APPELLATE CRIMINAL.

1888
November 23.

Before Mr. Justice Straight.

QUEEN-EMPRESS *v.* GANGA CHARAN.

Accomplice—Tender of pardon, effect of—Subsequent trial of accomplice for connected offences—Criminal Procedure Code, ss. 337, 339.

A prisoner charged before a Magistrate at Benares with offences punishable under ss. 471, 472 and 474 of the Penal Code, made a confession to the Magistrate in respect of those offences. He was then sent in custody to Calcutta, and was there, together with other persons, charged before a Magistrate with offences punishable under ss. 467, 473 and 475. The conduct to which these charges related was closely connected and mixed up with that to which the charges first-mentioned had reference. Under s. 337 of the Criminal Procedure Code, the Magistrate at Calcutta tendered a pardon to the prisoner upon the conditions specified in that section, and the prisoner accepted the pardon, and gave evidence for the prosecution. The Magistrate held that this evidence was not sufficiently corroborated, and accordingly discharged all the accused, but the pardon was not withdrawn, and there was nothing to show that the Magistrate was dissatisfied with the prisoner's statements or considered that he had not complied with the conditions on which the pardon was tendered. Subsequently the prisoner was committed by the Magistrate of Benares for trial before the Court of Sessions upon the charges under ss. 471, 472 and 474 of the Penal Code. He pleaded not guilty, but did not in terms plead the pardon as a bar to the trial, though he made some reference to the subject; and the Sessions Judge having made a brief inquiry as to the proceedings at Calcutta, came to the conclusion that there was no sufficient proof of any conditional pardon, and convicted and sentenced the accused.

Held that by the terms of the conditional pardon granted to the accused by the Calcutta Magistrate, the conditions of which were satisfied as was shown by its never having been withdrawn, the accused was protected from trial at Benares in respect of the offences under ss. 471, 472 and 474, and was not liable to be proceeded against in respect of them, and that the trial and conviction were therefore illegal.

Although s. 337 of the Criminal Procedure Code does not in terms cover a case where a Magistrate holding a preliminary inquiry for committal against several persons, tenders a conditional pardon to one of them, examines him as a witness, and subsequently discharges all the accused for want of a *primâ facie* case against them, the words "every person accepting a tender under this section shall be examined as a witness in the case" mean that for all purposes (subject to failure to satisfy the conditions of the pardon as provided for by s. 339) such a person ceases to be triable for the offence or offences under inquiry or (with reference to s. 339) for "any other offence of which he appears to have been guilty in connection with the same matter,"

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while making "a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences" directly under inquiry. The words last quoted refer to the importance, when a pardon is tendered, of encouraging the approver to give the fullest details, so that points may be found in his evidence which may be capable of corroboration. The question of how far the pardon protects him, and what portion of it should not protect him, ought not to be treated in a narrow spirit.

The facts of this case are sufficiently stated in the judgment of Straight, J.

Mr. *Dwarka Nath Banerji* and Babu *Jogindro Nath Chaudhri*, for the appellant.

The *Public Prosecutor* (Mr. *G. E. A. Ross*) for the Crown.

STRAIGHT, J.—The facts material to the determination of the main question raised by this appeal are as follows:—On the night of the 29th January last the appellant was arrested at Benares for uttering some forged five-rupee currency notes to a tradesman in the *chauk* at Benares, and immediately after the house at which he was stopping in Bengali Tolah in that city was searched, and two tin boxes were found, in one of which were seven hundred unnumbered counterfeit currency notes of Rs. 5 each, and one separate numbered note for a like amount, as also six dies marked with numbers for stamping. On the same day the appellant was taken before Mr. Adams, the District Magistrate, to whom he made the following statement:—"These notes (Rs. 5—R. 74-80909, March, 1884, and the others without numbers,) were found in my possession in my box, which was in my house, which I rented in Bengali Tolah. This note for Rs. 5 (M. R. 74-80915) was given by me last night to a *Bazaz* in the Dalka Mandavi. These three notes (80302, 80926, 80929) were given by me to Fazlu, shopkeeper of Char Mihman, yesterday night in payment for a time-piece, a pair of socks, a bottle of scent, and two pocket-knives. I got Rs. 2 or Rs. 2-8 (I forget which) cash in change. The six types produced were found with the notes in the box in my house. I and others made the plates for these notes and printed them. I engraved the plates, being a seal engraver by trade. I made the several plates at my home in

