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criminal proceedings have been instituted, and that it does not apply to false charges merely.

But, as I said before, the accused in this case did not institute any criminal proceedings in the sense of his instituting any proceedings in any Court. What he did was to make a false charge before the Police, and that, it seems to us, is the kind of false charges which is dealt with in the first part of the section, and consequently that the Magistrate was entitled to inflict the punishment which is provided by that part of the section, and that he was not compelled or, indeed, empowered, to inflict the punishment fixed by the latter half of the section, and therefore it was competent to him to award a fine only, if in his discretion he thought fit.

For these reasons we think that the Deputy Magistrate committed no legal error in the course he took in this case, and there is no reason for the interference of the Court.

T. A. P.

Order upheld.

FULL BENCH.

Before Mr. Justice Miller, Mr. Justice Prinsep, Mr. Justice Wilson, Mr. Justice Tottenham, and Mr. Justice Norris.

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May 23.

LAL MOHUN MUKERJEE AND GRISH CHUNDER MUKERJEE v.
JOGENDRA CHUNDER ROY AND OTHERS.

BONOMALI CHUNDER GHOSAL v. RAMKALI DUTT AND OTHERS.*

Bengal Tenancy Act, s. 174—Act creating new rights, Effect of—Application for execution.

The provision of an Act which creates a new right cannot, in the absence of express legislation or direct implication, have a retrospective effect.

Held, accordingly, that a judgment-debtor's right under s. 174 of the Bengal Tenancy Act to set aside a sale did not avail where the sale was held in pursuance of a decree, the execution whereof had been applied for before that Act came into operation,

THESE proceedings arose out of applications made by certain judgment-debtors under the provisions of s. 174 of the Bengal

* Full Bench Reference in Rule No. 592 of 1886, against the order of the Second Munsiff of Bhanga, Furriddpur, dated 20th February, 1886, and in Rule No. 1401 against the order of the Munsiff of Alipore, 24 Pergunnahs, dated 16th August, 1886.

Tenancy Act to set aside some sales of tenures held in execution of decrees for arrears of rent. In one of the cases (Rule No. 592) execution proceedings up to sale proclamation were had before the Bengal Tenancy Act came into operation ; but the sale took place after that date. In the other case (Rule No. 1401) the decree was passed under Bengal Act VIII of 1869 ; but application for execution was not made until the Tenancy Act had come into operation. The Munsiffs of Furridupur and Alipore, before whom the applications were respectively made, granted the application and set aside the sales in conformity with the provisions of s. 174 of the Act.

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The opposite parties in each case applied for and obtained rules in the High Court. The rules were argued before PRINSEP and BEVERLEY, JJ., who made the following reference to a Full Bench :—

These rules arise out of proceedings taken under s. 174 of the Bengal Tenancy Act, in which sales of tenures held in execution of decrees for arrears of rent have been set aside at the instance of the judgment-debtor. In both cases the decree was made while Bengal Act VIII of 1869 was still in force, but the sale actually took place after the 1st November, 1885, on which date the Bengal Tenancy Act came into force. But there is this difference between the two cases. In the case of Rule 592 execution was applied for, and the sale proclamation was issued under Bengal Act VIII of 1869, whereas in Rule 1401 the application for execution was made after the Bengal Tenancy Act came into force. The question is whether in either or both of these cases the provisions of s. 174 of the Bengal Tenancy Act are applicable. As the question is an important one, and as we understand that the matter is before the Court in several other cases, we think that the point should be referred to a Full Bench for decision. On the one hand it is contended that proceedings in execution are proceedings in the suit, and that the sales must therefore be considered to be sales under Bengal Act VIII of 1869 and not under the Bengal Tenancy Act, and that the provisions of s. 174 will not apply to such sales. It is further urged that s. 174 is only one of several sections contained in Chapter XIV of the Bengal

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Tenancy Act, many of which sections are expressly made applicable to sales under that Chapter only. It is argued, therefore, that s. 174 will not apply in cases other than those in which the application and attachment have been made under ss. 162 and 163. On the other hand it is contended on the authority of the Full Bench decision in the case of *Bhobo Sundari Debi v. Rakhal Chunder Bose* (1) that the Bengal Tenancy Act must be held to have retrospective effect in matters of procedure, so far that its provisions will be applicable to proceedings commenced before the Act came into force. In reply to this, it is argued that the section in question confers a new right on the judgment-debtor and takes away an already existing right from the auction-purchaser, and that, therefore, upon the authority of the very case cited, the Act ought not to be allowed to have retrospective effect. Section 6 of the General Clauses Act (I of 1868) is also relied on. Two other cases were referred to in the course of the argument. One of these is *In the matter of the petition of Mulo* (2), in which it was held that an application under s. 315 of Act X of 1877 could be entertained in respect of sales held under the former Code (Act VIII of 1859), although no similar provision was contained in that Code. The other case referred to was that of *Hurrosundari Debia v. Bhojohari Dass Manji* (3) in which it was held that where the repealing Act gave a right of appeal which did not exist under the Act repealed, no appeal would lie against a decree made before the passing of the repealing Act. The question, then, that we propose to refer to the Full Bench is this: Whether an application under s. 174 of the Bengal Tenancy Act can be entertained in respect of sales held in execution of decrees made before the passing of that Act—(a) when execution of the decree was applied for before the passing of the Act; (b) when execution of the decree was applied for after the passing of the Act.

