

1887

 IN THE
 MATTER OF
 THE
 PETITION OF
 GOLAM
 AHMED
 KAZI

the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things.

Upon the information which was given to these police constables, all that they could be justified in doing was to examine the informant as to what had happened to him, and then make such enquiries as the result of that examination might render desirable, but they would have no right to interfere with any one or search any one's house, because there were no circumstances brought to their knowledge by the information which this man gave, which entitled them to suppose that any particular individual was guilty of any offence. Under the circumstances the most that the statement of the accused amounts to is, that it was untrue and was made for the purpose of hoaxing the police. No doubt that is a very wrong thing for any man to do. In the first place it is wrong to tell lies, and in the second place it is extremely wrong to take up the time of Government servants by putting them to useless enquiries under circumstances of this kind; but I do not think myself that such conduct comes within the meaning of this section, or amounts to anything more than a hoax, for which no punishment is provided by the Code. Under these circumstances we cannot make a crime when it is not made one by the Code or provide a punishment for it.

The rule will therefore be made absolute to set aside the conviction; the prisoner will be discharged.

T. A. P.

Rule absolute.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Agnew.

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 December 22.

FA NINDRO DEB RAIKUT (JUDGMENT-DEBTOR) v. RANI JUGUDISH WARI
 DABI (DECREE-HOLDER).*

Execution of decree—Decree against executors for debts incurred while acting under a will afterwards found invalid, Effect of—The heir's liability under the decree—The remedy of the decree-holder.

Certain executors, acting under an order of the Court, borrowed a sum of money from *K. M.* for the funeral expenses of *J. D.* the testator. *K. M.*

* Appeal from Order No. 216 of 1886, against the order of (A. J. B. T. Dalton, Esq., Subordinate Judge of Jalpaiguri, dated the 20th of May, 1886.

obtained a decree for the amount against the executors and the adopted son of *J. D.* Afterwards *F. D.* got a decree, whereby both the will and the adoption were set aside, and he was declared the legal heir of *J. D.* *K. M.* then sought to enforce his decree against *F. D.* by the sale of the property which now formed part of the estate of *F. D.*, who objected to the proceedings.

Held, that as *F. D.* was not the legal representative of the judgment-debtors, the decree could not bind the estate in his hands; but, in order to make the estate liable for the debt, the proper course of the decree-holder was to bring a regular suit against *F. D.*

JOGENDRO DEB RAIKUT died on the 10th March 1878. He had made a will, appointed executors and left an adopted son. The executors took out probate, and gave a bond to Kali Mohun Rae for a sum of Rs. 5,000, which they had borrowed for the performance of the funeral ceremonies of Jogindro. Kali Mohun obtained a decree for the amount on the 29th July, 1881. In the meantime Fanindro Deb had brought a suit for the establishment of his right to the estate left by Jogendro, and to set aside the will and adoption. Fanindro fought up to the Privy Council and obtained a decree on the 14th February, 1885. On the 26th March the estate of the deceased Jogendro in Bycuntpore was attached in execution of Kali Mohun's decree. Afterwards under the direction of the Subordinate Judge the name of Fanindro Deb was substituted in respect of the estate of Jogendro Deb, and a fresh application was made in execution for the sale of the property. Fanindro took objection, and his principal ground was that, inasmuch as he was not a party to the suit, the decree was not enforceable against him, nor was the estate which had now passed to him liable under that decree. The Subordinate Judge, holding on the authority of *Sudinidra v. Budan* (1) that the objector was not entitled to go behind the decree and re-open the whole case, granted the application.

Fanindro Deb appealed to the High Court.

Mr. *Woodroffe*, Baboo *Srinath Das* and Baboo *Bhagabati Charan Ghose* for the appellant.

Mr. *Evans*, Baboo *Grish Chunder Chunder Chowdhry* and Baboo *Mukunda Nath Roy* for the respondent.

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The Court (PRINSEP and AGNEW, JJ.) delivered the following

judgment :—

FANINDRO
DEB RAJKOT
v.
RANI JUGU-
DISHWARI
DABI.