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Andul. The notes were printed by Mahandar Nath Bhattacharji of Andul. They were printed in his house by him and by his son Suresh Chandar, and Kali Kumar Pal, and myself. Suresh Chandar and his *Bahnoi*, also named Suresh Chandar, got the Press from Calcutta from Tantania, Cornwallis Street, Calcutta. They paid Rs. 125 I think for it. Suresh Chandar, son of Mahandar Nath, and I bought the copper plates in Calcutta in the Bara Bazaar. Mahandar Nath paid me Rs. 20 a month to do the work with the condition that he and I were each to have half the notes made. Kali Kumar Pal gave some money to Mahandar Nath for the expenses of the Press. We printed 1,300 or 1,400 notes for Rs. 5 each. Mahandar Nath's son-in-law, Suresh Chandar, without letting us know, passed some of the notes in Andul; passed some twenty or thirty or so, and the matter was blown upon and the police came from Howrah or Calcutta. Then Mahandar Nath said we would print no more there but would do so in Calcutta. He took possession of the notes and the plates, and would give me nothing. I said I would inform if he gave me nothing. Then he gave me a thousand notes, or it may have been less. He gave me notes without number like these produced. I made the types produced myself, they are not good ones. The good ones were kept by Mahandar Nath. It is a year since we began this work. I have not made any others. I and Suresh Chandar (son of Mahandar Nath) bought the paper at a shop in China Bazaar, which I can point out. I heard that two men were convicted in the High Court at Calcutta of forging ten rupee notes, and sentenced to ten or twelve years' imprisonment. We made five-rupee notes because Mahandar Nath said it was easy to pass them. He gave me the notes last *Katik*, and I left Andul only last Wednesday. I was afraid to pass them before. I did not pass any of the notes except at Benares. I have passed some twenty or thirty of the notes since I arrived here on Friday. I did not go to Magh Mela at Allahabad. This note produced (R. 74-80505) sent from Allahabad by the police, looks like one of our printing, but I cannot say for certain. Mahandar Nath Bhattacharji is of fairish complexion (wheat colour), about forty

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or forty-five years of age, of average height and middling figure, with moustache but not a beard. Suresh Chandar, his son, is above twenty or twenty-two years of age, of the same complexion, about my height, five feet five inches or five feet six inches, middling figure, wears a small beard, but he may have shaved it. Suresh Chander, his son-in-law, is fair (*gore rung*), age about twenty-nine or thirty, without a beard, and of average height and thin figure, wears a moustache. Kali Kumar Pal is of the complexion of Mahandar Nath, age about forty years, shorter than I am, middling figure, with a moustache only. When I left Andul I had not seen Mahandar Nath and the others for about ten or twelve days. The engraving tools were thrown into the Ganges. The engraving of the plates was delayed by my illness, which made Mahandar Nath angry. The silver anklets produced are mine. I bought them in Benares in the *Chauk* yesterday or the day before. I paid for them with some of my notes and Rs. 25 cash. The cash produced, Rs. 74-12, I brought part from Calcutta and part is change received here for notes. I learnt the trade of seal engraving ten or twelve years ago, but never before forged notes. Mahandar Nath's son, Suresh Chandar, came to me and said :—"You are poor, if you do this we shall all get rich."

