

he asked for it, we do not think it is a case for imposing the full penalty. We find that Mr. Beer did authorize and permit a refusal of inspection of the register of members to Mr. McRobert during business hours on 18th March 1897, and that he was not justified in so doing, and we convict him and fine him the sum of eight annas. It must be remembered that if any case comes before us of a wilful and obstructive refusal when the demand was a reasonable one, we shall impose the full penalty.

1897

 QUEEN-
EMPERESS
v.
BEER.

 APPELLATE CIVIL.

 1897
 November 18.

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

ABDA BEGAM (DECREE-HOLDER) v. MUZAFFAR HUSEN KHAN (JUDGMENT-DEBTOR)*

Civil Procedure Code, section 223—Execution of decree—Certificate of execution—Jurisdiction of Court to which a decree is transferred for execution.

The Court to which a decree is sent for execution retains its jurisdiction to execute the decree until the execution has been withdrawn from it, or until it has fully executed the decree and has certified that fact to the Court which sent the decree, or has executed it so far as that Court has been able to execute it within its jurisdiction and has certified that fact to the Court which sent the decree, or until it has failed to execute the decree and has certified that fact to the Court which forwarded the decree. The mere striking off of an application for execution on the ground of informality in the application does not terminate the jurisdiction of the Court to execute the decree, nor render it necessary for the Court to send any certificate to the Court which forwarded the decree for execution. *J. G. Bagram v. J. P. Wise* (1) followed.

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

Pandit *Baldeo Ram Dave*, for the appellant.

Pandit *Moti Lal*, for the respondent.

EDGE, C. J. and BURKITT J. :—The appellant before us obtained a decree for money in the Court of the Judicial Commissioner of Oudh. On the application of the decree-holder the decree was

*First Appeal No. 16 of 1897 from an order of Rai Kishan Lal, Subordinate Judge of Cawnpore, dated the 5th December 1896.

(1) 1 B. L. R., F. B. 21.

1897

ABDA BEGAM
v.
MUZAFFAR
HUSEN
KHAN.

sent to the District Judge of Cawnpore for execution under section 223 of the Code of Civil Procedure. The District Judge transferred the case to the file of the Subordinate Judge of Cawnpore. The decree-holder applied to the Subordinate Judge for execution of the decree. The application was admitted and property was attached. Thereupon the judgment-debtor, who is respondent here, filed an objection to the execution of the decree on the ground that the application did not comply with sections 235 and 237 of the Code of Civil Procedure. The application with the objection came on for hearing, and the Subordinate Judge on the 11th of April 1896, struck off the application on the ground that it did not comply with sections 235 and 237. Subsequently the Subordinate Judge certified to the Court at Lucknow that "on the objection of the judgment-debtor the application for execution was struck off." Apparently on the very day when that certificate was sent the decree-holder applied again to the Subordinate Judge of Cawnpore to have the decree executed. Her application was dismissed on the ground that the Subordinate Judge of Cawnpore was no longer seised of the case and was *functus officio*. From that order of dismissal this appeal has been brought.

The dismissal of the first application on the 11th of April 1896, was not a dismissal on the merits and was not a dismissal which precluded the decree-holder from applying again to the same Court for execution of her decree. The application was dismissed merely upon the ground of informalities in the application itself. It has been contended before us on behalf of the judgment-debtor that the Subordinate Judge of Cawnpore ceased to have jurisdiction when he forwarded the certificate that the first application had been struck off. The grounds of that contention are that section 243 of the Code provides, amongst other things, that the Court "to which a decree is sent under this section for execution shall certify to the Court which passed it, the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure," and it is contended that the certificate that the case had been struck off was a

certifying by the Subordinate Judge of Cawnpore, that his Court had failed to execute the decree within the meaning of section 223. Reference was made to clause (b) of section 224 for the purpose of showing that it was intended by the Legislature that the Court in which a decree was made should give information to the Court to which the decree was sent for execution as to the extent to which the decree had been executed, and as to the part of the decree which still remained unexecuted, and it is argued that similar information, when the decree had been sent to another Court, would be necessary for the Court which had sent the decree for its own guidance in case of further applications for execution of the decree. It has been now decided by their Lordships of the Privy Council that two or more contemporaneous executions of the same decree may be validly held. What might be the result if there were two or more contemporaneous sales of the judgment-debtor's property, say, one in Gorakhpur, another in Allahabad, and another in Meerut, each realizing the full amount due under the decree, is a matter with which we need not concern ourselves. What would become of the purchasers at these sales and what interest they would take, or how it could be arranged between the various Courts that the sales should not be held contemporaneously are further matters with which we need not concern ourselves.

