

case that, whether the decision on the law is right or wrong, there is any danger at all that justice will not be done. The only question is, which of two innocent persons is, not to bear a loss, but to be put to his remedy against a third person for the recovery of a certain sum of money; there is no question of that money having to be recovered from a person unable to repay it; there is no question that the judgment-debtor has paid the money and satisfied the decree; and no question that there is a remedy against the fraudulent decree-holder to recover that money by the person who purchased the property at the auction sale held at the instance of the decree-holder on a decree which had already been satisfied.

1887
 SHARUP
 CHAND
 MALA
 v.
 PAT DASSEE,

Under these circumstances I do not think it necessary in this case, whether there is or there is not any error in law, that this judgment should be reviewed, and I therefore refuse to admit the review.

The opposite party will be entitled to recover the costs of this hearing from the petitioner.

T. A. P.

Rule discharged.

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

IN THE MATTER OF DEEFHOLTS (CLAIMANT).
 DEEFHOLTS v. PETERS (DECREE-HOLDER) AND OTHERS (OPPOSITE
 PARTIES).*

1887
 June 29.

Civil Procedure Code (Act XIV of 1882), s. 278—Claim to property directed to be sold under a mortgage decree—Attachment.

Proceedings by way of claim under s. 278 of the Civil Procedure Code are applicable only to cases of money decrees where property has been attached, and not to claims preferred to properties directed to be sold under mortgage decrees.

THIS was a claim preferred by one Mrs. Deefholts under s. 278 of the Civil Procedure Code to certain properties which had been mortgaged in 1884 by her uncle to Mrs. Sophia Peters who had obtained a decree on such mortgage under ss. 86-88

* Civil Rule No. 505 of 1887, against the order of Baboo Promotho Nath Bannerjee, Subordinate Judge of Mymensingh, dated the 23rd of March 1887.

1887 of the Transfer of Property Act for the sale of the mortgaged
DEEHOLOTS properties.

v.
PETERS.

The Subordinate Judge hearing the claim case held that s. 278 of the Code applied only to claims preferred to the property which had been *attached* in execution of a decree; that it was unnecessary to issue an attachment in order to enforce a decree for sale of mortgaged property, the order for sale in the decree being in itself a sufficient authority for the sale; and that moreover s. 254 of the Code clearly showed that attachment is only necessary in the case of money decrees; he therefore dismissed the claim.

The claimant moved the High Court, and obtained a rule calling upon the decree-holder to show cause why the order of the Subordinate Judge should not be set aside, and why he should not be directed to entertain the claim on its merits.

Mr. *Evans*, Baboo *Lal Mohun Dass* and Baboo *Bairbunt Nath Dass*, in showing cause, contended that the order of the Subordinate Judge was correct, and cited *Dayachand Nemchand v. Hemchand Dharamohand* (1).

Baboo *Jogesh Chunder Rai* in support of the rule.

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

We think that this rule must be discharged. The rule was obtained for the purpose of compelling the Subordinate Judge to enquire into a claim which had been made by a person claiming to be interested in a certain property which had been ordered to be sold under a mortgage decree; the mortgage being a mortgage of that very property, and the decree sought to be executed being a decree passed upon the mortgage bond, and directing the sale of the property.

We think that proceedings by way of claim are not applicable to a case of this kind. Proceedings by way of claim are applicable only in cases of money decrees where property of the judgment-debtor has been attached; that is, where some property of the judgment-debtor is attached for the purpose of

(1) I. L. R., 4 Bom., 515.

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 Dinagapore, dated the 27th of May, 1887, against the sentence passed by H. Thompson, Esq., Deputy Magistrate of Dinagapore, dated the 10th of May, 1887.

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

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