This confession was certified according to law by Mr. Adams, and on the same date he passed the following order:—"The accused, Ganga Charan Chatterji, is charged with an offence under ss. 465, 467 and 468, Indian Penal Code, and also 417, Indian Penal Code. He is also liable under s. 472, Indian Penal Code. Information will be given to the Calcutta Police, but in the meantime he may be put on his trial here for cheating, s. 417, Indian Penal Code. Case made over to Mr. McLean, Joint Magistrate." Information was, as directed, sent to the Calcutta Police, and on the 3rd of February, Mahandar Nath Bhattacharji and Surendro Nath Bhattacharji, and on a subsequent date, Suresh Chandar Mukerji and Kali Kumar Pal, were arrested by them. On the 12th of February, the appellant was sent to Calcutta in charge of the Police Sub-Inspector, arriving there on the 13th. On the 17th of February, the four persons I have mentioned above, along with the

appellant, were brought before a Calcutta Magistrate upon charges under ss. 467, 473 and 475, Indian Penal Code, and upon the same date the Inspector of Police conducting the prosecution filed the following application :—

"To the Magistrate of Howrah—Empress *versus* Mahandar Nath Bhattacharji and others; charge under ss. 467, 473 and 475, Indian Penal Code. As there is no sufficient evidence obtained in the case to warrant the conviction of the four accused persons named, I, under instructions on behalf of Government, pray that accused Ganga Charan Chatterji be offered a pardon and made Queen's evidence, I have, &c., Signed Ram Krishto Rai, Inspector of Police." Thereupon the Magistrate made the following order:—"Whereas it has been brought to my notice that in this case there is no sufficient evidence to proceed with the case of Empress *versus* Mahandar Nath Bhattacharji, Surendra Nath Bhattacharji, Suresh Chandra Mukerji, and Kali Kumar Pal, under ss. 467, 473 and 475, unless the evidence of Ganga Charan Chatterji, an accused in dock, is recorded. As the offences under all these sections are triable exclusively by the Court of Session, I direct, under the power vested in me by s. 337, Criminal Procedure Code, a pardon to the said Ganga Charan Chatterji, on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences committed under ss. 467, 473 and 475, Indian Penal Code, and to every other person concerned, whether as principal or abetter in the commission thereof. Signed C. N. Banerji, First Class Magistrate.—The 17th February, 1888.

"Read and explained to Ganga Charan Chatterji, who accepts the pardon on the condition stated in the above order. It has been further explained to him that, unless he makes a full and true disclosure, the pardon is liable to be withdrawn and will be withdrawn."

This was also signed by the Magistrate and by the appellant. Upon the same day the appellant, having been removed from the dock, was placed in the witness-box as a witness for the prosecu-

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tion, and he made a long and detailed deposition, fully disclosing the parts he and the four accused had played in purchasing the implements and materials with which to forge the notes; in forging them and in disposing of them, and in the latter connection he said :—"A portion of these forged notes I took to Benares, but they were without numbers. I put on the numbers on those notes at Benares the very night I reached there. I put the numbers with my own hands. I passed four notes the day following, buying a silver necklet. This was in part payment. After passing sixteen notes I was arrested through the instrumentality of a shopkeeper where I had gone to purchase four gold mohurs. I did the engraving during the day. The notes would be printed at times in the day and at dead of night, and at times about 2 a. m. The notes were given by Mahandar Nath accused. I had threatened to disclose the matter if I were not paid my share for labour." There is nothing whatever to show that the Magistrate was dissatisfied with the statements made by the appellant, or considered that he had not complied "with the conditions on which the tender was made;" on the contrary I must take it, in the absence of any withdrawal of the pardon, that it remained, and remains, in full force and effect for what it is worth. On the 9th March the Calcutta Magistrate, holding there was no sufficient corroboration of the evidence given by the appellant, discharged the four accused before him. Meanwhile proceedings had been carried on, commencing on the 21st February, against the appellant in the Court of the Joint Magistrate at Benares for offences under sections 420, 474, 472 and 471, Indian Penal Code, and on the 10th March he was committed to take his trial before the Court of Session. He was then put on his trial on the 4th April and pleaded not guilty, being defended by a pleader, and in passing it must be noted that at the outset of the proceedings no plea in bar of the trial was raised on the ground of the pardon given by the Calcutta Magistrate. At the close of the evidence for the prosecution, however, the appellant did say: "I was examined at Howrah. There was a Bengali Magistrate. He read over something from a paper. He said as a witness for the Queen. I don't remember any more."

"*Q.*—Did the Magistrate make any promise to you?

