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in the course of a judicial proceeding, that is to say, upon the trial of Wilayat Husain.

As Sessions Judge he was the Judge of the Criminal Court, and it is not pretended that s. 477, s. 480 or s. 485 could have any application to the circumstances of this case. Accordingly I hold that there was a direct statutory prohibition to the Sessions Judge trying this case, and that in trying it he acted without jurisdiction, which condition of things no subsequent provision of the Criminal Procedure Code pretends to, or could, cure. I agree to this extent in the view expressed in the Full Bench ruling of the Calcutta Court that I have quoted, and it is not necessary for the purposes of this case to enter into other questions. I should have had no doubt as to the proper conclusion to arrive at upon the questions of law, but for the ruling of the learned Chief Justice reported in the *Empress v. Ganga Din* (1). It is deserving of notice in regard to that case that apparently the attention of the learned Judge was not directed to the terms of s. 487, but there is nothing, as far as I can gather, to show that in that particular case the trial which took place before the Sessions Judge in the first instance was in his character of Sessions Judge, and I am disposed to presume, until I am satisfied as to this, that the trial out of which the prosecution sprang was of a civil character. I allow this appeal, and setting aside the conviction and sentence, direct that the commitment be transferred to the Court of the Sessions Judge of Cawnpore for disposal according to law.

APPELLATE CIVIL.

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

HAIR GOBIND AND OTHERS (DEFENDANTS) v. NONI BAHU (PLAINTIFF).*

*Evidence—Document rejected as inadmissible but allowed to remain on the record—
Civil Procedure Code, section 142 A*

Where a document tendered in evidence in a Court of first instance was rejected as inadmissible but was nevertheless allowed to remain on the record of the case, *Held*

* Second Appeal No. 1194 of 1889 from a decree of G. L. Lang, Esq., Commissioner of Jhansi, dated the 20th August 1889, confirming a decree of Babu Baldeo Prasad, Deputy Collector of Jhansi, dated the 22nd June 1889.

(1) Weekly Notes 1887, p. 139.

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that the mere fact of the document remaining on the record did not make it evidence in the appellate Court, but it must be tendered as evidence in the appellate Court and accepted thereby.

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

Mr. *Amiruddin* and Maulvi *Mehdi Hasan*, for the appellants.

Babu *Jogindro Nath Chaudhri*, for the respondent.

EDGE, C. J., and TYRRELL, J.—The suit in which this second appeal has been brought by the defendants was one to have a mortgage set aside. The one question for decision in this suit was as to whether any consideration had been paid. The defendants produced and tendered in evidence a document purporting to be a receipt for the consideration. That document was rejected by the first Court on the ground that it was not proved as against the plaintiff. The suit was brought on the 26th of April 1889, consequently after Act VII of 1888 had come into force. The document bears an endorsement showing why it was rejected. It remains on the record *notwithstanding* the provisions of cl. 2 of s. 142A of the Code of Civil Procedure. The suit was decreed by the first Court, all the material issues having been found in favor of the plaintiff. The defendants appealed, and that portion of the memorandum of appeal to the lower appellate Court which relates to the document in question is as follow :—“ An unregistered receipt may be inadmissible in evidence, but is sufficient for the satisfaction of a Court of justice.” That was a broad proposition, but whether well founded or not we need not consider, because the document in question was not tendered in evidence in the lower appellate Court. It has been contended here that it was the duty of the lower appellate Court to deal with the document, inasmuch as it had not been returned to the defendants by the first Court. We do not accede to that argument; we assume that by some oversight on the part of some officer of the first Court, or by reason of the defendants or those who represented them not asking to have the document handed over to them it was allowed to remain on the record. The fact of its being on the record did not avoid the necessity which the

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defendants were under to tender it in evidence to the lower appellate Court, if they wanted to rely on it. S. 142A cl. (2) is explicit, and the document in question not having been admitted in evidence cannot be treated as forming part of the record, although in fact it is found amongst the papers on the record. We do not consider whether the document was admissible in evidence under the Registration Act or whether if it was inadmissible in evidence under the Registration Act, a Court of justice could look at it or not. It was not tendered in evidence in the lower appellate Court, and no question consequently arises upon it. The other matters raised in the appeal are concluded by the findings of fact in the lower appellate Court. The appeal is dismissed with costs.

Appeal dismissed.

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CIVIL REVISIONAL.

Before Mr. Justice Straight.

GAURI DATT (DECREE-HOLDER, PETITIONER) v. SHANKAR LAL (JUDGMENT-DEBTOR, OPPOSITE PARTY.)*

Execution of decree—Insolvency—Two reliefs not concurrent—Civil Procedure Code, ss. 351 et seqq.

A decree-holder in respect of whose judgment-debtor an order declaring him insolvent and appointing a receiver has been passed under s. 351 of the Code of Civil Procedure, and whose decree has been placed on the list of the judgment-debtor's scheduled debts, cannot, *pari passu* with the proceedings in insolvency, go on executing his decree in the ordinary way against that judgment-debtor. *Badal Singh v. Birch* (1), and *Abdul Rahman v. Behari Puri* (2), distinguished.

The facts of this case sufficiently appear from the judgment of Straight, J.

Munshi *Ram Prasad* and Kunwar *Parmanand*, for the applicant.

Babu *Jogindro Nath Chaudhri*, for the opposite party.

STRAIGHT, J.—This is an application for revision under s. 622 of the Code of Civil Procedure of an order of the Small Cause Court Judge of Allahabad, dated the 29th of August 1891. Gauri

* Miscellaneous Application for revision under s. 622 of the Code of Civil Procedure.

(1) I. L. R. 15 Cal. 762. (2) I. L. R. 10 All. 194.