

satisfying any general money claim. In that kind of claim it is clear that there should be some speedy remedy for the purpose of ascertaining whether the property claimed is the property of the judgment-debtor at all; but in a case like this where the property has been dealt with in a solemn way by the decree of the Court, and has been declared liable to sale under the mortgage, that remedy would not be applicable. In cases like this the remedy is not by claim under s. 278, but is either by regular suit to establish his right to the property, or by resistance to the purchaser, or the mortgagee, or other person who would be put in possession of the property.

The rule will, therefore, be discharged.

T. A. P.

Rule discharged.

CRIMINAL REFERENCE.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghoso.

QUEEN-EMPRESS *v.* KARIM BUKSH.

False charge—Penal Code, s. 211.

1887
June 10.

A false charge before the Police is a false charge falling within the first portion of s. 211 of the Penal Code.

The latter portion of s. 211 of the Penal Code is confined to cases in which criminal proceedings have been instituted, and does not apply to false charges merely. *Empress of India v. Pitam Rai* (1) and *Empress v. Paraku* (2) followed.

THE accused in this case, one Karim Buksh, a writer constable, had laid a charge of theft against a certain person before the Police. The Police reported the case to be false, whereupon the District Magistrate made over the case to a Deputy Magistrate for trial. On the day fixed for trial, Karim Buksh did not appear to prosecute, and the Deputy Magistrate therefore returned the record to the District Magistrate. The District Magistrate then

* Criminal Reference No. 137 of 1887 made by C. R. Marindin, Esq., Magistrate of Dinagopore, dated the 27th of May, 1887, against the sentence passed by H. Thompson, Esq., Deputy Magistrate of Dinagopore, dated the 10th of May, 1887.

(1) I. L. R., 5 All., 215.

(2) I. L. R., 5 All., 593.

1887
 QUEEN-
 EMPRESS
 v.
 KARIM
 BUKSH.

passed an order in the case declaring it to be false, and directed that Karim Buksh should be prosecuted under s. 211 of the Penal Code. The case against Karim Buksh was then taken up, and he was convicted of an offence under s. 211 of the Penal Code, and sentenced to a fine of Rs. 50, or in default to two months' rigorous imprisonment.

The District Magistrate sent up the case to the High Court for revision, considering that the order of the Deputy Magistrate was wrong in law, inasmuch as the criminal proceedings instituted by Karim Buksh having been taken under s. 380 of the Penal Code which carried a maximum sentence of seven years' rigorous imprisonment, the Deputy Magistrate had no alternative but to pass a sentence of *imprisonment* under the latter part of s. 211 of the Penal Code.

Baboo *Makunda Nath Rai* for Karim Buksh contended that the sentence of fine was legal, the case falling under the first part of s. 211 of the Penal Code; that the first part of the section dealt with criminal proceedings as well as false charges, and a sentence of fine only would be perfectly legal, although such false charges related to offences punishable with death, transportation for life, or imprisonment for seven years or upwards; that in the latter part of the section, criminal proceedings only are spoken of; that here the false charge having been made before a Police officer, no criminal proceeding was instituted in any Court; that therefore the Deputy Magistrate was quite competent to pass a sentence of fine only. See *Empress of India v. Pitam Rai* (1) and *Empress v. Paraku* (2).

The order of the Court (PETTIERAM, C.J., and GHOSE, J.) was as follows :—

PETTIERAM, C.J.—In this case we think there is no reason for the interference of the Court. This case has been referred to us by the Magistrate in order that this Court may revise the sentence of fine which has been passed on the accused on a conviction of having made a false charge before the Police, because the charge which he made was a charge of an offence under s. 380 of the Indian Penal Code, the punishment for which may be seven years' rigorous

(1) I. L. R., 5 All., 215.

(2) I. L. R., 5 All., 598.

imprisonment, and the Magistrate thinks that the sentence of fine was illegal, because by the latter portion of s. 211 of the Indian Penal Code, the punishment must be a punishment of imprisonment and there is no option to impose a fine only.

The facts of the case here are, that the accused made a charge before the Police which he did not afterwards press before the Magistrate, and the only offence which he has committed has been that of making a false charge before the Police, and not of instituting any criminal proceedings beyond that. The question which arises is, whether the offence which he has committed comes within the earlier or later portions of s. 211 of the Indian Penal Code.

The earlier portion of that section provides that "whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;" this is the first part of the section. And then the section goes on to say: "And, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, the person instituting such criminal proceeding shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." The class of offence which is included in the last half of this section is punishable with imprisonment without option of fine; and the question is, whether the offence of which the accused has been guilty is within the latter half of the section.

Now, the latter half of the section is confined to criminal proceedings instituted on false charges, and by the earlier part of the section the distinction is drawn between criminal proceedings instituted and false charges alone. We think that we must make the same distinction and must hold, as has been held in several cases in the Allahabad Court, though not in this Court, that the latter part of the section is confined to cases in which

1887

 QUEEN-
EMPERESS
v.
KARIM
BUKSH.

1887

QUEEN-
EMPRESS
v.
KARIM
BUKSH,

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.

1887
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.