

thing from holding that an attaching creditor has a right to be heard as to the merits of the decree attached by him which is *sub judice* in appeal. For the above reasons we refuse the application with costs.

*Application refused.*

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## APPELLATE CRIMINAL.

*Before Mr. Justice Knox and Mr. Justice Burkitt.*

QUEEN-EMPRESS v. CHIDDA AND OTHERS.

*Criminal Procedure Code, sections 337 and 529—Pardon—Tender of pardon by a Magistrate having powers under section 337, but not being the Magistrate before whom inquiry was being held.*

A dacoity was committed in the district of Muttra and was being inquired into in that district. Pending such inquiry, one Partap Singh appeared before the Magistrate of the neighbouring district of Etah and obtained from him a tender of pardon in respect of the said dacoity, on the strength of which pardon he was examined as a witness by the Magistrate of the Etah district and made a statement implicating himself and others in the dacoity. Subsequently, on the case being committed to the Court of the Sessions Judge of Agra, the tender of pardon made by the District Magistrate of Etah was ignored and Partap Singh was tried and sentenced for the dacoity.

*Held*, on appeal to the High Court, that the Magistrate of the Etah District had no jurisdiction under the circumstances to make the tender of pardon which he did, and that his action in that respect was not covered by section 529 of the Code of Criminal Procedure.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Messrs. *A. E. Ryves* and *A. H. C. Hamilton*, for the appellants.

The Government Advocate (*Mr. E. Chamier*) for the Crown.  
KNOX and BURKITT, JJ.—Chidda, Kallu, Kana, Partap Singh, Sona and Tunya have been convicted of an offence under section 395 of the Indian Penal Code and have one and all been sentenced to transportation for life. They have all appealed, and their appeals are now before us for decision. One of them, Partap Singh, pleaded guilty in the Court of Session, but in that Court he also pleaded in bar of sentence the fact that he had obtained what he considered a pardon under section 337 of the Code of

Criminal Procedure from the District Magistrate of Etah. In his memorandum of appeal here he pleads the same fact in bar of sentence. We will deal with his case first. The dacoity with which he is charged took place in the district of Muttra. The only inquiry connected with it that we know of was conducted from first to last in the district of Muttra. After that inquiry had continued for a considerable time in the district of Muttra; after one Balwanta had been arrested and obtained an offer of pardon from the District Magistrate of Muttra, and had named certain persons, and among them this very Partap Singh, who is himself a resident of Muttra, as having taken part in the dacoity, Partap Singh betook himself to the district of Etah, there presented himself before the District Magistrate, and, by some representations, of which we know nothing, obtained a tender of pardon from that Magistrate. The District Magistrate of Etah was not the District Magistrate before whom the offence of the dacoity was under inquiry, and he was certainly not one of the other persons mentioned in section 337 of the Code of Criminal Procedure. This being the case, he had no jurisdiction to tender a pardon to Partap Singh. Partap Singh was, however, examined as a witness by the Magistrate of Etah, and it is contended from the fact that he was so examined under a tender of pardon, however wrongly granted, that that tender of pardon cannot now be set aside. The last clause of section 529 is cited in support of this contention. In our opinion section 529 refers to quite different circumstances. It is a section which deals with acts done by a Magistrate in no way empowered by law to do those acts; it has no reference to a Magistrate empowered otherwise under the Act to tender pardon, but not possessing jurisdiction over the particular offence. The Magistrate of Etah, as Magistrate of the district Etah, is undoubtedly empowered to tender pardon in respect of offences inquired into in the Etah district which are covered by the provisions of section 337 of the Code of Criminal Procedure; but he has no such jurisdiction in respect of an offence of the same kind committed in the district of Muttra. On the other

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hand a second or third class Magistrate in the Muttra district not inquiring into the offence or not empowered by the Magistrate of the district, has no power by law to tender a pardon to a person accused of having committed an offence covered by section 337 within the district of Muttra, but if such a Magistrate should tender a pardon in such a case, his proceedings would not be set aside merely on the ground of his not being so empowered. Under these circumstances the Court of Session was, in our opinion, right in ignoring the pardon tendered by the District Magistrate of Etah to Partap Singh, and the so-called pardon cannot be pleaded in bar of sentence. The appeal of Partap Singh is, therefore, dismissed.

[The remainder of the judgment being occupied chiefly with a discussion of the facts of the case, is not reported—Ed.]

1897  
July 15.

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

TIKA RAM AND ANOTREE (DEFENDANTS) v. SHAMA CHARAN  
(PLAINTIFF)\*

*Hindu Law—Adverse possession—Limitation—Suit by reversioner to Hindu female heir—Appeal from order of an appellate Court—High Court bound by findings of fact of the Court below—Civil Procedure Code, sections 562 and 588.*

Where property which should by law be in the possession of a female heir is held adversely to such heir by a trespasser, the possession of the trespasser is adverse also as against the reversioners of such female heir as well as against the female heir, and limitation will begin to run against the reversioners from the date of the commencement of such adverse possession. *Hanuman Prasad v. Bhagauti Prasad* (1) approved.

The Full Bench decision in *Ram Kali v. Kedarnath* (2) has been impliedly overruled by the judgment of the Privy Council in *Mussummat Lachhan Kunwar v. Anant Singh* (3).

In an appeal from an order of an appellate Court the High Court is bound to accept, as in a second appeal from a decree, the findings of fact arrived at by the lower appellate Court. *Gauri Shankar v. Karima Bibi* (4) approved.

\* First Appeal No. 24 of 1897, from an order of E. J. Kitts, Esq., District Judge of Barcilly, dated the 1st April 1897.

(1) I. L. R., 19 All., 357.

(3) L. R., 22 I. A., 25.

(2) I. L. R., 14 All., 156.

(4) I. L. R., 15 All., 413.