence against the Prisons Act, in that he had taken to the havalat and attempted to give to the octroi muharrir food contrary to the prison regulations. Now a conviction on such a charge involves two things: first that the havalat is a prison within the meaning of that term in s. 3 of Act XXVI of 1870, and secondly that the act of introducing food into a prison is prohibited by the prison regulations and therefore an offence. With reference to the first point a prison is by s. 3, Act XXVI of 1870, defined to mean "any gaol or *penitentiary*, and includes the airing-grounds or buildings occupied for the use of the prison," meaning by gaol or penitentiary, as I understand those terms, a place of permanent confinement for a fixed and definite period, and not a mere place of temporary or preliminary custody, which appears to be the meaning of the term havalat. I observe that Act XXVI of 1870, s. 30, makes a clear distinction between criminal prisoners before trial and "convicted prisoners" and very properly, because the ultimate condition of the former class has yet to be determined. I am therefore rather of opinion that a havalat is not a prison within the meaning of s. 3, Act XXVI of 1870. As regards the second point, and assuming that a havalat is a prison as defined by s. 3, Act XXVI of 1870, I doubt very much whether the act of introducing food into a havalat in the way alleged in this case was an offence against the prison regulations. Such an act cannot, I consider, be deemed to be such an offence unless it can be shown to be so against some prohibitory law or regulation. Now I can find nothing of that character either in Act XXVI of 1870 or in the rules for the management and discipline of prisoners adopted under the Act. This conviction appears to proceed on s. 45 of the Act, clause 3, where it is provided that "whoever contrary to such regulations (of the prison) conveys or attempts to convey *any letter or other article not allowed by such regulations* into or out of any such prison or place" shall, on conviction, be liable, &c. The question thus at once arises whether the food attempted to be taken into the havalat by the accused was an "article" within the meaning of this section. According to the principles upon which statute laws are usually interpreted "article" here would mean something of the same kind with a letter such as other documents or a newspaper or a book or other

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matter brought to the accused in a printed or written form, and whatever else may have been intended, food does not necessarily come within the category, and this being a criminal case, we are not to determine against an accused person what is not plainly expressed or necessarily implied. Then as to the prison regulations, I was referred to No. 418 which is one of the rules relating to prisoners under-trial (and I presume received into havalat for that purpose). This rule provides that such prisoners shall receive the non-labouring rations of the gaol with certain additions of *ghi* and mustard oil. I was also referred to rule 524 which prescribes a dietary for native prisoners with a suggestion that such was the food the prisoners were to receive, and no other. That may have been the intention of the rule, but such intention is nowhere expressed, nor can I find any prohibition whatever against a friend of a prisoner in custody before trial and not after conviction doing what is here charged against Lalai. And again, I say we must not forget that this is a criminal case in which the presumption is against guilt, and we are not to assume that guilt without some express rule to the contrary, or without evidence which necessarily and irresistibly shows or, it may be, implies the accused's complicity. In fact these prison regulations merely prescribe the diet that is to be given to different classes of prisoners without any other meaning in a penal sense, and there is nowhere in any of them any rule or order against such a contribution to a prisoner's food as Lalai attempted in the present case. It is also to be observed that Lalai and his brother came openly in the first instance to the havalat, and requested permission of the head-constable to give their friend who was in custody then a little food. This was refused, but it does not appear that Lalai was then informed that what he asked permission to do was against the rules of the havalat, much less that it was a criminal offence to give a little *puri* to a prisoner there. It may, as I have suggested, be reasonable to believe and to imply that the diet detailed in a prison regulations was to be all the food that the prison authorities were to provide, but it does not therefore follow that what was here done was a criminal violation of the regulations, unless we are to read s. 45 of the Act otherwise than I have done and so as to include within its sanction what Lalai attempted. But I repeat this is a

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criminal case and everything charged against the accused should, to justify his conviction, be clearly shown to be contrary to express law, and not merely to be implied by any covert inference, however reasonable unless it be irresistible.

For all these reasons I consider the validity of Lalai's conviction under Act XXVI of 1870 is too doubtful, and I would quash it.