For the appellant it is contended that the Subordinate Judge of Cawnpore must have jurisdiction to execute the decree until the decree had in fact been executed or until there had been an absolute failure to enforce execution of it. The following cases were cited in the argument: *Rangili v. Riyat Husain* (1), *Gajadhar v. Hanuman* (2), *Buboria Ahun Basee Kooer v. JoobRaj Singh* (3) and *J. G. Bagram v. J. P. Wise* (4).

In our opinion the Court to which a decree is sent for execution retains its jurisdiction to execute the decree until the execution has been withdrawn from it, or until it has fully executed the decree and has certified that fact to the Court which sent the decree, or

1897

ABDA BEGAN

v

MUZAFFAR
HUSEN
KHAN.

(1) Weekly Notes, 1883, p. 247.

(3) 23 W. R., C. R. 225.

(2) Weekly Notes, 1886, p. 31.

(4) 1 B. L. R., F. B., 91.

1897

ABDA BEGAM
v.
MUZAFFAR
HUSEN
KHAN.

has executed it so far as that Court has been able to execute it within its jurisdiction and has certified that fact to the Court which sent the decree, or until it has failed to execute the decree and has certified that fact to the Court which sent the decree. Now the Legislature, when it used the words "fails to execute" in section 223 of the Code, could not have meant that a Court which merely strikes off an application on the ground of informality thereby fails to execute the decree. "Fails" must signify a failure after a serious and *bona fide* attempt by the Court to execute the decree. That paragraph in section 223 suggests to our minds that it may have originated in an attempt to assimilate as far as possible the practice in such cases in England where a decree-holder who has obtained his decree for money sues out a writ of *fiery facias* directed to the sheriff to levy on the goods of the judgment-debtor within his bailiwick, and the sheriff's return (to be a good one) must be, either that he has levied to the extent of the goods of the judgment-debtor within his bailiwick, or that there are no goods of the judgment-debtor within his bailiwick. In our opinion the Court of the Subordinate Judge of Cawnpore did not fail to execute the decree within the meaning of section 223; it merely struck off an application on the ground of informality. We further consider that the case was not a case in which the Subordinate Judge of Cawnpore was justified in sending any certificate to the Court at Lucknow. Neither of the events had arisen which would have justified the Subordinate Judge in sending any certificate under section 223, for there was neither execution nor failure. The case of *J. G. Bagram v. J. P. Wise*, which was a Full Bench ruling of the Calcutta Court, is an authority to show that the Court to which a decree is sent has, even after striking off an application for execution, as here, still jurisdiction in the matter of the execution. It is true that the Full Bench case was decided on section 284 of Act VIII of 1859, but in our opinion it is equally applicable to cases arising under the present Code of Civil Procedure. We have come to the conclusion that the Subordinate Judge wrongly declined jurisdiction when he had it. We set

aside the order dismissing the application out of which this appeal has arisen, and we remand the case under section 562 of the Code of Civil Procedure to the Court of the Subordinate Judge for the application to be restored to the file and to be disposed of according to law. The appellant will have her costs of this appeal.

Appeal decreed and cause remanded.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS *v.* MAIKU LAL AND ANOTHER.*

Evidence—Confession—Value to be attached to confession subsequently withdrawn.

It does not necessarily follow, because a confession made by an accused person is subsequently retracted and there is little or no evidence on the record to support the confession, that therefore the confession is to be rejected. The credibility of such a confession is in each case a matter to be decided by the Court according to the circumstances of each particular case, and if the Court is of opinion that such a confession is true, the Court is bound to act, so far as the person making it is concerned, upon such belief. *Queen-Empress v. Mahabir* (1) and *Queen-Empress v. Rangji* (2) referred to.

In this case two men, Maiku Lal and Nathu, were tried for and convicted of the offence of dacoity under section 395 of the Indian Penal Code. Maiku Lal made a long and detailed confession before the committing Magistrate and there was also other evidence connecting him with the dacoity. Nathu made a similar confession before the District Magistrate. In those confessions both men denied that any undue influence had been used to make them confess, and afterwards they admitted that none of the Police were in the room at the time when the confessions were recorded. Before the Sessions Judge both confessions were retracted, but both the Judge and the assessors believed the confessions to have been voluntarily made and to be substantially accurate. Each accused in his confession implicated the other accused, and, as has

* Criminal Appeal No. 1073 of 1897.

(1) I. L. R., 18 All., 76.

(2) I. L. R., 10 Mad., 295.

1897

ARDA BEGAN
v.
MUZAFFAR
HUSSEIN
KHAH.

1897
November 19.