The matter before us relates to the execution of a decree obtained by Kali Mohun against the executors of the estate of Jogendro Deb, deceased, acting under an order of the Court, and also against the minor, stated to be his lawfully adopted son, represented by the widow of the deceased as guardian *ad litem*. The decree was for money borrowed by the executors to celebrate the funeral ceremonies of the deceased Jogendro, and was made on the 29th July, 1881. In 1878 a suit was brought by Fanindro, the appellant before us, to establish his right to succeed to the estate of Jogendro, and to set aside the adoption of the minor as well as the will in his favor. On the 11th of November, 1879, Fanindro obtained a decree in the Court of first instance. An appeal against this order was pending before this Court while the suit by Kali Mohun was still under trial. That appeal was decided on the 24th June, 1881, in favor of the adoption, reversing the judgment of the first Court which had been obtained by Fanindro. At that time also, it may be observed, Kali Mohun's suit had not been decided. On the 27th of December, 1881, Kali Mohun took out execution and attached certain property belonging to the judgment-debtor. On the 22nd of February, 1882, Jugudishwari, the widow of Jogendro and the guardian of the minor whose adoption had been disputed, purchased this decree, and on the 20th of March following was substituted in the place of the decree-holder as his assignee. No further proceedings were taken, and on the 5th of April the proceedings terminated. On the 6th of November, 1884, Jugudishwari, the assignee of the decree-holder, applied for execution against Jogendro who had attained majority. The appeal in the suit brought by Fanindro was heard by the Privy Council in the early part of December, and judgment was delivered on the 14th February, 1885, setting aside the decree of this Court and restoring that of the first Court in favor of Fanindro (see L. R. 12 Ind. App., 72). Nevertheless the execution of Kali Mohun's decree proceeded, and, on the 26th of March, the estate of the deceased Jogendro in Bycuntpore was attached. On the 2nd April orders for its sale were passed, and on the 7th of May, Fanindro objected that execution could not be

taken out against him, as he was not one of the judgment-debtors or a party to the suit. This objection was allowed on the 11th of June, and the Subordinate Judge expressed the opinion that "the proper course will be for decree-holder to apply to have the name of Fanindro Deb substituted for that of Jogendro Deb, on the ground that the estate of Jogendro Deb is liable." The proceedings in execution were renewed on the 16th July, and on the 25th of September Fanindro again raised objections, which may be shortly described as those which are now presented before us in this appeal. The Subordinate Judge disallowed them on the 20th of May, 1886. It is first objected that Fanindro is not bound by any of the acts of the executors and others acting under the will and adoption made by Jogendro Deb, which at his suit have been declared invalid by their Lordships of the Privy Council. To this it is replied that, so long as the probate was operative, the acts of the executors within the authority conferred on them bound the estate especially in a matter connected with the performance of the religious ceremonies of the deceased under Hindu law, and further that in lending money to them for that purpose Kali Mohun could recover from the estate. For Fanindro it is stated that any ceremonies performed by a person unlawfully adopted are not valid, and therefore cannot be charged against the estate; and further that the funds in the hands of the executors were much more than sufficient for this purpose. Another objection raised is to the jurisdiction of the Court of the Sub-Judge of Rungpore to pass the decree now under execution, and of the Court of the Sub-Judge at Jalpaiguri to take proceedings in execution. This is an exceedingly complicated and difficult matter. The suit was instituted by Kali Mohun on 11th February, 1881, in the Court of the Sub-Judge of Rungpore, which, it is not disputed, had jurisdiction. On 24th March following a notification was published by the Government of Bengal under s. 10 of the Bengal Civil Courts' Act of 1871, vesting the Deputy Commissioner of Jalpaiguri with powers of a Sub-Judge from the 1st April next, and further declaring that from that date the Sub-Judge of Rungpore shall cease to have jurisdiction in Jalpaiguri. We are next informed that on 6th April following the Registrar of the High Court under its orders directed the Sub-Judge to continue to

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exercise jurisdiction until further orders. He consequently proceeded with the trial and finally made a decree. Execution was however taken out in the Court of the Sub-Judge at Jalpaiguri. No order for the transfer of the decree under s. 223 of the Code appears to have been made, and it would seem that the proceedings were taken under authority of the Government of Bengal of 1st April. It would certainly not be open to a judgment-debtor to question in execution the jurisdiction of the Court which had made the decree, but Fanindro, whom it is sought to bind by that decree, was no party to it. He holds the estate from which it is about to be realized, and he justly contends that he is entitled to an adjudication of all those objections before the decree ~~can be~~ realized from his estate. We are aware of no precedent under which an objection, such as have been raised before us, can be taken in the course of execution. Mr. Evans contends that it is for Fanindro in another suit to have himself absolved from liability under the decree, and that as it stands it can be executed against the estate. The matter is of considerable difficulty, but after some hesitation we have come to the conclusion that Fanindro cannot be held liable to satisfy the same; and that, if the decree-holder wishes to make him liable for the debt incurred, he should bring a separate suit in which matters which cannot be tried in the form in which the proceedings are now before us may be regularly and finally determined. Fanindro cannot be regarded as the legal representative of those who incurred the debt, and if it be sought to bind him as now representing the estate which was then represented by the parties to the bond, he can be made liable only in a separate suit.

We accordingly set aside the order of the Sub-Judge and direct that execution be stayed.

Appellant will receive his costs.

K. M. C.

Order set aside.