Baboo *Guru Dass Banerji*, Baboo *Jadub Chunder Seal* and Baboo *Chunder Kant Sen* for the petitioners.

(1) I. L. R., 12 Calc., 583.

(2) I. L. R., 2 All., 299.

(3) I. L. R., 13 Calc., 86.

Baboo *Rasbehari Ghose*, Baboo *Karuna Sindhu Mukerjee*,
 Baboo *Bhuban Mohun Dass*, Baboo *Amarendra Nath Chatterjee*
 and Baboo *Surendra Nath Roy* for the opposite parties.

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Before the Full Bench Rule No. 1401 was compromised.

Baboo *Rasbehari Ghose* opposed the Rule.—Section 174 of the Bengal Tenancy Act applies to this case. If proceedings have already been commenced under the old Act and the rules in the new Act conflict with those in the old, the repealed Act shall regulate the proceedings; but where the change is a beneficial one and gives only an additional remedy, the procedure in the new law shall be adopted. *Framji Bomanji v. Hormusji Burjorji* (1); *Ratan Chand Srichand v. Hanmantrav Shivbalsk* (2); *Ranjit Singh v. Meherban Koer* (3), have explained the terms “proceedings” and “procedure.” Procedure affects rights. In the present case no vested right has been taken away or abridged. Even conceding the most liberal construction to the word “proceedings,” in the present case they came to a close with the sale.

Authorities cited: Maxwell on Statutes, pp. 377-379; *Van Boven's case* (4); *Gurupadapa Basapa v. Virbhadrappa Ibsan-gapa* (5); *In the matter of the petition of Mulo* (6).

Baboo *Guru Dass Banerji* in support of the Rule.—There must be some distinction between “procedure” and “proceedings.” Statutes will not have retrospective effect except when they deal with procedure. Proceedings cannot be said to terminate with the sale. Confirmation of sale forms part of the previous proceedings—*Hurro Sundari Debi v. Bhojohuri Dass Manji* (7); Maxwell on Statutes, 195.

The judgment of the Court (MITTER, PRINSEP WILSON, TOTTENHAM and NORRIS, JJ.) was delivered by

MITTER, J.—We are of opinion that an application under s. 174 of the Bengal Tenancy Act cannot be entertained in respect of sales held in execution of decrees made before the date when that Act came into operation, the execution of the decree having been applied for before the aforesaid date.

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| (1) 3 Bom. H. R., O. C. 49. | (4) 9 Q. B. D., 669. |
| (2) 6 Bom. H. R., A. C. 166. | (5) I. L. R., 7 Bom., 459. |
| (3) I. L. R., 3 Calc., 662. | (6) I. L. R., 2 All., 299 |
| (7) I. L. R., 13 Calc., 86. | |

1887 Section 174 of the Bengal Tenancy Act confers upon the judgment-debtors a *new right* which they did not possess under the old Act. Therefore the presumption is (in the absence of express legislation or direct implication to the contrary), that its operation is not intended to be retrospective. Its provisions cannot, therefore, be applied to proceedings commenced before the Act came into operation. The rule will be made absolute with costs.

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PRINSEP, J.—As one of the Judges who referred this case, I think it necessary to state that it was referred as cognate to another case already referred,* in which the point raised was one of some difficulty and importance, so as to secure uniformity of practice. It is much to be regretted that the parties have since compromised that case and thus prevented the settlement of this matter.

K. M. C.

Rule absolute.

Before Mr. Justice Mitter, Mr. Justice Prinsep, Mr. Justice Wilson, Mr. Justice Tottenham, and Mr. Justice Norris.

BASUDEO NARAIN SINGH AND OTHERS (OBJECTORS), v. SEOLOJY SINGH (DECREE-HOLDER.)†

1887
April 18.

Civil Procedure Code, s. 244—Finality of order—Competency of Court.

S. S. brought a suit under a mortgage bond, making R. S., a subsequent incumbrancer, a defendant, and obtained a decree for a sale of the whole of the mortgaged premises. After the decree, a compromise was effected between all the parties *with the exception of R. S.*, by the terms of which, in consideration of the judgment-debtors (mortgagors) undertaking to do certain acts, S. S. promised to execute his decree against only a 3 annas 12 dams share of the mortgaged premises. The judgment-debtors (mortgagors) having failed to carry out the compromise, S. S. applied for a sale of the whole of the mortgaged premises, but on the petition of R. S. setting out the terms of the compromise to which he was no party, the Subordinate Judge, by an order of the 7th September, 1885, held that under the agreement S. S. was entitled to sell only a 3 annas 12 dams share of the mortgaged premises which was accordingly directed to be sold. That order was not

* Rule No. 1401.

† Full Bench Reference in Appeal from Order No. 421 of 1886, against the order of T. M. Kirkwood, Esq., Judge of Patna, dated the 30th of August, 1886, reversing the order of Baboo Ram Pershad Roy, Bahadur, Subordinate Judge of that district, dated the 12th of May, 1886.