"*A.*—The police said they would get me off. The Magistrate did not.

The learned Judge then recalled the Police Sub-Inspector, Ganesh Prasad, and he stated: "I took the prisoner to Howrah. He was produced before the Deputy Magistrate there and I heard that he was given the oath, and that his deposition was taken. I was not in the Court when his examination was begun, but was towards its close. The Magistrate, when his examination was closed, simply told me to take him away. I first took him before the Superintendent of Police of Howrah. The Superintendent took him before the Deputy Magistrate. The case was not finished. I took the prisoner away from Howrah, and I do not know what has been the result." Upon this matter the learned Judge remarks: "From what was mentioned orally in Court I thought it better to make a brief enquiry as to what happened when the prisoner was taken in police charge to Howrah. I see no sufficient reason for holding or reasonably suspecting that he was given a conditional pardon there." In the result the appellant was convicted under ss. 474, 472 and 471 Indian Penal Code, and sentenced to two years' rigorous imprisonment under s. 474; one year under s. 472, and five years under s. 471.

He now appeals to this Court, and the main, and indeed the only, ground seriously urged on his behalf is that "as he had previously received a full and complete pardon as an approver, the present trial and the sentence passed are illegal." When the case came before me on the 4th of August, I directed the Registrar to apply to the Calcutta High Court to sanction the record of the Howrah Magistrate being sent to this Court, and such sanction was at once granted, and I have had an opportunity of perusing the whole of his proceedings. It is true that the charges on which the appellant with the four accused was brought before the Magistrate were for forgery of valuable securities under s. 467; under s. 473 for making, counterfeiting, and having in possession plates and instruments, intending to use the same for purposes of a for-

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gery which would be punishable under s. 467, and for counterfeiting a device or mark within the meaning of s. 475; and that that there were no charges preferred under ss. 474, 472, 471 and 420 for which offences the appellant was subsequently tried at Benares. It is equally true that the evidence on which the appellant was convicted related to distinct individual possession by him of implements of forgery and of forged notes with knowledge and intent, and of specific utterings with knowledge and intent, at Benares. But it is impossible not to say that his conduct there was more or less mixed up and concerned with the conspiracy at Calcutta of which he made disclosure as a witness, and the passage from his evidence I have already quoted, as to what he had done at Benares, was a material portion of a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences then under enquiry. Though approvers may be infamous persons, they are nevertheless entitled to have faith kept with them by the Courts, and in dealing with the question as to what a pardon is to cover, and how far it is to extend, I should not be inclined to apply too technical tests, and should rather look to substance than mere matters of form. I have no hesitation whatever in holding that the pardon granted by the Calcutta Magistrate on the 17th February to the appellant, on condition of his making "a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences under ss. 467, 473 and 475, Indian Penal Code," was accepted by the appellant on such condition as his signature at its foot shows, that he subsequently gave his evidence in consequence of such pardon, and that whatever its force of operation may be it has never been withdrawn. Looking to the special facts of this case, it does not appear to me that the circumstance that the appellant had made a complaint to Mr. Adams on the 29th January, or that the pardon was tendered him by another Court in another Province with a different territorial jurisdiction, should affect the decision of the point before me. As to this latter matter, I think the case must be looked at in exactly the same light as it would have had to be regarded had the appellant and the four other persons been before the Joint Magistrate at

