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 BARKAT-  
 UN-NISSA  
 v.  
 ABDUL AZIZ.

necessary for the protection of the property. In the present case we consider it absolutely necessary for the preservation and better custody and management of the property that neither of the contending parties should be in possession of it until the dispute between them has been fully determined, and that the property should remain in the custody of a person independent of both parties,—a person moreover whose position will be that of an officer of the Court appointed by and answerable to the Court for all acts done by him during the period of his receivership. We accordingly allow the appeal, set aside the order of the learned Subordinate Judge, and send this case back to him to be dealt with in the light of our instructions and in accordance with the provisions of section 505 of the Code of Civil Procedure. The appellant will get her costs. We think it expedient to add that our order is not to be interpreted as an order setting aside the order of the Magistrate. The appointment of a receiver should be made with the least possible delay, and in order that the Magistrate may be aware of the purview of the order of this Court we direct that a copy be sent to him for his information.

*Appeal decreed.*

1900,  
 January 16.

## REVISIONAL CRIMINAL.

*Before Mr. Justice Blair.*

ABDULLAH (APPLICANT) v. JITU (OPPOSITE PARTY).\*

*Criminal Procedure Code, sections 87, 88, 89—Absconding offender—Proclamation and attachment—Sale of attached property—Title of purchaser.*

Where property was attached and sold as property of a proclaimed offender under sections 87 and 88 of the Code of Criminal Procedure, it was held that although the proclamation was irregular, yet, the property having vested in third parties strangers to the proceedings in which the proclamation was made, the sale could not be set aside.

THIS was a reference under section 438 of the Code of Criminal Procedure, made by the Sessions Judge of Allahabad. The facts out of which the reference arose are as follows.

A charge was brought in May 1898 against the applicant Abdullah and two other persons. The applicant did not then

\*Criminal Revision No. 813 of 1899.

appear, and the case was tried out against the two others, who were fined Re. 1 each under section 426, of the Indian Penal Code. As regards the applicant, the Magistrate who tried the case recorded his opinion that further proceedings need not be taken against him, as the matter was a trivial one. Notwithstanding this the complainant subsequently applied for process against the applicant, which was granted. As the applicant failed to appear, proceedings to enforce his attendance were adopted, and finally his property was attached, and some houses belonging to him were sold. The applicant then appeared, and asked that the proceedings against him might be stopped, and, in another application, that the proceedings for attachment and sale of his property might be set aside. In both applications applicant contended that he was protected by law. In the first application he contended that the Magistrate's remarks in his judgment, dated the 14th June 1898, virtually amounted to an acquittal, and that he could not be tried. On this point the Sessions Judge was of opinion that the order of the Magistrate was not an order of acquittal, and that there was no bar to the applicant's being tried. The Sessions Judge did not in respect of the proclamation proceedings find that any irregularities occurred in the attachment proceedings, except that at the time of attachment the Government did not take possession of the houses, as it should have done under section 88 of the Code of Criminal Procedure, but it left them in applicant's possession, and that even after sale they were apparently still in his possession. He was, however, of opinion that the case was one in which it would be appropriate to stop all proceedings and to cancel the attachments and sales, and to return the sale money to the purchasers. "The charge against him" said the Judge "is a very trivial one and resulted in the case of his two fellow-accused in a fine of one rupee each only. For such an offence it appears to me unnecessary to resort to extreme processes of law which entail attachment and sale of houses, &c., &c., and also to revive the charge after so long." The Government Pleader after taking instructions from the District Magistrate agreed that the matter was not one which ought to be pursued any further. The complainant, however, opposed this course, urging that the applicant was a man of extremely bad antecedents, having several previous convictions against him, and

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that in respect of the very matter in question he was at the time bound over to keep the peace and had purposely avoided the process of the Court until such time as his bond should have expired. Under these circumstances the Sessions Judge referred the case to the High Court for orders.

Mr. *R. K. Sorabji* for the applicant.

Maulvi *Muhammad Ishaq* for the opposite party.

BLAIR, J.—Three persons were sent before a Magistrate to answer a charge under section 426 of the Indian Penal Code. Two of them presented themselves, the third was absent. The case was heard against the two who were present. Upon their being convicted, the Court showed its appreciation of the magnitude of their offence by inflicting on each of them a fine of Re. 1. That amount was ordered to be given to the prosecutor, and the Magistrate says that it would more than recoup him for any damage suffered. The Magistrate also says that in his opinion the matter was so trivial that it was not desirable to waste time in pursuing the charge against the absent man. A few days after that determination of the case against the two, a fresh complaint was lodged against the third man by the prosecutor, and the Magistrate rightly held that such a complaint was not barred by any rule of law. The Magistrate entertained the complaint and issued his warrant for the arrest of the person charged. After some search had been made the Magistrate found that the person for whom the warrant had been issued was absconding or concealing himself to evade process, and thereupon on the 12th September drew up a proclamation calling upon the person charged to appear at the Court House at Allahabad within thirty days of the date of proclamation. It is not clear whether there ever was complete publication as required by law of that proclamation. The provisions of sub-sections (b) and (c) appear to have been complied with upon the 17th September. There is nothing to show whether the provisions of sub-section (a) were ever complied with at all. There was no endorsement or statement in writing made by the Court validating the proclamation. It is therefore obviously not a proclamation according to law. It did not specify a place and a time for the appearance of the absent man within thirty days or more from the date of the publication.

Apparently some form intended to amount to an attachment was gone through, but apparently the property, whatever it was, was allowed to remain in the possession of its original owner. A sale took place of what are described as houses. Purchasers were found and, I suppose, the purchase money was paid. Whether the possession of the property ever passed into other hands than that of the original owner is not clear. Now these matters were brought to the attention of the District Judge in an application for revision made by the absent man, and the Judge refers to this Court a statement of the facts coupled with a recommendation that further proceedings before the Magistrate should be put a stop to, and the attachment and sale be cancelled, and the sale money returned to the purchasers. It has been objected to the Judge's recommendation that the applicant in revision before him had and has his remedy under section 89 of the Code of Criminal Procedure, which enables the subject of such a proclamation as this to prove within two years that he had not absconded to avoid the warrant, and that he had not sufficient notice of the proclamation to enable him to attend within the time specified therein. It seems to me that section 89 prescribes a remedy where there is a good and legal publication, but offers no facility for the contesting of the legality of the proclamation. The fact, however, remains that a sale has taken place; that the purchasers have acquired some sort of title, and I am not aware that this Court in exercising its revisional power has ever passed an order affecting the title of persons (outsiders) to the legal proceedings in which the order is made. I therefore direct that the proceedings before the Magistrate go no further, and must decline to make the order desired in respect of the order of attachment and sale of the property. It will be for the parties to seek elsewhere their legal remedies.

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