decree. In executing the decree the Court executing it must take the decree as it finds it. It cannot amend the decree or alter it in any way. It is bound of course to construe the decree. The decree in execution may be the decree of the High Court, and the proper Court to execute that decree may be the Court of the Munsif by whom the suit was first decided. The Munsif could not act under section 206 in respect of a decree made by an appellate Court, and he would be bound, as the Court executing the decree, to execute the decree whether he approved of it or not, even if the decree had been one made by himself. For these reasons we are of opinion that the applications of the 5th of July 1893, and the 28th of November 1895, were not applications made to the proper Court within the meaning of article 179 to take a step in aid of execution of the decree, and consequently that execution of the decree was barred by limitation. It was decided, and we think rightly, in *Tursi Ram* v. *Man Singh* (1) that an application under section 206 of the Code does not give a fresh starting point for limitation. We dismiss this appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS *v.* MUHAMMAD SHAH KHAN AND ANOTHER.*

Act No. XLV of 1860 (*Indian Penal Code*), *section* 218—*Public servant framing incorrect record—Injury to the public—Police officer framing a false report.*

A report of the commission of a dacoity was made at a thana. The Police officer in charge of the thana at first took down the report which was made to him, but subsequently destroyed that report and framed another and a false report—of the commission of a totally different offence—to which he obtained the signature of the complainant, and which he endeavoured to pass off as the original and correct report made to him by the complainant.

Held that on the above facts the Police officer was guilty of the offences punishable under section 204 and section 218 of the Indian Penal Code.

* Criminal Appeal No. 1556 of 1897.

(1) I. L. R., 8 All., 492.

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QUEEN-EMPRESS v. MUHAMMAD SHAH KHAN.

THE facts of this case are fully stated in the judgment of the Court.

Messrs. *W. M. Colvin* and *C. C. Dillon*, for the accused persons.

The Officiating Government Advocate (Mr. *A. E. Ryves*), for the Crown.

EDGE, C. J., and BURKITT, J.—Muhammad Shah Khan, who was a clerk or muharrir at the thana of Didauli, and Kutb-ud-din, who was the thanadar, were tried for the offences punishable under sections 204 and 218 of the Indian Penal Code. Kutb-ud-din was acquitted; the Government has appealed against that acquittal, and that appeal is before us. Muhammad Shah Khan was convicted of the offence punishable under section 204 of the Indian Penal Code and was sentenced therefor to two years' rigorous imprisonment. He has appealed, and his appeal is now before us.

The facts of this case, although the evidence was taken at considerable length, are very simple. A dacoity had been committed on the night of the 24th-25th of May, and in that dacoity one Abdul Wahid, who was the zamindar's karinda, was injured rather severely. He first went to make his report to the thana at Amroha, apparently because he had been told that a difficulty had arisen about one Roshan belonging to the village getting a report made as to a previous dacoity alleged to have taken place in the same village on the night of the 23rd. He was directed at Amroha to make his report at the thana of Didauli, within the circle of which thana the village in question was. He arrived at the thana late at night, and made a statement to the thanadar; and early the next morning he made a report. He says in his evidence that he mentioned that two dacoities had been committed, and that he signed a book three times, and that later on they again put before him a book for his signature and he again signed it two or three times. He says that he did not take away any cheque receipt. A cheque book which was printed at the Government Press in 1891 was produced in Court, and

in that cheque book there was a counterfoil taken from a cheque book which was printed at the Government Press in 1892, and which otherwise shows on the face of it that it was of a different issue from that of the cheque book of 1891. On the interpolated counterfoil there was what purported to be a report by Abdul Wahid of a theft committed by three persons in the village. According to that report, after the three men had put the grain and other things into their bags, Abdul Wahid and his servant awoke, and in trying to seize the men were hurt. That report bears the genuine signature of Abdul Wahid. He says that that was not the report which he made, and we have no doubt that it was not. There must have been some strong motive to induce the thanadar and the clerk to concoct the report on a sheet of a cheque book of the issue of 1892, to get Abdul Wahid's signature to that report and to substitute that report for the report which was first recorded and signed by Abdul Wahid. No explanation is given by Muhammad Shah Khan or Kutb-ud-din of how it happened that in the cheque book of the issue of 1891 a sheet of the issue of 1892 has found a place. No reasonable man could believe that when the cheque book of 1891 was being bound a sheet from a cheque book printed the following year was inserted by mistake, and that by a fortuitous concourse of circumstances the report which is questioned in this case happened to be written on the sheet which by mistake had got into the wrong book in binding. Further, all the other sheets in the book of the issue of 1891 have the mark of three holes where the binding string has passed through them. The sheet from the book of 1892 has got three holes corresponding with the holes in the book of 1891 and in addition three other holes which do not correspond with any of the holes in the book of 1891. These are facts which speak for themselves.