Benares charged with offences within his jurisdiction under ss. 467, 473 and 475, and there being a charge against the appellant alone of uttering under s. 471. Could it be seriously pretended for a moment that if the Joint Magistrate of Benares had tendered a pardon in the same terms as those contained in the Calcutta Magistrate's order of the 17th February, and the appellant had given the same evidence before him as he did at Calcutta, such pardon would not have protected him? I hold that it would, and I am fortified in this view by what appears in s. 339, Criminal Procedure Code, as to the consequences that follow on a non-compliance by an approver with the conditions of his pardon and its withdrawal. He may be tried for the offence in respect of which the pardon was tendered, or for any other offence of which he appears to have been guilty in connection with the same matter. So that while on the one hand the condition is "a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence", on the other a non-compliance with it leaves him open to trial for the offence in respect of which the pardon was tendered, or any other offence in connection with the same matter. It must be borne in mind that in countenancing these pardons to accomplices the law does not invite a cramped and constrained statement by the approver, on the contrary it requires a thorough and complete disclosure of all the facts within his knowledge bearing upon the offence, or offences, as to which he gives evidence, and when he has given his evidence, I do not think that the question of how far it is to protect him, and what portion of it should not protect him, ought to be treated in a narrow spirit. In a note by Mr. Greaves to the 4th edition of Russell on Crimes, vol. III, p. 597, it is said: "If however, the prisoner, having been admitted as an accomplice to one felony, be thereby induced to suppose that he has freed himself from the consequences of another felony, the Judge will recommend the indictment for such other felony to be abandoned. Where an accomplice made a disclosure of property which was the subject-matter of a different robbery by the same parties, under the impression that by the information he had given previously as to the robbery of other property he had delivered himself from the conse-

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quences of having the property he so disclosed in his possession, Coleridge, J., recommended the counsel for the prosecution not to proceed against the accomplice for feloniously receiving such property :" *Garside's case*, 2 Lew. 18. I quote this passage as illustrative only of the principles upon which a learned Judge has acted in such a matter in England. The first question which it appears to me I have to ask myself is, looking to the offences under inquiry before the Calcutta Magistrate, should the pardon granted to the appellant be held to extend beyond these special offences, and to exempt him from punishment for the offences charged against him at Benares? I have read the evidence given by the appellant at Calcutta, and as the Magistrate nowhere upon this record indicates that he withdrew the pardon, I think I am bound to assume, as I have already said, that he believed the appellant had made a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences under inquiry, and so satisfied the conditions of the tender. It was suggested by the learned Public Prosecutor that the fact that the appellant had already made a confession to the Magistrate of Benares destroys the effect of his subsequent evidence at Calcutta. I do not think so, any more than I should have thought so had he simply made his statement to a police officer and the information contained therein had been forwarded to Calcutta and had led, as his confession to the Magistrate did, to the arrest of the persons implicated and to his being examined as a witness. Upon what appears to me a reasonable construction of the terms of the pardon tendered by the Calcutta Magistrate, I think that, looking to the particular facts of this particular case, and in no way laying down any rule to govern other cases, it ought to protect the appellant from punishment for the offences under ss. 471, 472 and 474. It is obvious to my mind that almost from the moment of his arrest it was contemplated by the police, and most properly, to make him the instrument of bringing the other conspirators to justice. The application of the Calcutta Inspector of the 17th February shows this, and I have no doubt that when the appellant gave his evidence at Calcutta as to his own proceedings at Benares, he did so in the belief that as to his whole con-

nection with the conspiracy he would be exempted. Then arises the question as to in what way the pardon granted by the Calcutta Magistrate should have been given effect to, so far as the trial in the Benares Sessions Court was concerned. Could it be pleaded as a legal plea in bar like "*autrefois convict*" or "*autrefois acquit*"? I confess I am placed in somewhat of a difficulty to answer that question from the absence from the Criminal Procedure Code of any specific directions on the subject. Primarily the power of pardon rests in the Sovereign, and the provisions of s. 417, Criminal Procedure Code, authorising the Governor-General in Council or a local Government to suspend the execution, or remit the whole or part of any sentence passed upon any person sentenced to punishment, in no way interfere with the prerogative of the Crown in that respect. The special authority therein conferred, however, relates to persons sentenced to punishment and does not touch cases under s. 337 of the Criminal Procedure Code, in which a person charged along with others with a crime has, under a conditionally tendered pardon, given evidence against such persons and satisfied the conditions precedent upon which it was tendered. I must, therefore, look to that section, and, as far as it throws light on the matter, to s. 339, to see what effect a pardon so tendered is to have. Taking s. 337, it is clear that it does not in terms cover a case in which a Magistrate holding a preliminary inquiry for committal against several persons, tenders a conditional pardon to one of them, examines him as a witness, and subsequently discharges all the accused for want of a *primâ facie* case to justify committal. But it appears to me that the words "every person accepting a tender under this section shall be examined as a witness in the case," mean that for all purposes, subject of course to his failure to satisfy the conditions of his pardon as provided for by s. 339, he ceases to be triable for the offence or offences under inquiry, or, looking again to s. 339, for "any other offence of which he appears to have been guilty in connection with the same matter while making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences," directly under inquiry. It is clear to my mind, there-

