

has been an appeal," contemplate and mean an appeal from the decree; and no other appeal. In the present case there was no appeal from the decree now sought to be executed; nor indeed under the provisions of the old Code of Procedure was that decree appealable. The application for execution of the decree of 2nd December, 1874, presented on 12th April, 1878, was clearly beyond time, and should have been disallowed. We reverse the orders of the lower Courts and decree the appeal, with costs in all Courts.

Appeal allowed.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

RAM KISHEN (DECREE-HOLDER) v. SEDHU (JUDGMENT-DEBTOR).*

Execution of Decree—Act X of 1877 (Civil Procedure Code), s. 230.

Held that the words "the last preceding application" in the third clause of s. 230 of Act X of 1877 mean an application under that section, and not an application under Act VIII of 1859.

THE decree-holder in this case applied in February, 1878, under s. 230 of Act X of 1877, for the execution of the decree. He had previously applied under Act VIII of 1859 for the execution of the decree in July, 1877. The Court executing the decree refused to grant the application for reasons which it is not necessary for the purposes of this report to state. On appeal by the decree-holder the lower appellate Court refused to grant the application, with reference to the third clause of s. 230 of Act X of 1877, on the ground that the decree-holder had not on the application made in July, 1877, used due diligence to obtain complete satisfaction of the decree.

The decree-holder appealed to the High Court, contending that the words "the last preceding application" in the third clause of s. 230 of Act X of 1877 meant the last preceding application under that section, and not a preceding application under Act VIII of 1859.

Munshi *Hanuman Prasad*, for the appellant.

* Second Appeal, No. 93 of 1878, from an order of H. G. Keene, Esq., Judge of Agra, dated the 31st July, 1878, affirming an order of Maulvi Mubarak-ul-lah, Munsif of Muthra, dated the 15th June, 1878.

1879

SHEO PRA
v.
ANRUDDH
SINGH.

1879
April 21

1879

M KISHEN
v.
SEDHU.

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

The judgment of the Court was delivered by

OLDFIELD, J.—The Judge has disallowed the application for execution on the ground, though not taken by the judgment-debtor, that the execution of the decree is barred under the provisions of s. 230, Act X of 1877, as due diligence was not used to procure complete satisfaction of the decree on the last preceding application. But the last preceding application to which s. 230 refers is an application made under that section, and in the case before us the last preceding application was made in July, 1877, before Act X of 1877 came into force. Those proceedings in execution were ultimately disposed of in December, 1877, but there was no fresh application for execution of the decree made intermediately between July and December, 1877. We reverse the order of the Judge and decree the appeal, and allow execution of the decree to proceed. The appellant will have costs in all Courts.

Appeal allowed.

1879
April 21.

CRIMINAL JURISDICTION.

Before Mr. Justice Spinkie.

EMPRESS OF INDIA v. NILAMBAR BABU.

*Act X of 1872 (Criminal Procedure Code), ss. 4, 297, 415, 416, 417, 418, 419, 420—
Stolen Property—High Court, Powers of Revision—"Judicial Proceeding."*

Where a person was accused of dishonestly receiving stolen property knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen, *held* that the Magistrate was competent, believing that the property was stolen, to make an order under s. 418 of Act X of 1872 regarding its disposal (1).

Where there is a Court of Appeal, resort should be had thereto before application is made to the High Court for the exercise of its powers of revision.

Quare.—Whether the issue by the Magistrate of a proclamation under s. 416 of Act X of 1872 is a "judicial proceeding," within the meaning of s. 297 of that Act.

(1) If the Court is of opinion that no offence appears to have been committed regarding the property, it is bound to restore the property to the accused person.—*In re Annapurnabai*, I. L. R., Bom. 630.