The report made in the cheque book was a report which the muharrir or clerk, according to the Police Regulations, was bound to report correctly word for word as it fell from the man making the report, and it was a report which, according to the same

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Police Regulations, the officer in charge of the thana was bound to sign, with the object of making the two men responsible for the correctness of the report. Consequently, it was a report which, in our opinion, must be taken to have been recorded by the two men. Further, as the report was signed by the person making it, namely Abdul Wahid, the document bearing his signature would have been admissible in a Court of Justice to contradict any statement which he might make at variance with the report and might for that purpose be sent for on a subpœna and could have been proved, if necessary, by the thanadar and the clerk in whose presence it was made and signed. No doubt the object in preparing the false report and substituting it for the true report was to keep from the knowledge of the District Superintendent of Police and the Magistrate of the District the fact that two dacoities were reported to have taken place in a village in the district. The offence, in our opinion, was a very serious one. It is in the interest of the public necessary that these reports should be recorded faithfully and truly by police officers. It is to the injury of the public that offences should be concealed by the police, and that reports should be falsely recorded. We bear in mind in dealing with the appeal of Muhammad Shah Khan that he is a young man, and that what he did was done no doubt at the suggestion and by the orders of the thanadar. However, we cannot pass over his offence lightly. We dismiss his appeal; but we alter the sentence to one of 12 months' rigorous imprisonment, which will count from the date of his conviction in the Court of Session. As to Kutb-ud-din, he was the responsible officer at the thana. It was his duty not only to show a good example of acting lawfully, but to take care, as far as he could, that those under him at the thana acted according to law. There is, in our opinion, a wide difference between his case and that of his subordinate Muhammad Shah Khan. We convict Kutb-ud-din of the offence punishable under section 204 of the Indian Penal Code; he certainly secreted or destroyed the first signed report; and we sentence him under that section to be rigorously imprisoned for

two years. We convict him also of the offence punishable under section 218 of the Indian Penal Code; he framed a record which he knew to be incorrect knowing it to be likely that he would thereby cause injury to the public. The record in respect of which we convict him under section 218 was the false record to which he obtained the signature, on the second occasion, of Abdul Wahid. Under section 218 we sentence Kutb-ud-din to be rigorously imprisoned for two years. The latter sentence will commence on the expiration of the former. A warrant will forthwith issue for the arrest of Kutb-ud-din.

APPELLATE CIVIL.

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February 12.

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

SHAH MUHAMMAD KHAN AND OTHERS (DEFENDANTS) v. HANWANT SINGH (PLAINTIFF).*

Civil Procedure Code, section 108—*Application to set aside a decree passed ex parte—Limitation—Act No. XV of* 1877 (*Indian Limitation Act*), *Sch. ii, Art.* 164—*Suit for partition—Nature of decree in such suit—Civil Procedure Code, section* 396—*Execution of process for enforcing the judgment.*

The action of an amin appointed under section 396 of the Code of Civil Procedure in a partition suit to demarcate the shares assigned to the respective parties to the suit is not the executing of a process for enforcing the judgment within the meaning of article 164 of the second schedule to the Indian Limitation Act, 1877. *Dwarka Nath Misser* v. *Barinda Nath Misser* (1) referred to.

IN this case the respondent obtained on the 30th September 1896 a decree for partition of certain immovable non-revenue-paying property against Shah Muhammad Khan and others. This decree was a decree of an interlocutory nature not capable of execution until the actual shares of the parties to it had been properly demarcated by means of the procedure prescribed by section 396 of the Code of Civil Procedure. An application,

* First Appeal No. 58 of 1897, from an order of Pandit Rai Indar Narain, Subordinate Judge of Meerut, dated the 1st May 1897.

(1) I. L. R., 22 Calc., 425.