

## REVISIONAL CIVIL.

1892  
May 21.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blair.*

RAHIMA (DECREE-HOLDER) v. NEPAL RAI (JUDGMENT-DEBTOR).\*

*Act IV of 1882, s. 87—Civil Procedure Code, ss. 2, 244 and 622—Revision.*

An order under s. 87 of Act IV of 1882 extending the time for payment of the mortgage money by a mortgagor is a decree within the meaning of ss. 2 and 244 of the Code of Civil Procedure 1882, and therefore no application will lie under s. 622 of that Code for revision of such order.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

The Hon'ble Mr. *Spunkie*, for the applicant.

Mr. *Abdul Raoof*, for the opposite party.

EDGE, C. J., and BLAIR, J.—This is an application for revision in which we are asked to exercise our powers under s. 622 of the Code of Civil Procedure, and to set aside an order of the Subordinate Judge of Gházipur postponing the day appointed for payment under a foreclosure decree. The decree was made under s. 86 of the Transfer of Property Act. A date was fixed for payment. After the expiry of that date the Subordinate Judge, on the application of the defendant, made the order which we are asked to revise. The order was not a ministerial order such as the order in the case of *Hulas Rai v. Pirthi Singh* (1), or the order in the case of *Bandhu v. Shah Muhammad Taki* (2). It was an order which was made under s. 87 of the Transfer of Property Act, and, if the Court had power to make it at all, it could only have been made upon good cause shown. Consequently, it was a judicial and not a ministerial order. In our opinion it was an order which related to the execution or discharge of a decree within the meaning of clause (c) of s. 244 of the Code of Civil Procedure. It was consequently appealable as a decree. This view is consistent with that taken by this Court in the case referred to in the note at page 502 and is not inconsistent with the case of *Hulas Rai v. Pirthi Singh*. As the

\* Application for Revision No. 63 of 1891, under s. 622 of the Civil Procedure Code.

(1) I. L. R., 9 All., 500.

(2) Weekly Notes, 1888, p. 119.

order in question was appealable, it cannot be the subject of revision under s. 622 of the Code of Civil Procedure. The application for revision is dismissed with costs.

*Application rejected.*

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RAHIMA  
v.  
NEPAL RAI.

## EXTRAORDINARY ORIGINAL CRIMINAL.

1892  
June 7.

*Before Mr. Justice Knox.*

QUEEN-EMPRESS v. STANTON AND FLYNN.

*Practice—Sessions trial—Witness for the Crown not called at Sessions trial though examined before the committing Magistrate—Duty of the prosecution with regard to the production of such witness.*

At a trial before the High Court in the exercise of its original criminal jurisdiction it is not the duty either of the prosecution or of the Court to examine any witness merely because he was examined as a witness for the Crown before the committing Magistrate, if the prosecution is of opinion that no reliance can be placed on such witness' testimony. All that the prosecution is bound to do is to have the witnesses who were examined before the committing Magistrate present at the trial so as to give the Court or Counsel for the defence, as the case may be, an opportunity of examining them. *Dhunno Kazi* (1) and *Empress of India v. Kaliprosunno Doss* (2) approved. *The Empress v. Grish Chunder, Talukdar* (3) and *The Empress v. Ishan Dutt* (4) dissented from.

THIS was a trial before Knox, J., and a jury at the Criminal Sessions of the High Court. The accused, Patrick Stanton and John Flynn, were charged with offences punishable under ss. 457, 380, 411 and 414 of the Indian Penal Code. At the close of the case for the prosecution, Counsel for the defence called the attention of the Court to the fact that one of the witnesses who had been examined by the committing Magistrate had not been called by the prosecution, and contended that such witness ought to be called by the prosecution or at least tendered for cross-examination, or should be examined by the Court. The arguments on both sides are stated in the ruling of Knox, J.

The Public Prosecutor (the Hon'ble Mr. *Spankie*), for the Crown,

(1) I. L. R., 8 Calc., 121.

(2) I. L. R., 14 Calc., 245.

(3) I. L. R., 5 Calc., 614.

(4) 15 W. R., Cr. R., 34.