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fore, that, at least, as to the charges under ss. 467, 473 and 475, Indian Penal Code, upon which the appellant was brought up with the other four persons before the Calcutta Magistrate, he ceased to be an accused and became a witness, and that such pardon never having been withdrawn, it could have been pleaded in bar to further proceedings against him had they been subsequently instituted under those sections before the Calcutta Magistrate. It remains then to see whether the pardon stood good for the same purposes as to the offences under ss 474, 472 and 471, that is to say, (1) for being in possession of the forged notes, knowing them to be forged, and with intent that they should be used as genuine ; (2) being in possession of instruments of forging notes with intention to use them, punishable under s. 467, only a more aggravated form of the offence with which he was charged at Calcutta under s. 473 ; and (3) uttering forged notes to the various persons at Benares. I have already said that in dealing with this point the terms of the pardon must be looked at in connection with the special facts of the particular case. The condition precedent imposed by the Calcutta Magistrate and accepted by the appellant was that he should make "a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences under ss. 467, 473 and 475;" in other words, that he should make a clean breast of his whole connection with the conspiracy to forge currency notes, in which he alleged the other four persons to have been concerned with him. I need not point out the importance, when a pardon is tendered, of encouraging the approver to give the fullest details, so that points may be found in his evidence, which may be capable of corroboration, and this is what I understand the Criminal Procedure Code to mean, when it speaks of a "full and true disclosure of the whole of the circumstances within his knowledge." It is true that the appellant did not in terms plead this pardon in the Court of Sessions as a bar to his trial there, but contended himself with a plea of not guilty to the charges, though he did say something about it towards the end of the proceedings. The case, however, is before me in appeal, and I think, seeing that there are no specific direction in the Code of Criminal Procedure as to how such matters are to be

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pleaded and what are to be the consequences of not specifically pleading them, that if I hold the appellant protected by the pardon given him, I ought to give him the benefit of it, as no doubt the learned Judge would have done had he had the materials before him that I have, just as much as if I were now satisfied that the appellant had been formerly acquitted or convicted of the offences of which he has now been convicted, I should feel bound to give effect to such a plea in appeal. To sum up the matter, having before me the additional evidence contained in the Calcutta record I am of opinion that, by the terms of the conditional pardon granted to the appellant, on the 17th February, the conditions of which were satisfied by him, as is shown by its never having been withdrawn, he was protected from trial at Benares in respect of the offences under ss. 474, 472 and 471 of the Penal Code, and was not liable to be proceeded against in respect of them. I therefore hold such trial to have been illegal, and accordingly I reverse the findings and sentences of the learned Judge, and quashing all the proceedings of the Sessions Court, discharge the appellant and direct that he be released.

Conviction quashed.

FULL BENCH.

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July 24.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, and Mr. Justice Tyrrell.

MUHAMMAD SADIK AND OTHERS (DEFENDANTS), *v.* MUHAMMAD JAN AND OTHERS (PLAINTIFFS).

Dismissal of suit for insufficient court-fee on plaint—Decree—Appeal—Civil Procedure Code, ss. 2, 54, 158—*Act VII of* 1870 *(Court Fees Act) s.* 12.

The Court of first instance being of opinion that the plaint bore an insufficient court-fee, and the plaintiff not making good the deficiency, dismissed the suit after recording evidence, but without entering into the merits. On appeal the lower appellate Court held that the court-fee was sufficient, and remanded the case for trial on the merits.

Held that s. 158 of the Civil Procedure Code was not applicable to the case; that the first Court's disposal of the suit must be treated as being under s. 54, and was therefore a decree within the meaning of s. 2, and appealable as such, and that such