This, so far as my judgment is concerned, determines the second appeal before us, and I shall now proceed to dispose of the other or first appeal, and with a like result. The legality of the conviction in this first appeal depends on the solution of the question whether what Lalai did was an "offence" within the meaning of s. 40 of the Indian Penal Code and Act XXVI of 1870. That question I have already determined by the opinion I have expressed in the second appeal to the effect that what Lalai did was not an offence as that term is so defined, or what is the same thing, that what he did was of too doubtful a character to necessitate conviction as an offence. That being so, Lalai was neither guilty of criminal trespass nor of house trespass, the *intent* to commit an *offence* being essential under both sections. I would therefore disallow the appeal and affirm the order of the Judge in both these respects.

SPANKIE, J.—It appears to me that on the facts found Lalai Ahir did commit the offence of criminal trespass. It was established by the evidence that an octroi muharrir had been sent to the havalat at Gorakhpur in custody on a charge of embezzlement. The next day Lalai Ahir came to the havalat about noon and asked the head-constable in charge of the guard to allow him to give some food to the muharrir. The head-constable refused to do so and warned him off. Sometime afterwards an alarm was raised that some one was on the top of the havalat wall, where there is a platform for the police sentry. Constables were sent to the spot and Lalai Ahir was caught. On being searched, a packet of "*puris*" and vegetables were found on his person. The Assistant Magistrate being of opinion that a havalat does not come under the definition of a prison within the terms of s. 3, Act XXVI of 1870, convicted Lalai Ahir on the charge of house-trespass under

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s. 448, Indian Penal Code. The Sessions Judge considered that no offence had been committed. Lalai had entered the havalat for the purpose of giving food, and the giving food under such circumstances was not punishable by law. He therefore annulled the conviction.

Under s. 441, Indian Penal Code, whoever commits criminal trespass, by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit house-trespass. This havalat or lock-up is certainly a place used as a human dwelling. Its officers, guards, and persons accused of offences occupy it as a dwelling place. The introduction of any part of the trespasser's body is entering sufficient to constitute house-trespass. But the trespass must be criminal. Under s. 441, Indian Penal Code, whoever enters into or upon property in the possession of another, with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence is said to commit criminal trespass. Now Lalai Ahir himself was a constable enrolled under the Police Act, and a public servant. Presumably he was quite aware that he was entering a place in which parties accused of offences were kept in custody, and that the head-constable of the guard was only doing his duty when he refused to allow him to give food to a person in custody and warned him to leave the premises, which he did do. But instead of keeping away, he managed to effect another entry and was caught. After due warning from the head-constable in charge of the building who was lawfully in possession of it, that he could not be allowed to give food to a person in custody therein, and after being told to leave the building, he is found after a short interval on the top of the wall with the food and vegetables, which he was told could not be given to the prisoner, concealed on his person. We must judge of his intent from his conduct, and it appears to me that his re-entry into the lock-up was, on the facts established, made with an intent to commit an offence against prison regulations and rules, and thereby an offence against the Prisons

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Act. If he had no such intention why did he conceal the food, and re-enter a building which he had been told to leave?

There cannot I think be a doubt that to secretly introduce food into the lock-up was an offence against the Prisons Act and therefore the offence of criminal trespass was committed, and on the facts found, which are also beyond a doubt, the offence of house-trespass was also committed. The conviction therefore under s. 448 might have been sustained by the Sessions Judge. But if there had been any room for doubt, the second conviction under s. 45 of Act XXVI of 1870 appears to have been good. I cannot admit that a havalat or lock-up is not a prison within the meaning of the Act. In s. 3 prison means any gaol or penitentiary, and includes the airing-grounds or other grounds or buildings occupied for the use of the prison. Criminal prisoner means any prisoner charged with or convicted of a crime. By s. 4 the Local Government is to provide for prisoners accommodation in a prison or prisons constituted and regulated in such manner as to comply with the requisitions of this Act in respect to the separation of prisoners. By s. 30, cl. 3, criminal prisoners *before trial* shall be kept apart from convicted prisoners. By ss. 34 and 35 a civil prisoner may maintain himself but is not allowed to sell any part of his food, clothing, bedding or necessaries to any other prisoner. By s. 45 whoever, contrary to the regulations of the prison, conveys, or attempts to convey, any letter or other article not allowed by such regulations into the prison, is liable on conviction to rigorous imprisonment for a period not exceeding six months, or to a fine not exceeding Rs. 200, or to both. By s. 54 the Local Government may make rules consistent with the Act, amongst others, as to the food and clothing of criminal prisoners. The Government has exercised such powers, and rule 417 allows prisoners under trial to cook their own food, and directs that they shall be subjected to no further restraint than is absolutely necessary for their safe custody. Rule 418 directs that these prisoners under trial shall receive the non-labouring rations of the jail, with the addition of two chittaks of *ghi* or mustard oil to each group of 25 prisoners, the oil to be given with their vegetables and the *ghi* with their *dál*. So that the food they are allowed to cook is not food which they purchase for themselves, but food which is supplied

