

from him a one pie share. He has got a decree from the lower appellate Court. Against this decree Ram Saran appeals. The ground upon which the decree is impugned is that the plaintiff's suit would not lie with reference to the terms of section 244 of the Code of Civil Procedure. In my opinion this plea cannot be sustained. The decree has passed beyond the stage of execution. The Court which passed the decree, so far as that decree is concerned, is *functus officio*, and, this being so, the terms of section 244 will not apply—see the case of *Fakar-ud-din Mahomed Ahsan v. The Official Trustee of Bengal* (1). So far as the execution of the decree is concerned, the plaintiff here could have no cause of complaint. The decree being passed against the judgment-debtors jointly, it could not be contended by him that there was any defect in the execution proceedings. The learned vakil for the respondent also refers me to the cases of *Aziz-ud-din Hossein v. Ramanugra Roy* (2) *Purmessuree Pershad Narain Singh v. Janki Kooer* (3) and a recent case, *Biru Mahata v. Shyama Churn Khawas* (4), in which it was held that, provided a suit, the institution of which is prohibited by section 244, is instituted in the Court which would have to deal with an application under that section, this is a mere defect in form and there is no real want of jurisdiction. But it is unnecessary to rely on this ground, for I hold this was not a case in which an application could have been made under section 244. The appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Sir John Edge, Kt., Chief Justice.

HIRA LAL (APPLICANT) v. SAHEB JAN (OPPOSITE PARTY).

Criminal Procedure Code, section 488—Order for maintenance—Person against whom order is sought a competent witness on his own behalf.

A person against whom an order for maintenance under section 488 of the Code of Criminal Procedure is sought is a competent witness on his own behalf in such proceedings.

THE facts of this case sufficiently appear from the judgment of the Court.

(1) L. L. R., 10 Calc., 533.

(2) L. L. R., 14 Calc., 605.

(3) 19 W. R., 90.

(4) L. L. R., 22 Calc., 483.

1895

RAM SARAN
PANDE
v.
JANKI PANDE.

1895
December 2.

1895

HIRA LAL
v.
SAHEB JAN.

Mr. *Amin-ud-din* for the petitioner.

Mr. *Howard* for the opposite party.

EDGE, C. J.—This is an application to revise an order in bastardy on the ground that the Magistrate did not examine some of the applicant's witnesses. The woman's case is that she had been kept by the applicant for two years, and when she became in the family way by him he turned her out of doors. She proved that she had been kept by him; that she had been turned out of doors; and that the applicant was the father of her child. Now there were two people who must have known whether this man and this woman had had connection at or about the time when the child might have been conceived. These two people were the mother of the child and the applicant, whom she alleges to be its father. She gave her evidence. He could have tendered himself as a witness in his own behalf, but he carefully avoided going into the witness-box and tried by evidence to prove what I may call an argumentative case. He wanted the Magistrate to infer that he could not have kept the woman and had connection with her, because he was a Hindu and she was a Muhammadan, and he would be liable to be outcasted for keeping a Muhammadan woman.

The material question was—had he connection with the woman about the time when the child might have been conceived?—not whether he would be liable to be outcasted if he had. The man could have given evidence on oath if he had chosen to do so. He merely relied on the answers given by him to questions put by the Magistrate, and on evidence which he called. It is contended that if the Magistrate had examined all the witnesses he would have found that the woman was of bad character.

A woman may be of bad character and yet be entitled to an order for maintenance of her illegitimate child if she proves that the man against whom she proceeds was the father of the child. I am not informed that there is any affidavit to show that any witness who was not examined was prepared to say on oath that he himself was the father of the child. There is no sufficient ground for interfering, and I dismiss the application.