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as rations. The head of a prison is the Superintendent (s. 7 of the Act, and the Inspector-General of Prisons for the North-Western Provinces has been vested with the general control and superintendence of all prisons situate in the territories under the Government, North-Western Provinces (s. 6). By the 424th rule made by the Government, the Inspector-General of Prisons is to exercise a legitimate watchfulness over the numbers and excessive detention of prisoners confined in the havalats under his inspection, and to call the attention of Government to the subject if circumstances necessitate this action. The classification of gaols in the North-Western Provinces authorized by the Government includes (i) Central Prison, (ii) 1st class District gaols, (iii) 2nd class District gaols, (iv) 3rd class District gaols, (v) 4th class District gaols, (vi) lock-ups (1). But it may be said that these lock-ups are within the prisons, and persons committed for trial by the Magistrate are confined therein, and that the term lock-up does not include the Magistrate's havalat. This however is not the case, as Rule 14, p. 18 of the work just cited above directs that—"In lock-ups shall be confined all the prisoners under trial before any Court, unless, where the lock-up is separate from the District gaol, the Magistrate or committing officer may think it necessary for greater security to send any prisoner committed to the Sessions to the District gaol. On the 27th August, 1864, the Lieutenant-Governor was pleased to approve of the proposal that all the "havalats" (lock-ups) in the North-Western Provinces should be placed under the supervision of the Inspector-General of Prisons from 1st May 1865 (2). The resolution also approved of the suggestions made by the Inspector-General of Prisons regarding the diet and clothing to be supplied to prisoners under trial.

The Magistrate of Gorakhpur reports to this Court that up to 1862 the gaol and lock-up were under charge of the Magistrate of the District. In 1862 the gaol was placed under charge of the Civil Surgeon as Superintendent. But the lock-up remained as before in charge of the Magistrate. In 1864 it was placed under the supervision of the Inspector-General of Prisons under the Government order dated 27th August 1864, quoted above, and in 1868 it was also

(1) Rules for the management and discipline of prisons authorized by Government, North-Western Provinces, published at Allahabad in 1874.

(2) General Department, No. 2663A. of 1864, dated Naini Tal, the 27th August, 1864.

placed under the supervision of the medical officer in charge of the district gaol by order dated 28th July, 1868 (1).

It appears therefore to be quite certain that the Magistrate's havalat or lock-up is, under the rules which the Local Government is authorized by s. 54 of the Act to make, a fifth class gaol within the meaning of prison as defined in s. 3 of the Act, and therefore if the accused committed any breach of the regulations in force and authorised to be made by the Prisons Act, the conviction would be legal, if had under s. 45 of the Act. On the merits there can be no doubt that the facts proved in the second case show that an attempt was made to introduce to a prisoner charged with an offence articles of food not allowed by the regulations. I would therefore decree the appeal and reverse the decision of the Sessions Judge and re-affirm the conviction and sentence passed under s. 45 of Act XXVI of 1870.

I would also decree the appeal in the house-trespass case, but as the subsequent conviction by the Magistrate has been affirmed in the other case, I do not think it necessary to do more than reverse the Sessions Judge's order and to approve the conviction of the Assistant Magistrate. There does not appear to be any necessity for pressing the sentence against the accused under s. 448, Indian Penal Code, and it might be remitted.

The learned Judges of the Division Bench having differed in opinion, the case was consequently referred to Oldfield, J., under s. 271B. of Act X of 1872.

OLDFIELD, J.—I will first deal with the offence under s. 45 of Act XXVI of 1870.

The definition of the word prison in s. 3 of that Act appears to me to include a havalat or lock-up in which prisoners under trial are confined. That such was the intention of the Act would appear from the definition of criminal prisoner in s. 3, which "means any prisoner charged with or convicted of an offence," and by the Act treating of prisoners under trial as well as after conviction. It is unnecessary, however, for me to determine this point, for assuming that an offence against the prison regulations of the nature of

(1) Government, North-Western Provinces, Circular No. 9A. of 1868, No. 148A. of 1868, to all Commissioners of Divisions, dated Naini Tal, 28th July, 1868.

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those provided for in s. 45 committed with reference to a prisoner under trial confined in the havalat will be an offence under s. 45, I am unable to hold that such an offence has been committed in this case. The offence alleged against the accused is that he conveyed or attempted to convey some food to a man confined in the havalat and under trial, and by doing so has contravened s. 45 of Act XXVI of 1870, which provides, *inter alia*, that "whoever, contrary to such regulations (*i. e.* the regulations of the prison), conveys, or attempts to convey, any letter or other article not allowed by such regulations into or out of any such prison or place, shall on conviction before a Magistrate be liable to rigorous imprisonment for a term not exceeding six months, or to fine not exceeding Rs. 200, or to both." Before, however, a conviction can be had under this part of s. 45, it must be shown that to convey food to a prisoner in the havalat is contrary to the regulations of the prison. Now the only regulations on the subject to which we are referred is rule 418 of Rules for the management and discipline of prisoners in the North-Western Provinces issued under the authority of Government under s. 54 of the Prisons Act. This rule refers to prisoners under trial and amongst other provisions provides that "they shall receive the non-labouring rations of the gaol with the addition of two chittaks of *ghi* or mustard-oil to each group of 25 prisoners, the oil to be given with their vegetables, and the *ghi* with their *dál*;" and the authorised scale of dietary is laid down in rule 524.

It is urged that, inasmuch as these rules provide a particular ration of food to be supplied by the prison authorities, it is contrary to the regulations to convey any food to such prisoners, and to do so will amount to the offence contemplated in s. 45. But this contention cannot, in my opinion, be maintained. To render the act of conveying, or attempting to convey, any article to a prisoner in havalat penal, it must be shown distinctly that there is a regulation which prohibits it. The rules in question merely deal with the articles of food which such prisoners are to receive from the prison authorities; they contain no prohibition against their receiving any other supplies of food, or any prohibition against any person conveying or attempting to convey food to them; and we are not at liberty to make assumptions or introduce prohibitions not contained in the regulations. We cannot hold that an act done

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by a person is "contrary to the regulations" merely because it is something not affirmatively allowed by the regulations. I hold therefore that the conviction under s. 45, Act XXVI of 1870, cannot be maintained, and it will follow that there can be no conviction of the offence of house-trespass or criminal trespass, since it cannot be shown that there was the intent required to constitute criminal trespass. It is not urged that there was an intent to commit an offence punishable under the Penal Code, and there was none to commit an offence punishable under special or local law, since the only offence under such a law to which such an intent could be referred is the offence under s. 45, Act XXVI of 1870, which in my opinion is not proved in this case.

I therefore affirm the order of the Judge in both the appeals before this Court.

Appeals dismissed.

APPELLATE CIVIL.

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May 1

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

SURJAN SINGH (DEFENDANT) *v.* JAGAN NATH SINGH (PLAINTIFF).*

Mortgage—Property situated partly in Oudh and partly in the N.-W. P.—Foreclosure—Regulation XVII of 1806, *s.* 8.

Where a mortgage of land situated partly in the District of Shâhjahânpur in the North-Western Provinces and partly in the District of Kheri in the Province of Oudh was made by conditional sale, and the mortgagee applied to the District Court of Shâhjahânpur to foreclose the mortgage and render the conditional sale conclusive in respect of the whole property, and that Court granted such application, *held*, with reference to the ruling of the Privy Council in *Ras Muni Dibiah* v. *Pran Kishen Das* (1) that, where mortgaged property is situated in two Districts, an order of foreclosure relating to the whole property may be obtained in the Court of either District, that the circumstance that Oudh was in some respects a distinct Province from the North-Western Provinces did not take the case out of the operation of that ruling, inasmuch as Regulation XVII of 1806 was in force in Oudh as well as in the North-Western Provinces at the time of the foreclosure proceedings.

THIS was a suit to have a conditional sale dated the 16th November, 1866, declared absolute, and to obtain the possession of

* First Appeal, No. 166 of 1878, from a decree of Maulvi Zain-ul-Abdin, Subordinate Judge of Shâhjahânpur, dated the 29th August, 1878.

(1) 4 Moore's Ind. App., 392.